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,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 04 2022 4:22 PM

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RESOLUTION

CASTAÑEDA, JR., J.:

Before this Court is petitioner's **Motion for Reconsideration** filed on December 6, 2021, with respondent's **Comment/Opposition (to Petitioner's Motion for Reconsideration dated 03 December2021)** filed, through registered mail, on February 21, 2022 and received by this Court on March 9, 2022.

On November 17, 2021, the Court promulgated a Decision denying petitioner's claim for refund of its unutilized input value-added tax (VAT) attributable to zero-rated sales for taxable year 2017 in the amount of ₱21,245,798.57 for failing to establish that it is doing business outside the Philippines, the dispositive portion of which reads as follows:

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

In its Motion, petitioner insists that it is entitled to refund its unutilized input VAT attributable to its zero-rated sales of service since the law only requires that a foreign corporation is doing business outside the Philippines to be entitled to VAT zero-rating. Petitioner claims Section 108 (2)(B) of the National Internal Revenue Code (NIRC) of 1997, as amended, does not actually state or require that a foreign corporation must exclusively be doing business outside the Philippines; the said provision only uses the phrase, *"a person engaged in business outside the Philippines."* Petitioner then posits that it is incorrect to require that a foreign corporation to be exclusively doing business outside the Philippines. According to petitioner, the main consideration is the legitimate use of foreign currency in the transaction citing the case of *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[1] (*"Burmeister case"* hereafter for brevity) to bolster its claim.

Moreover, petitioner likewise asserts that assuming the law requires that the foreign corporation is exclusively doing business outside the Philippines, the case at bar falls under the exceptions found under Republic Act (RA) No. 7042, as amended, or the "Foreign Investment Act (FIA) of 1991." Petitioner continues that Section 3(d) of the FIA of 1991 excludes the act of mere investing as a shareholder by a foreign entity as *doing business* under the law – as such, the Court's finding that Amadeus Spain wholly owns petitioner cannot convert it to a non-resident foreign corporation (NRFC) doing business in the Philippines.

Petitioner further assails the Court's finding that the Amadeus Commercial Organization (ACO) Agreement is replete with provisions that govern Amadeus IT Group SA (Amadeus Spain) control and participation in running the marketing and distribution of the Amadeus System in the Philippines. It also cites the case of *Steelcase Inc. vs. Design International Selections, Inc.*,[2] (*"Steelcase Inc."* hereafter for brevity) wherein the Supreme Court held that the any limitation set on the marketing of the products is insufficient to declare that a NRFC is doing business in the Philippines. Thus, petitioner submits that if any, given all the responsibilities stated in the ACO Agreement, petitioner should be considered as an independent contractor conducting business in its own name and for its own account.

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[1] G.R. No. 153205, January 22, 2007.
[2] G.R. No. 171995, April 18, 2012.

On the other hand, in its comment, respondent claims that petitioner is not entitled to its claimed VAT refund considering it failed to establish that it is indeed engaged in zero-rated sales or effectively zero-rated sales during the subject period. Respondent expounds that, in its attempt to invoke the applicability of VAT zero-rating to its arguments, petitioner disregarded Section 108(B)(1) in the interpretation of Section 108(B)(2). Thus, respondent claims that the transactions between Amadeus Spain and petitioner are subject to regular VAT since both petitioner and the recipient of its service are doing business in the Philippines.

Respondent further points out that the documents presented by petitioner to prove its entitlement to claim for refund only substantiate the existence of sales, receipt, receipt of currency payments, and inward remittance duly accounted for in accordance with Bangko Sentral ng Pilipinas (BSP) rules. He avers that the said evidence does not establish that the recipient of petitioner's services are doing business outside the Philippines.

Lastly, respondent asserts that that actions for tax refund or credit, as in the present case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.

The Court finds the present Motion for Reconsideration bereft of merit.

In the present case, petitioner asserts that nowhere in the law does it state that a foreign corporation must *exclusively* be doing business outside the Philippines; and that the main consideration in determining whether its doing business outside the Philippines should be the legitimate use of foreign currency in the given transaction, citing the *Burmeister case*.

However, the Court does not agree.

To start off, it must be stressed that the Court of Tax Appeals is a court of special jurisdiction. It can take cognizance only of such matters as are clearly within its jurisdiction. Under Section 7 of RA No.

9282,[3] the jurisdiction of the Court is to review by appeal, among others, the decision or inaction of the Commissioner of Internal Revenue in cases involving refunds of internal revenue taxes.

In the assailed Decision, the Court did not deny petitioner's claim for refund because it is **not exclusively** doing business outside the Philippines. The Court merely ruled that petitioner failed to show that respondent was in error in finding that Amadeus Spain is doing business in the Philippines. Stated simply, petitioner has failed to overcome respondent's finding and basis for denying its administrative claim.

Also, respondent correctly pointed out in his comment that in its attempt to invoke the applicability of VAT zero-rating to its arguments, petitioner disregarded Section 108(B)(1) in the interpretation of Section 108(B)(2). In the case of *Accenture, Inc. v. Commissioner of Internal Revenue,*[4] the Supreme Court reiterated its ruling in the *Burmeister case* that a parallel approach should be accorded to the renumbered provisions of Sections 108(B)(2) and 108(B)(1) of the NIRC of 1997, as amended. This means that Section 108(B)(2) must be read in conjunction with Section 108(B)(1), especially since Section 108(B) was a mere reproduction of Section 102(b) of the 1977 Tax Code, to wit.

> "In the Burmeister case, the Supreme Court harmonized both Sections 102(b)(1) and 102(b)(2) of the 1977 Tax Code, as amended, pertaining to zero-rated transactions. A parallel approach should be accorded to the renumbered provisions of Sections 108(B)(2) and 108(B)(1) of the 1997 NIRC. **This means that Section 108(B)(2) must be read in conjunction with Section 108(B)(1)**. Section 108(B)(2) requires as follows: a) services other than processing, manufacturing or repacking rendered by VAT registered persons in the Philippines; and b) the transaction paid for in acceptable foreign currency duly accounted for in accordance with BSP rules and regulations. **The same provision made reference to Section 108(B)(1) further imposing the requisite c) that the recipient of services must be** ge

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[3] "AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES", dated March 30, 2004.

[4] G.R. No. 190102, July 11, 2012.

> **performing business outside of Philippines. Otherwise, if both the provider and recipient of service are doing business in the Philippines, the sale transaction is subject to regular VAT** as explained in the Burmeister case xxx.
>
> xxx
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> Further, when the provider and recipient of services are both doing business in the Philippines, their transaction falls squarely under Section *[108]* (a) governing domestic sale or exchange of services. Indeed, this is a purely local sale or exchange of services subject to the regular VAT, unless of course the transaction falls under the other provisions of Section *[108]* (b).
>
> **Thus, when Section *[108]* (b) (2) speaks of 'services other than those mentioned in the preceding subparagraph,' the legislative intent is that only the services are different between subparagraphs 1 and 2. The requirements for zero-rating, including the essential condition that the recipient of services is doing business outside the Philippines, remain the same under both subparagraphs**." *(Emphases supplied)*

With regard to petitioner's assertion to use foreign currency as the main consideration in determining whether a person engaged in business conducted outside the Philippines is a dangerous precedent as explained in the *Burmeister case,* to wit:

> "xxx. If the provider and recipient of the 'other services' are both doing business in the Philippines, the payment of foreign currency is irrelevant. **Otherwise, those subject to the regular VAT under Section 102(a) can avoid paying the VAT by simply stipulating payment in foreign currency inwardly remitted by the recipient of services**. To interpret Section 102(b)(2) to apply to a payer-recipient of services doing business in the Philippines is to make the payment of the regular VAT under Section 102(a) dependent on the generosity of the taxpayer. The provider of services can choose to pay the regular VAT or avoid it by stipulating payment in foreign currency inwardly remitted by the

payer-recipient. Such interpretation removes Section 102(a) as a tax measure in the Tax Code, an interpretation this Court cannot sanction. A tax is a mandatory exaction, not a voluntary contribution." *(Emphasis supplied)*

As to petitioner's argument that it is exempt under RA No. 7042, as amended, or the FIA of 1991, because Amadeus Spain is a mere shareholder is untenable. True, mere investment as a shareholder by a foreign corporation in a duly registered domestic corporation shall not be deemed "doing business."[5] It must be stressed however that Amadeus Spain is not a mere shareholder but in fact wholly owns petitioner. While this alone does not mean equate to "doing" or "engaging in business," the same Section 3(d) in RA No. 7042 cited by petitioner states that "doing business" includes "**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.**" *(Emphasis and underscoring supplied)*

A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation, but only for application.[6] Verily, where the law does not distinguish, the courts should not distinguish. There should be no distinction in the application of a law where not is indicated.

In the same vein, petitioner's reliance on the case of *Steelcase Inc.* is also misplaced. While it is true that the imposition of minimum standards concerning sales, marketing, finance and operations is nothing more than an exercise of sound business practice to increase sales and maximize profit, the determination however of whether a foreign corporation is doing business in the Philippines must be judged in light of the attendant circumstances, to wit:

"xxx [T]he appointment of a distributor in the Philippines is not sufficient to constitute 'doing business'

[5] *Commissioner of Internal Revenue v. Interpublic Group of Companies, Inc.*, G.R. No. 207039, August 14, 2019.
[6] *Cynthia S. Bolos v. Danilo T. Bolos*, G.R. No. 186400, October 20, 2010.

> unless it is under the full control of the foreign corporation. On the other hand, if the distributor is an independent entity which buys and distributes products other than those of the foreign corporation, for its own name and its own account, the latter cannot be considered to be doing business in the Philippines. **It should be kept in mind that the determination of whether a foreign corporation is doing business in the Philippines must be judged in light of the attendant circumstances**." *(Emphasis supplied)*

To accentuate, there is no general rule or governing principle laid down as to what can be considered as "doing" or "engaging in" or "transacting" business in the Philippines. Each case must be judged in the light of its peculiar circumstances.[7] The determination of whether a foreign corporation is doing business in the Philippines must be based on the facts of each case.[8] A single act or transaction may be considered as "doing business" when a corporation performs acts for which it was created or exercises some of the functions for which it was organized.[9]

Petitioner likewise assails the Court's finding that several provisions in the ACO Agreement, if taken together, shows Amadeus Spain's control and participation and in running the marketing and distribution of the Amadeus System in the Philippines.

The Court maintains its ruling.

Indeed, the restrictive nature of the ACO Agreement shows that it allowed Amadeus Spain through and together with Amadeus Philippines to further its purpose in the Philippines. Similar to the case of *Top-Weld Manufacturing, Inc. v. ECED, S.A., et al.,*[10] this Court also rules:

> "A perusal of the agreements between the petitioner and the respondents shows that they are highly restrictive gc

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[7] *The Mentholatum Co., Inc., et al. v. Anacleto Mangaliman, et al.*, G.R. No. L-47701, June 27, 1941.
[8] *Cargill, Inc. v. Intra Strata Assurance Corporation*, G.R. No. 168266, March 15, 2020.
[9] *European Resources and Technologies, Inc. and Delfin J. Wenceslao v. Ingenieuburo Birkhahn + Nolte, ingeniurgesellschaft mbh and Heers & Brockstedt Gmbh & Co.*, G.R. No. 159586, January 22, 2007.
[10] G.R. No. L-44944, August 9, 1985.

in nature. The agreements provide in part the following terms:

x x x

10. No Sales in Territory by IRTI

IRTI shall not solicit or cause or permit its employees, licensees, or agents to solicit or make any sales, directly, or indirectly, of WELDING PRODUCTS within or to the Philippines. IRTI agrees to refer to LICENSEE all product inquiries received by IRTI for WELDING PRODUCTS destined for Philippines.

x x x

16. x x x

Restrictive Covenant

LICENSEE will not, directly or indirectly, without the written consent of IRTI at any time during the continuance of this Agreement and for a period of two years after the date of the termination of this Agreement, engage either directly or indirectly in the business of selling products similar to said WELDING PRODUCTS, either as principal, agent, employee or through stock or proprietary interests in a third party entity.

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6. DISTRIBUTOR shall not during the continuance of this agreement distribute products of any other manufacturer or supplier in the Territory assigned to him, which are similar to the Products.

Upon the termination of this agreement by either party, DISTRIBUTOR agrees not to engage, directly or indirectly, in the commercialization, distribution and/or manufacture of products competing with any EUTECTIC + CASTOLIN products covered by this agreement, or of products likely to affect the sale of any EUTECTIC + CASTOLIN products, either as principal, agent, or employee in the Territory, this prohibition to extend for a period of two (2) years from the date of termination, except for the explicit purpose of selling any remaining Products still in DISTRIBUTOR's possession on the date of termination of this agreement which sales shall not be below the DISTRIBUTOR's pretermination selling price for such Products unless such sale is to ECED or its nominee in which case Clause 19 hereof shall govern.

x x x

> We can conclude that assuming the petitioner maintains an independent status, in essence it merely extends to the Philippines the business of the foreign corporations."

It must be remembered that cases filed before this Court are litigated *de novo*, and that **party litigants must prove <u>every minute aspect</u> of their cases.**[11] It is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[12] Claims for tax refunds, when based on statutes granting tax exemption or tax refund, partake of the nature of an exemption; thus, the rule of strict interpretation against the taxpayer-claimant similarly applies.[13]

The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. In the present case, petitioner failed to convince this Court that not only was it entitled to substantive law to the grant of its claims but also that it satisfied all documentary and evidentiary requirements to warrant a successful claim for refund or tax credit.

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by petitioner in its Motion, the Court finds no compelling reason to reverse, amend, or modify the Decision promulgated on November 17, 2021.

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

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

[12] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

[13] *Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.*, G.R. No. 163835, July 7, 2010.

SO ORDERED.

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

We Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice