REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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FINANCIAL TIMES ELECTRONIC PUBLISHING PHILIPPINES, INC., Petitioner,	**CTA EB No. 2223** (CTA Case No. 9631)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** and **CUI-DAVID,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** APR 08 2022 2:23 p.m.

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RESOLUTION

UY, J.:

For resolution is petitioner's *Motion for Reconsideration*[1] filed through registered mail on October 18, 2021, without respondent's *Comment*, despite due notice,[2] as per Records Verification Report dated March 4, 2022.[3] In the said *Motion*, petitioner prays that the Court *En Banc* reconsiders its *Decision* dated September 23, 2021, and rule that petitioner is entitled to the issuance of tax credit certificate from the excess unutilized input value-added tax (VAT)

[1] EB Docket, pp. 85 to 95.
[2] Service of the *Resolution* dated November 26, 2021 to respondent was through personal service on December 1, 2021.
[3] Issued by Leocadia Victoria, Statistician II, *En Banc* – Judicial Records Division, and noted by Benjamin D. Pineda, Jr., Chief Judicial Staff Officer, Judicial Records Division.

attributable to its VAT zero rated sales for the period January 1, 2015 to March 31, 2015 in the amount of ₱2,583,112.90. The dispositive portion thereof reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit.
>
> The *Decision* dated October 7, 2019 and the *Resolution* dated January 16, 2020 by the Second Division of this Court in CTA Case No. 9631 are hereby **AFFIRMED**.
>
> **SO ORDERED.**"

In support of its *Motion*, petitioner argues that:

1. It has sufficiently shown that Financial Times Limited (FTL) is a non-resident corporation doing business outside the Philippines, as evidenced by: a) FTL's Authenticated Certificate of Incorporation (COI), Certificate of Change of Name (COCN), and Certification from the Registrar of Companies For England (CRCE); b) the Services Agreement between petitioner and FTL; c) the testimony of Paulito B. De Pano; and d) Securities and Exchange Commission (SEC) Certificate of Non-Registration of Company.

2. The Certificate of Authentication issued by Voltaire O. C. Mauricio, Consul for the Embassy of the Philippines, London, United Kingdom, with the seal of his office, relative to the Apostille issued by A. Khan of the Foreign and Commonwealth Office certifying that the Certification of David Noel Lloyd Fawcett has been signed by David Noel Lloyd Fawcett acting in the capacity of Notary Public, is compliant with the requirements for authenticating public documents kept in a foreign country.

3. Taking into account this Court's Division's ruling in *AIG Shared Services Corporation (Philippines) [Formerly: Chartis Technology and Operations Management Corporation (Philippines)] v. Commissioner of Internal Revenue* (*AIG* case)[4] that SEC Certificates of Non-Registration of Company and screenshots from various foreign government websites are sufficient in order to show that a foreign entity is a non-resident corporation doing business outside the Philippines, then the Court *En Banc* should also consider FTL's SEC Certificate of Non-Registration of Company and the Certificate of

[4] CTA Case No. 9100, January 24, 2019.

Authentication with the attached Certification and Apostille to which the COI, COCN and CRCE are attached, as sufficient proof to show that FTL is a non-resident corporation doing business outside the Philippines.

As mentioned earlier, respondent failed to file his *Comment* to the instant *Motion*. Hence, this *Resolution*.

THE COURT *EN BANC*'S RULING

Petitioner's *Motion* lacks merit.

After a careful examination and consideration of petitioner's arguments in its *Motion*, it is noted that the same are mere reiterations of matters which have already been considered, weighed and resolved in the assailed *Decision*. Thus, we shall not belabor, in this *Resolution*, the disquisitions made therein.

Nevertheless, the Court *En Banc* stresses that for purposes of zero-rating under Section 108 (B) (2)[5] of the Tax Code, the claimant must establish the two components of its client's status as a non-resident foreign corporation (NRFC), namely: (1) that its client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that its client is not engaged in trade or business in the Philippines. There must be sufficient proof of both of these components. It must not only be shown that the client is a foreign corporation, but also that it is not doing business in the Philippines.[6]

SEC Certifications of Non-Registration and service agreements prove the first component, while articles of association/COIs stating that an NRFC is registered to operate in its home country, outside the Philippines, is *prima facie* evidence of the second component.[7]

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[5] (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 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);.

[6] *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*, G.R. No. 234445, July 15, 2020.

[7] *Id.*

In this case, petitioner was not able to comply with the second component in order to prove that FTL is an NRFC not engaged in business in the Philippines. While petitioner was able to present FTL's SEC Certificate of Non-Registration and the Services Agreement between petitioner and FTL to prove that FTL is established under the laws of a foreign country, it was not able to present FTL's **duly authenticated** articles of association/COI to prove that FTL is not engaged in trade or business in the Philippines. The testimony of Paulito B. De Pano that FTL is a non-resident foreign corporation not engaged in business who was allegedly outside the Philippines when the services were performed is merely self-serving.

Petitioner is also mistaken in asserting that the alleged duly Authenticated AOI of FTL, which consists of the COI, COCN and CRCE, were properly authenticated.

Pursuant to Rule 132, Section 24[8] of the Revised Rules on Evidence, if the record of the public document is in a foreign country, the copy of the public document must be accompanied by a certificate that the attesting officer has the legal custody thereof. The certificate may be issued by any of the authorized Philippine embassy or consular officials stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. The attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be, and must be under the official seal of the attesting officer.[9] In this case, it must be the appropriate officer of the Philippine Embassy in England who should certify the COI, COCN, and CRCE, or attest to the foreign certifying officer's authority to authenticate the same.

Here, the Certificate of Authentication issued by Voltaire O. C. Mauricio, Consul for the Embassy of the Philippines, London, United Kingdom, **only endorsed A. Khan's authority to authenticate**

[8] SECTION 24. *Proof of Official Record.* — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. **If the office in which the record is kept is in foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.** *(Emphasis supplied)*

[9] *Manufacturers Hanover Trust Co. and/or Chemical Bank v. Rafael Ma. Guerrero*, G.R. No. 136804, February 19, 2003.

David Noel Lloyd Fawcett's Certification, without making any reference to the COI, COCN, and CRCE. Neither does the Apostille issued by A. Khan mention the COI, COCN, and CRCE. What was authenticated by Voltaire O. C. Mauricio, Consul for the Embassy of the Philippines, London, United Kingdom was the Apostille certifying to the authenticity of the Certification. Thus, the COI, COCN and CRCE were not authenticated in accordance with Rule 132, Section 24 of the Revised Rules on Evidence.

Meanwhile, the Court *En Banc* cannot subscribe to petitioner's argument that since this Court's Division ruled in the *AIG* case that SEC Certificates of Non-Registration of Company and screenshots from various foreign government websites are sufficient in order to show that a foreign entity is an NRFC doing business outside the Philippines, then the Court *En Banc* should also consider FTL as a non-resident corporation not engaged in business in the Philippines because petitioner has presented an SEC Certificate of Non-Registration and the Certificate of Authentication with the attached Certification and Apostille to which the COI, COCN and CRCE are attached.

It must be stressed that judicial decisions which form part of our legal system are only the decisions of the Supreme Court.[10] Suffice it to state that decisions of the Court of Tax Appeals are not given the same level of recognition.[11] Hence, the *AIG* case cannot be invoked as a binding precedent.

In view of the foregoing, the Court *En Banc* finds no compelling reason to reconsider, modify, or reverse the assailed *Decision*.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[10] *Government Service Insurance System v. Leo L. Cadiz*, G.R. No. 154093, July 8, 2003.
[11] *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 203249, July 23, 2018.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice