REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

FINANCIAL TIMES ELECTRONIC PUBLISHING PHILIPPINES, INC., Petitioner,	CTA Case No. 9434
	Members:
- versus -	FABON-VICTORINO, and RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 04 2019 5:10 p.m.

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DECISION

***Fabon-Victorino, J.*:**

In this Petition for Review[1], petitioner Financial Times Electronic Publishing Philippines, Inc. prays for the refund or issuance of tax credit certificate of the amount of One Million Nine Hundred Ninety-Nine Thousand Seven Hundred Sixty-Eight Pesos and Ninety-Nine Centavos (₱1,999,768.99), allegedly representing excess and unutilized input value-added tax (VAT) attributable to its zero-rated sales for the third (3rd) quarter of calendar year (CY) 2014.

First, the facts.

Petitioner is a domestic corporation with principal office address at 42/F Philamlife Tower, 8767 Paseo de Roxas, Makati City.[2] Its primary purpose is "to engage in and carry on the business of financial and corporate information data

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[1] Docket, pp. 12-31.
[2] Exhibits "P-1" and "P-2".

collection facility in the Philippines and generally to perform any and all acts connected with the business aforementioned or arising therefrom or incidental thereto as may be allowed by law."[3]

Petitioner is registered as a VAT taxpayer, with Tax Identification No. (TIN) 204-611-007-000.[4]

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue (BIR) vested with authority, among others, to act upon and approve claims for refund or tax credit of overpaid or erroneously paid internal revenue taxes. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

During the period July 1, 2014 to September 30, 2014, petitioner allegedly rendered services to Financial Times Limited, a non-resident foreign corporation not engaged in business within the Philippines, for which it was paid in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). During the same period, petitioner incurred input taxes from its purchases of goods and services attributable to its VAT zero-rated sales, in the aggregate amount of ₱1,999,768.99.

On October 17, 2014, petitioner filed with the BIR its third (3rd) Quarter VAT Return[5] for CY 2014 declaring, among others, VAT zero-rated sales of ₱210,074.40 and an unutilized input VAT in the aggregate amount of ₱1,999,768.99.

On March 30, 2016, petitioner filed with the BIR-Revenue District Office (RDO) No. 50 of Revenue Region No. 8, an Application for Tax Credits/Refunds (BIR Form No.

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[3] Exhibit "P-2-A".
[4] Paragraph B.1., Joint Stipulation of Facts and Issues (JSFI), Docket, p. 286; and Exhibit "P-3".
[5] Exhibit "P-7".

1914)[6] for its excess and unutilized input VAT for the third quarter of CY 2014 in the total amount of ₱1,999,768.88.

For alleged failure of respondent to act on its administrative claim, petitioner filed the instant Petition for Review before the Court on August 22, 2016.

In his Answer[7], respondent claims under his Special and Affirmative Defenses that petitioner's claim for refund is still subject to administrative routinary investigation/examination; that the amount of ₱1,999,768.88 allegedly representing petitioner's unutilized input taxes for the 3rd quarter of CY 2014 was not properly documented; that the burden of proof to establish its right to refund is on petitioner; and that claims for refund are construed strictly against the taxpayer as the same partakes the nature of exemption from taxation.

After the pre-trial conference, the parties filed their Joint Stipulation of Facts and Issues[8] on the basis of which a Pre-Trial Order[9] was issued on March 23, 2017.

During the trial, petitioner presented two (2) witnesses, namely: (1) its Financial Controller, Paulito B. De Pano; and (2) the Court-commissioned Independent Certified Public Accountant (ICPA), Annalyn B. Artuz, to prove the material allegations in its petition.

Witness **Paulito B. De Pano** testified[10] that as petitioner's Financial Controller, he supervises petitioner's compliance with pertinent laws and government rules and regulations as well as payment of taxes, fees and licenses. He is also in custody of petitioner's financial statements, tax returns, BIR Certificate of Registration, other permits, sales invoices, official receipts and other accounting records as well as corporate documents such as Articles of

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[6]Exhibit "P-10".
[7]Docket, pp. 140-142.
[8]Docket, pp. 286-294.
[9]Docket, pp. 296-301.
[10]Exhibit "P-19", Docket, pp. 182-195.

Incorporation, By Laws, General Information Sheet, and other reportorial requirements.

Under its Amended Articles of Incorporation, petitioner was incorporated primarily "*to engage in and carry on the business of financial and corporate information data collection facility in the Philippines and generally to perform any and all acts connected with the business aforementioned or arising therefrom or incidental thereto as may be allowed by law*." As a VAT registered taxpayer it was issued Tax Identification Number (TIN) 204-611-007-000, per its Certificate of Registration with the BIR.

The witness further declared that during the period July 1, 2014 to September 30, 2014, petitioner under the Services Agreement it executed with Financial Times Limited rendered accounting and business support services to latter. Financial Times Limited, allegedly a non-resident foreign corporation, was not engaged in business in the Philippines. The witness further declared that all the services rendered to Financial Times Limited were covered with VAT zero-rated official receipts, summary of export sales and certification of inward remittances.

On October 17, 2014, petitioner filed its quarterly VAT return for the 3rd quarter of CY 2014 reporting a VAT zero-rated sales of ₱210,074.40; and an input tax of ₱1,999,768.88 from domestic purchases of goods and services amounting to ₱16,664,742.73.

To recover the excess input VAT attributable to zero-rated sales for the 3rd quarter of CY 2014, petitioner filed with respondent an administrative claim for refund/issuance of TCC on March 30, 2016, amounting to ₱1,999,768.88. Attached to its administrative claim (BIR Form No. 1914) were: (1) a letter summary of supporting documents duly stamped received by the BIR on March 30, 2016; and (2) petitioner's Sworn Certification dated October 20, 2015, to the effect that the documents submitted in support of its claim for refund were complete.

Acting on the said administrative claim for refund, the respondent issued on April 25, 2016 a Letter of Authority (LOA) No. eLA201200035797 dated April 15, 2016, authorizing Revenue Officer (RO) Eugene Garcia and Group Supervisor Faisal Mamacotao of Revenue Region No. 8 – Revenue District Office No. 50 to examine petitioner's books of accounts and other accounting records for VAT for the period July 1, 2014 to September 30, 2014.

Subsequently, various discussions between the BIR examiners and representative of petitioner occurred regarding the documents necessary to support petitioner's claim for refund. However, the mandated 120-day period to process petitioner's application expired without any action on the part of respondent. Thus, on August 22, 2016, petitioner filed the instant Petition for Review before the Court.

ICPA **Annalyn B. Artuz**, declared[11] that after she was commissioned by the Court, she and her team started the examination and verification of petitioner's voluminous documents in support of its claim for refund.

Thereafter, she prepared a written report with the following findings and observation:

1. The Petitioner issued actual Statements of Accounts pertaining to zero-rated sales of services to its non-resident foreign customer totaling $2,378,234.00 for the period July 1, 2014 to September 30, 2014. The proceeds of such zero-rated sales were received, inwardly remitted to Petitioner's bank account in acceptable foreign currency in October 2014 and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas, and declared in the VAT returns of the 4th quarter of year 2014, a period subsequent to the period of claim.

2. The Petitioner's zero-rated receipts declarations in the aggregate amount of ₱210,074.40 in the

[11] Exhibit "P-48", Docket, pp. 487-499.

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Quarterly VAT Return of the 3rd quarter of year 2014 did not pertain to zero-rated sales of services and were remitted to the Petitioner's bank account in Philippine peso based on the bank's Certification of Inward Remittance (CIR) presented. These receipts pertained to amounts received as reimbursements for expenses of related parties that were advanced by the Petitioner.

3. ₱1,571,355.07 input taxes were properly supported with documents that were in compliance with the substantiation requirements.

4. The amount claimed for issuance of TCC of ₱1,999,768.88 was not subsequently utilized against any output VAT.

The ICPA capped her testimony by stating that on July 13, 2017, she submitted to the Court her written report[12], together with the photocopies of the documents she examined and pre-marked.

Petitioner rested its case with its formal offer[13] of Exhibits P-1 to P-49, inclusive of sub-markings, which the Court all admitted, except Exhibit P-35, in the Resolutions dated September 11, 2017[14] and November 24, 2017[15].

During respondent's presentation of evidence, his counsel manifested that he would not present evidence as the Revenue Officer assigned to examine petitioner's books of accounts had not submitted a final report of the examination.

On February 8, 2018, the instant case was deemed submitted for decision considering the filing of petitioner's Memorandum on January 25, 2018 and the Records Verification Report of the Judicial Records Division dated

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[12] Exhibit "P-47", docket, pp. 415-482.
[13] Docket, pp. 567-582.
[14] Docket, pp. 792-763.
[15] Docket, pp. 780-782.

February 6, 2018, stating that respondent failed to file any.[16]

THE ISSUE

The sole issue[17] submitted for resolution is:

> WHETHER OR NOT THE PETITIONER IS ENTITLED FOR THE ISSUANCE OF TAX CREDIT CERTIFICATES FOR THE EXCESS AND UNUTILIZED INPUT VALUE-ADDED TAX (VAT) DIRECTLY ATTRIBUTABLE TO ITS VAT ZERO-RATED SALES FOR THE PERIOD FROM JULY 1, 2014 TO SEPTEMBER 30, 2014 AMOUNTING TO ₱1,999,768.88.

THE COURT'S RULING

Petitioner invokes Sections 108(B)(2), in relation to 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, as legal bases for the instant claim for refund, to wit:

> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* —
>
> xxx xxxxxx
>
> (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**:
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> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where

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[16] Resolution, docket, p. 822.
[17] Paragraph C, JSFI, Docket, p. 287.

the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) **Services other than those mentioned in the preceding paragraph 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, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BangkoSentral ng Pilipinas (BSP)**; (*Emphasis supplied*)

SEC. 112. *Refunds or Tax Credits of Input Tax.* —

(A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be

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> directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108 (B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

Based on the afore-quoted provisions, the following requisites must be satisfied to be entitled to a refund or tax credit of input tax due or paid attributable to zero-rated or effectively zero-rated sales:

1. the taxpayer is VAT-registered;

2. the taxpayer is engaged in zero-rated or effectively zero-rated sales;

3. the input taxes are due or paid;

4. the input taxes are not transitional input taxes;

5. the input taxes have not been applied against output taxes during and in the succeeding quarters;

6. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;

7. for zero-rated sales under Sections 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas;

8. where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and

entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and

9. the claim is filed within two years after the close of the taxable quarter when such sales were made.[18]

As in any refund cases, the timeliness of the filing of the instant claim for refund or issuance of tax credit certificate must first be determined.

Per Section 112(A) and as expounded in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.* (Aichi),[19] a VAT-registered person, such as petitioner, may within two (2) years from the close of the taxable quarter when the relevant sales were made, apply with respondent a claim for refund or issuance of tax credit certificate of creditable input tax attributable to such sales.

The present claim covers the 3rd quarter of CY 2014 which closed on September 30, 2014. Counting two (2) years from said date, petitioner had until September 30, 2016, within which to file its administrative claim for tax credit or refund. Clearly, petitioner's administrative claim for refund was timely filed on March 30, 2016.

As to petitioner's judicial claim, Section 112(C) of the NIRC of 1997, as amended, provides as follows:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* —
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> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* —

[18] *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013.
[19] G.R. No. 184823, October 06, 2010.

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> In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
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> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, **the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals**. (Boldfacing supplied)

Thus, the taxpayer may appeal to the Court of Tax Appeals (CTA) within thirty (30) days from receipt of the decision or from inaction of the Commissioner of Internal Revenue after the lapse of the one hundred twenty (120)-day period *via* a Petition for Review.

Record reveals that upon filing of its administrative claim on March 30, 2016, petitioner simultaneously submitted complete documents in support thereof. Thus, the 120-day reckoned from March 30, 2016 shall be until July 28, 2016. Considering that respondent failed to act on the subject claim within the said 120-day period, petitioner had 30 days after the lapse of the 120-day period or until August 27, 2016 within which to seek judicial intervention. Evidently, petitioner's filing of its judicial claim for refund on August 22, 2016 was also on time.

On petitioner's compliance with the remaining requisites for refund of input VAT, it states that during the 3rd quarter of CY 2014, it rendered accounting and business support services to Financial Times Limited, a non-resident foreign corporation not engaged in business within the

Philippines, the consideration for which was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP. Petitioner contends that the services it rendered to Financial Times Limited was subject to zero percent (0%) VAT pursuant to Section 108(B)(2) of the NIRC of 1997, as amended.

Relevantly, in the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[20], the Supreme Court held that for the supply of services to be VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended, the following requisites must be met:

1. the services must be other than processing, manufacturing or repacking of goods;

2. the recipient of such services must be doing business outside the Philippines; and

3. the payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations.

It was established that the services rendered by petitioner to its client were other than processing, manufacturing or repacking of goods and that petitioner, as a registered VAT taxpayer was issued TIN 204-6111-007-000. In its company registration with the SEC, petitioner was established primarily to "*to engage in and carry on the business of financial and corporate information data collection facility in the Philippines and generally to perform any and all acts connected with the business aforementioned or arising therefrom or incidental thereto as may be allowed by law.*" For the Court, such services are not the same category as "*processing, manufacturing or repacking of goods*".

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[20] G.R. No. 153205, January 22, 2007.

To prove that its client, Financial Times Limited, is a non-resident foreign corporation doing business outside the Philippines, petitioner presented the following documents:

1. Financial Times Limited's Certificate of Foreign Incorporation and Certificate of Change of Name of the Company[21], as authenticated by the Philippines consulate in the United Kingdom;

2. Certification of Non-Registration of Company[22] dated March 1, 2017, as issued by the Securities and Exchange Commission; and

3. Service Agreement entered into by petitioner and Financial Times Limited.

In the case of *Deutsche Knowledge Services, Pte Ltd. vs. Commissioner of Internal Revenue*[23], this Court *En Banc* had the occasion to discuss the documentary requirements needed to prove that the recipients of services are non-resident foreign corporations doing business outside of the Philippines, to wit:

> *xxx* to prove that its clients are non-resident foreign corporations doing business outside the Philippines, petitioner presented the following documents: *(1)* SEC Certifications of Non-Registration of Company; *(2)* Certifications from different government agencies in the country of origin of petitioner's clients, duly authenticated by the nearest consulate ofthe Philippines; *(3)* Intragroup Service Agreements; and *(4)* Deutsche Bank List of Shareholdings 2008. However, the Court in Division found that the aforesaid documents *per se* do not constitute sufficient proof that petitioner's clients are non-resident foreign

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[21] Exhibit "P-4".
[22] Exhibit "P-35".
[23] CTA EB No. 1290 (CTA Case No. 7808), August 16, 2016.

> corporations doing business outside the Philippines. **To be considered as non-resident foreign corporation doing business outside the Philippines,each entitymust be supported, at the very least, <u>by both</u> SEC certificate of non-registration of corporation/partnershipand certificate/articles of foreign incorporation/association/registration.** *xxx (Boldfacing and underscoring supplied)*

Thus, to be considered as non-resident foreign corporation doing business outside the Philippines, the entity must be supported at the very least by **both** <u>SEC Certificate of non-registration of corporation/partnership</u> **and** <u>Certificate/Articles of foreign incorporation/association/registration</u>.

In the instant case, while petitioner offered as documentary exhibits its client Financial Times Limited's Certificate of Incorporation in the United Kingdom (Exhibit P-4), SEC Certification of Non-Registration of Company (Exhibit P-35), and Service Agreement (Exhibit P-5), the Court cannot consider the SEC Certification of Non-registration of Company (Exhibit P-35) as it was denied admission in the Resolution[24] dated September 11, 2017, for petitioner's failure to present the original thereof. In other words, the two (2) remaining documentary evidence are insufficient to prove that Financial Times Limited was a non-resident foreign corporation not doing business in the Philippines during the relevant period.

Even assuming that Exhibit P-35 was admitted, the same would not save the day for petitioner insofar as proving that Financial Times Limited was a non-resident foreign corporation not doing business in the Philippines. Perusal of the record reveals that the name in the Certificate of Incorporation and Certificate of Change of Name of the Company, marked as Exhibit P-4, pertains to a company originally incorporated as FINANCIAL TIMES (1928),

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[24]Docket, pp. 762-763.

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LIMITED, which was subsequently changed to THE FINANCIAL TIMES LIMITED. On the other hand, the Philippine SEC Certification of Non-registration of Company, marked as Exhibit P-35, pertains to a company named, FINANCIAL TIMES GROUP, LTD. Plainly, the Certificate of Non-registration submitted by petitioner was not for its client Financial Times Limited.

It must be emphasized that without the Certificate of Non-registration issued by the SEC, the Court would not be able to ascertain whether petitioner's client, Financial Times Limited, is a non-resident foreign corporation not doing business in the Philippines.

Consequently, petitioner's sales of services to Financial Times Limited cannot qualify for VAT zero-rating and the claimed input taxes attributable thereto in the amount of ₱1,999,768.99 cannot be refunded.

In view of the foregoing, it is unnecessary to discuss petitioner's compliance with the remaining requisites previously stated.

WHEREFORE, the instant Petition for Review is hereby **DENIED,** for insufficiency of evidence.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I concur:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Acting Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice