REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>SECOND DIVISION</u>

DÖHLE SHIPMANAGEMENT PHILS. CORP.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE and the ONE-STOP SHOP INTER-AGENCY TAX CREDIT AND DUTY DRAWBACK CENTER OF THE DEPARTMENT OF FINANCE,
Respondents.

CTA CASE NO. 8721

Members:

CASTAÑEDA, JR., *Chairperson, and*
CASANOVA, *JJ.*

Promulgated:

DEC 15 2016 4:00 pm

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For this Court's resolution is respondent Commissioner of Internal Revenue's (CIR) **Motion for Reconsideration (of the Decision dated 2 August 2016)**, filed through registered mail on August 5, 2016 and received by this Court on August 22, 2016, with petitioner's **Comment (on Respondent's *Motion for Reconsideration*)**, filed on September 21, 2016.

Respondent CIR seeks reconsideration of the Court's Decision promulgated on August 2, 2016 (assailed Decision)[1], the dispositive portion of which reads:

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[1] Docket vol. III, pp. 877-905.

"**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of ₱20,980,559.39, representing its unapplied excess input VAT attributable to zero-rated sales for taxable year 2011

SO ORDERED."[2]

Respondent CIR claims that petitioner's transactions cannot qualify as zero-rated because petitioner failed to prove that the recipient of its services are non-resident foreign clients doing business outside the Philippines. According to respondent CIR, petitioner failed to prove that the recipient of its services were directly 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.

Respondent CIR avers that based on petitioner's Service Agreement with Doehle (IOM) Ltd. (DIOM) and the Training Agreement with Peter Döhle Schiffahrts KG (PDSK) and Neptune Shipmanagement Services (Pte.) (NSSP), petitioner does not directly render services to its non-resident foreign clients, but directly to the crews being trained by them. Hence, respondent CIR claims that for failure of petitioner to show that the direct recipient of its services are non-resident foreign clients doing business outside the Philippines, its transactions cannot qualify as zero-rated under Section 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Moreover, respondent CIR contends that claims for refunds are construed strictly against the claimant for they partake the nature of exemption from taxation, and as such, they are looked upon with disfavor. Hence, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund.

On the other hand, petitioner argues that respondent CIR's contention does not have any factual and legal basis, and should be disregarded. According to petitioner, in a contract for services, it is fundamental that the services are rendered to the obligee under the

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[2] Docket, p. 904.

contract. Petitioner avers that a distinction must be made between the service itself, or the prestation or the subject or object of the contract, and the contracting parties - the obligor who renders the services and the obligee, to whom the services are rendered.

It is petitioner's stance that the obligee to whom the services are rendered is also the party who pays the financial consideration leading to the financial transactions and payments relevant to a claim for refund. It claims that the training and the service of arranging the travel of the various crews for DIOM is the prestation or the obligations performed by petitioner under its agreement with DIOM. The crew did not become the obligee under the agreement and the recipient of these services is still DIOM.

Finally, petitioner contends that Section 108(B)(2) of the NIRC of 1997, as amended, envisions a situation where the person to whom the services are rendered may not be the person who is the object or subject of the service. Thus, there is no requirement that the object or subject of the service should also be the person to whom the services are rendered for the sale of such service to qualify as zero-rated sales.

The Motion for Reconsideration is bereft of merit.

After carefully evaluating the parties' contentions, the Court finds that respondent CIR's sole argument is a mere rehash of the previous argument raised in the Memorandum[3] which has been duly considered by the Court in the assailed Decision.

The Court reiterates the requisites in order for sale of services to be considered VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended, citing the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[4], to wit:

1. the services by a VAT-registered person must be other than processing, manufacturing or repacking of goods;
2. the payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and

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[3] Docket, vol. II, pp. 869-873.
[4] G.R. No. 153205, January 22, 2007.

3. the recipient of such services is doing business outside the Philippines.

In the assailed Decision, the Court discussed petitioner's compliance with the third requisite, to wit:

> "With regard to the *third* requisite, petitioner avers that in taxable year 2011, it rendered services to its foreign clients who are not engaged in trade or business in the Philippines. The said foreign clients are DIOM, PDSK, and NSSP. However, a closer perusal of petitioner's Notes to Financial Statements for the years ended December 31, 2011 and 2010, particularly Notes 11 and 16, shows that petitioner earned revenues from its principal, DIOM and PDSK, but not from NSSP.
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> The Court holds that petitioner has sufficiently established compliance with the third requisite, but only with respect to DIOM and PDSK through the following pieces of evidence:
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> a. SEC Certificate of Non-registration of Company;
> b. DIOM's Authenticated Certificate of Incorporation;
> c. DIOM's Authenticated Memorandum of Association with attached Articles of Association;
> d. Authenticated Certification of Change of Name [From Midocean Maritime Limited to Döhle (IOM) Limited]; and
> e. PDSK's Authenticated Certificate of Commercial Register A of the Local Court of Hamburg.
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> As regards NSSP, the sole document presented by petitioner to prove that NSSP is a non-resident foreign corporation is Invoice No. 103/11. The said invoice, standing alone, failed to convince the Court that NSSP is a non-resident foreign corporation. If at all, the said invoice would only show that petitioner rendered services to NSSP. It cannot be regarded as being competent to prove that NSSP is a foreign corporation doing business outside the Philippines.

The pronouncement made by the Supreme Court in *Accenture, Inc. vs. Commissioner of Internal Revenue* is applicable, to wit:

> 'Consequently, to come within the purview of Section 108(B)(2), it is not enough that the recipient of the service be proven to be a foreign corporation; rather, it must be specifically proven to be a non-resident foreign corporation.'

Therefore, only DIOM and PDSK complied with the third requisite as laid down in the *Burmeister* case."

Moreover, while claims for tax refund are strictly construed against the taxpayer and liberally in favor of the State, petitioner has overcome the burden of showing strict compliance with the conditions for the grant of the tax refund. And once the taxpayer was able to sufficiently prove its entitlement to a refund, it thus behooves the government to refund what the taxpayer is entitled to. "In the field of taxation where the State exacts strict compliance upon its citizens, the State must likewise deal with taxpayers with fairness and honesty. The harsh power of taxation must be tempered with evenhandedness."[5]

Considering the fact that respondent did not raise any new argument that would merit reconsideration of the assailed Decision, the Court finds no cogent reason to reverse or modify the same. Petitioner was able to sufficiently prove its entitlement to a refund or issuance of a tax credit certificate in the reduced amount of ₱20,980,559.39, representing its unapplied excess input VAT attributable to zero-rated sales for taxable year 2011.

WHEREFORE, premises considered, respondent Commissioner of Internal Revenue's **Motion for Reconsideration (of the Decision dated 2 August 2016)** is **DENIED** for lack of merit.

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[5] *Filinvest Development Corporation vs. Commissioner of Internal Revenue*, G.R., 146941, August 9, 2007.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

CAESAR A. CASANOVA
Associate Justice