REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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ACCENTURE, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7046

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

NOV 13 2008, 10:10 am

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DECISION

BAUTISTA, J.:

The *Petition for Review* seeks refund or issuance of tax credit certificate in the amount of P35,178,884.21, representing unutilized input value-added tax (VAT) on domestic purchases of goods and services for the period covering July 1, 2002 to November 30, 2002.

Accenture Incorporated (Petitioner) is a domestic corporation duly registered with the Securities and Exchange Commission, and existing under and by virtue of the laws of the Republic of the Philippines. Its principal office address is at MSE Building, Ayala Avenue, Makati City.[1] It is primarily engaged in the business of providing management consulting and management information consulting services, including but not limited to, business strategies development, change management services, systems integration, systems management, development, sale and/or licensing of software, and sale of hardware and

[1] Par. 1, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 98

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related products, either as a principal or an agent, and other related business activities.[2] Likewise, petitioner is a VAT taxpayer duly registered with the Bureau of Internal Revenue, with Taxpayer Identification Number (TIN) 000-845-543-000 VAT.[3]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, with authority, among others, to decide, approve and grant claims for refund or tax credit of internal revenue taxes. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[4]

In petitioner's Quarterly VAT Return for the fourth quarter of 2002 (covering the period from June 1, 2002 to August 31, 2002), the following are reflected:[5]

Purchases	Amount	Input VAT
Domestic Purchases- Capital Goods	12,312,722.00	P 1,231,272.20
Domestic Purchases- Goods other than Capital Goods	64,789,507.90	6,478,950.79
Domestic Purchases- Services	16,455,868.10	1,645,586.81
Total Input Tax		**P 9,355,809.80**
Zero-rated Sales		P316,113,513.34
Total Sales		P335,640,544.74

While petitioner's Quarterly VAT Return for the first quarter of 2003 (covering the period from September 1, 2002 to November 30, 2002), reflected the following:[6]

Purchases	Amount	Input VAT
Domestic Purchases- Capital Goods	80,765,294.10	P 8,076,529.41
Domestic Purchases- Goods other than Capital Goods	132,820,541.70	13,282,054.17
Domestic Purchases- Services	63,238,758.00	6,323,875.80
Total Input Tax		**P27,682,459.38**
Zero-rated Sales		P 545,686,639.18
Total Sales		P 572,880,982.68

On July 31, 2004, petitioner filed with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center an administrative claim for refund or issuance of tax credit certificate of its alleged unutilized input VAT credits for the period covering July 1, 2002 to

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[2] Par. 4, JSFI, Docket, p. 99
[3] Exhibit "B"
[4] Par. 2, JSFI, Docket, pp. 98-99
[5] Exhibit "E"
[6] Exhibit "K"

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August 31, 2002, and September 1, 2002 to November 30, 2002 in the amounts of P8,811,301.66 and P26,367,542.55, respectively, or in the aggregate amount of P35,178,844.21.[7]

Due to respondent's inaction, petitioner filed before this Court a *Petition for Review* on August 31, 2004.

Respondent filed a *Motion to Admit Answer* on November 23, 2004 with attached *Answer*.[8] In his *Answer*[9], respondent asserted the following Special and Affirmative Defenses:

> "4. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
>
> 5. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent Bureau;
>
> 6. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.
>
> 7. Petitioner's claim for refund or issuance of tax credit certificate in the amount of P35,178,844.21 as alleged unutilized input VAT paid on its domestic purchases of goods and services for the period covering July 1, 2002 to November 30, 2002 were not fully substantiated/documented.
>
> 8. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit.
>
> 9. Petitioner's sales of goods and services to various alleged clients do not qualify as zero-rate VAT.
>
> 10. It is incumbent upon the latter to show that it has complied with the provisions under Section 204(c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.
>
> 11. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation ***(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and as such, they are looked upon with disfavor ***(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).***"

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[7] Exhibits "L" and "M"
[8] Docket, pp. 47-50
[9] Docket, pp. 49-50

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Petitioner filed a *Motion to Declare Respondent in Default*[10] on December 6, 2004 and *Opposition to Respondent's Motion to Admit Answer* on January 19, 2005[11]; which the Court admitted in a *Resolution* dated April 4, 2005.[12]

Petitioner filed its *Pre-Trial Brief*[13] on April 27, 2005; while respondent filed its *Respondent's Pre-Trial Brief*[14] on June 29, 2005. The parties filed their *Joint Stipulation of Facts and Issues*[15] on August 1, 2005, which was approved in a *Resolution*[16] dated August 12, 2005.

During the hearing on January 17, 2006, petitioner's counsel manifested that the Department of Finance has recommended for the approval of its claim for refund or issuance of tax credit certificate for the period from September to November 2002; hence, petitioner will file the corresponding motion to amend the *Petition for Review* when the claim has actually been approved.[17]

After the presentation of documentary and testimonial evidence, petitioner filed its *Formal Offer of Evidence*[18] on November 27, 2006, which was admitted in *Resolutions* dated January 18, 2007[19], March 23, 2007[20], and May 29, 2007[21].

During the July 3, 2007 hearing, respondent's counsel manifested that the One-Stop Shop of the Department of Finance has denied petitioner's claim.[22]

On December 4, 2007, respondent filed its *Manifestation with Motion to Admit Formal Offer of Evidence with attached Formal Offer of Evidence*. The Court granted

[10] Docket, pp. 52-55
[11] Docket, pp. 58-62
[12] Docket, pp. 65-66
[13] Docket, pp. 71-81
[14] Docket, pp. 87-89
[15] Docket, pp. 98-101
[16] Docket, p. 103
[17] Docket, p. 111
[18] Docket, pp. 139-151
[19] Docket, pp. 217-219
[20] Docket, pp. 242-243
[21] Docket, pp. 248-249
[22] Docket, p. 250

respondent's motion[23] and admitted its *Formal Offer of Evidence* in a *Resolution* dated February 13, 2008.[24]

In a *Resolution* dated March 25, 2008, the Court granted petitioner's *Motion (for Partial Reconsideration)*[25] filed on March 5, 2008. Thereafter, petitioner filed its *Supplemental Formal Offer of Evidence* on April 21, 2008, which was admitted in a *Resolution*[26] dated June 2, 2008.

On July 14, 2008, the case was submitted for decision, taking into consideration the *Memorandum*[27] filed by petitioner on July 7, 2008, *sans* respondent's *Memorandum*.[28]

Hence, this Court's decision.

The issues[29] as stipulated by the parties are as follows:

"1. Whether or not Petitioner's sales of goods and services are zero-rated for VAT purposes under Section 108(B)(2)(3) of the 1997 Tax Code.

2. Whether or not petitioner's claim for refund/tax credit in the amount of P35,178,884.21 represents unutilized input VAT paid on its domestic purchases of goods and services for the period commencing from 1 July 2002 until 30 November 2002.

3. Whether or not Petitioner has carried over to the succeeding taxable quarter(s) or year(s) the alleged unutilized input VAT paid on its domestic purchases of goods and services for the period commencing from 1 July 2002 until 30 November 2002, and applied the same fully to its output VAT liability for the said period.

4. Whether or not Petitioner is entitled to the refund of the amount of P35,178,884.21, representing the unutilized input VAT on domestic purchases of goods and services for the period commencing from 1 July 2002 until 30 November 2002, from its sales of services to various foreign clients.

5. Whether or not Petitioner's claim for refund/tax credit in the amount of P35,178,884.21, as alleged unutilized input VAT on domestic purchases of goods and services for the period covering 1 July 2002 until 30 November 2002 are duly substantiated by proper documents."

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[23] Docket, p. 276
[24] Docket, p. 284
[25] Docket, p. 292
[26] Docket, p. 317
[27] Docket, pp. 318-337
[28] Docket, p. 339
[29] Docket, pp. 99-100

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The issues can be simplified as follows: "Whether or not petitioner is entitled to a refund or issuance of tax credit certificate in the amount of P35,178,844.21, representing unutilized input VAT on domestic purchases of goods and services attributable to its sales of services to various foreign clients for the period covering July 1, 2002 to November 30, 2002".

Petitioner anchors its claim on Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, which allows the refund/tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales, to wit:

> "**SEC. 112. Refunds or Tax Credits of Input Tax.** —
>
> **(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 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 sales 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 to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

Based on the afore-quoted provision, the following are the requisites for the granting of a claim for refund or tax credit:

1. there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes are directly attributable to zero-rated sales or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and
5. that the claim for the refund was filed within the two-year prescriptive period.

Anent the first requisite, petitioner asserts that the bulk of its sales for the subject period of claim is subject to zero percent (0%) VAT pursuant to Section 108(B)(2) of the 1997 NIRC, as amended; since the said sales pertain to petitioner's services to various foreign clients in providing management consulting and management information consulting services, including but not limited to, business strategic services, change management services, systems integration, systems management, the development, sale/or licensing of software, and the sale of hardware and related products, either as principal or agent, and other related business activities, and the consideration for which is paid for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*.

Value-added tax at zero percent (0%) is imposed on revenues derived from sale of services aside from processing, manufacturing or repacking of goods for other person doing business outside the Philippines which goods are subsequently exported, provided that the transaction is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* under Section 108(B)(2) of the 1997 NIRC, as amended, which states:

> "**SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties.** -
>
> xxx xxx xxx
>
> **(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:
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the 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, 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)*

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Thus, for services to qualify for zero-rating under Section 108(B)(2), the taxpayer must comply with the following requirements: (1) the recipient of its business is doing business outside the Philippines, (2) the payment of its service fees was in acceptable foreign currency, and (3) accounting of such remittance was in accordance with BSP rules.

In order to prove its alleged zero-rated or effectively zero-rated sales, petitioner presented in its formal offer of exhibits, the Official Receipts[30], Billing Statements[31], Memo Invoices-Receivable[32], Memo Invoices-Payable[33] and Bank Statements[34].

In addition, petitioner submitted the Report[35] of the Court-commissioned Independent CPA, Mr. Emmanuel Mendoza, dated August 1, 2006, where he noted that petitioner's gross billings as reflected in the Intercompany Payment Requests (IPR) for the fourth quarter of taxable year 2002 (July 2002 to August 2002) and first quarter of taxable year 2003 (September 2002 to November 2002) were all supported by zero-rated official receipts, billing statements, and memo invoices issued by the Company. However, based on the said Report, the Court finds that the alleged zero-rated sales per IPR amounting to P994,325,474.18 are higher than the alleged zero-rated sales per petitioner's Quarterly VAT Returns by P132,525,321.66.

However, considering that petitioner did not file an Amended VAT Return to reflect the higher zero-rated sales amount of P994,325,474.18, the Court will consider only the amount of P861,800,152.52 reflected in its VAT Returns for the subject period of claim, broken down as follows:

Exhibit No.	Period Covered		Zero Rated Sales Per VAT Returns
"E"	4th qtr 2002	July 1, 2002 to August 31, 2002	P 316,113,513.34
"K"	1st qtr 2003	September 1, 2002 to November 30, 2002	545,686,639.18
Total			**P861,800,152.52**

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30 Exhibits "GG-1" to "GG-5"
31 Exhibits "HH-1" to "HH-5"
32 Exhibits "II-1" to "II-31"
33 Exhibits "JJ-1" to "JJ-33"
34 Exhibits "KK-1" to "KK-5"
35 Exhibit "T"

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Nevertheless, after a thorough review and evaluation of the documentary evidence presented, the Court notes that no evidence was presented to prove the fact that the foreign clients to whom petitioner renders service are clients doing business outside the Philippines.

In the case of **Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.**[36], the Supreme Court held that another essential condition for qualification to zero-rating under Section 108(B)(2) [then Section 102(b)(2)] is that the recipient of such services is doing business outside the Philippines. The Court quotes hereunder the pertinent portion of the said Decision:

> "The Tax Code not only requires that the services be other than 'processing, manufacturing, or repacking of goods' and that payment for such services be in acceptable foreign currency accounted for in accordance with BSP rules. Another essential condition for qualification to zero-rating under Section 102(b)(2) is that **the recipient of such services is doing business *outside* the Philippines.** While this requirement is not expressly stated in the second paragraph of Section 102(b), this is clearly provided in the first paragraph of Section 102(b) where the listed services must be 'for other persons doing business outside the Philippines.' The phrase 'for other persons doing business outside the Philippines' not only refers to the services enumerated in the first paragraph of Section 102(b), but also pertains to the general term 'services' appearing in the second paragraph of Section 102(b). In short, services other than processing, manufacturing, or repacking of goods must likewise be performed for persons doing business outside the Philippines.
>
> This can only be the logical interpretation of Section 102(b)(2). If the provider and recipient of the 'other services' are both doing business in the Philippines, the payment of foreign currency is irrelevant. Otherwise, those subject to the regular VAT under Section 102(a) can avoid paying the VAT by simply stipulating payment in foreign currency inwardly remitted by the recipient of services. To interpret Section 102(b)(2) to apply to a payer-recipient of services doing business in the Philippines is to make the payment of the regular VAT under Section 102(a) dependent on the generosity of the taxpayer. The provider of services can choose to pay the regular VAT or avoid it by stipulating payment in foreign currency inwardly remitted by the payer-recipient. Such interpretation removes Section 102(a) as a tax measure in the Tax Code, an interpretation this Court cannot sanction. A tax is a mandatory exaction, not a voluntary contribution." *(Emphasis supplied)*

[36] G.R. No. 153205, January 22, 2007

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In this case, the documents submitted by petitioner merely establish the existence of sale, that the payments of its service fees were in acceptable foreign currency, that the proceeds of such sales transactions were inwardly remitted to the Philippines and accounted for in accordance with BSP rules.

Even in the testimonial evidence[37] presented by petitioner, there is nothing that will show that the "foreign clients" are doing business outside the Philippines and the Court quotes hereunder the pertinent portions of the testimony given by Ms. Loida S. Samson, petitioner's Country Controller:

"Q: Ms. Witness, what is the general business of Accenture?

A: Accenture is engaged in a management consultant services.

Q: And who are the clients of Accenture?

A: **Most of our clients are foreign clients**." *(Emphasis supplied)*

Likewise, even in the Report prepared by Mr. Emmanuel Mendoza, there is no indication or mention to the effect that petitioner's foreign clients are doing business outside the Philippines. Petitioner's allegation that its clients were "foreign clients" is not sufficient to meet the requirement of the law that **the recipient of its service is doing business outside the Philippines**.

The phrase "foreign clients" is couched in general terms that the Court cannot just simply assume that they are doing business outside the Philippines. A "foreign client" may also be engaged in doing business in the Philippines and in that case, when the petitioner and the recipient of its services are both doing business in the Philippines, their transaction falls squarely under Section 108(A) of NIRC of 1997, as amended; governing domestic sale or exchange of services subject to 12% VAT. Even if there is an allegation that these foreign clients are doing business outside the Philippines, still the Court cannot give weight

[37] TSN, June 6, 2006, pages 4 to 5

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to such allegation. Mere allegations are not sufficient but must be accompanied by supporting evidence.[38]

Thus, petitioner fails to prove that its sale of services to "foreign clients" qualifies for zero percent VAT. Well settled is the rule that a claim for refund is construed *strictissimi juris* against the taxpayer as it partakes in the nature of exemption from taxation.[39] Furthermore, this Court believes that in claims for refund, the law mandates the court to observe a higher standard of caution in appreciating and evaluating evidence. If indeed a claim for refund is wanting in pertinent and supporting evidence, then the granting thereof could prove to be improper, if not difficult.[40] Petitioner has the burden of proof to establish the factual basis of its claim for tax refund, which petitioner failed to do.

Accordingly, the Court will no longer discuss the other requisites, and hereby finds that the claim for refund or issuance of tax credit certificate must be denied.

WHEREFORE, with the foregoing disquisitions, the *Petition for Review* is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

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[38] Accenture Inc. vs. Commissioner of Internal Revenue, CTA Case Nos. 7158, 7285 & 7313, August 7, 2008
[39] Citibank N.A. vs. Court of Appeals, et. al., G.R. No.107434, October 10, 1997
[40] ECW Joint Venture Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6398, May 26, 2003

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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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division

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