REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

WATERFRONT PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8024

Members:
UY, *Chairperson, and*
FABON-VICTORINO, *JJ.*

Promulgated:
APR 24 2013 ; 2:00 p.m.

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AMENDED DECISION

UY, *J.*:

For resolution is respondent's **"MOTION FOR RECONSIDERATION"** filed on December 4, 2012, praying that the Decision promulgated on November 13, 2012 be reversed and set aside, and another one be rendered ordering petitioner to pay the amount of ₱ 2,337,494.00 as deficiency value-added tax (VAT) for taxable year 2006.

For easy reference, the dispositive portion of the said Decision reads:

> "**WHEREFORE**, premises considered, the petitioner's prayer for the cancellation of the assessment covering deficiency amended expanded withholding tax for taxable year 2006 are hereby **DENIED**.
>
> Accordingly, petitioner is hereby **ORDERED** to pay respondent deficiency amended expanded withholding tax for the taxable year 2006 in the amount of P873,448.22, inclusive of 25% surcharge and 20% deficiency interest imposed pursuant to Section 248 A(3) and 249(B) of the NIRC of 1997.

> Likewise, petitioner is **ORDERED** to pay delinquency interest at the rate of 20% per annum on the total deficiency taxes of P873,448.22 from December 15, 2009 until full payment thereof pursuant to Section 249(C)(3) of the 1997 NIRC.
>
> **FINALLY,** as to the petitioner's prayer for the cancellation of the assessment on the deficiency value added tax for taxable year 2006 and the compromise penalty for the unauthorized use of computerized accounting and for non-submission of the alpha list of payees, this Court finds it meritorious to cancel the same. Consequently, respondent is hereby **ORDERED** to **CANCEL** the assessment on the deficiency value added tax for taxable year 2006 and the assessment on the compromise penalty for the unauthorized use of computerized accounting system and for non-submission of alpha list of payees.
>
> **SO ORDERED.**"

In the instant Motion, respondent argues that petitioner was assessed of deficiency VAT not as a lending investor but for the interest income realized from the interest-bearing loans and collateral-free advances extended to related parties; that the interest income is the revenue realized from the services rendered by petitioner to its related parties as part of its ordinary course of trade or business; that petitioner does not fall under the exempt transactions provided under Section 109 of the National Internal Revenue Code (NIRC) of 1997, and did not present any BIR Ruling exempting it from the payment of VAT; and that all presumptions are in favor of the correctness of tax assessments.

THE COURT'S RULING

The Motion is meritorious.

Indeed, petitioner was assessed by respondent not by reason that it acted as a lending investor, but because the interest income it received is revenue realized from the services rendered to related parties as part of petitioner's normal course of trade or business.

This is manifested in the Memorandum[1] dated October 30, 2009 of Revenue Officer Venus Beta-Chi A. Badilla, which provides in part:

> "A substantial portion of [petitioner's] income were from interest income on loans granted to Metro Alliance Holdings and Equities Corporation (MAHEC) and to Wellex Group, Inc. which are related parties of [petitioner]. In the ordinary course of its operations, [petitioner] extends and obtains cash advances and loans to/from related parties for working capital purposes as well as to finance the construction and operation of its hotel projects, this is in furtherance of its primary purposes as stated in its Articles of Incorporation. **Hence, the interest income is revenue realized from the services rendered by [petitioner] to its related parties as part of its normal course of trade or business.** Pursuant to RR 16-2005, any person who in the course of trade or business, sells, or barters, exchanges or leases goods or properties, or renders services, and any persons who imports goods, shall be liable to Value-Added Tax imposed in Secs. 106 to 108 of the tax code. Sec.4.105-3 of RR 16-2005 provides that the term in the course of trade and business means the regular conduct or pursuit of a commercial or economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is non-stock, non-profit private organization or government entity.
>
> It is a well settled rule that he who claims exemption should prove that he is exempted. Exemption from taxation is highly disfavored in law and he who claims an exemption must be able to justify his claim by the clearest grant of organic or statutory law. Subject taxpayer cannot present a ruling in its favor that it is actually exempt from value added tax. It also does not fall under the exempt transactions as provided for by Sec. 109 of the NIRC. Subject taxpayer in its protest letter asserted that [it] shall not be liable for value added tax since it is not a lending investor. However, **this Office finds that [petitioner] is liable for value added tax not as a lending investor but for the reason that the interest income is revenue recognized from its normal course of trade and business**." *(Emphases supplied)*

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[1] Exhibits "D" (for petitioner) and "1" (for respondent), BIR Records, pp. 692 to 693.

In this connection, Section 105 of the NIRC of 1997 provides as follows:

> "SEC. 105. *Persons Liable.* — Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.
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> The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.
>
> **The phrase *'in the course of trade or business'* means the regular conduct or pursuit of a commercial or an economic activity, <u>including transactions incidental thereto</u>, by any person** regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.
>
> The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business." *(Emphasis and underscoring supplied)*

VAT is a tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto. The term *"in the course of trade or business"* requires the regular conduct or pursuit of a commercial or an economic activity, regardless of whether or not the entity is profit-oriented.[2]

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[2] *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 125355, March 30, 2000.

Relative to the sale of services, Section 108 of the same Code, as amended by Republic Act No. 9337,[3] states:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.*—
>
> (A) *Rate and Base of Tax.* — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: Provided, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:
>
> (i) Value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifth percent (2 4/5%); or
>
> (ii) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1½%).[4]
>
> **The phrase *'sale or exchange of services'* means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including** those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes for hire and other

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[3] 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.

[4] Effective February 1, 2006, the VAT rate was increased to 12%. (Refer to Revenue Memorandum Circular No. 7-2006 dated January 31, 2006.

> domestic common carriers by land relative to their transport of goods or cargoes; common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines; sales of electricity by generation companies, transmission, and distribution companies; services of franchise grantees of electric utilities, telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; **and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties.** xxx."

Interpreting the above provision, the Supreme Court held In *Diaz, et al. vs. Secretary of Finance, et al.*,[5] that:

> "It is plain from the above that the law imposes VAT on 'all kinds of services' rendered in the Philippines for a fee, including those specified in the list. **The enumeration of affected services is not exclusive. By qualifying 'services' with the words 'all kinds,' Congress has given the term 'services' an all-encompassing meaning. The listing of specific services are intended to illustrate how pervasive and broad is the VAT's reach rather than establish concrete limits to its application. Thus, every activity that can be imagined as a form of 'service' rendered for a fee should be deemed included unless some provision of law especially excludes it.**" *(Emphasis supplied)*

Thus, for the imposition of the VAT on the sale of service, the issue of whether or not petitioner is a lending investor would not be material, since being a lending investor is merely one of those specified in the list stated in the above-quoted Section 108. Such being the case, so long as it can be found that petitioner performed a certain service for another for a fee, remuneration or consideration, the same is subject to VAT.

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[5] G.R. No. 193007, July 19, 2011.

In the present case, it is undisputed that petitioner extended cash advances with interest to its affiliates. This act is clearly a performance of service for a fee, remuneration or consideration within the purview of the above-quoted provisions of the NIRC of 1997, the fee, remuneration or consideration being the interest received by petitioner. Thus, the same should certainly be subject to VAT.

Petitioner's acts of extending cash advances with interest to its affiliates may be treated as an isolated transaction. However, it does not follow that an isolated transaction cannot be an incidental transaction for purposes of VAT liability. Indeed, a reading of Section 105 of the 1997 Tax Code would show that a transaction *"in the course of trade or business"* includes *"transactions incidental thereto."*[6]

WHEREFORE, premises considered, respondent's Motion for Reconsideration of the Decision dated November 20, 2012 is hereby **GRANTED**.

Accordingly, the dispositive portion of the said Decision of this Court is hereby modified to read as follows:

> "**WHEREFORE**, premises considered, the petitioner's prayer for the cancellation of the assessment covering deficiency amended expanded withholding tax for taxable year 2006 are hereby **DENIED**.
>
> Accordingly, petitioner is hereby **ORDERED** to pay respondent deficiency amended expanded withholding tax for the taxable year 2006 in the amount of ₱ 873,448.22, inclusive of 25% surcharge and 20% deficiency interest imposed pursuant to Section 248 A(3) and 249(B) of the NIRC of 1997.
>
> Likewise, petitioner is **ORDERED** to pay delinquency interest at the rate of 20% per annum on the total deficiency taxes of ₱ 873,448.22 from December 15, 2009 until full payment thereof pursuant to Section 249(C)(3) of the 1997 NIRC.

[6] *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 193301 and 194637, March 11, 2013.

In addition, as to petitioner's prayer for the cancellation of the compromise penalty for the unauthorized use of computerized accounting and for non-submission of the alpha list of payees, this Court finds it meritorious to cancel the same. Consequently, respondent is hereby **ORDERED** to **CANCEL** the assessment on the compromise penalty for the unauthorized use of computerized accounting system and for non-submission of alpha list of payees.

FINALLY, anent the deficiency VAT assessment, petitioner is hereby **ORDERED** to pay respondent deficiency VAT tax for the same taxable year in the amount of ₱ 1,409,101.74, plus 25% surcharge and 20% deficiency interest imposed under Section 248 A(3) and 249, respectively, of the NIRC of 1997.

SO ORDERED."

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice