REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

**THIRD DIVISION**

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| MANILA PENINSULA HOTEL, INC., Petitioner, | C.T.A. CASE NO. 8519 |
| | Members: |
| -versus- | BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ. |
| COMMISSIONER OF INTERNAL REVENUE, Respondent. | Promulgated: |
| | DEC 10 2015 4:20 p.m. |

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# RESOLUTION

***FABON-VICTORINO, J.:***

This resolves petitioner's Motion for Reconsideration of the Decision dated August 14, 2015 filed on September 4, 2015, the dispositive portion of which reads as follows:

> **WHEREFORE**, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**.

In compliance with the Court's directive, respondent filed her Comment on October 14, 2015.

In challenging the Court's Decision, petitioner submits the following arguments:

and all services rendered to persons engaged in international shipping or international air transport operations;

2.) BIR Ruling No. 99-2011 dated 6 April 2011 does not have any legal basis;

3.) Revenue Memorandum Circular No. 046-08 dated 1 February 2008 is invalid; and

4.) Petitioner's sale of services to Delta Air is exempt from the application of the Destination Principle and the Cross Border Doctrine.

Respondent however states that Section 108(B)(4) of the Tax Code, as amended by RA No. 9337 clearly and categorically provides that only services rendered to persons engaged in international air transport operations shall be subject to zero percent (0%) rate. Services such as room accommodations as well as food and beverages served to guests within the hotel premises are definitely not included in the exemption granted under Section 108(B)(4) of the Tax Code, as amended. To consider the said services as tax exempt is to expand the coverage of the law to include even those services not related to international air transport in violation of the law. According to respondent, a claim for exemption from tax payments must be clearly shown and based on language in the law too plain to be mistaken,[1] on this regard, petitioner failed.

On petitioner's assertion that the change in the language of Section 108(B)(4) shows the intent of the legislature to expand the coverage of the provisions to any and all services "rendered to persons engaged in international shipping or international air transport operations", respondent counters that the same is simply of no moment for petitioner's failure to quote the Senate Journal of the Senate Bill on the matter.

[1] Page 185, Statutory Construction, Judge Noel Diaz.

With regard to the second and third grounds raised by petitioner, respondent argues that collateral attack against the validity on BIR Ruling No. 99-2011 and Revenue Memorandum Circular No. 046-08 is prohibited. Moreover, petitioner did not previously assail the validity of the said BIR issuances. Besides, the BIR's interpretation of tax laws is entitled to great weight because of its recognized expertise on matters falling within its exclusive administrative domain. Assuming *arguendo* that the BIR exercised administrative legislation in this regard, the same is not illegal *per se.* Administrative agencies in the exercise of their rule-making power can formulate rules and regulations in order to achieve the declared policies laid down by the Congress.

Moreover, given that services to Delta Air's pilots and cabin crew during flight layovers were rendered within petitioner's premises, they have no direct connection with the transport of goods and passengers, hence, they cannot be deemed as services directly attributable to the transport of goods and passengers from a Philippine port directly to a foreign port entitled to zero-rating. This being the case, the alleged application of the Destination Principle and Cross Border Doctrine has no legal mooring.

Finally, respondent stresses that the claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. After all, tax refunds, like tax exemptions, are construed strictly against the taxpayer.[2]

Petitioner's Motion for Reconsideration lacks merit.

Petitioner's Motion for Reconsideration merely reiterates the arguments in its Petition for Review and Memorandum, all of which have already been sufficiently discussed in the assailed Decision of August 14, 2014.

To repeat, to qualify for zero-rating, the services rendered by a VAT-registered person to a person engaged in

[2] *Citibank N.A. v. Court of Appeals and Commissioner of Internal Revenue*, 280 SCRA 459; *Commissioner of Internal Revenue v. Tokyo Shipping Co. Ltd.*, 244 SCRA 332, cited in *Benguet Corporation v. Commissioner of Internal Revenue*, CTA Case No. 5392, Oct. 30, 1998.

international air transport operations must pertain to or must be attributable to the transport of goods and passengers from a port in the Philippines directly to a foreign port without docking or stopping at any port in the Philippines. There is no denying that the services provided by petitioner to Delta Air's pilots and cabin crew during flight layovers were rendered within petitioner's premises, therefore, they have no direct connection with the transport of goods or passengers from a Philippine port directly to a foreign port to be entitled to zero-rating.

Further, the amendment should be read in conjunction with Section 4.108-5(b)(4) of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 4-2007, as well as Revenue Memorandum Circular No. 046-08 dated February 1, 2008, as it clarifies which services or transactions are subject to zero percent (0%) VAT and which are still subject to twelve percent (12%) VAT.

On petitioner's collateral attack against the validity of BIR Ruling No. 99-2011 dated April 6, 2011 and Revenue Memorandum Circular No. 046-08 dated February 1, 2008, the same has been addressed by the Court *En Banc* in the case of *Delta Air Lines, Inc. v. Hon. Sec. Cesar V. Purisima (in his capacity as Sec. of the Department of Finance) and Hon. Com. Kim S. Jacinto-Henares (in her capacity as Incumbent Commissioner of Internal Revenue*[3], in this wise:

> "BIR Ruling No. 099-2001, as affirmed by DOF Letter dated September 8, 2011, applied and interpreted Section 108 (B) (4) of the NIRC of 1997, as amended. Section 108 (B) (4) of the NIRC of 1997, as amended, provides:
>
>> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties. –*
>>
>> xxx xxx xxx

[3] C.T.A. EB CASE NO. 1113, September 10, 2015.

(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:

xxx xxx xxx

(4) Services rendered to persons engaged in international shipping or international air transport operations, including leases of property for use thereof;"

The foregoing provision must be read in conjunction with Section 4.108-5 (b) (4) of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 4-2007, which states:

"SEC. 4.108-5. Zero-Rated Sale of Services. —

xxx xxx xxx

(b) Transactions Subject to Zero Percent (0%) VAT Rate. — The following services performed in the Philippines by a VAT-registered person shall be subject to zero-percent (0%) VAT rate:

xxx xxx xxx

(4) Services rendered to persons engaged in international shipping or air transport operations, including leases of property for use thereof: Provided, however, That the services referred to herein shall not pertain to those made to common carriers by air and sea relative to their transport

> of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines, the same being subject to twelve percent (12%) VAT under Sec. 108 of the Tax Code starting February 1, 2006."

It is therefore clear that the services performed in the Philippines by a VAT-registered person to persons engaged in international shipping or air transport operations, including leases of property for use thereof are generally subject to zero percent (0%) VAT. However, RR No. 16-2005, as amended by RR No. 4-2007, provides that when the services performed in the Philippines by a VAT-registered person are rendered to common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines, the same shall already be subject to twelve percent (12%) starting February 1, 2006.

It is undisputed that the services provided by the Hotel to petitioner were rendered within the Hotel's premises, they have no direct connection with the transport of goods or passengers, and as such, they cannot be considered as services directly attributable to the transport of goods and passengers from a Philippine port directly to a foreign port to be entitled to zero-rating.

The BIR merely interpreted the law and the rules in the assailed BIR Ruling and held that the sale of services by the Hotel to petitioner is subject to the 12% VAT given that the services provided by the Hotel to petitioner pertain to room accommodations and food and beverage services to its pilots and crew members during flight layovers in

> the Philippines, which have no direct connection with the transport of goods or passengers. Hence, the same cannot be considered as services directly attributable to the transport of goods and passengers from a Philippine port directly to a foreign port entitled to zero-rating.
>
> Clearly, the interpretation of respondent CIR was well within the parameters of what was provided by the law and rules from which such ruling was based.
>
> Finally, the Court recognizes the doctrine that interpretations of administrative agencies in charge of enforcing a law are entitled to great weight and consideration by the courts, unless such interpretations are in a sharp conflict with the governing statute or the Constitution and other laws, which is not obtaining in the present case."

Significantly, BIR Ruling No. 99-2011 dated April 6, 2011 was not reversed or modified by the Secretary of Finance. In fine, it is deemed valid with force and effect of law[4].

Finally, under the cross-border or destination principle, the sale of services is subject to VAT only if the services are performed in the Philippines as in the present case. While it may be true that Sec 108(B)(4) of the Tax Code provides for exemption to the cross-border or destination principle, however, to be entitled to VAT zero-rating under the provision, the services rendered by a VAT-registered person to a person engaged in international air transport operations must pertain to or must be attributable to the transport of goods and passengers from a port in the Philippines directly to a foreign port without docking or stopping at any port in the Philippines. Since the services to Delta Air's pilots and cabin crew during flight layovers were rendered within petitioner's premises, they had no direct connection with the

[4] *CIR v. Negros del Norte Planters Association Multi-purpose Cooperative*, CTA EB No. 1012, August 14, 2014.

transport of goods or passengers, and as such, they could not be considered as services directly attributable to the transport of goods and passengers from a Philippine port directly to a foreign port entitled to zero-rating.

**WHEREFORE**, petitioner's Motion for Reconsideration (Re: Decision dated 14 August 2015) filed on September 4, 2015, is hereby **DENIED**, for lack of merit.

**SO ORDERED**.

ESPERANZA R. FABON-VICTORINO
Associate Justice

*We Concur:*

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice