REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

CHEVRON HOLDINGS, INC. [FORMERLY CALTEX (ASIA) LIMITED],
Respondent.

CTA *EB* NO. 1143
(CTA Case No. 8241)

x--x

CHEVRON HOLDINGS, INC. [FORMERLY CALTEX (ASIA) LIMITED]
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 1349
(CTA Case No. 8241)

Present:
Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, *and*
Manahan, JJ.

Promulgated:
MAR 15 2017 3:10 pm

x--x

D E C I S I O N

BAUTISTA, J:

The Case

These are two (2) consolidated Petitions for Review[1] under *Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals*[2] *("CTA")* seeking the following:

1. *CTA EB No. 1143* - for the Court *En Banc* to reverse and set aside the Decision[3] promulgated on August 14, 2013 and the Resolution[4] promulgated on February 27, 2014 both rendered by the First Division of the CTA ("Court in Division"), and to render a decision denying the claim for refund in its entirety;[5] and

2. *CTA EB No. 1349* - for the Court *En Banc* to modify the Decision dated August 14, 2013 and the Amended Decision[6] dated August 11, 2015, and to grant its claim for refund and/or issuance of a tax credit certificate ("TCC") in the amount of Php51,198,943.08 representing unutilized and/or unapplied input value-added tax ("VAT") for the taxable year ("TY") covering January 1, 2009 to December 31, 2009.[7]

The Parties[8]

Chevron Holdings Inc. ("CHI"), formerly Caltex (Asia) Limited, is a corporation organized and existing under the laws of the State of Delaware, United States of America. The purposes for which it was created are limited to general administration and planning, business planning and coordination, sourcing and procurement of raw materials and components, corporate finance advisory services, marketing control and sales promotion, training and personnel

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[1] *Rollo, CTA EB No. 1143, Petition for Review,* pp. 7-82, with annexes; *Rollo, CTA EB No. 1349, Petition for Review,* pp. 1-84, with annexes.

[2] SECTION 3. *Who May Appeal; Period to File Petition.* — xxx

xxx xxx xxx

(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] *Records, CTA Case No. 8241, Vol. 1, Decision,* pp. 454-487; penned by Presiding Justice Roman G. del Rosario, with Associate Justices Erlinda P. Uy and Cielito N. Mindaro-Grulla concurring.

[4] *Id., Resolution,* pp. 896-907; penned by Presiding Justice Roman G. del Rosario, with Associate Justices Erlinda P. Uy and Cielito N. Mindaro-Grulla concurring.

[5] *Rollo, CTA EB No. 1143, Petition for Review,* p. 29.

[6] *Records, Vol. 3, Amended Decision,* pp. 2283-2295; penned by Presiding Justice Roman G. del Rosario, with Associate Justices Erlinda P. Uy and Cielito N. Mindaro-Grulla concurring.

[7] *Rollo, CTA EB No. 1349, Petition for Review,* p. 29.

[8] *Records, Vol. 1, Decision,* pp. 454-455.

management, logistics services, research and development services and product development, technical support and maintenance, data processing and communication, and business development.

CHI is licensed by the Securities and Exchange Commission ("SEC") to transact business in the Philippines as a regional operating headquarters ("ROHQ") under SEC Registration No. A199802486 dated June 3, 1998. It is authorized to engage in the business of providing finance, human resources, information technology, and procurement services to its affiliates. It is likewise registered with the Bureau of Internal Revenue ("BIR") as a large taxpayer and a VAT-taxable entity under OCN 9R0000170259, with Taxpayer's Identification No. ("TIN") 201-056-391-000. Its office address is at the 35th Floor, Yuchengco Tower I, RCBC Plaza, 6819 Ayala Avenue, Makati City.

The Commissioner of Internal Revenue ("CIR") is the duly appointed Commissioner of the BIR, vested with authority, among others, to decide, to approve, and to grant tax credits or refunds of overpaid or erroneously paid internal revenue taxes. He holds office at the 5th Floor, BIR National Office Building, Diliman, Quezon City.

The Facts

As stated in the Decision[9] promulgated on August 14, 2013, the factual antecedents of this case are as follows:

> [CHI] filed its Quarterly VAT Returns for [TY] 2009, through the [BIR]'s Electronic Filing and Payment System (eFPS), on the following dates:
>
> | QUARTERLY VAT RETURN | DATE FILED |
> |---|---|
> | First Quarter | May 4, 2009 |
> | Second Quarter | August 24, 2009 (amended) |
> | Third Quarter | October 20, 2009 |
> | Fourth Quarter | January 22, 2010 |
>
> On November 2, 2010, [CHI] filed an administrative claim for refund before the BIR and requested for the issuance of a [TCC] or tax refund of unutilized input taxes attributable to its zero-rated sales of services for [TY] 2009 in the aggregate amount of P[hp]51,198,943.08.

[9] *Records, Vol. 1, Decision,* pp. 455-461.

[The CIR] failed to act with finality on [CHI]'s administrative claim for refund. Thus, [CHI] was constrained to file the instant Petition for Review on March 23, 2011.

In h[is] Answer filed on May 24, 2011, [the CIR] interposed the following special and affirmative defenses:

xxx xxx xxx

The case was then set for pre-trial conference on August 4, 2011. [The CIR] filed h[is] Pre-trial Brief on July 29, 2011.

When this case was called for pre-trial, only counsel for [the CIR], Atty. Janet L. Martinez, appeared; while counsel for [CHI] failed to appear despite notice, and no Pre-trial Brief for [CHI] was filed. Thus, upon motion of [the CIR], the case was dismissed for failure of [CHI] to appear at the pre-trial and for its failure to file its Pre-trial Brief as per [the Court in Division]'s Resolution dated August 4, 2011.

On August 22, 2011, a Motion for Reconsideration (Of Resolution dated August 4, 2011) with Motion to Admit Attached Pre-Trial Brief was filed by [CHI]. The Motion was granted via Resolution dated October 5, 2011. Thus, the Resolution dated August 4, 2011 was set aside, the instant case was reinstated, and [CHI]'s Pre-trial Brief attached to the Motion was admitted. Consequently, a pre-trial conference was conducted on October 27, 2011.

On November 16, 2011, the parties filed with [the Court in Division] their Joint Stipulation of Facts and Issues which was later approved in a Resolution dated November 18, 2011. In the same Resolution, the pre-trial was considered terminated and the parties were ordered to proceed with the trial on the merits and present only evidence not covered by their Joint Stipulation of Facts and Issues.

During trial, [CHI] presented and formally offered evidence in support of its claim for refund or issuance of [TCC]. On October 25, 2012, a Resolution was issued by [the Court in Division] admitting as [CHI]'s evidence Exhibits "A" to "AAA" and "CCC" to "GGG[."] Exhibit "BBB" was not, however, admitted as evidence for [CHI]'s failure to submit the same in Court.

> On the other hand, when it was [the CIR]'s turn to present evidence, counsel for [the CIR] manifested that she has no witness to present.
>
> [CHI] posted its Memorandum on March 15, 2013 while [the CIR] filed h[is] Memorandum on April 1, 2013. On April 19, 2013, the case was submitted for decision.

The dispositive portion[10] of the Decision reads as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, [the CIR] is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **P[hp]4,623,001.60** to [CHI], representing its excess and unutilized input VAT for the four taxable quarters of 2009 attributable to its zero-rated sales for the same period.
>
> **SO ORDERED.**

Not satisfied with the Decision, CHI filed its Motion for Partial Reconsideration with Motion for New Trial[11] on September 18, 2014, countered by the CIR's Comment (To Petitioner's Motion for Partial Reconsideration with Motion for New Trial dated 18 September 2013)[12] filed on November 4, 2013, to which CHI finally filed its Reply [To Respondent's Comment dated 31 October 2013][13] on November 25, 2013. The CIR likewise filed his Motion for Partial Reconsideration (re: Decision promulgated on 14 August 2013)[14], to which CHI posted its Comment/Opposition [To Respondent's Motion for Partial Reconsideration dared 19 September 2013][15] on October 14, 2013.

On February 27, 2014, the Court in Division resolved the Motions in the following manner:[16]

> **WHEREFORE**, premises considered, [the CIR]'s *Motion for Partial Reconsideration* filed on September 19, 2013 is hereby

[10] *Records, Vol. 1, Decision, Dispositive Portion,* pp. 486-487.
[11] *Id., Motion for Partial Reconsideration with Motion for New Trial,* pp. 488-793, with annexes.
[12] *Id., Comment (To Petitioner's Motion for Partial Reconsideration with Motion for New Trial dated 18 September 2013),* pp. 844-860.
[13] *Id., Reply [To Respondent's Comment dated 31 October 2013],* pp. 882-890.
[14] *Id., Motion for Partial Reconsideration (re: Decision promulgated on 14 August 2013),* pp. 794-809.
[15] *Id., Comment/Opposition [To Respondent's Motion for Partial Reconsideration dated 19 September 2013],* pp. 861-877.
[16] *Records, Vol. 1, Resolution, Dispositive Portion,* pp. 906-907.

> **DENIED** for lack of merit. On the other hand, [CHI]'s *Motion for New Trial* filed on September 18, 2013 is hereby **GRANTED**. Let the case be set for presentation of [CHI]'s supplementary evidence on April 22, 2014 at 9:00 a.m. Accordingly, the resolution of [CHI]'s *Motion for Partial Reconsideration* filed on September 18, 2013 is hereby **HELD IN ABEYANCE**.
>
> **SO ORDERED.**

On March 25, 2014, the CIR filed his Motion for Reconsideration (re: Resolution promulgated on 27 February 2014)[17], to which CHI filed a Comment/Opposition [to Respondent's Motion for Reconsideration dated 25 March 2014][18] on April 11, 2014. This was resolved by the Court in Division in a Resolution[19] dated June 2, 2014, denying the same and setting the case for presentation of CHI's supplementary evidence.

The following facts were extracted from the Amended Decision[20]:

> [CHI] recalled to the witness stand Hyacinth Pacifico-Carreon, the current Optimization Manager of Chevron Holdings, Inc. She identified her Supplemental Judicial Affidavit as Exhibit "UUU" and her signature on page 22 thereof, as Exhibit "UUU-1[."] She further identified documentary evidence for [CHI] marked as Exhibits "C-116" to "C-133[,"] "HHH" to "HHH-31[,"] "III" to "III-18[,"] "JJJ" to "JJJ-16[,"] "KKK" to "KKK-5[,"] "LLL" to "LLL-12[,"] "RRR-1[,"] "MM-2[,"] "RRR-3[,"] "SSS" to "SSS-11[,"] "TTT" to "TTT-3[,"] and "WWW" to "WWW-1[."]
>
> In substance, Pacifico-Carreon testified that she acts as [CHI]'s Finance Manager and that [CHI] is the [ROHQ] of Chevron Holdings, Inc., a corporation organized and existing under the laws of the State of Delaware, USA, serving as a shared center that offers finance, human resources, information technology, and procurement services to its customers. As regards its customers, Pacifico-Carreon explained that [CHI] only caters to affiliates, subsidiaries, branches, and divisions under the Chevron group of companies. These customers

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[17] *Records, Vol. 1, Motion for Reconsideration (re: Resolution promulgated on 27 February 2014)*, pp. 908-920.
[18] *Id., Vol. 2, Comment/Opposition [to Respondent's Motion for Reconsideration dated 25 March 2014]*, pp. 928-933.
[19] *Id., Vol. 2*, pp. 1336-1339.
[20] *Id., Vol. 3, Amended Decision*, pp. 2284-2286.

outsourced or devolved certain functions to the shared services centers, such as [CHI], and streamlined their finance, human resources, information technology, and procurement departments as they no longer employ staff for certain positions and functions.

Said witness presented and identified the following documents to prove that [CHI]'s customers are located outside the Philippines: (1) printed screenshots from Chevron intranet/subgovern site; (2) printed screenshots of the official online websites of the foreign government company registries; and, (3) negative certifications issued by the Philippine [SEC].

To further support [CHI]'s claim for VAT refund, the witness presented [CHI]'s VAT Official Receipts and Sales Invoices issued to its local affiliates customers for [TY] 2009, [CHI]'s Authority to Print Receipt issued by the [BIR], [CHI]'s Quarterly VAT Return for taxable year 2007, and Certifications from the BIR and the [CTA] that no refund claims were filed by [CHI] for the period covering [TY] 2007.

On November 26, 2014, the Court admitted all the abovementioned documentary evidence, except Exhibits "III" to "III-18[,"] "KKK[,"] "KKK-3[,"] and "KKK-5" for [CHI]'s failure to present the original copies of said documents for comparison, and ordered the parties to submit their simultaneous memoranda.

On December 19, 2014, [CHI] filed a "Motion for Reconsideration" of the Resolution dated November 26, 2014 denying admission of Exhibits "III" to "III-18[,"] "KKK[,"] "KKK-3[,"] and "KKK-5[,"] which the Court denied in its Resolution dated February 27, 2015. On March 20, 2015, [CHI] filed a "Proffer of Excluded Evidence[,"] which the Court noted in a Resolution dated March 31, 2015.

Meanwhile, on December 22, 2014, [the CIR] filed a Manifestation stating that []he will no longer file a Memorandum. On the other hand, on April 8, 2015, [CHI] filed its Memorandum.

On May 4, 2015, [CHI]'s "Motion for Partial Reconsideration" was deemed submitted for resolution.

On August 11, 2015, the Court in Division promulgated an Amended Decision[21] finding that CHI has sufficiently proven its entitlement to a refund or issuance of a TCC in the amount of Php6,785,362.73,41, the dispositive portion[22] of the Amended Decision reads as follows:

> **WHEREFORE,** premises considered, petitioner's **"Motion for Partial Reconsideration"** is hereby **PARTIALLY GRANTED.** Accordingly, the dispositive portion of Our Decision dated August 14, 2013 is hereby amended to read, as follows:
>
> > "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, [the CIR] is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in favor of [CHI] in the reduced amount of **SIX MILLION SEVEN HUNDRED EIGHTY FIVE THOUSAND THREE HUNDRED SIXTY TWO PESOS and 73/100 (P[hp]6,785,362.73),** representing [CHI]'s unutilized and excess input VAT attributable to its zero-rated sales of services to its affiliate companies for the four quarters of 2009.
> >
> > **SO ORDERED.**"
>
> **SO ORDERED.**

After being granted an extension,[23] CHI raised the instant case to the Court *En Banc* when it filed a Petition for Review[24] on April 10, 2014, to which the CIR filed its Comment [to Respondent's Motion for Reconsideration (of Resolution dated 7 August 2014) with Prayer to Hold the Submission of Memoranda in Abeyance][25] on November 11, 2014.

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[21] *Records, Vol. 3, Amended Decision,* pp. 2283-2295.
[22] *Id., Dispositive Portion,* pp. 2294-2295.
[23] *Rollo, CTA EB No. 1143,* pp. 1-6.
[24] *Id., Petition for Review,* pp. 7-82, with annexes.
[25] *Id., Comment [to Respondent's Motion for Reconsideration (of Resolution dated 7 August 2014) with Prayer to Hold the Submission of Memoranda in Abeyance],* pp. 113-117.

The CIR filed his Petition for Review[26] on August 27, 2015. As a response, CHI posted its Comment (to the Petition for Review dated 27 August 2015)[27] on November 2, 2015.

Thereafter, on November 6, 2015, *CTA EB No. 1349* was consolidated with *CTA EB No. 1143*, the case bearing the lower docket number.[28]

On January 7, 2016, the Court *En Banc* gave due course to both Petitions for Review and required the parties to submit their respective memoranda within thirty (30) days from notice.[29]

On February 16, 2016, the CIR filed his Manifestation[30] stating that he will no longer file a Memorandum for *CTA EB No. 1143*, considering that he already previously filed a Manifestation adopting the arguments raised in his Petition for Review; and that for *CTA EB No. 1349*, he will be adopting as his Memorandum the arguments in his Comment.

On March 21, 2016, CHI filed its Memorandum[31].

On April 20, 2016, the Court *En Banc* promulgated a Resolution[32] submitting the case for decision; hence, this Decision.

The Issues

Based on the Petition for Review[33] filed by the CIR, the sole assigned error of the case is as follows:

> WHETHER THE COURT IN DIVISION ERRED IN PARTIALLY GRANTING THE REFUND IN THE REDUCED AMOUNT OF PHP4,623,001.60, ALLEGEDLY REPRESENTING CHI'S EXCESS AND UNUTILIZED

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[26] *Rollo, CTA EB No. 1349, Petition for Review*, pp. 1-84, with annexes.
[27] *Id., Comment (to the Petition for Review dated 27 August 2015)*, pp. 95-105.
[28] *Rollo, CTA EB No. 1143*, p. 128.
[29] *Rollo, CTA EB No. 1349*, pp. 125-127.
[30] *Id.* at 130-133.
[31] *Rollo, CTA EB No. 1143, Memorandum*, pp. 142-185.
[32] *Id.* at 188-189.
[33] *Id., Petition for Review, Assigned Errors*, p. 18.

INPUT VAT FOR THE FOUR (4) TAXABLE QUARTERS OF 2009 ATTRIBUTABLE TO ITS ZERO-RATED SALES.

Based on the Petition for Review[34] filed by CHI, the assigned errors are as follows:

> WHETHER THE EVIDENCE ON RECORD SUFFICIENTLY ESTABLISHED THE SECOND REQUISITE UNDER *SECTION 108(B)(2) OF THE 1997 NATIONAL INTERNAL REVENUE CODE, AS AMENDED ("1997 NIRC")*, THAT IS WHETHER CHI'S SERVICES WERE RENDERED TO PERSONS ENGAGED IN BUSINESS CONDUCTED OUTSIDE THE PHILIPPINES, OR TO A PERSON NOT ENGAGED IN BUSINESS BUT WHO IS OUTSIDE OF THE PHILIPPINES WHEN THE SERVICES WERE PERFORMED;
>
> WHETHER THE COURT IN DIVISION ERRED IN DENYING ADMISSION OF THE SCANNED INCORPORATION PAPERS OF CHI'S FOREIGN AFFILIATE-CLIENTS LOCATED OUTSIDE THE PHILIPPINES;
>
> WHETHER THE COURT IN DIVISION ERRED IN FAILING TO CONSIDER THE PRINTED SCREENSHOTS OF CHI'S INTRANET/SUB-GOVERN WEBSITE WHICH ESTABLISH THAT CERTAIN ENTITIES, WHICH CHI RENDERS SERVICE TO, ARE MERELY DIVISIONS OR BRANCHES OR INCORPORATED ENTITIES; AND
>
> WHETHER THE COURT IN DIVISION ERRED IN APPLYING THE PHP44,296,472.84, WHICH IT RULED AS THE VALID AND SUBSTANTIATED EXCESS INPUT TAX FOR THE YEAR 2009, AGAINST CHI'S PHP19,875,929.00 OUTPUT TAX LIABILITIES FOR THE SAME YEAR.

***CHI's Arguments*[35]**

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[34] *Rollo, CTA EB No. 1349, Petition for Review, Issues,* pp. 9-11.
[35] *Id., CTA EB No. 1143, Memorandum,* pp. 152-183.

CHI avers that the Bicameral Conference Committee Report of the Commission on Ways and Means confirms that services consumed outside the Philippines are deemed zero-rated, regardless of whether the recipient is engaged in business; that the SEC Certificates of Non-Registration, coupled with the Certificates of Inward Remittance, constitute a preponderance of evidence that the recipients of CHI's services are not doing business in the Philippines and located outside the Philippines when the services were performed; that it proved by way of testimonial evidence that the scanned incorporation papers of its foreign affiliate customers are complete, unaltered and accurate duplicates of the original incorporation papers, hence, deemed equivalent to the originals pursuant to the *Rules on Electronic Evidence;* that despite admitting the printed screenshots of its intranet/sub-govern website into evidence, the Court in Division failed to rule on whether these are competent proof that CHI's sale of services to these entities qualify as zero-rated transactions; that exhibits admitted into evidence by the Court in Division prove that CHI applied its excess and unutilized input VAT carried-over from previous quarters against its output VAT liability for the current period; that the non-submission of complete documents does not bar the Court from taking jurisdiction over the judicial claim filed; that *Revenue Memorandum Order ("RMO") No. 53-98* refers to audit cases and not to VAT refund cases under *Section 112(C) of the 1997 NIRC;* that *RMO No. 53-98* should be read in conjunction with *Revenue Memorandum Circular ("RMC") No. 29-09;* that assuming *RMO No. 53-98* is applicable, the obligation to require the submission of complete documents lies with the CIR, as mandated in *RMC No. 29-09;* and that the cases cited by the CIR are not applicable to the case at bar.

The CIR's Counter-Arguments[36]

The CIR counters that the claim for refund is subject to administrative investigation/examination and pending investigation, no grant of refund may be given to CHI; that CHI failed to submit complete documents to support its claim under *RMO No. 53-98,* making the Petition for Review premature; that the period of one hundred and twenty (120) days did not start to run; that rules and regulations issued by administrative bodies to interpret the law which they are entrusted to enforce has the force of law and are entitled to great respect; that failure to imprint "zero-rated" on invoices and receipts is fatal to the claim; and that tax refunds are construed

[36] *Rollo, CTA EB No. 1143, Petition for Review,* pp. 18-29; *Rollo, CTA EB No. 1349, Comment,* pp. 100-102.

strictissimi juris against the taxpayer and liberally in favor of the government.

It is likewise averred by the CIR that although the place of consumption of the service does not affect the entitlement of a transaction to zero-rating, the place where the recipient conducts its business does; that it is important for CHI to establish that the recipient of its services is doing business outside the Philippines; and that it is the responsibility of CHI to gather all the documents needed to prove its case before trial and during trial proper, and not after the decision has been rendered.

The Ruling of the Court En Banc

In the Decision of the Court in Division, it found that both administrative and judicial claims for refund were timely filed. As to the latter, the Court in Division found that CHI was able to submit supporting documents along with its administrative claim for refund, and that there is nothing in the records showing that a written notice was sent by the BIR informing CHI that the submitted documents are incomplete, or requiring CHI to submit additional documents. Hence, the 120-day period commenced to run from the date of filing of the administrative claim on November 2, 2010. Therefrom, the CIR had until March 2, 2011 to act on the refund, which the CIR failed to do. Hence, CHI had 30 days from expiration of the 120 days or until April 1, 2011 to file its judicial claim with the Court in Division. Having filed the instant Petition for Review on March 23, 2011, the same was clearly filed within the prescribed period.

After finding that the Petition for Review was filed within the period to appeal, the Court in Division went on to determine CHI's compliance with requirements laid down for zero-rated sales, to wit: *(1)* it is duly registered with the BIR as a VAT taxpayer and the services it renders through its ROHQ are not in the same category as "processing, manufacturing or repacking of goods;" *(2)* it received United States ("US") Dollar payments with the peso equivalent of Php2,070,253,775.02, which were accounted for in accordance with the Bangko Sentral ng Pilipinas' ("BSP") rules and regulations, as evidenced by the bank remittances issued by JP Morgan Chase Bank N.A and duly supported by VAT zero-rated official receipts it issued to its affiliate-clients; *(3)* however, while the Certifications of Non-Registration of Corporation/Partnership issued by the SEC can prove that its affiliate-clients are not registered in the Philippines; the Service Agreements, Articles of Association, Articles/Certificate of Incorporation, and printed screenshots of the US SEC website for company filings do not, by themselves, prove that said affiliate-clients are doing business outside the Philippines.

The Court in Division went on to say that in order to be considered as non-resident foreign corporation doing business in the Philippines, CHI must provide each affiliate-client's *(1)* SEC Certifications of Non-registration of Corporation/Partnership; and *(2)* Articles/Certificates of foreign incorporation/association OR printed screenshots of the United States SEC website showing the state/province/country where the entity was organized. Hence, it found that only a number of CHI's clients may be considered as non-resident foreign corporations doing business outside the Philippines. Accordingly, only the sales of services in the amount of Php409,127,980.26 shall be subject to VAT zero-rating pursuant to *Section 108(B)(2) of the 1997 NIRC.*

As to input VAT, the Court in Division said that CHI's claim for refund is only Php51,198,943.08, computed based on the lower input VAT of Php55,273,889.14. However, despite the fact that the ICPA accounted for Php62,393,685.02 input VAT, the Court in Division stated that CHI cannot be granted a refund or TCC in an amount exceeding the one prayed for in the Petition for Review and declared in the Quarterly VAT Returns. Hence, it used the lowest figures (on a *per* quarter basis) among the amounts: *(1)* stated in the claim, *(2)* stated in the Returns and *(3)* verified by the ICPA, in determining the amount to be refunded or the TCC to be issued. Consequently, the Court in Division arrived at Php55,273,888.13 for the four (4) quarters of TY 2009. The Court in Division likewise sustained the Independent Certified Public Accountant's ("ICPA") disallowance of Php10,977,415.30 for not being properly substantiated by VAT invoices and receipts, leading to the amount of Php44,296,472.84; and found that input VAT was not applied against any output VAT liability in the succeeding quarters.

Lastly, the Court in Division applied a portion of the Php44,296,472.84 against CHI's reported output VAT liability of Php19,875,929.90, leading to the difference of Php24,420,542.94 input VAT which can be attributed to the entire zero-rated sales declared by CHI in the amount of Php2,070,261,775.50. However, since the Court in Division found that CHI's valid zero-rated sales is only

Php409,127,980.26, the input VAT attributable thereto is only Php4,623,001.60.

In the assailed Resolution, the Court in Division resolved[37] that it is an essential condition for zero-rated sales that the recipient of the services is doing business outside the Philippines, and reiterated that the Certificates of Non-Registration are insufficient to prove that CHI's clients are doing business outside the Philippines. As to the Motion for New Trial, however, the Court in Division stated that the rationale of the rules of procedure is to secure a just determination of every action, and that it is a tool designed to facilitate the attainment of justice. The Motion for New Trial was granted in view of CHI's claim that the documents it wishes to present could not be produced during trial proper, despite reasonable diligence and serious attempt, since it does not exercise control over the management of its foreign affiliate-clients.

As to the CIR's Motion for Partial Reconsideration (re: Decision promulgated on 14 August 2013), the Court in Division noted that the arguments raised were mere reiterations of the allegations interposed in the Memorandum, which were already addressed and passed upon by the Court in Division in its Decision.

In the assailed Amended Decision[38], the Court in Division explained that as CHI's clients are engaged in business outside the Philippines, it must establish that the recipient of such services are doing business outside the Philippines. To prove that its customers are located outside the Philippines, CHI presented internal documents of Chevron, on-line registries of companies from websites of foreign governments, and negative certifications issued by the SEC. The Court in Division explained that being official government registries of corporations, it is inclined to accept the printed screenshots of the official websites of other foreign government's registry of companies as sufficient proof, in lieu of the Certificates/Articles of Foreign Incorporation/Association. As a result, the Court in Division found that the sales of services by CHI to said entities for the year 2009 in the amount of Php178,801,182.83 should also be subjected to zero percent (0%) VAT, pursuant to *Section 108(B)(2) of the 1997 NIRC.*

As to petitioner's contention that the total amount of zero-rated sales credited to Cabinda Gulf Oil Co. Ltd ought to be

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[37] *Records, Vol. 1, Resolution,* pp. 896-907.
[38] *Id., Vol. 3, Amended Decision,* pp. 2286-2294.

Php36,015,697.05 and not only Php28,378, 745.54, the Court in Division found that sales of services to Cabinda Gulf Oil Co. Ltd for the year 2009 amounted to Php36,196,639.90. Therefore, the additional valid zero-rated sales amounts to Php186,438,134.34. As to the rest of CHI's declared zero-rated sales in the amount of Php1,474,695,660.90, the Court in Division cannot consider them for CHI's failure to prove that the entities to whom it rendered services are non-resident foreign corporations located outside the Philippines.

Therefore, the Court in Division found that CHI's adjusted valid VAT zero-rated sales amounts to Php595,566,114.60, with an input VAT attributable thereto amounting to Php6,785,362.73. Accordingly, the Court in Division held that CHI has sufficiently proven its entitlement to a refund or issuance of a TCC in the amount of Php6,785,362.73,41.

The Court *En Banc* finds no merit in the instant Petition for Review.

With regard to the CIR's claim of prematurity of the filing of the judicial claim of CHI, the Court *En Banc* finds no reason to reverse the Court in Division's findings.

Section 112(A) of the 1997 NIRC states that a taxpayer has two (2) years from the close of the taxable quarter when the sales were made to file an administrative claim with the CIR. The latter is given 120 days from submission of complete supporting documents to decide on the claim. In case of inaction by the CIR after 120 days from the date of submission of the application with complete documents, *Section 112(C) of the 1997 NIRC*, in relation to *RR No. 16-2005*, grants the taxpayer 30 days to file a judicial claim with the CTA.

Records disclose that the subject period covers January-March, April-June, July-September and October to December, all of 2009; hence the taxable quarters close on March 31, 2009, June 30, 2009, September 30, 2009 and December 31, 2009, respectively. Therefrom, CHI had 2 years or until March 31, 2011, June 30, 2011, September 30, 2011 and December 31, 2011, respectively, to file its administrative claims for refund.

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On November 2, 2010, CHI filed its administrative claim for refund, along with its supporting documents, well within the due dates. Thereafter, petitioner had 120 days or until March 2, 2011 to await the CIR's decision.

Finding that the CIR failed to act on its claim, CHI had 30 days from March 2, 2011 or until April 01, 2011 to file its judicial claim with the CTA; which it timely filed on March 23, 2011.

Therefore, the CIR's claim of premature filing has no basis, as correctly found by the Court in Division.

As to the Motion for New Trial, *Section 5*[39], *Rule 15 of the RRCTA*, in relation to *Section 1, Rule 37 of the Revised Rules of Court*, provides that it may be based on a cause or causes materially affecting the substantial rights of the movant. The Court *En Banc* finds that the Court in Division properly granted the same since the documents, which were the basis of the Amended Decision, were not in its possession and control, could not be procured during trial despite reasonable diligence and serious attempt, and were only received after trial.

As to the issue of whether the affiliate-clients of CHI are non-resident foreign corporations doing business outside the Philippines, CHI claims entitlement to VAT zero rating under *Section 108(B)(2) of the 1997 NIRC, viz.*:

> SECTION 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* —
>
> xxx xxx xxx

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[39] SECTION 5. Grounds of Motion for New Trial. — A motion for new trial may be based on one or more of the following causes materially affecting the substantial rights of the movant:

> (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or
>
> (b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial and, which, if presented, would probably alter the result.
>
> A motion for new trial shall include all grounds then available and those not included shall be deemed waived.

> (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) <u>Processing, manufacturing or repacking goods</u> 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);
>
> (2) <u>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</u>, 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);[40]

This provision has been thoroughly discussed in the Supreme Court case of *Commissioner of Internal Revenue v. Burmeister and Wain Scandanavian Contractor Mindanao, Inc.*[41] in the following manner:

> 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. <u>Another essential condition for qualification to zero-rating under Section 102(b)(2) [now 108(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) [now 108(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) [now 108(B)], but also pertains to the general term services appearing in the second paragraph of Section 102(b) [now 108(B)].</u> In short, services other than processing, manufacturing, or repacking of goods must likewise be performed for persons doing business outside the Philippines.

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[40] Underscoring ours.
[41] G.R. No. 153205, January 22, 2007, 515 SCRA 124.

This can only be the logical interpretation of Section 102(b)(2) [now 108(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) [now 108(B)] 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) [now 108(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) [now 108(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) [now 108(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.

<u>When Section 102(b)(2) [now 108(B)(2)] stipulates payment in acceptable foreign currency under BSP rules, the law clearly envisions the payer-recipient of services to be doing business outside the Philippines.</u> Only those not doing business in the Philippines can be required under BSP rules to pay in acceptable foreign currency for their purchase of goods or services from the Philippines. In a domestic transaction, where the provider and recipient of services are both doing business in the Philippines, the BSP cannot require any party to make payment in foreign currency.

<u>Services covered by Section 102(b) [now 108(B)] (1) and (2) are in the nature of export sales since the payer-recipient of services is doing business outside the Philippines. Under BSP rules, the proceeds of export sales must be reported to the *Bangko Sentral ng Pilipinas*. Thus, there is reason to require the provider of services under Section 102(b) [now 108(B)] (1) and (2) to account for the foreign currency proceeds to the BSP.</u> The same rationale does not apply if the provider and recipient of the services are both doing business in the Philippines since their transaction is not in the nature of an export sale even if payment is denominated in foreign currency.

Further, when the provider and recipient of services are **both** doing business in the Philippines, their transaction falls squarely under Section 102(a) [now 108(A)] governing **domestic** sale or exchange of services. Indeed, this is a purely local sale or exchange of services subject to the regular VAT, unless of course the transaction falls under the other provisions of Section 102(b) [now 108(B)].

> Thus, when Section 102(b)(2) [now 108(B)(2)] speaks of **[s]ervices other than those mentioned in the preceding subparagraph,** the legislative intent is that only the services are different between subparagraphs 1 and 2. The requirements for zero-rating, including the essential condition that the recipient of services is doing business outside the Philippines, remain the same under both subparagraphs.
>
> Significantly, the amended Section 108([B]) [previously Section 102(b)] of the present Tax Code clarifies this legislative intent. Expressly included among the transactions subject to 0% VAT are [s]ervices other than those mentioned in the [first] paragraph [of Section 108(b)] 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 BSP.
>
> xxx xxx xxx
>
> The Court recognizes the rule that the VAT system generally follows the destination principle (exports are zero-rated whereas imports are taxed). However, as the Court stated in *American Express*, there is an exception to this rule. This exception refers to the 0% VAT on services enumerated in Section 102 [now 108] and performed in the Philippines. For services covered by Section 102(b)(1) and (2) [now 108(B)(2)(1) and (2)], the recipient of the services must be a person doing business outside the Philippines. Thus, to be exempt from the destination principle under Section 102(b)(1) and (2) [now 108(B)(2)(1) and (2)], the services must be (a) performed in the Philippines; (b) for a person doing business outside the Philippines; and (c) paid in acceptable foreign currency accounted for in accordance with BSP rules.[42]

As amply stated by the Supreme Court itself in *Borromeo v. Mariano*[43]*:*

> The cardinal rule of statutory construction requires the court to give effect to the general legislative intent if that can be

[42] Underscoring ours, emphases retained.
[43] G.R. No. L-16808, January 3, 1921; citing 2 Lewis Sutherland, Statutory Construction, pp. 662, et seq.; In re Allen [1903], 2 Phil., 630; Code of Civil Procedure, sec. 287.

> discovered within the four corners of the Act. When the object intended to be accomplished by the statute is once clearly ascertained, general words may be restrained to it and those of narrower import may be expanded to embrace it, to effectuate the intent. Along with this fundamental principle is another, equally well-established, that such a construction is, if possible, to be adopted, as will give effect to all provision of the statute.[44]

The Court *En Banc* believes that when the Supreme Court in *Burmeister* extended the requirement under the second paragraph of *Section 108(B)(2)* (*i.e.* that the recipient of such services is doing business outside the Philippines) to the first paragraph, it had the intent to give effect to all provisions of the law. Therefore, the Court *En Banc* finds no reason to reverse the Court in Division's finding that, along with the requirement that the consideration was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP, to be entitled to zero-rating under the first paragraph of *Section 108(B)(2) of the 1997 NIRC*, each entity must be supported at the very least by both *(1)* SEC Certificate of Non-Registration of Corporation/Partnership and *(2)* Certificate/Articles of foreign incorporation/association or printed screenshot/s of US SEC website showing the state/province/country where the entity was organized.

CHI questions the Court in Division's disregard of the electronically-scanned copies of the original incorporation papers it provided as evidence, claiming that the same falls under the definition of electronic evidence and must be given evidentiary weight, just like the printed screenshots of the US SEC website, which was considered by the Court in Division in its Amended Decision.

The Court *En Banc* is not convinced. *RA No. 8792*, otherwise known as the *Electronic Commerce Act of 2000*, defines an electronic document as follows:

> Rule 2
> DEFINITION OF TERMS AND CONSTRUCTION
>
> Section 1. *Definition of terms.* - For purposes of these Rules, the following terms are defined, as follows:
>
> xxx xxx xxx

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[44] Underscoring ours.

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> (h) *"Electronic document"* refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically. It includes digitally signed documents and any print-out or output, readable by sight or other means, which accurately reflects the electronic data message or electronic document. For purposes of these Rules, the term "electronic document" may be used interchangeably with "electronic data message".
>
> xxx xxx xxx
>
> Rule 3
> ELECTRONIC DOCUMENTS
>
> Section 1. *Electronic documents as functional equivalent of paper-based documents.* - Whenever a rule of evidence refers to the term writing, document, record, instrument, memorandum or any other form of writing, such term shall be deemed to include an electronic document as defined in these Rules.
>
> Section 2. *Admissibility.* - An electronic document is admissible in evidence if it complies with the rules on admissibility prescribed by the Rules of Court and related laws and is authenticated in the manner prescribed by these Rules.
>
> xxx xxx xxx
>
> Rule 4
> BEST EVIDENCE RULE
>
> Section 1. *Original of an electronic document.* - An electronic document shall be regarded as the equivalent of an original document under the Best Evidence Rule if it is a printout or output readable by sight or other means, shown to reflect the data accurately.[45]

In the Supreme Court case of *MCC Industrial Sales Corporation v. Ssangyong Corporation*[46], the Highest Tribunal explained that to be considered as the functional equivalent of an original document under

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[45] Underscoring ours.
[46] G.R. No. 170633, October 17, 2007, 536 SCRA 408.

the best evidence rule, the writing must foremost be an electronic data message or an electronic document, to wit:

> Facsimile transmissions are not, in this sense, paperless, but verily are paper-based.
>
> A facsimile machine, which was first patented in 1843 by Alexander Bain, is a device that can send or receive pictures and text over a telephone line. It works by digitizing an image dividing it into a grid of dots. Each dot is either on or off, depending on whether it is black or white. Electronically, each dot is represented by a bit that has a value of either 0 (off) or 1 (on). In this way, the fax machine translates a picture into a series of zeros and ones (called a bit map) that can be transmitted like normal computer data. On the receiving side, a fax machine reads the incoming data, translates the zeros and ones back into dots, and reprints the picture. A fax machine is essentially an image scanner, a modem and a computer printer combined into a highly specialized package. The scanner converts the content of a physical document into a digital image, the modem sends the image data over a phone line, and the printer at the other end makes a duplicate of the original document.
>
> xxx xxx xxx
>
> Accordingly, in an ordinary facsimile transmission, there exists an original paper-based information or data that is scanned, sent through a phone line, and re-printed at the receiving end. Be it noted that in enacting the Electronic Commerce Act of 2000, Congress intended virtual or paperless writings to be the functional equivalent and to have the same legal function as paper-based documents. Further, in a virtual or paperless environment, technically, there is no original copy to speak of, as all direct printouts of the virtual reality are the same, in all respects, and are considered as originals. Ineluctably, the laws definition of electronic data message, which, as aforesaid, is interchangeable with electronic document, could not have included facsimile transmissions, which have an original paper-based copy as sent and a paper-based facsimile copy as received. These two copies are distinct from each other, and have different legal effects. While Congress anticipated future developments in communications and computer technology when it drafted the law, it excluded the early forms of technology, like telegraph, telex and telecopy (except computer-generated faxes, which is a newer development as compared to the ordinary fax machine to fax

machine transmission), when it defined the term electronic data message.

In the case at bar, it must be noted that the printed screenshots of the US SEC website were considered by the Court in Division in its Amended Decision since they fall under the definition of electronic documents and are originally digital. The Court *En Banc* cannot say the same as to the electronically scanned copies.

CHI's witness Ms. Pacifico-Carreon testified that the incorporation papers, by-laws and certificates of change in name are electronically scanned copies, with the originals located in the respective countries and jurisdictions where the Chevron entities reside.[47] The affiliates provided electronically scanned copies of their respective incorporation papers to the Corporate Governance Department of Chevron Corporation located in San Ramon, California.[48] The subsidiary liaisons then sent to CHI these electronic scanned copies by electronic mail in a portable document format (.pdf).[49]

It can be gathered from the above that the documents' originals all come in a paper-based form, which were just electronically scanned, resulting to an electronic copy in .pdf. These .pdf documents were then sent by electronic mail to CHI, which printed the documents and offered them as evidence before the Court in Division. Accordingly, these documents are beyond that coverage of *RA No. 8792* for the originals are paper-based and are in fact in the possession of the affiliates, and should have been covered by the ordinary rules on evidence. In fact, the said print outs were never compared with the originals and the originals should have been consularized, as provided under *Section 24 of the Revised Rules on Evidence*. Hence, they were rightfully not considered by the Court in Division.

As to CGI and the CIR's other arguments in their respective Petitions for Review the Court *En Banc* finds no new and/or compelling averment for being a mere rehash of previously discredited arguments or were sufficiently acted upon in the assailed Decision and Amended Decision. Therefore, the Court *En Banc* finds it unnecessary to discuss the other remaining issues.

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[47] *Records, Vol. 2, Judicial Affidavit of Ms. Hyacinth Pacifico-Carreon,* Q22 & 23, p. 942.
[48] *Id.*
[49] *Id.*

WHEREFORE, the instant Petitions for Review are hereby **DENIED** for lack of merit. Accordingly, the Decision dated August 14, 2013, the Resolution dated February 27, 2014, and the Amended Decision dated August 11, 2015, all promulgated by the First Division of the Court of Tax Appeals, are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen R. - L
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

CHEVRON HOLDINGS INC. [Formerly CALTEX (ASIA) LIMITED],
Respondent.

CTA EB NO. 1143
(CTA Case No. 8241)

x- x

CHEVRON HOLDINGS INC. [Formerly CALTEX (ASIA) LIMITED],
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1349
(CTA Case No. 8241)

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, *JJ.*

Promulgated:
MAR 15 2017 3:00 pm

x- -x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the parties' respective Petitions for Review for lack of merit thereby affirming the Decision dated August 14, 2013, the Resolution dated February 27, 2014 and the Amended Decision dated August 11, 2015 rendered by the Court in Division.

The *ponencia*, however, made a pronouncement that to be considered as zero-rated sale of services under **Section 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 9337, the claimant is required to establish that the recipient of services is doing business outside of the Philippines**.

Section 108(B)(2) of the NIRC of 1997, as amended by RA No. 9337, provides:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* —
>
> (A) *Rate and Base of Tax.* — 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) Xxx xxx xxx;
>
> (2) **Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines <u>or</u> 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);"
>
> xxx xxx xxx. (Emphases supplied)

I submit that the requirement that the *recipient of services is doing business outside the Philippines* applies only to the first situation in Section 108(B)(2) of the NIRC of 1997, as amended by RA 9337, relating to services rendered to ***"person engaged in business conducted outside the Philippines"***, and not to the second situation pertaining to services rendered to ***"non-resident person not engaged in business who is outside the Philippines when the services are performed."*** I elaborated on this point in pages 5 to 8 of the assailed August 11, 2015 Amended Decision, *viz.:*

"In Our Decision, We cited the case of *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[1] to determine whether petitioner's client is doing business outside the Philippines to comply with one of the prescribed requisites for zero-rating. Petitioner contends, however, that a correct interpretation of Section 108(B)(2) of the NIRC of 1997, as amended, will show that said section enumerates two kinds of zero-rated customers, to wit: those who are engaged in business abroad and those who are not engaged in business abroad.

Indeed, a plain reading of Section 108(B)(2) of the NIRC of 1997, as amended by RA 9337, reveals that it contemplates two (2) situations wherein sales can be regarded as zero-rated for VAT purposes, *viz:*

> 1) <u>Services were rendered to a person engaged in business conducted outside the Philippines</u>, and the consideration for which is paid for in foreign currency and accounted for in accordance with the rules and regulations of the Banko Sentral ng Pilipinas (BSP);
>
> or
>
> 2) <u>Services were rendered to a non-resident person not engaged in business who is outside the Philippines when the services are performed</u>, and the consideration for which is paid for in foreign currency and accounted for in accordance with the rules and regulations of the BSP.

True, in *Burmeister case* and in the latter case of *Accenture, Inc. v. Commissioner of Internal Revenue,*[2] the Supreme Court ruled that in order for the supply of services to be VAT zero-rated, the claimant must be able to establish, among others, that the recipient of such services is doing business outside the Philippines.

The Court notes, however, that the provision that was interpreted by the Supreme Court in *Burmeister* is

[1] G.R. No. 153205, January 22, 2007.
[2] G.R. No. 190102, July 11, 2012.

Section 102(b)(2) of the NIRC[3] which, prior to its amendment by RA No. 9337, provides as follows:

> '(b) Transaction subject to zero-rate. - The following services performed in the Philippines by VAT -registered persons shall be subject to 0%:
>
> (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);
>
> (2) **Services other than those mentioned in the preceding subparagraph**, 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);
>
> (3) Services rendered to persons or entitles whose exemptions under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero rate;
>
> (4) Services rendered to vessels, engaged exclusively in international shipping; and,
>
> (5) Services performed by subcontractors and/or contractors in processing, converting, or manufacturing goods for an enterprise whose export sales exceed seventy percent (70%) of total annual production.'

Notably, Section 102(b)(2) of the NIRC, as then worded, did not contemplate the second situation stated in Section 108(B)(2) ofthe NIRC of 1997, as amended by RA No. 9337, to wit, ***'services to a non-resident person not engaged in business who is outside the Philippines when the services are performed.'*** In interpreting Section 102(b)(2) of the NIRC, both in *Burmeister* and *Accenture,* the Supreme

[3] The applicable provision in 1986 when Burmeister rendered the services and paid the VAT in question was the National Internal Revenue Code (NIRC) of 1977 as amended by Executive Order No. 273 and Republic Act No. 7716 dated 25 July 1987 and 5 May 1994, respectively. Section 102(b) was renumbered as Section 108(B). The renumbering took effect on January 1, 1998 pursuant to Republic Act No. 8424, otherwise known as the Tax Reform Act of 1997. On November 1, 2005, Section 6 of RA No. 9337 amended Section 108(B).

Court did not pass upon the issue of the applicability of the essential condition that the *recipient of such services is doing business outside the Philippines* to the second situation provided in Section 108(B)(2) of the NIRC of 1997, as amended by RA No. 9337. Needless to say, this is not an issue in both *Burmeister* and *Accenture.*

Any interpretation extending the ruling of the Supreme Court in *Burmeister* and *Accenture* to the second situation provided in Section 108(B)(2) of the NIRC of 1997, as amended by RA No. 9337, and consequently prescribing the essential condition that the *recipient of services is doing business outside the Philippines*(,) clearly violate(s) the well-settled rule in statutory construction as well as the maxim *verba legis non est recedendum* or "from the words of a statute there should be no departure." As clearly and succinctly worded, to qualify for zero-rating under the second situation, only the following requirements must be met: (a) services were rendered to a non-resident person; (b) said non-resident person is not engaged in business; (c) said non-resident person is outside the Philippines when services were performed; and, (d) the consideration for said services were paid for in foreign currency and accounted for under the rules and regulations of the BSP.

In fine, the Court holds that the doctrine laid down in *Burmeister* and *Accenture* that in order for the supply of services to be VAT zero-rated, the claimant must be able to establish, among others, the existence of the essential condition that the *recipient of such services is doing business outside the Philippines,* **applies only to the first situation provided in Section 108(B)(2) of the NIRC of 1997, as amended by RA No. 9337.**

In the second scenario, the taxpayer-claimant is not required to prove the fact that its customers are doing business outside the Philippines, but it is required to establish that its services were rendered to non-resident persons who are not engaged in business and who are outside the Philippines when the services were performed."

CM

In the case at bar, **petitioner's VAT zero-rated sales still falls under the first scenario as petitioner's services were rendered to persons engaged in business outside the Philippines**. On direct examination, petitioner's witness, Pacifico-Carreon, testified that petitioner's clients are engaged in **core business** functions and outsourced their respective finance, human resources, information technology, and procurement functions to petitioner.

Indubitably, **as petitioner's clients are engaged in business outside the Philippines, petitioner must comply with *Burmeister* and *Accenture* wherein petitioner must establish that the recipient of such services is doing business outside the Philippines**.

To prove that petitioner's customers are located outside the Philippines, petitioner presented internal documents of Chevron,[4] *on-line registries of companies from websites of foreign governments,*[5] and *negative certifications issued by the SEC.*[6]

As stated in Our Decision, 'in order to be considered as non-resident foreign corporation engaged in business, each entity must be supported at the very least by both the *SEC Certificate of Non-registration of Corporation/Partnership* and Certificates /Articles of foreign incorporation/association or *printed screenshots of the US SEC website showing the state/province/country where the entity was organized.'*[7] xxx"

(Boldfacing with underscoring supplied)

Anent the other arguments raised by the parties in their respective Petitions for Review, I agree with the *ponencia*'s findings that that they are not sufficient to warrant a reversal of the assailed Decision, Resolution and Amended Decision of the Court in Division.

[4] Exhibits "HHH" to "HHH-31".
[5] Exhibits "JJJ" to "JJJ-16".
[6] Exhibits "C" to "C-133".
[7] CTA Docket Vol. 1, pp. 478-479.

All told, I **VOTE** to **DENY** the present Petitions for Review for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice