REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

IBEX PHILIPPINES, INC.,
Petitioner,

CTA EB NO. 2337
(CTA Case No. 9546)

- versus -

Present:

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:
MAR 0 3 2022 11:45am

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DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner Ibex Philippines, Inc. (**petitioner/IPI**), pursuant to Rule 8, Section 3(b)[2] of the Revised Rules of the Court of Tax Appeals

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[1] Filed on 09 October 2020, *Rollo*, pp. 9-53, with annexes.

[2] **SEC. 3**. *Who may appeal; period to file petition.* —

...

(**RRCTA**). It seeks to reverse and set aside the Third Division's Decision dated 07 November 2019[3] (**assailed Decision**) and Resolution dated 23 July 2020[4] (**assailed Resolution**) in CTA Case No. 9546 entitled *Ibex Philippines, Inc. v. Commissioner of Internal Revenue.*

PARTIES OF THE CASE

Petitioner, formerly known as TRG Philippines, Inc., is a domestic corporation duly registered with the Securities and Exchange Commission (**SEC**) under Company Registration No. CS200513223.[5] It is also registered with the Board of Investments (**BOI**) as a New IT Export Service Firm in the Field of Operation of a Call Center, as evidenced by BOI Certificate of Registration No. 2006-005 dated January 6, 2006[6]; and with the Bureau of Internal Revenue (**BIR**) under Tax Identification No. (**TIN**) 239-838-099-000, with registered address at 29/F, Joy-Nostalg Center, No. 17 ADB Avenue, Ortigas Center, San Antonio, Pasig City.[7]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**) vested with authority to carry out the functions and duties of said office, including, among others, the duty to act on and approve claims for refund or issuance of a tax credit certificate (**TCC**), as provided by law.

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

[3] Division Docket, Volume II, pp. 603-616; Penned by Hon. Associate Justice Erlinda P. Uy with Hon. Associate Justice Maria Rowena Modesto-San Pedro, concurring, and Hon. Associate Justice Ma. Belen M. Ringpis-Liban, dissenting.

[4] Id., pp. 641-643.

[5] Exhibits "P-1-1" and "P-1-2", id., Volume I, pp. 456-489.

[6] Exhibit "P-4-D", CD.

[7] Exhibit "P-1-4", Division Docket, Volume I, p. 490.

FACTS OF THE CASE

Petitioner filed its Quarterly Value-Added Tax (**VAT**) Returns (BIR Form No. 2550-Q) for the four (4) quarters of the fiscal year (**FY**) ended 30 June 2015 as follows:

Period Covered	Nature of Return Filed	Date Filed
First (1st) Quarter Ending on 30 September 2014	Original[8]	24 October 2014
	Amended[9]	27 September 2016
Second (2nd) Quarter Ending on 31 December 2014	Original[10]	23 January 2015
	Amended[11]	27 September 2016
Third (3rd) Quarter Ending on 31 March 2015	Original[12]	27 April 2015
	Amended[13]	27 September 2016
Fourth (4th) Quarter Ending on 30 June 2015	Original[14]	24 July 2015
	Amended[15]	27 September 2016

Subsequently, on 30 September 2016, petitioner filed with the VAT Credit Audit Division (**VCAD**) of the BIR its Letter-Request[16] and Application for Tax Credits/Refunds (BIR Form No. 1914)[17] for the refund of its excess and unutilized input VAT attributable to its zero-rated sales for the four (4) quarters of FY 2015 in the aggregate amount of ₱13,480,821.26. The BIR issued a Checklist of Mandatory Requirements for Claims for VAT Credit/Refund[18] which indicated that petitioner's administrative claim is complete as to requirements.

On 04 October 2016, relative to petitioner's subject administrative claim, a Letter of Authority (**LOA**) with SN:

8 Exhibit "P-1-5-A", id., pp. 491-492.
9 Exhibit "P-1-5-B", id., pp. 493-494.
10 Exhibit "P-1-6-A", id., pp. 495-496.
11 Exhibit "P-1-6-B", id., pp. 497-498.
12 Exhibit "P-1-7-A", id., Volumes I and II, pp. 499-500.
13 Exhibit "P-1-7-B", id., Volume II, pp. 501-502.
14 Exhibit "P-1-8-A", id., pp. 503-504.
15 Exhibit "P-1-8-B", id., pp. 505-506.
16 Exhibit "P-1-15", id., Volume I, pp. 119-121.
17 Exhibit "P-1-14", id., p. 118.
18 Exhibit "P-1-16", id., p. 122.

eLA201000050834[19] was issued requesting that all required documents, books and records be provided to Revenue Officers (**ROs**) Kristine Albano (**Albano**), Norine Cruz (**Cruz**), Jimmy De Luis (**De Luis**) and Ruth Jimenez (**Jimenez**) and Group Supervisor (**GS**) Alvin Batausa (**Batausa**) of Revenue Region No. 040 - VCAD.

With no action from respondent since the filing of its claim, petitioner claimed that the mandatory 120-day period for processing the subject administrative claim expired on 28 January 2017.

On 27 February 2017 and within thirty (30) days from the lapse of the aforesaid 120-day period (for respondent to act on its administrative claim), petitioner filed its prior Petition for Review before the Court in Division to appeal the "deemed denial due to inaction" on its administrative claim.[20] The same was raffled to the Third Division and docketed as CTA Case No. 9546.[21]

After being granted an extension of time by the Third Division[22], respondent filed his Answer[23] on 19 May 2017. In his Answer, respondent alleged, *inter alia*, that petitioner's claim for refund is subject to BIR's administrative investigation or examination. According to him, the taxes paid and collected are presumed to have been paid in accordance with law and regulation, hence, not refundable. He argued that in order to validly claim for tax credit/refund, it is imperative for petitioner to prove its compliance with the following requirements: (1) registration of, invoicing and accounting requirements for, VAT-registered persons; (2) filing and payment of VAT; (3) submission of complete documents in support of the administrative claim for tax refund; and, (4) filing of the claim within two (2) years after the close of the quarter when the sales were made.

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19 Exhibit "P-1-17", id., p. 123.
20 Supra at note 1.
21 The Third Division is composed of Hon. Associate Justice Lovell R. Bautista (Ret.), as Chairperson, Hon. Associate Justice Esperanza R. Fabon-Victorino (Ret.) and Hon. Associate Justice Ma. Belen M. Ringpis-Liban, as Members.
22 See Resolution dated 27 April 2017, Division Docket, Volume I, p. 30.
23 Id., pp. 32-35.

On 23 May 2017, the Court issued a Notice of Pre-Trial Conference[24] and set the Pre-Trial Conference on 15 August 2017. Accordingly, respondent filed his Pre-Trial Brief[25] on 10 August 2017, while petitioner filed its Pre-Trial Brief[26] on 11 August 2017.

During the 15 August 2017 Pre-Trial Conference, the Third Division granted both parties twenty (20) days or until 04 September 2017 within which to file their Joint Stipulation of Facts and Issues (**JSFI**).[27] On 04 September 2017, the parties submitted their JSFI.[28]

On 29 August 2017, respondent forwarded to the Third Division the entire BIR Records of the present case consisting of 308 pages in one (1) folder, together with one (1) folder consisting of purchases from July 2014 to May 2015 (303 pages).[29] The Third Division noted the same in the Minute Resolution dated 07 September 2017.[30]

On 12 October 2017, the Third Division issued a Pre-Trial Order[31] approving the parties' JSFI and terminating the pre-trial.

On 22 November 2017, petitioner filed a motion for the commissioning of Neil U. Sison (**Sison**) as the Independent Certified Public Accountant (**ICPA**).[32] In the Order dated 28 November 2017[33], the Third Division commissioned Sison as the ICPA and directed him to submit his report within 30 days therefrom. ICPA Sison filed his Report[34] on 28 December 2017.

In the trial that ensued, petitioner presented its testimonial and documentary evidence. It offered the testimonies of its witnesses,

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24 Id., pp. 36-37.
25 Id., pp. 49-52.
26 Id., pp. 126-134.
27 See Order dated 15 August 2017, id., pp. 138-139.
28 Id., pp. 145-149.
29 See Letter dated 29 August 2017, id., p. 144.
30 Id., p. 159.
31 Id., pp. 170-176.
32 See Motion to Commission Independent Certified Public Accountant dated 22 November 2017, id., pp. 181-184.
33 Id., p. 196.
34 Exhibit "P-3", id., pp. 199-212.

namely: (1) Joel S. Aldaya (**Aldaya**), petitioner's Supervisor for Tax and Corporate Compliance; and, (2) Sison, the Court-commissioned ICPA.

On the witness stand, Aldaya identified his Judicial Affidavit dated 09 August 2017[35] and Supplemental Judicial Affidavit dated 19 April 2018[36] where he declared essentially that: (1) as Supervisor for Tax and Corporate Compliance, he oversees all tax-related matters and ensures that petitioner is compliant with BIR requirements, including but not limited to the filing and/or remittance of monthly withholding tax returns and liabilities, quarterly and annual income tax returns and liabilities, monthly and quarterly VAT returns and reportorial requirements, and handles VAT refund applications as well as compliance with local government requirements; (2) during the period of claim, petitioner provided business process outsourcing and contact center services and facilities to only one foreign client, *i.e.*, Lovercius Consultants, Ltd. (**Lovercius**), which was incorporated in Cyprus with registered office at Lampousas 1, Nicosia 1095, Cyprus and does not maintain a branch office in the Philippines; (3) petitioner has a Service Agreement with Lovercius for the provision of contact center services and solutions in support of the latter's business; (4) since petitioner is VAT-registered and its sales are only made to a foreign client, the same is subject to 0% output VAT and thus, input VAT accumulates as it could not be credited against any output VAT; (5) he personally filed petitioner's Application for Tax Credits/Refunds (BIR Form No. 1914)[37] and witnessed the Checklist of Mandatory Requirements for Claims for VAT Credit/Refund[38] being checked as "Complete as to Requirements"; (6) thereafter, on 04 October 2016, the BIR issued a LOA[39] to petitioner and, (7) since then the BIR has not acted on petitioner's administrative claim.

During cross-examination, Aldaya was only asked to explain the delayed submission of Lovercius' Certificate of Incorporation. According to him, the Philippine Consulate in Cyprus did not consularized the Certificate of Incorporation that Lovercius initially

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35 Exhibit "P-1", id., pp. 436-455.
36 Exhibit "P-5", id., Volume II, pp. 534-537.
37 Supra at note 17.
38 Supra at note 18.
39 Supra at note 19.

provided. As such, they had to make another request for a consularized version of the same document.[40]

Next to assume the witness stand was ICPA Sison who identified his (1) Judicial Affidavit dated 19 April 2018[41]; (2) ICPA Report dated 28 November 2017[42]; and, (3) the CD[43] containing scanned copies of the Exhibits he examined and marked as Exhibit "P-3-b" and the Exhibits referred to in his Judicial Affidavit and Report.

No cross examination was conducted.[44]

On 09 May 2018, after completing the presentation of its testimonial evidence, petitioner filed its Formal Offer of Evidence[45] (FOE) consisting of Exhibits "P-1" to "P-5-a"[46], inclusive of sub-

40 TSN dated 24 April 2018.
41 Exhibit "P-2", Division Docket, Volume II, pp. 517-533.
42 Exhibit "P-3", supra at note 34.
43 Exhibit "P-21-2".
44 Supra at note 40.
45 Division Docket, Volume I, pp. 424-435.
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Exhibit No.	Description
"P-1"	Affidavit in lieu of Direct Examination of Mr. Joel S. Aldaya.
"P-1-a"	Signature of Mr. Joel S. Aldaya, page 17 of the Affidavit in lieu of Direct Examination.
"P-1-1"	Certificate of Incorporation of Petitioner issued by the Securities and Exchange Commission (SEC) on 01 August 2005.
"P-1-2"	Certificate of Filing of Amended Articles of Incorporation issued by the SEC on 08 May 2013.
"P-1-3"	Bureau of Internal Revenue (BIR) Certificate of Registration bearing Revenue District Office Control No. 3RC0000633222 issued on 29 January 2014.
"P-1-4"	BIR Certificate of Registration bearing Revenue District Office Control No. 3RC0000779136 issued on 14 February 2017.
"P-1-5-A"	eFPS Quarterly VAT Return of Petitioner for Q1 of fiscal year ended June 2015 with Reference No. 101400009846627.
"P-1-5-B"	Amended eFPS Quarterly VAT Return of Petitioner for Q1 of fiscal year ended June 2015 with Reference No. 101600016932719.
"P-1-6-A"	eFPS Quarterly VAT Return of Petitioner for Q2 of fiscal year ended June 2015 with Reference No. 101500010401255.
"P-1-6-B"	Amended eFPS Quarterly VAT Return of Petitioner for Q2 of fiscal year ended June 2015 with Reference No. 101600016932937.
"P-1-7-A"	eFPS Quarterly VAT Return of Petitioner for Q3 of fiscal year ended June 2015 with Reference No. 101500011222269.
"P-1-7-B"	Amended eFPS Quarterly VAT Return of Petitioner for Q3 of fiscal year ended June 2015 with Reference No. 101600016932968.
"P-1-8-A"	eFPS Quarterly VAT Return of Petitioner for Q4 of fiscal year ended June 2015 with Reference No. 101500012049805.
"P-1-8-B"	Amended eFPS Quarterly VAT Return of Petitioner for Q4 of fiscal year ended June 2015 with Reference No. 101600016932990.

markings. Respondent, however, failed to file his comment thereto despite notice.[47]

In the Resolution dated 13 July 2018[48], *except* for Exhibits "P-4-I-18" and "P-4-T-19"[49] which could not be found in the records, the Third Division admitted petitioner's exhibits,.

At the 10 September 2018 hearing for the presentation of respondent's evidence, respondent manifested that he has no evidence

"P-1-9"	Authenticated Service Agreement between Petitioner and Lovercius Consultants, Ltd. dated 01 April 2013.
"P-1-10"	Consularized Certificate of Incorporation of Lovercius Consultants, Ltd. issued by the Registrar of Companies of the Republic of Cyprus on 01 January 2013.
"P-1-11"	Certificate of Non-Registration of Company (Lovercius Consultants, Ltd.) issued by the SEC on 02 March 2017.
"P-1-13"	Authority to Print of Petitioner with OCN 3AU000984851.
"P-1-14"	Application for Tax Credits/Refunds (BIR Form No. 1914) for the Claim Period filed on 30 September 2016.
"P-1-14-A"	"RECEIVED" stamp at the bottom right corner indicating date of receipt: 30 September 2016.
"P-1-15"	Letter of Petitioner to the BIR VAT Credit Audit Division (VCAD) dated 28 September 2016.
"P-1-16"	Checklist of Mandatory Requirements for Claims for VAT Credit/Refund of Petitioner.
"P-1-16-A"	Check mark on the space for "8.1 Complete as to Requirements" with the handwritten name, "Jennifer Agmata".
"P-1-17"	Letter of Authority (LOA) issued to Petitioner dated 04 October 2016.
"P-2"	Affidavit in lieu of Direct Examination of Mr. Neil U. Sison as the Court-commissioned Independent Certified Public Accountant (ICPA).
"P-2-a"	Signature of Mr. Neil U. Sison, page 11 of the Affidavit in lieu of Direct Examination.
"P-3"	ICPA Report dated 28 November 2017.
"P-3-a"	Signature of Mr. Neil U. Sison, page 13 of the ICPA Report.
"P-3-1"	Replacement page for page 7 of the ICPA Report.
"P-4-A" to "P-4-AA-2"	ICPA Pre-marked voluminous documents.
"P-5"	Supplemental Affidavit in lieu of Direct Examination of Mr. Joel S. Aldaya.
"P-5-a"	Signature of Mr. Joel S. Aldaya, page 3 of the Supplemental Affidavit in lieu of Direct Examination.

47 *Per* Records Verification Report dated 05 June 2018, Division Docket, Volume II, p. 542.
48 Id., pp. 551-552.
49

Exhibit No.	Description
"P-4-I-18"	Document supporting a zero-rated sale.
"P-4-T-19"	Document supporting a domestic purchase of goods and services substantiated by a VAT sales invoice (SI) or official receipt (OR) claimed not equal to the input VAT *per* document.

to present.[50] The Court then gave the parties a period of 30 days within which to submit their respective memoranda.[51]

After being granted an extension of time by the Third Division[52], petitioner filed its Memorandum[53] on 15 October 2018. Respondent, on the other hand, failed to filed his memorandum.[54] Accordingly, on 09 November 2018, the Third Division considered the case submitted for decision.[55]

On 07 November 2019, the Third Division dismissed petitioner's prior Petition for Review for insufficiency of evidence.[56]

Aggrieved, petitioner filed a Motion for Reconsideration[57] (**MR**) on 28 November 2019. After respondent failed to file his comment thereon[58], the Third Division promulgated the assailed Resolution[59] denying petitioner's MR for lack of merit.

With the denial of its MR and after being granted an extension of time[60], petitioner filed the instant Petition for Review[61] with the Court *En Banc* on 09 October 2020. After respondent again failed to file his comment[62], the Court *En Banc* submitted the case for decision on 09 February 2021.[63]

ISSUES

In the instant Petition for Review, petitioner assigns the following errors to the Third Division's actions[64]:

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50 See Order dated 10 September 2018, Division Docket, Volume II, p. 561.
51 Id.
52 See Resolution dated 12 October 2018, id., p. 569.
53 Id., pp. 570-592.
54 *Per* Records Verification Report dated 22 October 2018, id., p. 594.
55 See Resolution dated 09 November 2018, id., p. 596.
56 Supra at note 3.
57 Division Docket, Volume II, pp. 621-632.
58 *Per* Records Verification Report dated 22 January 2020, id., p. 637.
59 Supra at note 4.
60 See Minute Resolution dated 28 September 2020, Division Docket, Volume II, p. 651; *Rollo*, p. 8.
61 Supra at note 1.
62 *Per* Records Verification dated 21 January 2021, *Rollo*, p. 57.
63 See Resolution dated 09 February 2021, id., pp. 59-60.
64 Assignment of Errors, Petition for Review, id., pp. 15-16.

I.

THE COURT OF TAX APPEALS - THIRD DIVISION GRAVELY ERRED IN FAILING TO CONSIDER THE EVIDENCE ON RECORD THAT PROVES THAT PETITIONER IBEX PHILIPPINES, INC. PERFORMS ITS CALL CENTER SERVICES IN THE PHILIPPINES.

II.

THE COURT OF TAX APPEALS - THIRD DIVISION GRAVELY ERRED IN FAILING TO CONSIDER THAT THERE IS PREPONDERANCE OF EVIDENCE FOR PETITIONER IBEX PHILIPPINES, INC.'S RECOVERY OF ITS EXCESS AND UNUTILIZED INPUT VALUE-ADDED TAX (VAT) GRANTED UNDER THE NATIONAL INTERNAL REVENUE CODE OF THE PHILIPPINES AND RESPONDENT COMMISSIONER OF INTERNAL REVENUE DID NOT PRESENT ANY EVIDENCE TO REFUTE PETITIONER IBEX PHILIPPINES, INC.'S ENTITLEMENT THERETO.

III.

THE COURT OF TAX APPEALS - THIRD DIVISION GRAVELY ERRED IN ALLOWING THE GOVERNMENT TO BE UNJUSTLY ENRICHED OF PETITIONER IBEX PHILIPPINES, INC.'S EXCESS AND UNUTILIZED INPUT VALUE-ADDED TAX (VAT).

In support of the above, petitioner reiterates its argument in its MR before the Third Division that the evidence on record, the Rules of Evidence and even plain logic dictate that there is sufficient proof that it performs its call center services in the Philippines.

Petitioner further argues that there is clear preponderance of evidence supporting its claim for refund of excess and unutilized input VAT attributable to its zero-rated sales for the four (4) quarters of FY ended 30 June 2015. According to it, this preponderance of evidence is likewise undisputed as respondent altogether waived his right to present evidence.

Finally, petitioner maintains that the denial of its claim for refund despite clear preponderance of evidence (supporting its entitlement thereto) resulted in unjust enrichment on the part of the government.

RULING OF THE COURT

Before going into the merits of the case, We shall first resolve whether the Court *En Banc* has jurisdiction over the instant petition.

THE PETITION FOR REVIEW
WAS TIMELY FILED.

The Third Division issued the assailed Resolution denying petitioner's MR on 23 July 2020. Petitioner received the said assailed Resolution on 09 September 2020.[65]

Under Section 2(a)(1)[66], Rule 4 in relation to Section 3(b)[67], Rule 8 of the RRCTA, petitioner had fifteen (15) days from 09 September 2020 or until 24 September 2020, within which to file an appeal before this Court.

On 24 September 2020, petitioner filed *via* registered mail its "Motion for Extension of Time (To file Petition for Review)"[68], requesting for an additional period of 15 days from 24 September 2020 or until 09 October 2020, within which to file its Petition for Review. The Court *En Banc* granted the same in its Minute Resolution dated 28 September 2020.[69] Accordingly, petitioner timely filed the instant petition on 09 October 2020.[70]

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[65] See Registry Return Receipt attached to the Notice of Resolution dated 23 July 2020, Division Docket, Volume II, p. 640.

[66] **SEC 2.** *Cases Within the Jurisdiction of the Court En Banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies — **Bureau of Internal Revenue**, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.] (Emphasis supplied.)

[67] Supra at note 2.

[68] *Rollo*, pp. 1-6.

[69] Division Docket, Volume II, p. 651; *Rollo*, p. 8.

[70] Supra at note 1.

NO COMPELLING GROUND TO REVERSE OR MODIFY THE ASSAILED DECISION AND RESOLUTION.

A closer evaluation of the case records and the arguments raised by petitioner in the instant Petition for Review reveals that the arguments relied upon are, indeed, mere rehash of the matters which the Third Division had already thoroughly discussed and passed upon in the assailed Decision and Resolution. Nevertheless, for emphasis, the Court *En Banc* shall pass upon petitioner's arguments.

Petitioner submits that its sales of business process and contact center services to its sole client, *i.e.*, Lovercius, which is a non-resident foreign corporation (**NRFC**), the consideration for which was paid in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (**BSP**), are subject to zero percent (0%) VAT pursuant to Section 108(B)(2) of the National Internal Revenue Code (**NIRC**) of 1997, as amended, which states:

> ...
>
> **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 **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).**[71]
>
> ...

[71] Emphasis supplied.

In *Accenture, Inc. v. Commissioner of Internal Revenue*[72], citing *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[73], the Supreme Court held that in order for the supply of services to be considered VAT zero-rated under the above-mentioned provision, the taxpayer-claimant must prove the following:

1. Services other than processing, manufacturing or repacking of goods rendered by VAT registered persons in the Philippines;

2. The recipient of such services must be performing business outside the Philippines;

3. The transaction paid for in acceptable foreign currency duly accounted for in accordance with BSP rules and regulations; and,

4. The subject services were performed in the Philippines.

As to the ***1st, 2nd*** and ***3rd requirements***, We concur with the Third Division's findings in the assailed Decision that petitioner was able to establish that it rendered services other than "processing, manufacturing or repacking of goods" to Lovercius, which is an NRFC not doing business in the Philippines (as evidenced by the SEC Certificate of Non-Registration of Company dated 02 March 2017[74]) and is doing business outside the Philippines (as evidenced by the Certificate of Incorporation dated 31 January 2013[75] issued by the Republic of Cyprus in favor of Lovercius). Moreover, that such services were paid for in acceptable foreign currency and duly accounted for in accordance with BSP rules and regulations as evidenced by the Proof of Inward Remittances issued by Union Bank for FY ended 30 June 2015[76], purportedly showing the remittances of Lovercius to petitioner.

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72 G.R. No. 190102, 11 July 2012.
73 G.R. No. 153205, 22 January 2007.
74 Exhibit "P-1-11", Division Docket, Volume II, p. 516.
75 Exhibit "P-1-10", id., p. 515.
76 ICPA Exhibits "P-4-1-1" to "P-4-1-12", CD.

We, however, take exception as regards the *4th requirement*, *i.e.*, that the subject services were performed in the Philippines.

Petitioner claims that, contrary to the Third Division's finding, it was able to establish by evidence on record that it performed its call center services in the Philippines by citing the pertinent provisions of the following documents:

(1) SEC Certificate of Incorporation with attached Articles of Incorporation (**AOI**) and Amended AOI[77], which indicates that its primary purpose is "to engage in the business of providing call/contact center and other facilities and services ... through digital and electronic software applications and other services to facilitate and complete commercial transactions" and that its principal office is established or located in Metro Manila;

(2) BIR Certificate of Registration[78], which provides that its registered address is at 29/F, Joy-Nostalg Center, No. 17 ADB Avenue, Ortigas Center, San Antonio, Pasig City;

(3) BOI Certificate of Registration[79], which provides that it is registered as a "New IT Export Service Firm in the Field of Operation of a Call Center" in accordance with the Omnibus Investments Code (**OIC**) of 1987;

(4) Authenticated Service Agreement dated 01 April 2013[80] and the Exhibit[81] attached thereto, which specifically states that petitioner, "a Philippine company", is being engaged by Lovercius for the "provision of Call Center Agents and related personnel working 9 hour shift US time zone"; and,

(5) ICPA Report dated 28 November 2017[82], which states that its purchases amounting to ₱106,480,173.16 whose input tax are valid for the subject claim for refund include significant

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77 Exhibit "P-1-2", Division Docket, Volume I, pp. 479-489.
78 Supra at note 7.
79 Supra at note 6.
80 Exhibit "P-1-9", Division Docket, Volume II, pp. 510-514.
81 Exhibit to Service Agreement, id., Volume I, p. 117.
82 Supra at note 34.

> purchases relating to the operation of a call center in the Philippines such as rent from Hanston Commercial & Industrial Corp., security services from 3rd Alert Security and Detective Services, Inc., facility services from ISS Facility Services Phils., Inc., health maintenance organization (**HMO**) services from Me, office supplies from Xentrix Solutions, Inc., washroom hygiene products from Jjed Phils. Inc., computers/workstations from Micro Pacific Technologies and Systems Corporation, and communication headsets from Gateway Network Solutions, Inc.[83]

According to petitioner, the necessary and logical conclusion is that it performs its call center services in the Philippines considering that: (1) it established itself in the Philippines as a corporation, as an export service firm in the field of operation of a call center, and as a taxpayer; (2) it was engaged as a "Philippine company" to provide call center services to Lovercius; (3) the payments of Lovercius for its call center services were inwardly remitted to the Philippines; (4) it duly reported to the BIR its sales from call center services to Lovercius; and, (5) it incurred expenses in the Philippines in connection with its business of providing call center services to Lovercius.

We are not convinced.

It is indispensable that a claimant of tax refund must prove that the services it rendered to its foreign affiliates must have been performed or rendered in the Philippines and not abroad.[84]

As correctly pointed out by the Third Division in the assailed Decision, there is no evidence on record to prove that petitioner's services to its sole client, Lovercius, were performed in the Philippines. Moreover, in its FOE[85], petitioner did not offer any specific evidence to show that the subject services were performed in the Philippines.

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[83] Exhibits "P-4-K-1" to "P-4-K-20", "P-4-L-1" to "P-4-L-254", and "P-4-M-1" to "P-4-M-83", CD.

[84] *Procter & Gamble Asia Pte. Ltd. v. Commissioner of Internal Revenue*, CTA EB Case No. 2301 (CTA Case Nos. 7581 & 7639), 24 November 2021.

[85] Supra at note 45.

We likewise echo the Third Division's conclusion that the above-enumerated documents do not suffice to establish that the subject services were clearly performed in the Philippines and only in the Philippines.

Petitioner's reliance on the ICPA Report[86] stating that its sales of services (for the period 01 July 2015 to 30 June 2015) were qualified for VAT zero-rating does not constitute sufficient proof that would meet the requirement of the law. To reiterate, the Court is not bound to accept the ICPA's findings as it has a duty to independently verify such findings.

A perusal of petitioner's Authenticated Service Agreement[87] with Lovercius would show that nothing therein can be construed that the qualifying services are to be rendered and performed by petitioner only in the Philippines.

Considering that there is no contractual provision from which it can be deduced that the subject services may only be rendered by petitioner in its place of business, *i.e.*, Pasig City, Philippines, the Authenticated Service Agreement[88] submitted by petitioner is not sufficient to prove that its call center services were rendered in the Philippines.

It bears stressing that a claimant has the burden of proof to establish the factual basis of the claim for tax credit or refund.[89] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[90] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[91]

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86 Supra at note 34.
87 Supra at note 80.
88 Id.
89 *Citibank N.A. v. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, 10 October 1997.
90 *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, 25 June 1999.
91 *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179961, 31 January 2011.

In view of petitioner's failure to prove that its alleged VAT zero-rated sales of services were performed in the Philippines, the Court *En Banc* finds that the Third Division aptly denied petitioner's claim for refund or issuance of a TCC in the aggregate amount of ₱13,480,821.26.

WHEREFORE, premises considered, the instant Petition for Review dated 09 October 2020 filed by petitioner Ibex Philippines, Inc. is hereby **DENIED** for lack of merit. Accordingly, the Third Division's Decision dated 07 November 2019 and Resolution dated 23 July 2020, respectively, in CTA Case No. 9546 entitled *Ibex Philippines, Inc. v. Commissioner of Internal Revenue*, are hereby **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(*With due respect, please see Dissenting Opinion*)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(*With due respect, I join J. Liban's Dissenting Opinion*)
CATHERINE T. MANAHAN
Associate Justice

x - x

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

IBEX PHILIPPINES, INC.,

Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

CTA EB NO. 2337
(CTA Case No. 9546)

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

Promulgated:
MAR 03 2022 11:45

x- -x

DISSENTING OPINION

RINGPIS-LIBAN, *J.*:

With due respect, I reiterate my Dissenting Opinion in the Assailed Decision in CTA Case No. 9546 as follows:

> "In my humble opinion, I believe that there is sufficient evidence on record to establish the fourth requisite — that the services sought to be subject to the VAT rate of zero percent (0%), under Section 108 (B) (2) of the NIRC, be performed in the Philippines by a VAT-registered person.
>
> As regards compliance with the fourth requisite — that services must be performed in the Philippines — the *ponencia* cites *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.* (Burmeister case) and *Commissioner of Internal*

Revenue vs. American Express International, Inc. (Philippine Branch) (AMEX Case). However, *Burmeister* dealt with a recipient of services that was doing business, not outside, but within the Philippines — a situation clearly not on all fours as the case at bar. The *AMEX* case, on the other hand, clarified the exception to the 'destination principle' in the VAT System...

> 'As a general rule, the value-added tax (VAT) system uses the destination principle. However, our VAT law itself provides for a clear exception, under which the supply of service shall be zero-rated when the following requirements are met: **(1) the service is performed in the Philippines**; (2) the service falls under any of the categories provided in Section 102(b) of the Tax Code; and (3) it is paid for in acceptable foreign currency that is accounted for in accordance with the regulations of the Bangko Sentral ng Pilipinas. Since respondent's services meet these requirements, they are zero-rated. Petitioner's Revenue Regulations that alter or revoke the above requirements are ultra vires and invalid.
>
> Respondent is a VAT-registered person that facilitates the collection and payment of receivables belonging to its non-resident foreign client, for which it gets paid in acceptable foreign currency inwardly remitted and accounted for in conformity with BSP rules and regulations. Certainly, the service it renders in the Philippines is not in the same category as 'processing, manufacturing or repacking of goods' and should, therefore, be zero-rated.'

The *AMEX* Case, however, did not elaborate on the quantum of evidence needed to establish the fact that services were indeed performed in the Philippines, thus, making it clearly a matter of sound judicial discretion.

In the case at bar, Petitioner has presented its Certificate of Incorporation of Petitioner issued by the SEC with attached Articles of Incorporation in which its primary purpose is 'to engage in the business of providing call/contact center and other facilities and services as may be required by manufacturers and sellers of goods and services and the buyers and consumers thereof, through digital and electronic software applications and other services to facilitate and complete commercial transactions,' among others. It has likewise presented its Certificate of Filing of Amended Articles of Incorporation issued by the SEC with the same primary purpose.

The Authenticated Service Agreement between Petitioner and Lovercius Consultants, Ltd. states that it is between 'a Philippine Company and a Cyprus Company.' It was issued an Authority to Print VAT zero-rated official receipts by Respondent and it issued these receipts when it received 'payment for its services in acceptable foreign currency accounted for in accordance with BSP rules.' According to the *ponencia*, this requisite has been established. The receipts have likewise been examined by the ICPA, Mr. Neil U. Sison, as evidenced by the ICPA Report, and has been testified to in his Judicial Affidavit. In my opinion, the official receipts issued by a company incorporated in the Philippines that have been printed with approval of the Philippine taxation authorities and itemize services that are part and parcel of their primary purpose is more than ample evidence of the fact that the services were indeed performed in the Philippines."

From all the foregoing, I vote to **GRANT** Petitioner's claim for refund of its unutilized input VAT in the amount of Php13,480,821.26, attributable to zero-rated sales for the four (4) quarters of the fiscal year (FY) ended June 30, 2015.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice