REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

AMADEUS MARKETING PHILIPPINES, INC., *Petitioner,*	**CTA CASE NO. 9664** Members:
-*versus*-	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 17 2022 9:16 a.m.

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RESOLUTION

MODESTO-SAN PEDRO, J.

For the Court's resolution is petitioner's **Motion for Reconsideration**[1] ("Motion"), filed on 22 March 2021, without[2] respondent's Comment despite order.[3]

In its Motion, petitioner seeks the reversal and setting aside of this Court's Decision[4] ("Assailed Decision"), promulgated on 22 February 2021, the dispositive part of which reads:

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

Petitioner moves for reconsideration of the Assailed Decision based on the following grounds:

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1 Division Records Vol. 3, pp. 1195-1211.
2 *See* Records Verification Report dated 26 April 2022, *id.*
3 *See* Resolution dated 27 May 2021, *id.*
4 *Id.*, pp. 1176-1194.

First, the Court in Division erred in finding that the ACO Agreement between petitioner and Amadeus IT Group S.A. is highly restrictive in nature. Petitioner explains that, on the contrary, the ACO Agreement does not restrict petitioner but rather restricts Amadeus IT Group S.A., who cannot appoint another distributor in the Philippines other than petitioner.

Even assuming that the exclusivity applies to petitioner, it explains that such does not render Amadeus IT Group S.A. as doing business in the Philippines given that petitioner remains independent. Petitioner maintains that the case of ***Steelcase Inc. v. Design International Selections, Inc.***,[5] which declared that no less than "full control" is the criteria in determining whether a representative or distributor is independent of the contracting foreign corporation, applies to the present case. It asserts that petitioner can choose and contract Subscribers on its own behalf and retain all revenues therefrom. It further maintains that the profits of Amadeus IT Group S.A. is limited to subsequent transactions between Providers and Subscribers using the system.

Consequently, according to petitioner, the ACO Agreement did not highly restrict or dictate full control on how petitioner will conduct its business. In support thereof, petitioner cites certain provisions of the ACO Agreement purportedly showing the independence of petitioner in performing its contractual obligations. Petitioner thus concludes that Amadeus IT Group S.A. is not doing business in the Philippines.

Second, the Court in Division erred in finding that the ACO Agreement contains numerous provisions showing Amadeus IT Group S.A.'s participation in running the marketing and distribution of the Amadeus System in the Philippines.

Petitioner explained that the ACO Agreement sets limitations on how the Amadeus System, a Global Distribution System (GDS) computer software created by Amadeus IT Group S.A., will be marketed and distributed in the Philippines. Necessarily, the intellectual property rights over the software are retained by Amadeus IT Group S.A.

Petitioner faults the Court in Division's interpretation of specific terms in the ACO Agreement pertaining to: (1) Multinational Subscribers; (2) Online Subscribers; (3) Third-party Licensors; and (4) Misuse or Abuse. According to petitioner, these terms were included in the ACO Agreement to set limitations on how the Amadeus System would be marketed; to allow Amadeus IT Group S.A. to protect its intellectual property rights; and to address the territorial limitations in the ACO Agreement.

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[5] G.R. No. 171995, 18 April 2012.

After a careful perusal of the foregoing arguments, the Court finds no sufficient reason to reverse the Assailed Decision.

The arguments raised in the present Motion for Reconsideration have been thoroughly considered and passed upon by this Court in the Assailed Decision. Nonetheless, for emphasis, the Court in Division shall briefly discuss and reiterate its reasons for denying petitioner's Petition for Review.

In the more recent case of ***Magna Ready Mix Concrete Corp. v. Andersen Bjornstad Kane Jacobs, Inc.***,[6] the Supreme Court reiterated the ruling in ***Agilent Technologies v. Integrated Silicon***,[7] which identified the two tests for determining whether a foreign corporation is doing business in the Philippines:

> The case of *Agilent Technologies v. Integrated Silicon*, citing *Mentholatum v. Mangaliman*, discusses the two tests to determine whether a foreign corporation is doing business in the Philippines:
>
> > In *Mentholatum*, this Court discoursed on the two general tests to determine whether or not a foreign corporation can be considered as "doing business" in the Philippines. The **first of these is the substance test**, thus:
> >
> > > The true test [for doing business], however, seems to be whether the foreign corporation is continuing the body of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another.
> >
> > The **second test is the continuity test**, expressed thus:
> >
> > > The term [doing business] implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in the progressive prosecution of, the purpose and object of its organization.
>
> The number of the transactions entered into is not determinative whether a foreign corporation is doing business in the Philippines; the **intention to continue the body of its business prevails**. The number or quantity is merely an evidence of such intention. A single act or transaction may then be considered as doing business when a corporation performs acts for which it was created or exercises some of the functions for which it was organized.
> (Citations omitted; emphasis, Ours.)

[6] G.R. No. 196158, 20 January 2021.
[7] G.R. No. 154618, 14 April 2004.

In the case of *Agilent Technologies v. Integrated Silicon*,[8] the Supreme Court held that restrictive provisions in the agreement which effectively reduce the Philippine entity to a mere extension or instrument of the foreign corporation are sufficient basis for the Court to rule that the foreign corporations were doing basis in the Philippines as this implies that the commercial dealings in the country were continuous.

Given the foregoing, the Court stands by its ruling in the Assailed Decision that the provisions in the ACO Agreement present clear and convincing evidence that disproves petitioner's claims that Amadeus IT Group S.A. is a non-resident foreign corporation doing business outside the Philippines.

Contrary to petitioner's contention, petitioner's business is limited to marketing Amadeus System. Indeed, as found by the Court in Division, petitioner's Amended Articles of Incorporation states that petitioner is engaged in the business of marketing the Amadeus System in the Philippines.[9]

Thus, petitioner's reliance on ***Steelcase, Inc. v. Design International Selections, Inc.***[10] is misplaced. In the said case, the Supreme Court held that if the distributor is an independent entity that buys and distributes products <u>other than those of the foreign corporation</u> for its own name and for its own account, the distributor <u>cannot</u> be considered to be doing business in the Philippines.

The circumstances are different in the instant case. To reiterate the Court in Division's findings in the Assailed Decision, Part 18 of the ACO Agreement prohibits petitioner from distributing and/or participating in equity in any venture that competes directly or indirectly with Amadeus SA in the marketing of its global distribution system services to subscribers or from providing products and services that competes with Amadeus SA's products and services without its prior consent.

Petitioner thus failed to convince this Court that the provisions in the ACO Agreement are included merely to protect the intellectual property rights of Amadeus IT Group S.A., to market the Amadeus System, or to address territorial constraints. Quite the contrary, Amadeus IT Group S.A. is doing business through petitioner. Consequently, the sales rendered by petitioner to Amadeus IT Group S.A. do not qualify for VAT zero-rating as provided under ***Section 108(B)(2) of the Tax Code.***

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8 G.R. No. 154618, 14 April 2004.
9 *See* Amended Articles of Incorporation, Exhibit "P-3", p. 4 of 11, Division Records, Vol. 2, p. 830.
10 G.R. No.171995, 18 April 2012.

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At this juncture, it is worthy to emphasize that tax refunds or tax credits, just like tax exemptions, are strictly construed against the taxpayers.[11] The taxpayer claimant has the burden to prove compliance with the conditions for the grant of the tax refund or credit.[12] Considering that taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[13]

All told, the Court finds no justifiable reason to reverse or modify the conclusions reached in the Assailed Decision.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration,** is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[11] Sitel Philippines Corp. v. Commissioner of Internal Revenue, G.R. No. 201326, 8 February 2017 *citing* Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (now TeaM Energy Corporation), G.R. No. 180434, 20 January 2016.

[12] *Ibid.*

[13] Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 222428, 19 February 2018.

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