REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AMADEUS MARKETING PHILIPPINES, INC., Petitioner,	**CTA CASE NO. 10094**
	Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson, and* **BACORRO-VILLENA**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** NOV 17 2021

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2:10 p.m.

DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

The *Petition for Review* filed on June 19, 2019, prays for the refund of the amount of ₱21,245,798.57, allegedly representing petitioner's excess and unutilized input value-added tax (VAT) attributable to its zero-rated sales for the 1st, 2nd, 3rd and 4th quarters of the taxable year 2017.[1]

THE PARTIES

Petitioner Amadeus Marketing Philippines, Inc. (Amadeus Philippines) is a corporation duly organized and existing under the

[1] Summary of the Case, Pre-Trial Order dated October 16, 2019, Docket, Vol. I, p. 404.

laws of the Philippines,[2] with business address at 36th Floor, LKG Tower, 6801 Ayala Avenue, Makati City.[3] It is a corporation registered with the Securities and Exchange Commission (SEC), on June 11, 1997,[4] with Company Registration No. A1997-11194[5] and with the Bureau of Internal Revenue (BIR), on January 1, 1998, as VAT-taxpayer, among others, under Certificate of Registration No. OCN 9RC0001310469E and Taxpayer's Identification Number (TIN) 005-374-900-00000.[6]

Amadeus Philippines is also a wholly-owned subsidiary of Amadeus IT Group S.A. (Amadeus Spain), a company domiciled in Madrid, Spain. It was primarily established to market, promote and distribute the Amadeus System to local users, particularly travel agencies, acting as neutral *agent* for its parent company, Amadeus Spain.[7] Specifically, petitioner's Articles of Incorporation state that it is primarily engaged in the business of marketing in the Philippines an automated computerized reservations system, the "Amadeus Global Travel Distribution" that incorporates a software package which performs various functions, such as real-line airlines seat reservations, schedules booking for a variety of air, boat, train, package tours, car rental and hotel services, automatic ticketing and fare pricing displays in the Philippines.[8]

Respondent Commissioner of Internal Revenue is being sued in his official capacity, having been duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund as provided by law, with office address at BIR National Office Building, Diliman, Quezon City.[9]

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[2] Par. 2, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 392.
[3] Admission, Par. 2, Petition for Review, Docket – Vol. I, p. 10 *and* Par. 2, Answer, Docket – Vol. I, p. 80.
[4] Exhibit P-6, TY 2017 Audited Financial Statements with Complete Notes, Docket – Vol. II, p. 921.
[5] *Id.*, p. 910.
[6] Exhibit P-8, Certificate of Registration (BIR Form 2303), Docket – Vol. II, p. 470.
[7] Exhibit P-6, TY 2017 Audited Financial Statements with Complete Notes, Docket – Vol. II, p. 921; *see also* Exhibit P-50, Par. 4, Recitals, ACO (Amadeus Commercial Organization) Agreement, Docket – Vol. II, p. 486.
[8] Exhibit P-2, SEC Registration and Articles of Incorporation and By-Laws, Docket – Vol. II, p. 972.
[9] Par. 4, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 392.

ANTECEDENTS

On January 1, 2015, Amadeus Philippines entered into an ACO (Amadeus Commercial Organization) Agreement with its parent company, Amadeus Spain. Under the agreement, Amadeus Philippines will promote, make available and facilitate access to the Amadeus System to the subscribers located in the Amadeus ACO Territory (Philippines) and will act as a neutral agent for all Amadeus Spain participants and subscribers under the agreement. Amadeus System is a fully automated reservations and distribution system with the ability to perform comprehensive information, communications, reservations, ticketing and related functions worldwide. Under the ACO Agreement, Amadeus System is also defined as the processing facilities related to computerized travel information and distribution hardware and software systems are developed, owned, operated and/or distributed by Amadeus Spain.[10]

Pursuant to the ACO Agreement, Amadeus Philippines rendered services to Amadeus Spain[11] and issued billing invoices for the year 2017. For the payments received from Amadeus Spain petitioner issued VAT zero-rated official receipts.[12] In the course of its operations, petitioner allegedly incurred and paid input VAT arising from domestic purchases of goods and services which were attributable to its zero-rated sales.[13]

Thereafter, petitioner filed its quarterly VAT returns for 2017.[14]

On April 1, 2019, petitioner Amadeus Philippines filed with the BIR Revenue District Office No. 50 an administrative claim for refund of its excess and unutilized input VAT [via a cover letter dated March 29, 2019 and an Application for Tax Credits / Refunds (BIR Form No. 1914)], allegedly incurred in the 1st to 4th quarters of 2017, in the amount of ₱21,245,798.57.[15]

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[10] Exhibit P-50, Recitals, ACO (Amadeus Commercial Organization) Agreement, Docket – Vol. II, p. 486.

[11] Exhibit P-57, Amended Sworn Statement of Krizel C. Sansano in lieu of Direct Testimony, Docket – Vol. II, p. 448; *see also* Manifestation with Attached Motion for Reconsideration, Docket – Vol. III, p. 1144.

[12] Exhibit P-58, Amended Sworn Statement of Myra Luna Davalos in lieu of Direct Testimony, Docket – Vol. II, pp. 806 to 810.

[13] Par. 10, Petition for Review, Docket – Vol. I, pp. 13 to 15; Exhibit P-57, Amended Sworn Statement of Krizel C. Sansano in lieu of Direct Testimony, Docket – Vol. II, pp. 451 to 452.

[14] Exhibit P-57, Amended Sworn Statement of Krizel C. Sansano in lieu of Direct Testimony, Docket – Vol. II, pp. 452 to 453; Exhibits P-10, P-11, P-12 and P-13, Docket – Vol. II, pp. 557 to 572.

[15] Exhibits P-3, P-3a and P-3b, Docket – Vol. II, pp. 471 to 481.

However, in an undated letter a copy of which was received by petitioner on May 21, 2019, the BIR, through Revenue District Officer Claire B. Corpus, denied petitioner's administrative claim.[16]

PROCEEDINGS BEFORE THIS COURT

Aggrieved, Amadeus Philippines filed the instant *Petition for Review* on June 19, 2019.[17]

On August 10, 2019, respondent filed his *Answer (with Special and Affirmative Defenses)*,[18] interposing certain special and affirmative defenses, to wit: (1) petitioner's claim is still subject to administrative investigation by the BIR; (2) petitioner still has to prove compliance with registration requirements of a VAT taxpayer, invoicing and accounting requirements under Sections 113 and 114 of the 1997 National Internal Revenue Code (NIRC), submission of complete documents, and the two-year prescriptive period under Section 112 (A) of the 1997 NIRC; (3) petitioner has yet to establish that the recipient of its services is doing business outside the Philippines; and, (4) claims for refund are construed strictly against herein petitioner since taxes paid and collected are presumed to have been made in accordance with existing laws and regulations, thus not creditable or refundable.

Accordingly, the Pre-Trial Conference was set on September 12, 2019.[19] Before the conference, respondent filed his Pre-Trial Brief by licensed courier on September 6, 2019[20] while petitioner filed its Pre-Trial Brief on September 10, 2019.[21]

On October 2, 2019, the parties filed their *Joint Stipulation of Facts and Issues* (JSFI).[22]

On October 16, 2019, the *Pre-Trial Order* was issued,[23] which approved and adopted the JSFI, and deemed the pre-trial terminated. *gr*

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[16] Exhibit P-40, Docket – Vol. II, p. 1060.
[17] Docket – Vol. I, pp. 10 to 22.
[18] Docket – Vol. I, pp. 80 to 84.
[19] *Notice of Pre-Trial Conference* dated August 23, 2019, Docket – Vol. I, pp. 86 to 87.
[20] Docket – Vol. I, pp. 112 to 116.
[21] Docket – Vol. I, pp. 117 to 131.
[22] Docket – Vol. I, pp. 392 to 394.
[23] Docket – Vol. I, pp. 404 to 408.

Trial ensued and petitioner presented its documentary and testimonial evidence. Specifically, petitioner offered the testimonies of the following individuals, namely: (1) Ms. Krizel C. Sansano,[24] petitioner's Head of Finance; (2) Ms. Myra Luna Davalos,[25] petitioner's Senior Finance Officer; and, (3) Mr. Enrico T. Pizarro,[26] the duly-commissioned Independent Certified Public Accountant (ICPA).[27]

On January 7, 2020, the ICPA filed his report to the Court.[28]

On March 9, 2020, petitioner filed its *Formal Offer of Evidence.*[29] Respondent filed its *Comment (to Petitioner's Formal Offer of Evidence)* on June 15, 2020.[30] In the Resolution dated July 10, 2020, the Court admitted petitioner's exhibits, *except* for Exhibits P-4, P-47, P-48 to P-48f, P-58 to P-58a and ICPA Exhibit P-72.877.[31] Accordingly, on August 4, 2020, petitioner filed a *Manifestation (with attached Motion for Reconsideration).*[32] In addition, petitioner also filed by registered mail a *Motion for Leave to File Clearer Copies of Certain ICPA Exhibits.*[33] Consequently in an August 26, 2020 Order, the Court partially granted petitioner's motion and admitted Exhibits P-48 and P-58 and their submarkings. However, the Court reiterated its denial of Exhibit P-4 [petitioner's application for VAT refund for the year *2016*] for failure to submit the original. Finally, the Court granted petitioner's *Motion for Leave to File Clearer Copies of Certain ICPA Exhibits*.[34]

Respondent's counsel manifested in open court that they would no longer present evidence.[35]

On September 10, 2020, petitioner filed its *Compliance to the Order dated August 26, 2020 with attached Clearer ICPA Exhibits* by registered mail.[36] *jr*

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[24] Exhibit P-57, Docket – Vol. II, pp. 443 to 456.
[25] Exhibit P-58, Docket – Vol. II, pp. 804 to 812.
[26] Exhibit P-87, Docket – Vol. II, pp. 879 to 888.
[27] *Oath of Commission* dated November 20, 2019, Docket – Vol. II, p. 780.
[28] Exhibit P-85, please refer to the separate Binder-Folder.
[29] Docket – Vol. II, pp. 894 to 908.
[30] Docket – Vol. III, pp. 1106 to 1109.
[31] Docket – Vol. III, pp. 1112 to 1116.
[32] Docket – Vol. III, pp. 1118 to 1125; *see also* pp. 1143 to 1150.
[33] Docket – Vol. III, pp. 1129 to 1133; *see also* pp. 1137 to 1140.
[34] August 26, 2020 Order, Docket – Vol. III, p. 1136.
[35] *Id.*
[36] Docket – Vol. III, p. 1155 to 1157; *see also* pp. 1159 to 1161.

In a September 28, 2020 Resolution, the Court noted petitioner's *Compliance to the Order dated August 26, 2020 with attached Clearer ICPA Exhibits* and gave the parties thirty (30) days to filed their respective memoranda.[37]

On October 29, 2020, Petitioner filed its *Memorandum*.[38] On December 1, 2020, counsel for respondent, alleging that was stricken with Covid-19 had to undergo mandatory quarantine and had been deemed fit to work only on November 24, 2020, filed his *Motion to Admit (Attached Memorandum)* through private courier,[39] which was admitted by the Court in its December 11, 2020 Resolution.[40]

On December 11, 2020, the instant case was considered submitted for decision.[41]

THE ISSUE

As stipulated by the parties, the lone issue to be resolved by the Court is whether petitioner Amadeus Philippines is entitled to a refund of the alleged unutilized VAT input taxes in the amount of Twenty-One Million Two Hundred Forty-Five Thousand Seven Hundred Ninety-Eight and 57/100 pesos (₱21,245,798.57) for the 1st, 2nd, 3rd and 4th quarters of the taxable year 2017.[42]

Petitioner's arguments:

Petitioner contends that it is entitled to a refund of unutilized VAT input taxes in the total amount of ₱21,245,798.57, representing its unutilized VAT input taxes for the 1st, 2nd, 3rd & 4th quarters of TY 2017; that it is a VAT-registered taxpayer and is engaged in zero-rated and effectively zero-rated sales; that it complied with the qualifying conditions for zero-rating; that the recipient of its services, its parent, Amadeus Spain, is doing business *outside* the Philippines; that the input taxes being claimed are attributable to zero-rated sales; that the input taxes are due or paid and were not been applied against output VAT liability; that the acceptable foreign currency

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[37] Docket – Vol. III, p. 1332.
[38] Docket – Vol. III, pp. 1333 to 1350.
[39] Docket – Vol. III, pp. 1354 to 1370.
[40] December 11, 2020 Resolution, Docket – Vol. III, p. 1374.
[41] *Id.*
[42] Issue, JSFI, Docket – Vol. I, p. 331.

exchanges proceeds have been duly accounted for in accordance with BSP rules and regulations; that petitioner was able to substantiate its claim for refund for the unutilized VAT input taxes; and that petitioner's administrative and judicial claims were filed within the prescriptive period.[43]

Respondent's counter-arguments:

Respondent contends that petitioner's claim for refund or issuance of tax credit certificate must be denied because it failed to prove that it is engaged in zero-rated or effectively zero-rated sales of services; the recipient of petitioner's services is actively doing business in the Philippines; the petitioner is the established local agent and/or representative of its alleged foreign recipient; petitioner failed to comply with the mandatory requirements for its refund claim such as the registration requirements, the invoicing and accounting requirements under Sections 113 and 114 of the 1997 NIRC, the submission of complete documents in support of the administrative claim; petitioner failed to overcome the burden of proving its entitlement to refund; and, that claims for refund are construed strictly against herein petitioner.[44]

THE RULING

The instant *Petition for Review* lacks merit.

Requisites for the refund of input VAT under the law.

Section 112 of the National Internal Revenue Code (NIRC) of 1997, as last amended by RA No. 10963,[45] provides, in part, as follows:

[43] Petitioner's Memorandum, Docket – Vol. III, pp. 1333 to 1350.
[44] Respondent's Memorandum, Docket – Vol. III, pp. 1357 to 1370.
[45] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

"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 sale and also in taxable or exempt sale of goods of 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: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

xxx xxx xxx

(C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: xxx.

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however*, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code."

Based on the foregoing provision, certain requisites must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT attributable to its zero-rated or effectively zero-rated sales. The said requisites may be classified into certain categories, to wit:

As to the timeliness of the filing of the administrative and judicial claims:

1. The refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[46]

2. In case of full or partial denial of the refund claim, the judicial claim is filed with this Court, within thirty (30) days from receipt of the decision;

<u>With reference to the taxpayer's registration with the BIR</u>:

3. The taxpayer is a VAT-registered person;[47]

<u>In relation to the taxpayer's output VAT</u>:

4. The taxpayer is engaged in zero-rated or effectively zero-rated sales;[48]

5. For zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[49]

<u>As regards the taxpayer's input VAT being refunded</u>:

6. The input VAT are not transitional input taxes;[50]

7. The input VAT are due or paid;[51]

8. The input VAT claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, *Jl*

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[46] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 1166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.

[47] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.*

the input taxes shall be proportionately allocated on the basis of sales volume;[52] and,

9. The input VAT have not been applied against output VAT during and in the succeeding quarters.[53]

Finally, it must be emphasized that the cases filed before this Court are litigated *de novo*, thus, party-litigants must prove every minute aspect of their case.[54] Accordingly, petitioner must show compliance with each of the above-enumerated requisites.

Petitioner is a VAT-registered entity.

Petitioner complied with the *third* requisite, considering that there is undisputed proof that petitioner is a VAT-registered entity, since January 1, 1998, as evidenced by BIR Certificate of Registration No. OCN 9RC0001310469E and TIN 005-374-900-00000.[55]

Petitioner's administrative and judicial claims were timely filed.

The *first* requisite pertains to the filing of the refund claim for tax credit or refund of input VAT with the BIR, within two (2) years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the 1st, 2nd, 3rd and 4th quarters of taxable year 2017. Counting two (2) years from the respective close of the said quarters, the following table indicates the pertinent last

[52] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.

[53] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.

[54] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

[55] Exhibit P-8, Certificate of Registration (BIR Form No. 2303), Docket – Vol. II, p. 470.

days for the filing of an administrative claim for the said four (4) quarters, to wit:

Period	Close of the Taxable Quarter	Last Day to File Administrative Claim	Date of Filling of the Administrative Claim
1st Quarter of 2017 (January 1, 2017 to March 31, 2017)	March 31, 2017	March 31, 2019[56]	April 1, 2019[57]
2nd Quarter of 2017 (April 1, 2017 to May 31, 2017)	June 30, 2017	June 30, 2019	
3rd Quarter of 2017 (June 1, 2017 to September 30, 2017)	September 30, 2017	September 30, 2019	
4th Quarter of 2017 (October 1, 2017 to December 31, 2017)	December 31, 2017	December 31, 2019	

On the basis thereof, petitioner's administrative claim for refund or tax credit certificate for the subject periods was timely filed on April 1, 2019.[58]

The *second* requisite necessitates that the judicial claim must have been filed within thirty (30) days from receipt of respondent's decision or after the expiration of the 90-day period under Section 112(C) of the NIRC of 1997, as amended.

Respondent denied petitioner's administrative claim in an undated letter a copy of which was received by petitioner on May 21, 2019.[59] Counting thirty (30) days from May 21, 2019, petitioner had until June 20, 2019, within which to file an appeal before the Court. Considering that petitioner filed the instant *Petition for Review* on June 19, 2019,[60] the judicial claim was seasonably made.

Such being the case, petitioner fulfilled the above-stated *first* and *second* requisites.

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[56] Sunday.
[57] Monday.
[58] Exhibits P-3, P-3a and P-3b, Docket – Vol. II, pp. 471 to 481.
[59] Exhibit P-40, Docket – Vol. II, p. 1060.
[60] Docket – Vol. I, pp. 10 to 22.

Petitioner, however, failed to establish that it is engaged in zero-rated sales or effectively zero-rated sales during the four (4) quarters of 2016.

The *fourth* and *fifth* requisites respectively require that the taxpayer is engaged in zero-rated or effectively zero-rated sales, and for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2) of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the BSP rules and regulations.

Petitioner claims that during the taxable year 2016, the services it rendered to its parent company, Amadeus IT Group SA (Amadeus Spain) are subject to zero percent (0%) VAT, pursuant to Section 108(B) of the NIRC of 1997, as amended, to wit:

> "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.* - <u>The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate</u>:
>
> (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) <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, 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)</u>;". *(Underscoring added)* *gl*

Based on the foregoing provisions, certain essential elements must be present for a sale or supply of services to qualify for VAT rate of zero percent (0%), namely:

1) The services fall under any of the categories under Section 108(B)(2),[61] or simply, the services rendered should be other than "processing, manufacturing or repacking goods";[62]

2) The service must be performed in the Philippines[63] by a VAT-registered person;

3) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules;[64] and,

4) The recipient of the services is a foreign corporation, and the corporation is doing business *outside* the Philippines, or is a nonresident person not engaged in business who is *outside* the Philippines when the services were performed.[65]

To prove compliance with the *first* and *second* essential elements, petitioner presented its Certificate of Filing of Amended Articles of Incorporation,[66] Amended Articles of Incorporation[67] and Amadeus Commercial Organization (ACO) Agreement.[68]

Under the ACO Agreement, the term *"Service"* (to be provided by petitioner) *"means any services provided in relation to a particular Product, as updated from time to time by AMADEUS"*, and in turn, the term *"Product"* means *"any software or functionality listed in the*

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[61] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.
[62] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007.
[63] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, supra.
[64] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, supra.
[65] *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017; *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Accenture, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 190102, July 11,2012.
[66] Exhibit P-2, Docket – Vol. II, p. 969.
[67] Exhibit P-2, Docket – Vol. II, pp. 972 to 979.
[68] Exhibit P-50, Docket – Vol. II, pp. 485 to 517.

AMADEUS catalogue, as updated from time to time by AMADEUS".[69] Simply put, the services to be provided by petitioner is any service related to any software or functionality listed in the AMADEUS catalogue. Thus, the said services fall within the scope of "*services other than processing, manufacturing or repacking of goods*", hence, there is compliance with the *first* essential element.

Under the same ACO Agreement, the services to be rendered by petitioner shall be in the following geographical area: "PHILIPPINES".[70] Such being the case, petitioner likewise complied with the above-stated *second* essential element.

With respect to the *third essential element* (which is likewise the *fifth requisite* for the granting of input VAT refund), petitioner Amadeus Philippines presented the certification of inward remittances credited to its account in Hongkong and Shanghai Banking Corporation Limited showing the 2017 payments of Amadeus Spain for its services.[71] Considering that the sworn certification attests to the fact of payment "*in acceptable foreign currency ...and accounted for in accordance with the rules and regulations of the BSP*";[72] by Amadeus Spain in 2017, petitioner is considered to have complied with the *third* essential element for a sale or supply of services to be subject to the VAT rate of zero percent (0%).

Relative the *fourth* essential element, petitioner offered in evidence a Certification of Non-Registration of Company for Amadeus Spain[73] issued by the Philippine SEC to the effect that the records of the latter do not show the registration of Amadeus Spain as a corporation, a partnership or a One Person Corporation (OPC). Petitioner likewise submitted Amadeus Spain's Tax Residency Certification,[74] By-Laws,[75] and Screenshot of the Official Website of Spain Company Registries.[76]

A taxpayer claiming for a VAT refund or credit under Section 108(B) of the NIRC of 1997, as amended, has the burden to prove

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[69] Exhibit P-50, Docket – Vol. II, at p. 489.
[70] Exhibit P-50, Docket – Vol. II, at p. 492.
[71] Exhibit P-46, Docket – Vol. II, pp. 553 to 554.
[72] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.
[73] Exhibit P-41, Docket – Vol. II, p. 1062.
[74] Exhibit 42, Docket – Vol. II, pp. 548 to 551.
[75] Exhibit P-43, Docket – Vol. II, pp. 519 to 547.
[76] Exhibit P-44, Docket – Vol. II, p. 1061; see also Docket – Vol. II, p. 552.

not only that the recipient of the service is a foreign corporation, *but also that said corporation is doing business outside the Philippines.*[77]

Significantly, the BIR denied petitioner's administrative claim on the ground that petitioner's sale of services to its parent Amadeus Spain cannot be considered as zero-rated sales since Amadeus Spain is doing business in the Philippines.[78]

In relation to this denial, when a judicial claim for refund or tax credit is appealed from an unsuccessful administrative claim, the taxpayer has to convince the Court that respondent CIR had no reason to deny its claim. It becomes imperative for the taxpayer to show the Court that not only is it entitled under substantive law to its claim, but also that it satisfied all the evidentiary requirements for its administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place.[79]

First, the Court notes that Amadeus Philippines is a wholly-owned subsidiary of Amadeus Spain.[80]

Second, to revisit the ACO Agreement between the subsidiary and its parent, it bears stressing that Amadeus Philippines is tasked to promote, make available and facilitate access to the Amadeus System to the subscribers located in the Amadeus ACO Territory (Philippines) and to act as a neutral *agent* for all Amadeus Spain participants and subscribers under the agreement. More significantly, the ACO Agreement is replete with provisions that govern Amadeus Spain's control and participation in running the marketing and distribution of the Amadeus System in the Philippines, a few of the significant provisions are as follows:

- Nothing in the agreement shall constitute a license to Amadeus Philippines to use or sub-license its own right to the software which runs the Amadeus System, other than in accordance with the terms of the agreement.[81]

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[77] *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue*, G.R. 201326, February 8, 2017.
[78] Exhibit P-40, Docket – Vol. II, p. 1060.
[79] Refer to *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 207112, December 8, 2015.
[80] Exhibit P-6, TY 2017 Audited Financial Statements with Complete Notes, Docket – Vol. II, p. 921.
[81] Par. 2.2, ACO Agreement, Exhibit P-50, Docket – Vol. II, p. 489.

- Ownership of any and all intellectual property, including those generated by Amadeus Philippines in the performance of its obligations such as, without limitation, any developments, improvements, enhancements, modifications, or changes to the Amadeus Products or Amadeus System shall remain the exclusive property of Amadeus Spain.[82]

- Amadeus Philippines, with respect to the performance of the services under the agreement, shall not solicit business, or open its own offices or facilities outside Philippine territory *without the prior written consent* of Amadeus Spain.[83]

- Amadeus Spain reserves its right to negotiate and contract with multinational subscribers for the provision of services and products by Amadeus Philippines.[84]

- Amadeus Spain is obliged to provide improvements and additions to Amadeus Products and Services, market information and promotional materials, basic and continuing training programs covering all Amadeus Products and Services, sales training, training programs for technical support staff and 24-hour central Customer Services / Help Desk.[85]

- Amadeus Philippines is obliged to follow and comply with all the privacy policies and procedures established by Amadeus Spain.[86]

- Amadeus Spain has the right to terminate the agreement if Amadeus Philippines violates the non-competition provisions, significantly deviates from the business plan or fails to meet the targets set by the parent and subsidiary by a significant margin.[87]

Clearly, the ACO Agreement paved the way for Amadeus Spain through and together with Amadeus Philippines to further advance its purpose to continually promote, market, and distribute the Amadeus System in the Philippines. These and its powers above, fall squarely

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[82] Par. 4, ACO Agreement, Exhibit P-50, Docket – Vol. II, pp. 490 to 491.
[83] Par. 5, ACO Agreement, Exhibit P-50, Docket – Vol. II, p. 492.
[84] Par. 1, Appendix C, ACO Agreement, Exhibit P-50, Docket – Vol. II, p. 507.
[85] Par. 12.3, ACO Agreement, Exhibit P-50, Docket – Vol. II, p. 496.
[86] Par. 14.3, ACO Agreement, Exhibit P-50, Docket – Vol. II, p. 498.
[87] Par. 17.2, ACO Agreement, Exhibit P-50, Docket – Vol. II, p. 499.

under the definition of "doing business in the Philippines" under Section 3(d) of Republic Act No. 7042, to wit:

> "d) The phrase 'doing business' shall include soliciting orders, service contracts, opening offices, whether called 'liaison' offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totaling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization: *Provided, however*, That the phrase 'doing business': shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account;" (*Underscoring supplied*)

In sum, petitioner failed to show that respondent was in error in finding that Amadeus Spain is doing business in the Philippines. Petitioner has failed to overcome respondent's finding and basis for denying its administrative claim.

It becomes unnecessary to determine whether petitioner complied with the remaining requisites under Section 112 of the NIRC of 1997, as amended, to successfully obtain a credit/refund of its alleged input VAT.

It bears stressing that tax refunds are in the nature of tax exemptions. As such they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption. The burden of proof is upon him who claims the exemption in his favor and he must be able to justify his claim by the clearest grant of organic or statute law.[88]

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[88] *Commissioner of Internal Revenue vs. Interpublic Group of Companies, Inc.,* G.R. No. 207039, August 14, 2019.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest 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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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