REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MARUBENI PHILIPPINES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1548
(CTA Case No. 7223)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

MARUBENI PHILIPPINES CORPORATION,
Respondent.

CTA EB No. 1554
(CTA Case No. 7223)

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

Promulgated:
SEP 06 2018
3:43p.m.

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution are the "Motion for Reconsideration" filed by the Commissioner of Internal Revenue (CIR) on April 26, 2018 and the "Motion for Reconsideration" filed by Marubeni Philippines Corporation ("Marubeni") on May 3, 2018.

The dispositive portion of the April 2, 2018 Decision reads:

> **WHEREFORE,** premises considered, the Petition for Review filed by Marubeni Philippines Corporation in CTA EB No. 1548, and the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 1554, are **DENIED** for lack of merit. Accordingly, the April 21, 2016 Amended Decision and the October 19, 2016 Resolution of the Special First Division in CTA Case No. 7223 are **AFFIRMED.**
>
> **SO ORDERED.**

In its motion, Marubeni alleges that it sufficiently established the validity of the offsetting arrangement with Marubeni Corporation-Tokyo ("Marubeni Tokyo") pursuant to RMC No. 42-2003. MPC submits that the Court-Commissioned Independent Certified Public Accountant (ICPA) has ascertained the validity of the offsetting arrangement between Marubeni and Marubeni Tokyo on the basis of the Mutual Account Ledger,[1] among others.

Marubeni also alleges that the VAT invoices substantially complied with the requirements under the Tax Code and relevant revenue regulations. Marubeni submits that the Court should consider the laws, regulations, jurisprudence, and procedure prevailing at the time of the transaction (*i.e,* 2003) in evaluating whether Marubeni complied with the substantiation requirements for its zero-rated sales, *i.e.,* whether its zero-rated sales of services are supported by VAT invoices or VAT official receipts, instead of the subsequent versions or amendments of such laws, regulations and subsequent versions or amendments of such laws, regulations and jurisprudence. Marubeni argues that it did not err when it chose to support its claim for refund with VAT invoices. Marubeni alleges that it was compliant with the law, regulations, jurisprudence, and procedure present at the time the claim for refund was instituted.

CIR in his motion argues that Marubeni's invoices and official receipts in support of its claimed unutilized input VAT, wherein this Court granted the amount of P134,662.95, representing its unutilized excess input taxes attributable to its zero-rated sales for taxable year 2003 failed to comply with the mandatory invoicing requirements under Sections 110 (A), 113 (A) (B) and 237 of the 1997 Tax Code, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of Revenue Regulations No. 16-05 and Revenue Memorandum Circular No. 42-2003.

CIR also alleges that Marubeni's documentary exhibits (*i.e.* purchase invoices, invoices, official receipts, Airway Bills, Bills of Lading, Bank

[1] Exhibits NNN-74 to NNN-114.

Credit Advice and Certificate of Bank Remittances) which are presented in court as evidence to support its judicial claim for input VAT refund are hearsay evidence, hence, inadmissible as evidence in this case.

CIR states that Marubeni's claim for refund is strictly construed against it for the same partakes the nature of tax exemption.

On June 25, 2018, Marubeni filed its Comment to CIR's Motion for Reconsideration dated April 25, 2018.

On July 11, 2018, the motions of CIR and Marubeni were submitted for resolution.

After a careful review of the grounds raised and arguments presented by Marubeni and CIR, We find no valid or cogent reason to deviate from our findings and conclusions reached in our Decision dated April 2, 2018, thus, the motions are denied.

It is also noted that with respect to the CIR's motion, the arguments therein are mere reiterations of the arguments raised in his petition for review which were already considered and passed upon by the Court.

Anent Marubeni's motion, We emphasize that "the burden of proof is upon the claimant of the tax refund to prove the factual basis of his claim."[2] In this case, except the substantiated input VAT claim of P134,662.95,[3] no sufficient proof was shown by Marubeni to convince this Court to grant in full Marubeni's claim for input VAT refund of P11,139,650.19, allegedly representing its excess and unutilized input VAT for the four (4) quarters of calendar year 2003.

This Court reiterated the findings of the Court in Division that Marubeni "failed to establish the offsetting arrangement with Marubeni-Tokyo in compliance with the provisions of RMC No. 42-2003"[4] and that "without VAT official receipts, petitioner's reported collected commissions from non-residents in the amount of P39,475, 267.97 and commissions from PEZA entities in the amount of P687,626.92 cannot qualify for VAT zero-rating."[5]

There is also no merit to the contention that Marubeni complied with the substantiation requirements for its zero rated sales, *i.e.,* whether its zero-

[2] *Eastern Telecommunications Phils., Inc. v. Commissioner of Internal Revenue*, G.R. No. 168856, August 29, 2012.
[3] *Rollo*, p. 28 and p. 45; April 21 2016 Amended Decision, CTA Case No. 7223 (CTA EB No. 799), p. 1 and p. 18.
[4] *Rollo*, p. 109; April 2, 2018 Decision of the above-captioned consolidated cases, p. 17.
[5] *Rollo*, p. 113; April 2, 2018 Decision of the above-captioned consolidated cases, p. 21.

rated sales of services are supported by VAT invoices or VAT official receipts, prevailing at the time of the transaction (*i.e.,* 2003).

In the case of *AT & T Communication Services Philippines, Inc. v. Commissioner of Internal Revenue,*[6] which involves taxable year 2003, the Supreme Court emphasized that "**even prior to the enactment of R.A. No. 9337,** which clearly delineates the invoice and official receipt, **our Tax Code has already made the distinction...The legislature separately categorized VAT on sale of goods from VAT on sale of services, not only by its treatment with regard to tax but also with respect to substantiation requirements.** Having been grouped under Section 108, its subparagraphs, (A) to (C),[7] and Section 106, its subparagraphs (A) to (D),[8] have significant relations with each other." *(Emphases Supplied.)*

Contrary to the assertion of Marubeni, the case of *Takenaka Corp.-Philippine Branch v. Commissioner of Internal Revenue,*[9] *citing Northern Mindanao Power Corporation v. Commissioner of Internal Revenue,*[10]*which cites the case Commissioner of Internal Revenue v. Manila Mining Corporation,*[11] is applicable in the instant case. In *Takenaka* case, the Supreme Court ruled that the denial of the claim for refund was proper on the ground that the petitioner had not established its zero-rated sales of services through the presentation of official receipts. In other words, the sales invoices presented by the petitioner were not sufficient as evidence to prove its zero-rated sale of service.

The *Takenaka* case, *Northern Mindanao Power* case, and *Manila Mining* case, which distinguished an invoice from receipt, although promulgated after the filing of Marubeni's administrative claim and judicial claim for refund on April 20, 2005 and April 21, 2005, respectively, are applicable in the instant case. "It is elementary that the interpretation of a law by this Court constitutes part of that law from the date it was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect."[12] gr

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[6] G.R. No. 185969, November 19, 2014.

[7] SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* —

xxx xxx xxx

(C) Determination of the Tax — The tax shall be computed by multiplying the total amount indicated in the **official receipt** by one-eleventh (1/11). (Emphasis supplied)

[8] SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* —

xxx xxx xxx

(D) Determination of the Tax. —

(1)The tax shall be computed by multiplying the total amount indicated in the **invoice** by one-eleventh (1/11). (Emphasis supplied)

[9] G.R. No. 193321, October 19, 2016; *Takenaka* case, for brevity.

[10] G.R. No. 185115, February 18, 2015; *Northern Mindanao Power* case, for brevity.

[11] G.R. No. 153204, August 31, 2005; *Manila Mining* case, for brevity.

[12] *Accenture, Inc. v. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012, citing *Senarillos v. Hermosisisma,* 100 Phil. 501 (1956).

WHEREFORE, premises considered, "Motion for Reconsideration" filed by the Commissioner of Internal Revenue (CIR) on April 26, 2018 and the "Motion for Reconsideration" filed by Marubeni Philippines Corporation ("MPC") on May 3, 2018 are **DENIED**, for lack of merit.

SO ORDERED.

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

WE CONCUR:

(Inhibited)
ROMAN G. DEL ROSARIO
Presiding 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 M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice