REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

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NOKIA (PHILIPPINES), INC., Petitioner,	**CTA Case No. 8405** **(CTA EB No. 1313)**
	Members:
- versus -	**DEL ROSARIO,** P.J., *Chairperson,* **UY**, and **MINDARO-GRULLA,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** SEP 24 2019 . 1:02 pm

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RESOLUTION

UY, J.:

On November 7, 2014, the First Division of this Court promulgated its Decision[1] in the instant case, the dispositive portion of which reads as follows:

> "**WHEREFORE**, all of the foregoing considered, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

Petitioner then filed, on November 28, 2014, a *Motion for Reconsideration*,[2] which the said First Division denied in the Resolution dated May 11, 2015,[3] the dispositive portion of which states:

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[1] Docket, pp. 413 to 442.
[2] Docket, pp. 443 to 455.
[3] Docket, pp. 490 to 507.

"**WHEREFORE**, all the foregoing considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED."

Eventually, petitioner filed a *Petition for Review* on June 25, 2015 before this Court *En Banc*,[4] praying that a new Decision be rendered ordering respondent to refund or issue a tax credit certificate in the amount of ₱16,134,824.44. The case was docketed as CTA EB No. 1313.

On September 22, 2016, the Court *En Banc* rendered its Decision,[5] the dispositive portion of which reads:

"**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The Decision dated November 7, 2014 and Resolution dated May 11, 2015 in the CTA Case No. 8405 are **REVERSED** and **SET ASIDE**. Accordingly, the instant case is hereby **REMANDED** to the CTA First Division for determination of the amount refundable.

SO ORDERED."

Consequently, respondent filed a *Motion for Reconsideration (Re: Decision dated 22 September 2016)* on October 18, 2016.[6] The said *Motion*, however, was denied by the Court *En Banc* for lack of merit, in the Resolution dated February 15, 2017.[7]

Undaunted, respondent filed a *Petition for Review on Certiorari* before the Supreme Court,[8] praying for the annulment and setting aside of the Court *En Banc*'s Decision dated September 22, 2016 and Resolution dated February 15, 2017. The case was entitled *"Commissioner of Internal Revenue, Petitioner, versus Nokia (Philippines), Inc., Respondent"*, and docketed as G.R. No. 229979.

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[4] EB Docket (CTA EB No. 1313), pp. 17 to 42.
[5] Docket, pp. 531 to 546: EB Docket (CTA EB No. 1313), pp. 169 to 184.
[6] EB Docket (CTA EB No. 1313), pp. 203 to 210.
[7] Docket, pp. 571 to 578; EB Docket (CTA EB No. 1313), pp. 223 to 230.
[8] EB Docket (CTA EB No. 1313), pp. 244 to 262.

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On June 19, 2017, the Second Division of the Supreme Court denied the petition, as follows:

> "**G.R. No. 229979 (*Commissioner of Internal Revenue vs. Nokia [Philippines], Inc.*).** – Considering the allegations, issues and arguments adduced in the petition for review on certiorari assailing the Decision dated 22 September 2016 and Resolution dated 15 February 2017 of the Court of Tax Appeals, *En Banc* in CTA EB No. 1313 (CTA Case No. 8405), the Court resolves to **DENY** the petition for failure to sufficiently show any reversible error in the assailed judgment to warrant the exercise by this Court of its discretionary appellate jurisdiction in this case. *Carpio, J., on official leave.*"[9]

Respondent then filed a *Motion for Reconsideration (Of the Resolution dated 19 June 2017)* on August 3, 2017,[10] praying for the reconsideration and setting aside of the Supreme Court's Resolution dated June 19, 2017. However, the said Motion was denied with finality by the Third Division of the Supreme Court in its Resolution dated January 22, 2018, which reads as follows:

> "**G.R. No. 229979 *(Commissioner of Internal Revenue vs. Nokia [Philippines], Inc.)*.** – Acting on the motion of the Office of the Solicitor General for reconsideration of the Resolution dated June 19, 2017 which denied the petition for review on certiorari, the Court resolves to **DENY** the motion with **FINALITY**, as no substantial arguments were raised to warrant its reconsideration.
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> No further pleadings, motions, letters or other communications shall be entertained in this case. Let entry of judgment be issued. (**Martinez, *J.,*** *on leave.)*"[11]

Thereafter, the Supreme Court recorded its Resolution dated January 22, 2018 in its Book of Entries of Judgments.[12]

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[9] Notice issued by the Deputy Division Clerk of Court Teresita Aquino Tuazon of the Supreme Court, EB Docket (CTA EB No. 1313), p. 731.
[10] EB Docket (CTA EB No. 1313), pp. 732 to 744.
[11] Notice issued by the Deputy Division Clerk of Court Misael Domingo C. Battung III of the Supreme Court, EB Docket (CTA EB No. 1313), p. 746.
[12] Entry of Judgment, EB Docket (CTA EB No. 1313), pp. 747 to 748.

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Thus, on October 19, 2018, the Court *En Banc* issued a Resolution,[13] remanding the case to this Division, pursuant to its Decision dated September 22, 2016 in CTA EB No. 1313.

Hence, this Resolution, in compliance with the directive of the Court *En Banc*.

THE ISSUE

Pursuant to the directives of the CTA Court *En Banc* contained in its Decision dated September 22, 2016 in CTA EB No. 1313, this Court in Division is tasked to make a determination of the amount refundable to Nokia (Philippines), Inc., in CTA Case No. 8405.

As a corollary, this Court must also make a determination whether or not petitioner has fully complied with legal requirements that would establish its right to its claim for refund.

THE COURT'S RULING

The instant *Petition for Review* must still be denied.

The pertinent provision for refunds or tax credits of input value-added tax (VAT) is Section 112 of the NIRC of 1997, as amended by Republic Act No. (RA) 9337,[14] which reads as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax*. -
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> (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

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[13] Docket, pp. 584 to 585; EB Docket (CTA EB No. 1313), pp. 750 to 751.
[14] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

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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 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.

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(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 Subsections (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.

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Based on the foregoing, the following requisites that must be satisfied in order that petitioner's claim for refund or issuance of tax credit certificate of unutilized input VAT under Section 112 of the NIRC of 1997, as amended, may be allowed or granted, to wit:

1. the taxpayer is VAT-registered;
2. the claim must be filed within two years after the close of the taxable quarter when such sales were made;

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3. the taxpayer is engaged in sales which are zero-rated or effectively zero-rated;
4. the creditable input VAT due or paid must be attributable to such sales, except the transitional input VAT, to the extent that such input VAT has not been applied against the output VAT;
5. in case of zero-rated sales under Section 106(A)(2)(a)(1) and (2), Section 106(B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof have been duly accounted for in accordance with BSP rules and regulations;[15] and
6. in case of denial of the refund claim, whether full or partial, or inaction on the part of respondent, the judicial action must be timely filed in accordance with the above-quoted Section 112(D) and pertinent jurisprudence.

Anent the *first*, *second*, and *sixth* requisites, the same have already been determined in the Decision dated November 7, 2014 in CTA Case No. 8405. Undisputedly, petitioner complied with the said requisites, as stated therein.

Relative to the *third* requisite necessitating that the taxpayer is engaged in sales which are zero-rated or effectively zero-rated, Section 108(B) of the NIRC of 1997, as amended by RA 9337, is instructive, to wit:

> "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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> (1) Processing, manufacturing or repacking goods for other persons doing business outside the

[15] *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010; *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011.

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> Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
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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);" *(Emphasis supplied)*

Based on the foregoing provisions, the following elements must be present for a transaction to be treated as subject to the zero percent (0%) VAT under Section 108(B)(2), to wit:

1) the services must be performed in the Philippines;

2) the recipient of such services is doing business outside the Philippines;

3) the services must be other than processing, manufacturing or repacking goods;[16] and

4) the consideration for the services is paid for in acceptable foreign currency accounted for in accordance with the BSP rules and regulations.

Without doubt, the said *second* element to qualify for VAT zero-rating has already been found by the Court *En Banc* as present, when the latter, in effect, reversed the First Division's finding and ruled that Nokia Corporation, the service-recipient in this case, is doing or engaging in business in the Philippines, per the Court *En Banc*'s Decision dated September 22, 2016.

As regards the first element, after a careful and thorough review of the evidence presented in the instant case (CTA Case No. 8405), there is still no showing that petitioner complied with the above-stated *first* element, *i.e.*, that the subject services were performed in the Philippines.

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

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The First Division of this Court refuted the contention of petitioner that its official receipts and invoices establish that the services were performed in the Philippines. To reiterate, this finding was affirmed by the Court *En Banc* (CTA EB No. 1313), in the same Decision dated September 22, 2016, the pertinent portions of which state:

> **"The VAT zero-rated official receipts and sales invoices do not sufficiently establish that the services were indeed performed in the Philippines.**
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> Petitioner states that being in the nature of an excise tax, VAT imposed on the sale of services can only be levied by the State when the acts, privileges or businesses are performed within the jurisdiction of the Philippines. Based thereon, petitioner argues that where the payment of the services were receipted with VAT zero-rated official receipts and, thereafter, collected by the government, such shows that the services were performed within the Philippines; thus, the matter of whether or not the services were rendered within the Philippines should not be an issue anymore.
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> *We* are not persuaded.
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> Invoices are merely written accounts of the particulars of merchandise shipped or sent to a purchaser or consignee with the value or prices and charges annexed. As such, it may be used to evidence a sale or transfer, or an agreement to sell or transfer goods and services.
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> On the other hand, an official receipt is a more formal and official evidence of a transaction. For purposes of VAT pursuant to Section 108 of the NIRC, as amended, it is a proof of sale of service and/or leasing of properties which shall be the basis of the output tax liability of the seller and the input tax claim of the buyer. It is a written admission or acknowledgment of the fact that money has been paid and received for the payment or

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settlement between persons rendering services and its customers.

While it is true that VAT official receipts and invoices are proofs of the parties' business transactions – to prove sale or lease of goods or services and payment thereof, the same, however, does not *ipso facto* equate that the said sale or lease were actually rendered within the Philippines. Nowhere in the said documents is it stated or shown that the services were actually performed in the Philippines. As correctly held by the court *a quo*, the determination of whether a certain sale or lease of a good or service is performed within or outside of the Philippines is a question of fact which should, therefore, be duly proven and substantiated.

Moreover, *We* agree with the court *a quo* that the phrase 'performance of all kinds of services in the Philippines', as mentioned in Section 108(A), merely recognizes the country's taxing jurisdiction. In fact, Section 108 only provides for the rate and base of VAT derived from sale or exchange of services and use of lease of properties. Notably, legislative intent must be ascertained from consideration of the statute as a whole and not of an isolated part or a particular provision alone. For taken in the abstract, a word or phrase might easily convey a meaning quite different from the one actually intended and evident when the word or phrase is considered with those in which it is associated."[17] *(Emphases and underscoring supplied)*

The Court *En Banc*'s ruling that the VAT official receipts and invoices do not *ipso facto* establish that the services were performed in the Philippines becomes the *law of the case*.

The doctrine of *law of the case* simply means that when an appellate court has once declared the law in a case, its declaration continues to be the *law of that case* even on a subsequent appeal, notwithstanding that the rule thus laid down may have been reversed in other cases. For practical considerations, indeed, once the appellate court has issued a pronouncement on a point that was presented to it with full opportunity to be heard having been accorded

[17] Docket, pp. 535 to 536, and 537 to 538; EB Docket (CTA EB No. 1313), pp. 173 to 174, and 175 to 176.

to the parties, the pronouncement should be regarded as the *law of the case* and should not be reopened on remand of the case to determine other issues of the case.[18]

With the above-quoted pronouncement of the Court *En Banc*, it is clearly evident that petitioner indeed failed to show that its services were performed in the Philippines. In effect, this pronouncement or finding of the Court *En Banc* affirms the finding of the First Division of this Court in the instant case.

Having failed to comply with the *first* element, it becomes unnecessary for this Court to proceed to determine whether or not petitioner complied with the other elements for a transaction to be treated as subject to the zero percent (0%) VAT under Section 108(B)(2) of the NIRC of 1997, as amended by RA No. 9337.

Thus, although this case was remanded to this Court in Division for the determination of the amount refundable, the same can only be done if petitioner has complied with the legal requisites for it to be entitled to the refund claim. Again, this Court in Division reiterates the settled finding of the Court *En Banc* in CTA *EB* Case No. 1313, that petitioner failed to comply with the *third* requisite, as there is no showing that its services were performed in the Philippines.

Correspondingly, with the finding that petitioner failed to show that it is engaged in sales which are zero-rated or effectively zero-rated, or the *third* requisite for the grant of the subject refund claim, it likewise becomes unnecessary to determine whether petitioner satisfied the *fourth* and *fifth* requisites therefor.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED**, for failure of petitioner to show that its sales of services for the fourth quarter of 2009 qualify for VAT zero-rating.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[18] *Development Bank of the Philippines vs. Guariña Agricultural and Realty Development Corporation*, G.R. No. 160758, January 15, 2014.

WE CONCUR:

(Inhibited)
ROMAN G. DEL ROSARIO
Presiding Justice

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