REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

AMADEUS MARKETING PHILIPPINES, INC., Petitioner,	CTA CASE NO. 8578
	Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 21 2016 10:50 a.m.

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DECISION

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

In the instant Petition for Review filed on November 26, 2012[1], petitioner Amadeus Marketing Philippines, Inc. prays for refund of the amount of Twenty-Three Million Three Hundred Fifty-Five Thousand Eight Hundred Forty-One Pesos and 61/100 (₱23,355,841.61), allegedly representing unutilized input value-added tax (VAT) for the 2nd, 3rd, and 4th quarters of taxable year 2010.

THE FACTS

Petitioner is a domestic corporation, with office address at 36th Floor, LKG Tower, 6801 Ayala Avenue, Makati City. It is registered with the Securities and Exchange Commission (SEC) with Company Registration No. A1997-11194.[2] It is also a VAT-registered entity with Certificate of Registration

[1] Docket, vol. 1, pp. 6-17.
[2] Exhibit "A".

No. OCN9RC0000133815[3] and Taxpayer's Identification Number (TIN) 005-374-900-000 dated January 1, 1998.

Per its Article of Incorporation, petitioner's primary purpose is to market an automated computerized reservations system, "Amadeus Global Travel Distribution" which incorporates a software package which performs various functions, including real-line airlines seat reservations, schedules booking for a variety of air, boat, train, package tours, car rental and hotel services, automatic ticketing, and fare pricing displays in the Philippines.[4]

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR), authorized to act on claims for refund or issuance of tax credit certificate in accordance with the law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner alleges that during the 2nd, 3rd and 4th quarters of 2010, it entered into several transactions and consequently incurred input taxes, which were reported in its VAT returns.

Its sales/receipts for the 2nd, 3rd and 4th quarters of 2010 include only small amounts subject to 12% VAT and a substantial portion of the input taxes incurred on purchases are attributable to its zero-rated sales/receipt. Thus, the input taxes attributable to its zero-rated sales/receipts were not fully utilized in the same quarter and were not used against its output taxes in the subsequent periods.

Petitioner, through the Electronic Filing and Payment System (EFPS), filed its Quarterly VAT Returns for the 2nd, 3rd and 4th quarters of taxable year 2010 on the following dates:

PERIOD COVERED (2010)	VAT RETURN	DATE FILED
Second Quarter	Original	July 22, 2010[5]
	Amended	August 17, 2010[6]

[3] Exhibit "B".
[4] Exhibit "C".
[5] Exhibit "L".
[6] Exhibit "L-1".

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Third Quarter	Original	October 19, 2010[7]
Fourth Quarter	Original	January 26, 2011[8]

On June 29, 2012, petitioner filed with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 50 in Makati City an Application for Tax Refund with all its supporting documents[9], allegedly representing its unutilized input VAT for the 2nd, 3rd and 4th quarters of taxable year 2010.

On November 26, 2012, petitioner filed the instant Petition for Review citing as ground respondent's inaction on its administrative claim for refund.

On February 11, 2013, respondent posted her Answer[10], suggesting petitioner's burden to substantiate its claim for refund with sufficient evidence and comply with all the legal requisites for its alleged entitlement. Failure to discharge the said burden is fatal to petitioner's claim.[11] And in view of the doctrine that taxes are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[12]

After the Pre-Trial Conference, the parties filed their Joint Stipulation of Facts and Issues on July 25, 2013, which the Court approved on August 8, 2013[13].

It support of its case, petitioner presented its Finance Officers, Rosaldo Andales and Romanelle Silungan Aguila; and the Court-commissioned Independent Certified Public Accountant (ICPA) Joseph Celdric Calica, as witnesses.

Witness **Rosaldo Andales** testified[14] that as

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[7] Exhibit "M".
[8] Exhibit "N".
[9] Exhibits "T" and "U".
[10] Docket, vol. 1, pp. 31-39.
[11] Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990, as cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206.
[12] Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue, G.R. No. 159471, January 26, 2011.
[13] Docket, vol. II, pp. 738-746.

petitioner's Finance Officer II/Team Lead since April 19, 2010, he ensures that petitioner complies with existing tax law and regulations. For this purpose, he prepares and reviews petitioner's tax returns and pays the corresponding taxes due thereon. He also reviews petitioner's financial reports and record, including matters pertaining to tax and contracts. As custodian of petitioner's corporate documents, he keeps its Articles of Incorporation, BIR Certificate of Registration, SEC Registration and other reportorial requirements of other government agencies.

Petitioner is registered with the SEC with Company Registration No. A 1997-11194 issued on January 31, 2005[15] and a VAT-registered entity with BIR Certificate of Registration No. OCN 9RC0000133815 bearing Taxpayer's Identification Number 005-374-900-000 issued on January 1, 1998[16]. Per petitioner's Articles of Incorporation, its primary purpose is to market in the Philippines an automated computerized reservations system, "Amadeus Global Travel Distribution" which incorporates a software package that performs various functions, including real-line airlines seat reservations, schedules booking for a variety of air, boat, train, package tours, car rental and hotel services, automatic ticketing, and fare pricing displays.[17] As such, petitioner rendered services to Amadeus IT Group, S.A. a non-resident foreign corporation doing business in Spain.

According to the same witness, petitioner and Amadeus IT Group, S.A. entered into a contract denominated as Amadeus Commercial Organization (ACO) Agreement[18], under which petitioner rendered services to Amadeus IT Group, S.A. substantial portion of which was paid through offsetting[19] arrangement against petitioner's payables to Amadeus IT Group, S.A. pursuant to their Offsetting Arrangement Agreement/Cash Netting of Distribution Fee and DAPS products. The balance of the consideration was paid in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), as shown in the Certificates of

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[14] Exhibits "W" and "W-1"
[15] Exhibit "A".
[16] Exhibit "B".
[17] Exhibit "C".
[18] Exhibit "D".
[19] Exhibits "H" and "H-1".

Inward Remittances issued by Hongkong and Shanghai Banking Corporation[20] (HSBC), for which petitioner issued VAT zero-rated official receipts.

The witness explained that the payables incurred by petitioner from Amadeus IT Group, S.A. were due to its use of the latter's software pack in the conduct of its business for which it was billed with software communication charges as evidenced by the invoices issued to it and the Distribution Agreement[21]. In addition, petitioner also obtained loans from Amadeus IT Group, S.A. under a contract denominated as Credit Facility Agreement.[22] The proceeds of the loan were remitted to petitioner as shown in the Certificate of Inward Remittance issued by HSBC.[23]

He also declared that the services performed by petitioner in the Philippines to Amadeus IT Group, S.A. are treated as zero-rated sales since Amadeus IT Group, S.A. is a foreign corporation not licensed to transact business in the Philippines[24] and is engaged in business outside the Philippines[25], in accordance with Section 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended.

He added that petitioner filed an application for VAT refund of its unutilized input VAT for the 2nd, 3rd and 4th quarters of 2010 in the total amount of ₱23,355,841.61 with the BIR RDO No. 50 in Makati City[26] on June 29, 2012[27] as it was not able to apply or utilize the said input VAT against any output VAT in the same and subsequent taxable periods, as reflected in petitioner's quarterly VAT Returns[28]. Petitioner's excess input taxes for the 2nd, 3rd and 4th quarters of 2010 were included in the accumulated amount of input taxes carried over from previous years, which remained unutilized and not set-off against any of petitioner's VAT output tax liability.

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[20] Exhibit "E".
[21] Exhibit "V".
[22] Exhibit "F".
[23] Exhibit "G".
[24] Exhibit "I".
[25] Exhibits "J" and "K".
[26] Exhibits "T" and "U".
[27] Exhibit "T-2".
[28] Exhibits "L" to "R-4".

Petitioner's Finance Officer **Romanelle Silungan Aguila**[29] corroborated the testimony of Andales adding that petitioner Amadeus IT Group, S.A. sent E-mail correspondences[30] to petitioner each time it transferred funds to its account in payment of the services rendered in its favor, which was net of the Software Charges of Amadeus IT Group, S.A. against petitioner. On the other hand, petitioner issued Statements of Accounts[31] to Amadeus IT Group, S.A. for the service fees it charges for services rendered, which were also recorded in its books of accounts, as shown in the relevant pages of its General Ledger on 2010 Revenues[32].

Witness Aguila further declared that Amadeus IT Group, S.A., for its part, issued invoices[33] to petitioner for the software charges it incurred, while the latter issued official receipts[34] for the payment for the services rendered. The payments of software charges by petitioner to Amadeus IT Group, S.A. were net of taxes, since the final taxes were already withheld by petitioner and remitted to the BIR[35].

The Court-commissioned ICPA, **Joseph Cedric V. Calica** testified[36] that he audited and evaluated petitioner's documents and records in support of its claim for VAT refund for the 2nd, 3rd and 4th quarters of taxable year 2010, the result of which is reflected in his Report executed on June 10, 2013[37].

Per documents submitted to him, petitioner was engaged in zero-rated sales as it rendered services to Amadeus IT Group, S.A., a foreign company engaged in business conducted outside the Philippines and not engaged in trade or business in the Philippines. Out of petitioner's total claim for refund of unutilized input VAT on purchases of goods and services attributable to zero-rated sales in the amount of ₱23,783,426.50, only the net amount of

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[29] Exhibit "A^6" to "A^6-1".
[30] Exhibits "CCC" to "KKK", "JJJJJ" and "KKKKK"
[31] Exhibits "DDDD" to "VVVV".
[32] Exhibits "GG-1" and "WW".
[33] Exhibits "MMM" to "TTT", "LLLLL", "MMMMM" and "RRRRR".
[34] Exhibits "AAAAA" to "IIIII", "NNNNN" to "QQQQQ".
[35] Exhibits "UUU" to "CCCC.
[36] Exhibits "S" and "S-1".
[37] Exhibit "CCC".

₱19,675,292.92 qualified for refund.

On May 4, 2015[38], respondent manifested that she would no longer present any evidence and would only file a memorandum in support of her position.

THE ISSUES

The parties submitted the following issues[39] for the determination of the Court, to wit:

A. Whether or not petitioner's claim is filed within two years after the close of the taxable quarter when such sales were made;

B. Whether or not petitioner has zero-rated or effectively zero-rated sales that will result in input value-added taxes that may be refunded;

C. Whether or not petitioner's input taxes claimed are attributable to zero-rated or effectively zero-rated sales;

D. Whether or not petitioner's input taxes being claimed have not been applied against output taxes during and in the succeeding quarters;

E. Whether or not the input taxes being claimed by petitioner are due or paid;

F. Whether or not petitioner was able to substantiate its allegations as required by pertinent laws and rules and regulations to support its claim for a tax refund; and

[38] Docket, vol. 4, p.1739.
[39] Issues, JSFI, docket, vol. II, pp. 731-732.

G. Whether or not petitioner is entitled to a refund for its alleged unutilized input VAT in the total amount of Twenty-Three Million Three Hundred Fifty-Five Thousand Eight Hundred Forty-One Pesos and 61/100 (₱23,355,841.61), representing alleged unutilized VAT input taxes for the second, third, and fourth quarters of taxable year 2010.

The foregoing issues may be summed up into one, viz., whether petitioner is entitled to the refund prayed for in the amount of Twenty-Three Million Three Hundred Fifty-Five Thousand Eight Hundred Forty-One Pesos and 61/100, allegedly representing its unutilized input VAT for the 2nd, 3rd, and 4th quarters of taxable year 2010.

THE RULING OF THE COURT

To be entitled to the refund subject of the instant case, petitioner must satisfy the following requisites mandated in Section 112(A) of the NIRC of 1997, as amended,[40] to wit:

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[40] "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 or properties or services, and the amount of creditable input tax due or paid cannot be 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."

1. the taxpayer must be VAT-registered;

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

3. that input taxes were incurred or paid;

4. that such input taxes were attributable to zero-rated or effectively zero-rated sales;

4. that the input taxes were not applied against any output VAT liability; and

5. that the claim for refund was filed within the two-year prescriptive period.

Critical in meeting the foregoing requirements is the timeliness of the filing of the claim.

Section 112 (A) of the NIRC of 1997, as amended, expressly provides that a VAT-registered person, whose sales are zero-rated or effectively zero-rated may apply for refund/tax credit of creditable input tax due or paid attributable to such sales within two (2) years from the close of the taxable quarter when the relevant sales were made.

Corollarily, Section 112 (C) of the NIRC of 1997, as amended,[41] elucidated in the case of *Commissioner of*

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[41] "SEC. 112.**Refunds or Tax Credits of Input Tax**. —

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. — 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.

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."

Internal Revenue v. Aichi Forging Company of Asia, Inc. (Aichi)[42], provides that respondent had one hundred twenty (120) days to act on the claim and in case of adverse decision or expiration of the allowable period, petitioner had thirty (30) days from notice of the adverse decision or expiration of the one hundred twenty-day (120) period to appeal the decision or the inaction of respondent to this Court.

The relevant dates in this petition are summarized as follows:

PERIOD COVERED (taxable year 2010)	CLOSE OF THE TAXABLE QUARTER	LAST DAY OF THE 2-YEAR PERIOD TO FILE ADMINISTRATIVE CLAIM	DATE OF FILING OF ADMINISTRATIVE CLAIM	LAST DAY OF THE 120-DAY PERIOD	LAST DAY OF THE 30-DAY PERIOD TO FILE JUDICIAL CLAIM	FILING OF PETITION FOR REVIEW
2nd Quarter	June 30, 2010	June 30, 2012	June 29, 2012	Oct. 27, 2012	Nov. 26, 2012	Nov. 26, 2012
3rd Quarter	Sept. 30, 2010	Sept. 30, 2012				
4th Quarter	Dec. 31, 2010	Dec. 31, 2012				

In the instant case, petitioner's claim for refund covers the 2nd, 3rd and 4th quarters of taxable year 2010 which closed on June 30, 2010; September 30, 2010; and December 31, 2010, respectively. Pursuant to Section 112(A) of the NIRC of 1997, as amended, petitioner had two (2)-years from the close of each taxable quarter or until June 30, 2012 for the 2nd quarter; September 30, 2012 for the 3rd quarter, and December 31, 2012 for the 4th quarter, within which to file an administrative claim for refund.

Evidently, petitioner timely filed its administrative claim for refund of its alleged unutilized input VAT for the 2nd to 4th quarters of 2010 on June 29, 2012.

As to the timeliness of the judicial claim for refund, Section 112(C) of the NIRC of 1997, as amended, relevantly provides that respondent had 120 days from June 29, 2012, the date of petitioner's filing of its administrative claim for

[42] G.R. No. 184823, October 06, 2010.

refund together with the supporting documents, within which to act on petitioner's administrative claim. However, since respondent failed to act on the matter, petitioner had 30 days from the lapse of the 120-day period on October 27, 2012 or until November 26, 2012, within which to appeal the respondent's inaction to this Court. Hence, the instant Petition for Review was as well seasonably filed on November 26, 2012.

The Court will now proceed with the other requisites.

The taxpayer is a VAT-registered entity

Petitioner's BIR Certificate of Registration No. OCN9RC0000133815 and Taxpayer's Identification No. 005-374-900-000[43] presented during the trial undeniably show that petitioner is a VAT-registered entity.

The taxpayer is engaged in zero-rated or effectively zero-rated sales

Petitioner claims that its sales of services to Amadeus IT Group, S.A. for the 2nd, 3rd and 4th quarters of taxable year 2010 qualify as zero-rated sales under Section 108(B)(2) of the NIRC of 1997, as amended.

To qualify as VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended,[44] the supply of services by petitioner must satisfy the following requisites:

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[43] Par. 6, Facts, JSFI, docket, vol. II, p. 731; Exhibit "B".

[44] "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:

(1) xxx xxx xxx ;

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

2. the recipient of such services is 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.[45]

It is undisputed that petitioner's primary purpose, as stated in its Amended Articles of Incorporation, is to market in the Philippines an automated computerized reservations system known as "Amadeus Global Travel Distribution", which incorporates a software package that performs various functions, including real-line airlines seat reservations, schedules bookings for a variety of air, boat, train, package tours, car rental and hotel services, automatic ticketing, and fare pricing display. Further, pursuant to the ACO Agreement executed between petitioner and Amadeus IT Group, S.A., the former shall render services to the latter by marketing, promoting, offering and distributing Amadeus products in the Philippines. Clearly, the marketing services rendered by petitioner to Amadeus IT Group, S.A. were services other than processing, manufacturing or repacking of goods thereby satisfying the first requisite.

With respect to the second requisite - that the recipient of such services, referring to Amadeus IT Group, S.A., must be doing business outside the Philippines, the Decision rendered by the Court in the case of Deutsche Knowledge Services, Pte Ltd. v. Commissioner of Internal Revenue[46] is in point, thus:

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(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 Bangko Sentral ng Pilipinas (BSP);"

[45] Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 153205, January 22, 2007.

[46] CTA Case No. 7808, December 16, 2014.

"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, all duly authenticated by the nearest consulate of the Philippines;
3. Intragroup Service Agreements; and
4. Deutsche Bank List of Shareholdings 2008

However, the Court finds that **the aforesaid documents *per se* do not constitute sufficient proof that petitioner's clients are nonresident foreign corporations doing business outside the Philippines.**

While the SEC Certificates of Non-Registration show that the named entities therein are not registered corporations/partnerships in the Philippines, the same do not prove that such entities are non-resident foreign corporations doing business outside the Philippines. Likewise, the Intra-Group Service Agreements only show the names of petitioner's customers to whom it rendered services but the same do not establish that such customers are non-resident foreign corporations doing business outside the Philippines. Moreover, the Articles of Association and Certificates of Registration/Incorporation of Foreign Company only prove that the named entities therein were incorporated/organized abroad. However, they also do not establish that such entities are not doing business in the Philippines.

To be considered as non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both SEC certificate of non-registration of corporation/partnership and certificate/articles of foreign incorporation/association/registration. xxx" *(Emphasis supplied)*

To prove that petitioner's client, Amadeus IT Group, S.A., was a non-resident foreign corporation doing business outside the Philippines, petitioner presented the Authenticated Certification/Articles of Association of Amadeus IT Group, S.A.[47] and the Certificate of Non-Registration[48] of Amadeus IT Group, S.A. issued by the Philippines' SEC. But while the said documents tend to prove that Amadeus IT Group S.A. was a non-resident foreign corporation organized and established under the laws of Spain, there are indications from the documents presented that Amadeus IT Group S.A. conducted business in the Philippines.

Shown in petitioner's Quarterly VAT Returns that it had input VAT on services rendered by non-residents in the amounts of ₱4,491,327.95[49], ₱4,615,705.54[50], and ₱4,187,524.85[51] for the 2nd, 3rd and 4th quarters of 2010, respectively, or a total of ₱13,294,558.34. Based on petitioner's Schedule of Purchases of Goods and Services and Corresponding Input Tax for the Period April 1, 2010 to December 31, 2010[52], such input taxes pertain to petitioner's purchases of services from Amadeus IT Group, S.A., which were supported by Monthly Remittance Returns of VAT and Other Percentage Taxes Withheld (BIR Form No.

[47] Exhibit "J".
[48] Exhibit "I".
[49] Line 21L, Exhibit "L-1".
[50] Line 21L, Exhibit "M".
[51] Line 21L, Exhibit "N".
[52] Exhibit "BB".

1600) but only in the amount of ₱11,758,947.65, detailed as follows:

MONTH	NAME OF SUPPLIER	EXHIBIT NO.	AMOUNT
April	Amadeus IT Group, S.A.	BB-448	₱ 1,544,851.30
May	Amadeus IT Group, S.A.	BB-518	1,594,767.67
June	Amadeus IT Group, S.A.	BB-631	1,762,872.99
July	Amadeus IT Group, S.A.	BB-819	1,414,228.34
August	Amadeus IT Group, S.A.	BB-901	1,342,997.64
September	Amadeus IT Group, S.A.	BB-1137	1,643,996.65
October	Amadeus IT Group, S.A.	BB-1279	1,318,952.21
November	Amadeus IT Group, S.A.	BB-1343	1,136,280.85
TOTAL			**₱11,758,947.65**

Thus, it would appear that the non-resident foreign corporation that rendered services to petitioner in the Philippines and whose sales of services were subjected to VAT, was also Amadeus IT Group, S.A., to whom petitioner claims to have made its zero-rated sales.

Amadeus IT Group, S.A. was made liable to VAT being a non-resident person who, in the course of its trade or business, rendered services in the Philippines, pursuant to Section 105 of the NIRC of 1997, as amended, and as implemented by Sections 4.105-1 and 4.105-3 of Revenue Regulations (RR) No. 16-2005, as amended, which provide as follows:

> "SEC. 105. *Persons Liable.* – Any person who, in the course of trade or business, sells barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.
>
> The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.

The phrase *'in the course of trade or business'* means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

The rule of regularity, to the contrary notwithstanding, **services** as defined in this Code **rendered in the Philippines by nonresident foreign persons shall be considered as being course of trade or business**." *(Emphasis supplied)*

"SECTION 4.105-1. *Persons Liable.* – Any person who, in the course of his trade or business, sells, barters, exchanges or leases goods or properties, or renders services, and any person who imports goods, shall be liable to VAT imposed in Secs. 106 to 108 of the Tax Code.

xxx xxx xxx

'Person' refers to any individual, trust, estate, partnership, corporation, joint venture, cooperative or association.

xxx xxx xxx

SECTION 4.105-3. *Meaning of 'In the Course of Trade or Business'.* – xxx

Non-resident persons who perform services in the Philippines are deemed to be making sales in the course of trade or business, even if the performance of services is not regular."

Since Amadeus IT Group, S.A., the recipient of petitioner's services, is doing business in the Philippines, petitioner failed to satisfy the second requisite for it to be entitled to the refund sought.

Settled is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same.[53] Moreover, statutes in derogation of sovereignty, such as those containing exemption from taxation, should be strictly construed in favor of the State.[54] The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed.[55]

Petitioner, as taxpayer-claimant, has the burden of proof to show that it is entitled to the refund of the amount claimed as refundable because taxes are presumed to have been collected in accordance with laws and regulations on the matter. The burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a refund.[56] Petitioner, in this regard utterly failed.

WHEREFORE, the instant Petition for Review filed on November 26, 2012 by Amadeus Marketing Philippines, Inc., is hereby **DENIED,** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[53] Philippine Geothermal, Inc. v. The Commissioner of Internal Revenue, G.R. No. 154028, July 29, 2005.
[54] Philippine Long Distance Telephone Company, Inc. v. City of Davao, et al., G.R. No. 143867, March 25, 2003.
[55] National Power Corporation v. Province of Isabela, G.R. No. 165827, June 16, 2006.
[56] Commissioner of Internal Revenue v. Tokyo Shipping Co., Ltd., et al., G.R. No. 68252, May 26, 1995.

We Concur:

LOVELL R. BAUTISTA
Associate Justice

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the 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