CTA Form No. 8 (For DCC)

20-000066-0076

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10261

PHILIPPINE MINING SERVICE CORPORATION,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village, Makati City

ATTY. AYESHA HANIA B . GUILING-MATANOG
ATTY. CLARISSA J. VIRTUDES-BABARAN
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

PLATON MARTINEZ FLORES SAN PEDRO & LEAÑO
6th Floor, Tuscan Building
114 V.A. Rufino St., Legaspi Village
Makati City

GREETINGS:

You are hereby notified by these presents that on **July 3, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **July 4, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

PHILIPPINE MINING SERVICE CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10261

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

JUL 03 2024 3:30PM

x - x

RESOLUTION

MANAHAN, *J.:*

For resolution of the Court is respondent's *Motion for Partial Reconsideration (Re: Decision promulgated 13 March 2024)* filed on March 26, 2024, with petitioner's *Comment (to Respondent's Motion for Partial Reconsideration dated 25 March 2024)* filed on April 24, 2024.

For easy reference, the dispositive portion of the assailed Decision reads:

> "Accordingly, the instant Petition for Review is **PARTIALLY GRANTED**. Respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **₱18,951,788.25**, representing petitioner's unutilized input VAT attributable to its zero-rated sales for the CY 2018.
>
> **SO ORDERED**."[1]

In his motion, respondent argues that based on *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue,*[2] the judicial review should be confined to the same documents submitted at

[1] Decision, Docket, Vol. II, p. 1095.
[2] G.R. No. 207112, December 8, 2016.

the administrative level, and this Court's jurisdiction becomes strictly appellate in nature.

Moreover, respondent asserts that petitioner is not entitled to its refund claim.

On its part, petitioner counters that the *Pilipinas Total Gas* case is inapplicable to the instant case. Further, petitioner asserts that it fully substantiated its refund claim.

After careful consideration of the above-arguments, the Court finds the instant motion unmeritorious.

With respect to the applicability of the *Pilipinas Total Gas* case, suffice it to state that respondent failed to specify the findings and conclusions in the assailed decision which are not supported by evidence. As such, the said case is inapplicable to this case.

With respect to petitioner's entitlement to its claim for refund, respondent asserts that petitioner failed to show that it rendered services to affiliates outside and not doing business in the Philippines, pursuant to the ruling of the Court of Tax Appeals (CTA) *En Banc* ruling in *Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue.*[3]

In *Deutsche*, petitioner's claim is anchored on Section 108(B)(2) of the 1997 National Internal Revenue Code (NIRC).[4] It provides:

> "SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.—*
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.—* The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> (2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in

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[3] CTA EB No. 1742, November 4, 2019.

[4] Prior to the amendments introduced by the Tax Reform for Acceleration and Inclusion (TRAIN) Act.

> business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);"

In contrast, petitioner's claim in the present case is anchored on Section 106(A)(2)(a)(1) of the 1997 NIRC, as amended. It provides:

> "SEC. 106. *Value-Added Tax on Sale of Goods or Properties* . —
>
> (A) *Rate and Base of Tax.* — xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales* . — The term **"export sales"** means:
>
> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)."

In relation to the above-provision, petitioner must prove the following elements:

1) The sale was made by a VAT registered person;

2) There was sale and actual shipment of goods from the Philippines to foreign country; and,

3) The sale was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

In other words, Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, does **not** require petitioner to show that the recipient of the exported goods are non-resident foreign corporations doing business outside the Philippines. This requirement is only applicable to services rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the

Philippines when the services are performed, pursuant to Section 108(B)(2) of the 1997 NIRC, as amended.

Considering the foregoing, the Court finds no reason to deviate from its previous ruling. Hence, the denial of the present motion is in order.

FOR THESE REASONS, respondent's *Motion for Partial Reconsideration (Re: Decision promulgated 13 March 2024)* is **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice