Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

MACQUARIE OFFSHORE SERVICES PTY LTD. – PHILIPPINE BRANCH,
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1514
(CTA Case No. 8337)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

MACQUARIE OFFSHORE SERVICES PTY LTD. - PHILIPPINE BRANCH,
Respondent.

CTA EB No. 1518
(CTA Case No. 8337)

Present:
DEL ROSARIO, *PJ*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *J.J.*

Promulgated:

SEP 18 2017 4:06 p.m.

x- -x

DECISION

CASANOVA, *J.*:

These are appeals, by way of Petition for Review, filed by both parties from the Amended Decision[1] dated June 2, 2016 (the "Assailed

[1] EB Rollo (1514), pp. 19-46.

covering the period April 1, 2009 to March 31, 2010, in the amount of Php10,359,678.44, be REINSTATED."

The antecedent facts, as found and narrated in the Decision dated July 15, 2015, are as follows:

"Petitioner is a foreign corporation registered with the Securities and Exchange Commission (SEC) on April 10, 2008 to operate as a Regional Operating Headquarters (ROHQ) pursuant to the Omnibus Investments Code of 1987, as amended by Republic Act No. 8756, and its implementing rules and regulations. It is authorized to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services, research and development services and product development; technical support and maintenance; data processing and communication; and business development. Its principal place of business is at 30th Floor, Tower I, The Enterprise Center, Ayala Avenue, Makati City. Petitioner is also registered with the Bureau of Internal Revenue (BIR) as a VAT entity with Certificate of Registration No. OCN 9RC0000266681.

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR), empowered to act on and approve claims for refund or tax credit as provided by law. She (sic) holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

As an ROHQ, petitioner provides qualifying services to its affiliates and related parties in the Asia-Pacific Region and other foreign markets as stated in the SEC Certificate of Registration No. FS200805155.

Petitioner claims that for the four quarters of fiscal year 2010, it generated VAT zero-rated sales of services to a foreign affiliate engaged in business conducted outside the Philippines for which services it was paid in Australian dollars (AUD) inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

Petitioner filed its original Quarterly VAT Returns for the four quarters of fiscal year 2010 on the following dates:

EXHIBIT	QUARTER	PERIOD	DATE FILED
'C'	1st	April to June 2009	July 24, 2009
'D'	2nd	July to September 2009	October 23, 2009
'E'	3rd	October to December 2009	January 25, 2010
'F'	4th	January to March 2010	April 26, 2010

On April 26, 2011, petitioner filed with the BIR Revenue District Office No. 47 an Application for Tax Credit/Refund, in the amount of P10,359,678.44, allegedly representing excess and unutilized input VAT attributable to its zero-rated sales for the period covering April 1, 2009 to March 31, 2010.

On September 21, 2011, petitioner filed the instant Petition for Review alleging inaction on the part of respondent on its administrative application for refund/tax credit.

In her Answer, respondent mainly avers that petitioner has the burden of proving its entitlement to the claim for refund, especially in light that tax refunds are construed strictly against the taxpayer.

On December 2, 2011, petitioner filed a Reply.

In support of its allegations, petitioner presented its Division Director and resident agent Garry Taylor and the Court-commissioned Independent Certified Public Accountant (ICPA) Jerome Antonio B. Constantino, as its witnesses.

Witness **Garry Taylor** testified that petitioner is a licensed ROHQ providing qualifying services to its affiliates and related parties in the Asia-Pacific Region and in other foreign markets. It is registered with the BIR. Petitioner has only two clients to which it renders services on a regular basis, namely, Macquarie Financial Holdings Limited (MFHL) and Macquarie Group Services Australia Pty. Ltd. (MGSA) with most transactions with the former. Both are foreign corporations not registered in the Philippines and doing business outside of the country. For services rendered, these clients pay petitioner in Australian Dollars inwardly remitted and accounted for in accordance with the rules of the Bangko Sentral ng Pilipinas. As a matter of practice, petitioner issues invoices for services rendered on a monthly basis and sends them to the clients in Australia. The latter however usually lump together their payments for a number of billings covered by different sales invoices then remit payment to petitioner in Australian dollars.

In connection with its business, petitioner made input VAT payments for domestic purchases of goods and services and capital goods for the fiscal year covering the period from April 1, 2009 to March 31, 2010. As petitioner had only VAT zero-rated sales and no sales subject to VAT which would otherwise result in output VAT payable, its input VAT remained unutilized.

Witness Taylor further testified that on April 26, 2011, petitioner applied for refund/tax credit of its unutilized input taxes with BIR Revenue District Office No. 47. However, the BIR failed to act on the said application, hence, the instant Petition for Review.

ICPA **Jerome Antonio B. Constantino**, testified that he audited and evaluated petitioner's documents and records in support of its claim for VAT refund for fiscal year 2010. The said audit reveals that petitioner's input VAT mainly came from its domestic purchases of goods other than capital goods, domestic purchases of services, domestic purchases of capital goods exceeding P1 million, and input tax deferred on capital goods exceeding P1 million from previous quarters. He capped his testimony with the finding that petitioner properly substantiated its unutilized input tax but in the reduced amount of P6,497,786.82.

On recall, the ICPA testified that petitioner submitted additional documents to substantiate its claim thereby increasing the amount of unutilized input tax for refund from P6,497,786.82 to P7,943,615.96.

After its second witness, petitioner rested its case. Despite the opportunity granted, respondent did not

Amended Decision") and Resolution[2] dated August 12, 2016 (the "Assailed Resolution"), both promulgated by the Court of Tax Appeals (CTA)-Third Division.

The parties, respectively, pray as follows:

<u>CTA EB No. 1514</u>

Macquarie Offshore Services PTY Ltd. - Philippine Branch, Petitioner vs. Commissioner of Internal Revenue, Respondent.

"xxx that this Honorable Court **REVERSE** and **SET ASIDE** the Honorable Third Division's Resolution dated 12 August 2016 and in its place **RENDER** a new Decision including: a) Service Invoice Nos. 000024 and 000029 in the computation of petitioner's VAT zero-rated revenues for FY 2010; b) the official receipts/invoices enumerated in Annex 'A' of Petitioner's Motion for Partial Reconsideration dated 22 June 2016 in determining the excess and unutilized input value-added tax (VAT) refundable to petitioner."

<u>CTA EB No. 1518</u>

Commissioner of Internal Revenue, Petitioner vs. Macquarie Offshore Services PTY Ltd. - Philippine Branch, Respondent.

"xxx it most respectfully prayed of this Honorable Court of Tax Appeals (En Banc) that the Court of Tax Appeals (Third Division) Amended Decision promulgated on June 2, 2016 and the Resolution promulgated on August 12, 2016 be **REVERSED AND SET ASIDE**. Instead, the Decision of the Court of Tax Appeals (Third Division) dated July 15, 2015, denying MACQUARIE OFFSHORE SERVICES PTY LTD. - PHILIPPINE BRANCH's claim for refund of excess and unutilized input value-added tax (VAT) for the fiscal year

[2] Ibid, pp.62-64.

present any evidence, hence, the case was submitted for decision on July 31, 2014."

On July 15, 2015, the CTA-Third Division promulgated the Decision[3] which denied petitioner-Macquarie's Petition for Review.

On July 31, 2015, petitioner-Macquarie filed a Motion for New Trial[4] without respondent-CIR's Comment/Opposition thereto per Records Verification[5] dated September 4, 2015.

In a Resolution[6] promulgated on September 22, 2015, the CTA-Third Division granted petitioner-Macquarie's Motion for New Trial. Thus, the case was set for the presentation of the SEC Certification bearing the correct name of Macquarie Financial Holdings Limited (MFHL) in lieu of the previously presented SEC Certification marked as Exhibit "HH" for petitioner.

Thereafter, in the hearing of November 23, 2015, petitioner Macquarie presented its witness, Ms. Ailyn Perocho who testified and identified her Judicial Affidavit dated November 13, 2015, marked as Exhibit "BBB", her signature thereon, marked as Exhibit "BBB-1", and the SEC Certification of Non-Registration of Company dated July 30, 2015, marked as Exhibit "CCC".

On November 27, 2015, petitioner-Macquarie filed its Supplemental Formal Offer of Evidence[7] offering Exhibits "BBB", "BBB-1" and "CCC" which exhibits were admitted by the Court in Division in the Resolution[8] dated January 18, 2016. In the same Resolution, the parties were given thirty (30) days from notice within which to file their respective memoranda.

On February 18, 2016, petitioner-Macquarie submitted its Memorandum[9] while respondent-CIR failed to file his Memorandum per Report[10] of the Judicial Records Division dated March 8, 2016. The case

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[3] Division Docket (Vol. V), pp. 2532-2546.
[4] Ibid., pp. 2547-2536.
[5] Id., p. 2559.
[6] Id., pp. 2561-2564.
[7] Id., pp. 2574-2576.
[8] Id., pp. 2589-2590.
[9] Id., pp. 2591-2613.
[10] Id., p. 2615.

was, thus, deemed submitted anew for decision per Resolution[11] dated March 22, 2016.

On June 2, 2016, the CTA-Third Division promulgated the assailed Amended Decision which reversed and set aside the Decision dated July 15, 2015 and partially granted petitioner-Macquarie's Petition for Review dated September 21, 2011. Respondent-CIR was, thus, ordered to refund to petitioner-Macquarie the amount of ₱3,396,522.45 representing its excess and unutilized input value-added tax (VAT) attributable to its zero-rated sales for the fiscal year covering the period of April 1, 2009 to March 31, 2010.

On June 22, 2016, respondent filed, thru registered mail, his Motion for Reconsideration[12] with petitioner-Macquarie's Opposition (Re: Motion for Reconsideration dated 22 June 2016)[13] filed on July 27, 2016.

On June 23, 2016, petitioner-Macquarie filed a Motion (Re: Partial Reconsideration of the Decision dated 02 June 2016)[14] without respondent's Comment/Opposition thereon per Records Verification[15] dated July 28, 2016.

On August 12, 2016, the CTA-Third Division promulgated the Assailed Resolution which denied both parties' motion.

Thus, both parties elevated their appeals to the Court En Banc by filing their respective Petitions for Review, as follows:

<u>CTA EB No. 1514</u> – filed via registered mail on September 9, 2016, Macquarie Offshore Services PTY LTD. – Philippine Branch-petitioner vs. Commissioner of Internal Revenue-respondent. No Comment on petitioner's Petition for Review was filed by respondent per Records Verification[16] dated January 18, 2017.

<u>CTA EB No. 1518</u> – filed via registered mail on September 26, 2016, Commissioner of Internal Revenue-petitioner vs. Macquarie Offshore Services PTY LTD. - Philippine

[11] Id., p. 2617.
[12] Id., pp. 2663-2668.
[13] Id., pp. 2672-2676.
[14] Id., pp. 2647-2660.
[15] Id., p. 2677.
[16] EB No. 1514 Docket, p. 150.

Branch-respondent. Respondent filed its Comment (Re: Petition for Review dated 22 September 2016)[17] on December 1, 2016.

On October 6, 2016, the Court En Banc resolved to consolidate CTA EB No. 1518 with CTA EB No. 1514 per Minute Resolution[18] of the same date.

In the Resolution[19] dated February 21, 2017, the Court En Banc required the parties to submit their respective memoranda within thirty (30) days from receipt of the Resolution, after which period the Petitions for Review shall be considered submitted for decision with or without such memoranda.

On April 10, 2017, petitioner filed its Memorandum[20] while respondent failed to file his Memorandum per Records Verification[21] dated May 9, 2017.

The consolidated Petitions for Review were deemed submitted for decision per Resolution[22] dated May 24, 2017.

The parties, in support of their respective Petitions for Review, submitted the following grounds/arguments, to wit:

<u>CTA EB Case No. 1514 - Macquarie Offshore Services PTY LTD. - Philippine Branch (petitioner)</u>

1. The Honorable Third Division of the Court of Tax Appeals seriously erred in holding that Service Invoice Number 000024 and 000029 pertained to services outside the period of the claim. a

[17] Ibid, pp. 109-117.
[18] Id., p. 98.
[19] Id., pp. 152-153.
[20] Id., pp. 171-192.
[21] Id., p. 199.
[22] Id., pp. 201-202.

2. The Honorable Third Division of the Court of Tax Appeals seriously erred in holding that the invoices/receipts containing corrections no longer have probative value.

CTA EB No. 1518 - Commissioner of Internal Revenue (petitioner)

1. The CTA Third Division erred in ordering the refund in favor of Macquarie Offshore Services PTY LTD. - Philippine Branch on its alleged excess and unutilized input VAT for the fiscal year covering the period April 1, 2009 to March 31, 2010 in the reduced amount of ₱3,396,522.45 despite petitioner's failure to comply with the invoicing requirements.

2. The CTA Third Division erred in granting the refund inasmuch as the input taxes are not directly attributable to Macquarie Offshore Services PTY LTD. - Philippine Branch's zero-rated sales.

3. The CTA Third Division erred in not applying the rule that tax refunds being in the nature of tax exemption are construed *strictissimi juris* against the person or entity claiming the exemption; thus, entitlement to a tax refund is for the taxpayer to prove and not for the government to disprove.

After a careful and thorough evaluation and consideration of the parties' arguments as well as the records of the instant cases, the CTA En Banc finds no merit in both Petitions for Review.

The arguments raised by both parties in their respective Petitions for Review in CTA EB No. 1514 and CTA EB No. 1518 are mere rehash/reiteration of the arguments in their respective Motion for Reconsideration/Partial Reconsideration.

The CTA En Banc finds no new matters which have not yet been considered, passed upon and exhaustively discussed by the CTA-Third Division in its Assailed Amended Decision and Assailed Resolution.

WHEREFORE, finding no cogent reason to reverse or modify the Assailed Amended Decision dated June 2, 2016, and the Assailed Resolution dated August 12, 2016, both promulgated by the CTA-Third Division, the Petitions for Review are hereby **DENIED** for lack of merit. Accordingly, the June 2, 2016 Amended Decision and August 12, 2016 Resolution of the CTA-Third Division are hereby **AFFIRMED**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen
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