REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1437** (CTA Case No. 8701)
-versus-	Present: ***Del Rosario, P.J., Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban,*** *and* ***Manahan, JJ.***
MANULIFE DATA SERVICES, INC., *Respondent.*	Promulgated: SEP 08 2017 2:16 p.m.

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RESOLUTION

BAUTISTA, J.:

For resolution is petitioner's Motion for Reconsideration filed on June 29, 2017; with Comment/Opposition (Re: Motion for Reconsideration dated 27 June 2017) ("Comment/Opposition") from respondent filed on July 17, 2017.

On June 7, 2017, the Court *En Banc* promulgated a Decision[1] ("Assailed Decision"), the dispositive portion of which states:[2]

> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision dated October 28, 2015, and the

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[1] *Rollo, CTA EB No. 1437, Decision,* pp. 111-137.
[2] *Id.*, p. 133.

Resolution dated February 22, 2016, both promulgated by the Second Division of the Court of Tax Appeals, are hereby **AFFIRMED**.

SO ORDERED.

In his Motion for Reconsideration, petitioner begs the Court *En Banc*'s indulgence to reconsider its Decision, and consequently deny respondent's claim for refund or the issuance of a tax credit certificate ("TCC") because, citing the case of *Commissioner of Internal Revenue v. Aichi Forging Co. of Asia, Inc.*[3], respondent failed to prove the factual and legal bases for claiming its alleged unutilized input taxes for the first to fourth quarters of taxable year 2011 ("TY 2011").

Petitioner avers that respondent failed to present proof that it has a refundable or creditable input value-added tax ("VAT"), and the same has not been applied against its output VAT during and in the succeeding quarters; and that, respondent was not able to establish that its sales qualify for VAT zero-rating under existing laws, and did not present sufficient evidence that said zero-rated sales were actually made and resulted in a refundable or creditable input VAT in the amount being claimed.

Petitioner also claims that respondent's failure to present the original documents in its administrative application for refund is fatal to its claim pursuant to *Section 112 (A)*[4] *of the 1997 National Internal Revenue Code*[5]*, as amended ("1997 NIRC").*

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[3] G.R. No. 184823, October 6, 2010, 632 SCRA 422.

[4] 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.

[5] Republic Act No. 8424, January 1, 1998.

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Further, according to petitioner, respondent was not able to provide proof that its sales of services to The Manufacturer's Life Insurance Company ("MLIC") is a VAT zero-rated sales under *Section 108(B)(2)*[6] *of the 1997 NIRC*; and that since MLIC has a branch office in the Philippines, it is considered to be doing business in the Philippines under *Section 1*[7] *of Republic Act No. 5455*[8], thus, the sales made to them cannot qualify for VAT zero-rating.

Petitioner asserts that respondent also failed to provide proof that the taxes which are subject of the claim for refund or the issuance of a TCC were erroneously or illegally paid.

Finally, petitioner insists that claims for refund or the issuance of a TCC are construed strictly against the taxpayer as they partake of the nature of tax exemptions, as ruled in the case of *Compagnie Financiere Sucres Et Denrees v. Commissioner of Internal Revenue*[9].

In its Comment/Opposition, respondent counter-argues that the arguments and issues raised by petitioner merely rehashed those matters which have been repeatedly rejected by the Court *En Banc* and the Court in Division.

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[6] SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* -

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(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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(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a non-resident 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);

[7] Section 1. *Definitions and scope of this Act.* (1) As used in this Act, ... the phrase "doing business" shall include soliciting orders, purchases, service contracts, opening offices, whether called "liaison" offices or branches; appointing representatives or distributors who are domiciled in the Philippines or who in any calendar year stay in the Philippines for a period or periods totaling one hundred eighty days or more; participating in the management, supervision or control of any domestic business firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization.

[8] An Act To Require That The Making Of Investments And The Doing Of Business Within The Philippines By Foreigners Or Business Organizations Owned In Whole Or In Part By Foreigners Should Contribute To The Sound And Balanced Development Of The National Economy On A Self-Sustaining Basis, And For Other Purposes, September 30, 1968.

[9] G.R. No. 133834, August 28, 2006, 499 SCRA 664.

The Court *En Banc* resolves.

After a careful evaluation and consideration of petitioner's Motion for Reconsideration, the Court *En Banc* finds that the arguments proffered by petitioner, are mere reiterations, if not repetitions, of the very same arguments which have already been considered, weighed and resolved by the Court *En Banc* in the Assailed Decision. Thus, the Court *En Banc* shall no longer belabor, in this Resolution, to repeat the disquisitions made therein.

WHEREFORE, premises considered, Commissioner of Internal Revenue's Motion for Reconsideration is hereby **DENIED** for lack of merit. Accordingly, the Assailed Decision dated June 7, 2017 is hereby **AFFIRMED** and **UPHELD.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(I reiterate my Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro - Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice