REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

MACQUARIE OFFSHORE SERVICES PTY LTD-PHILIPPINE BRANCH,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9469

Members:

UY, *Chairperson*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JAN 15 2021
1:21 p.m.

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RESOLUTION

RINGPIS-LIBAN, J.:

Submitted before this Court's is respondent's **Motion for Reconsideration** filed through registered mail on July 27, 2020 and received by this Court on August 25, 2020, with petitioner's **Comment/Opposition (Re: BIR's Motion for Reconsideration dated 23 July 2020)** filed on October 16, 2020.

On June 30, 2020, this Court promulgated a Decision partially granting petitioner's claim for refund of input value-added tax ("VAT") attributable to its zero-rated sales as a service provider to its affiliates in the Asia-Pacific and other foreign markets, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, Respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of Petitioner in the amount of **Php50,489,528.20** representing its excess and unutilized input VAT attributable to its zero-rated

sales/receipts for FY 2015 or from April 1, 2014 to March 31, 2015.

SO ORDERED."

In his Motion, respondent prays that the above Decision be reconsidered and that petitioner's claim of refund be denied in its entirety. Respondent anchors his prayer on the following grounds in support of his arguments, *viz*.:

A. Petitioner failed to present valid Authority to Print ("ATP") in relation to its tax refund.

B. Petitioner failed to satisfy that they are engaged in zero-rated or effectively zero-rated sales.

As to the first ground, respondent cites the case of *Silicion Philippines, Inc., (Formerly Intel Philippines Manufacturing Inc.) v. Commissioner of Internal Revenue*,[1] ("*Silicon case*") wherein the Supreme Court held that a taxpayer-claimant must present an ATP that was issued prior to the subject taxable period applied for tax refund; otherwise, the submitted receipt has no probative value. However, in the present case, respondent asserts that petitioner failed to do so.

With regard to the second ground, respondent argues that petitioner failed to satisfy that it is engaged in zero-rated or effectively zero-rated sales. Respondent explains that petitioner is actually an instrumentality by which Macquarie Financial Holdings Limited ("MFHL") engages business here in the Philippines. As such, services rendered by petitioner to MFHL cannot qualify for VAT zero-rating.

On the other hand in its Comment, petitioner argues that respondent's reliance on the *Silicon case* is misplaced considering that in the said case, the requirement of presenting the ATP came about because the invoices issued by Silicon Philippines therein did not indicate the details of its ATP. Therefore, the court required other pieces of evidence, *i.e.*, the ATP itself, to prove that Silicon Philippines' invoices were indeed registered with the Bureau of Internal Revenue ("BIR"). In stark contrast with the present case, the details of petitioner's ATP are clearly indicated in the official receipts and service invoices that were offered and admitted as evidence during trial. In any case, petitioner claims that the BIR has not alleged, must less proved, that petitioner's ATP is false or fabricated, thus, there is no need to require it to present the ATP itself.

Moreover, petitioner also asserts that there is no merit in respondent's argument that petitioner is the instrumentality by which MFHL engages in

[1] G.R. No. 172378, January 17, 2011.

business in the Philippines. Petitioner insists that MFHL and petitioner are two distinct and separate entities, each with their own business, as seen in their individual charter documents. As such, petitioner and MFHL must remain and be treated as separate entities. Petitioner further claims that respondent imputes baseless allegations without showing any factual or legal basis to warrant the application of doctrine of piercing the corporate veil. Lastly, petitioner maintains that it has proven that it is engaged in zero-rated sales.

The Court finds respondent's Motion for Reconsideration bereft of merit.

As correctly pointed out by petitioner, a careful reading of the *Silicon case* reveals that the presentation of a taxpayer's ATP would only be required if such ATP "*is not indicated in the invoices or receipts*". The Supreme Court clarified that with such non-indication, the presentation of the ATP from the Bureau of Internal Revenue would be "*the only way to verify whether the invoices or receipts are duly registered*", to wit:

> "But while there is no law requiring the ATP to be printed on the invoices or receipts, Section 238 of the NIRC expressly requires persons engaged in business to secure an ATP from the BIR prior to printing invoices or receipts. Failure to do so makes the person liable under Section 264 of the NIRC.
>
> This brings us to the question of whether a claimant for unutilized input VAT on zero-rated sales is required to present proof that it has secured an ATP from the BIR prior to the printing of its invoices or receipts.
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> We rule in the affirmative.
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> Under Section 112 (A) of the NIRC, a claimant must be engaged in sales which the zero-rated or effectively zero-rated. *To prove this, duly registered invoices or receipts evidencing zero-rated sales must be presented. However, since the ATP is not indicated in the invoices or receipts, the only way to verify whether the invoices or receipts are duly registered is by requiring the claimant to present its ATP from the BIR.* Without this proof, the invoices or receipts would have no probative value for the purpose of refund. In the case of *Intel*, we emphasized that:
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> > It bears reiterating that while the pertinent provisions of the Tax Code and the rules and regulations implementing them require entities to engaged in business to secure a BIR authority to

> print invoices or receipts and to issue duly registered invoices or receipts, it is not specifically required that the BIR authority to print be reflected or indicated therein. **Indeed, what is important with respect to the BIR authority to print is that it has been secured or obtained by the taxpayer, and that invoices or receipts are duly registered.**" *(Italics and underscoring supplied)*

In the present case, perusal of petitioner's official receipts[2] and service invoices[3] show that its ATP states the following: "1 BOX 1000 SETS/BOX 2 PLY 001,001-002,000 BIR OCN 9AU0000582033 DATE ISSUED 9 JUNE 2013 VALID UNTIL 08 JUNE 2018 LOOSE-LEAF PERMIT NO. LL-3165-08 DATED 29 SEPTEMBER 2008 x x x." Evidently, the official receipts and service invoices contain the details of number of booklets allowed to be printed, the series numbers, and the name of the printer. These details demonstrate that petitioner has secured and obtained an ATP prior to the printing of its official receipts and service invoices. Such being the case, and as held in the *Silicon* case, petitioner's duly registered official receipts and service invoices have probative value for refund purposes. Having such information, respondent could have easily verified the truthfulness thereof and disprove the same, since he ought to know the tax records of all taxpayers.[4]

As to respondent's other argument that petitioner is actually an instrumentality by which MFHL engages business in the Philippines, and thus, services rendered by petitioner to MFHL cannot qualify for VAT zero-rating, this Court is not convinced.

Perforce, it is with emphasis that in order for a court to disregard the separate juridical personality of a corporation, the imputed wrongdoing must be clearly and convincingly established. In the case of *California Manufacturing Company, Inc. v. Advanced Technology System, Inc.*,[5] the Supreme Court ruled that in order for the doctrine of piercing the corporate veil to apply, the wrongdoing must be established clearly and convincingly, to wit:

> "Any piercing of the corporate veil must be done with caution. As the CA had correctly observed, it must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of rights. Moreover, the wrongdoing must be clearly and convincingly established. *Sarona v. NLRC* instructs, thus:

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2 Exhibits "P-178-1" to "P-178-6".
3 Exhibits "P-181-1" to "P-181-74".
4 Commissioner of Internal Revenue v. Ironcon Builders and Development Corporation, G.R. No. 180042, February 08, 2010.
5 G.R. No. 202454, April 25, 2017.

> Whether the separate personality of the corporation should be pierced hinges on obtaining facts appropriately pleaded or proved. However, any piercing of the corporate veil has to be done with caution, albeit the Court will not hesitate to disregard the corporate veil when it is misused or when necessary in the interest of justice. After all, the concept of corporate entity was not meant to promote unfair objectives.
>
> The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation."

Going back to the present case, respondent merely relied on the *Services Agreement*[6] dated April 1, 2009 executed by petitioner and MFHL in claiming that petitioner is an instrumentality of MFHL without doing any further investigation. Accordingly, respondent failed to present clear and convincing evidence that petitioner is an alter ego of MFHL. Hence, the doctrine of piercing the corporate veil cannot be applied.

On the final note, substantial justice dictates that the government should not keep money that does not belong to it at the expense of citizens. Hence, in view of the foregoing disquisition, there is no cogent reason to disturb or modify the assailed Decision.

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

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[6] Docket – Vol. 4, Exhibit "P-130", pp. 1709 to 1723.

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice