REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

CITCO INTERNATIONAL SUPPORT SERVICES LIMITED-PHILIPPINE ROHQ,
Respondent.

CTA EB No. 2015
(CTA CASE No. 9102)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
NOV 29 2019
2:27 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on May 22, 2019 of this Court *En Banc* is a Petition for Review filed by petitioner Commissioner of Internal Revenue (CIR) seeking the reversal of the Decision, dated 02 July 2018[1] and the Resolution dated 04 February 2019[2] rendered by the Third Division of this Court, the dispositive portions of which, respectively, read as follows:

Decision dated July 2, 2018:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **PARTIALLY GRANTED.** Respondent Commissioner of Internal Revenue is hereby **ORDERED** to refund in favor of

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[1]Penned by Associate Justice Lovell R. Bautista, concurred in by Associate Justice Esperanza R. Fabon Victorino and Associate Justice Ma. Belen M. Ringpis-Liban, En Banc Docket, pp.16-33.
[2] Penned by Associate Justice Esperanza R. Fabon Victorino, conurred in by Associate Justice Ma. Belen M. Ringpis-Liban, pp.36-39.

petitioner Citco International Support Services Limited- Philippine ROHQ the amount of **Five Million Eight Hundred Fifty-Seven Thousand One Hundred Ninety- Three Pesos and 91/100 (Php5,857,193.91)** representing the latter's unutilized input value added tax arising from its zero-rated sales for calendar year 2013.

SO ORDERED."

Resolution dated February 4, 2019:

"**WHEREFORE**, there being no new matters and issues advanced that will merit reconsideration, let alone modification of the assailed Decision of July 2, 2018, respondent's **Motion for Reconsideration** posted on July 20, 2018, is **DENIED**, for lack of merit.

SO ORDERED."

The following facts of the case as recited by the Court in Division in its Decision[3] and as established by evidence on record[4], read as follows:

"Petitioner (now, respondent) Citco International Support Services Limited - Philippine ROHQ (Citco) is a foreign company duly organized and existing under the laws of the Cayman Islands and licensed to do business in the Philippines as a regional operating headquarters (ROHQ) with principal office address at the 20th Floor Philamlife Tower, 8767 Paseo de Roxas Avenue, Makati City. It is a VAT-registered taxpayer under Bureau of Internal Revenue (BIR) Certificate of Registration No. 9RC0000419141.

Respondent (now, petitioner) Commissioner of Internal Revenue (CIR) is the duly appointed CIR with office address at the BIR Building, Diliman, Quezon City.

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[3] Supra note 2.
[4] Joint Stipulation of Facts and Issues, (JFSI), Division Docket, Vol.I, pp.372-376.

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For CY 2013, petitioner filed its Quarterly VAT Returns (BIR Form No. 2550-Q), which reflected the following entries:

TAXABLE QUARTER	OUTPUT TAX DUE	TOTAL ALLOWABLE INPUT TAX	NET VAT PAYABLE (OVERPAYMENT)	TAX CREDITS/ PAYMENTS	TOTAL AMOUNT PAYABLE (OVERPAYMENT)
1ST (Original)	-	Php 2,587.59	Php (2,587.59)	-	Php (2,587.59)
2nd (Original)	-	4,942,165.88	(4,942,165.88)	-	(4,942,165.88)
2nd (Amended)	-	4,939,578.29	(463,512.89)	-	(463,512.89)
3rd (Original)	-	7,069,763.85	(7,069,763.85)	-	(7,069,763.85)
3rd (Amended)	-	2,591,110.86	(888,700.33)	-	(888,700.33)
4th (Amended)	-	3,514,047.36	-	-	-

On March 27, 2015, petitioner filed its administrative claim for refund of the unutilized input VAT for the period March 1, 2013 to December 31, 2013. As a result, Letter of Authority ("LOA")-050-2015- 00000119 was issued on April 23, 2015 authorizing Revenue Officer Villaflor Lagundi and Group Supervisor Susana Santos to examine petitioner's books of accounts and other accounting records for VAT for the period March 1, 2013 to December 31, 2013, pursuant to the mandatory audit of claims for VAT refunds.

On June 22, 2015, petitioner received respondent's letter dated June 17, 2015 wherein respondent denied petitioner's claim for VAT refund for failure to comply with the requirements under Revenue Memorandum Circular ("RMC") No. 54-2014 since the invoices issued by petitioner's suppliers were either not certified true copies or not covered by Authorities to Print.

On July 22, 2015, petitioner filed the present Petition for Review.

On October 8, 2015, respondent filed his Answer by registered mail wherein he argues, among others, that petitioner failed to demonstrate that the tax being claimed for refund was erroneously or illegally collected, and that petitioner's claim for refund was not fully substantiated by proper documents (e.g., sales invoices, official receipts).

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During trial, petitioner presented the following witnesses: (1) Ms. Olga T. Ponce, petitioner's Finance Manager; and (2) Atty. Adan T. Delamide, the Court-commissioned Independent Certified Public Accountant ("ICPA") for the case.

Petitioner filed its Formal Offer of Evidence on June 28, 2016 wherein it offered *Exhibits* "P-1," "P-1-A," "P-2," "P-2-A," "P-2-B," "P-3," "P-4," "P-5," "P-6," "P-7,' "P-8," "P-9," "P-10," "P-11," "P-12," "P-12-A," "P-13," "P-13-A," "P-14," "P-14-A," "P-15," "P-16," "P-17," "P-17-A," "P-18," "P-18-A," "P-19," "P-20," "P-20-A," "P-21," "P-21-A," "P-22," "P-22-A," "P-23" to "P-28," "P-29" to "P-47," "P-48" to "P-64," "P-65" to "P-79," "P-80" to "P-97," "P-98" to "P-121," "P-122" to "P-140," "P-141" to "P-155," "P-156" to "P-175," "P-176" to "P184," "P-185" to "P-197," "P-198" to "P-279," "P-280" to "P-398," "P-399" to "P-441," "P-442," "P-443," "P-443-1," "P-444," "P-445," "P-445-1," "P-446," "P-446-1," "P-446-2," "P-447," "P-447-1," "P-447-2," "P-448," "P-448-1," "P-448-2," "P-449" to "P-470," "P-471" to "P-491," "P-492" to "P-495," "P-496" to "P-499," "P-500," "P-500-1," "P-501," "P-502," "P-503," "P-504," and "P-505". Respondent filed his Comment (To Petitioner's Formal Offer of Evidence) on June 30, 2016 by registered mail. In the Resolutions dated August 10, 2016 and October 27, 2016, the Court admitted all of petitioner's evidence.

On the other hand, respondent presented its sole witness, Revenue Officer Villaflor A. Lagundi, the person authorized to conduct the examination of petitioner's books of accounts and other accounting records pursuant to the LOA.

Respondent submitted his Formal Offer of Evidence on May 9, 2017 by registered mail wherein he offered Exhibits "R-1," "R-1-a," "R-2"and "R-3," "R-2-a," "R-4" to "R-32" "R-33," "R-33-a," "R-34" to "R-41," "R-39-a," "R-39-b," "R-40-a," "R-42,"and "R-42-a." Petitioner filed its Comment/ Opposition to Respondent's Formal Offer of Evidence on May 26, 2017. In a Resolution dated June 2, 2017, the Court admitted all of respondent's evidence.

After trial on the merits, the Court in Division directed both parties to submit their respective Memoranda. Citco filed its Memorandum[5] on July 13, 2017 while the CIR failed to submit his Memorandum[6] despite notice. Thereafter, the case was considered submitted for decision.

On July 2, 2018, the Court in Division rendered a Decision[7] which partially granted Citco's claim for refund in a reduced amount of P5,857,193.91 representing its excess and unutilized input VAT for CY 2013.

Aggrieved, the CIR filed a Motion for Reconsideration, but was denied in a Resolution[8] dated February 4, 2019. Hence, this Petition for Review was filed.

In the instant petition, the CIR insists that Citco is not entitled to its claim for refund in the amount of P5,857,193.91, allegedly representing its excess and unutilized input value-added tax (VAT) attributable to zero-rated transactions for the CY 2013, considering that it failed to establish that the recipient of its services is doing business outside the Philippines.

We rule to DENY the Petition.

This Court has repeatedly held that in claims for refund, the dispute most often centers on the sufficiency of the documentary evidence to prove the said erroneously paid taxes.

In sum, to be entitled to a refund or tax credit of unutilized VAT, Section 112 (A)[9] of the NIRC, as amended, provides that the following requisites must be satisfied:

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[5] Division Docket, Vol. II, pp.918-934.
[6] Records Verification Report, Division Docket, Vol. II, p.935.
[7] Supra Note 2.
[8] Supra Note 3.
[9] SECTION 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 or 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."

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1. There must be zero-rated or effectively zero-rated sales;

2. Input taxes were incurred or paid;

3. Such input taxes are attributable to zero-rated or effectively zero-rated sales;

4. The input taxes were not applied against any output tax; and

5. The claim for refund was filed within the two-year prescriptive period.

From among the requisites, the Court deems it necessary to discuss only the third requisite considering the CIR's insistence on denying Citco's claim for refund is anchored on the ground that the latter's sale of services does not qualify for zero-rating.

In determining whether Citco's services to its Customer-Affiliates are VAT Zero-Rated, it is an essential condition for zero-rated sales that the recipient of the services is doing business outside the Philippines. Section 108(B)(2) of the NIRC of 1997, as amended provides as follows:

> "SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. -
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> (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:
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> xxx xxx xxx
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> (2) 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);"

Based on the foregoing, in order to subject a sale of service transaction to 0% VAT rate, it is required, *inter alia*, that the services were **"rendered to a person engaged in business outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed" and the consideration therefor was "paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)".**

As clearly and succinctly worded in the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,*[10] in order for the supply of services be VAT zero-rated, the claimant must be able to establish, among others, that the recipient of such services is doing business outside the Philippines.

The Court notes, however, that the provision that was interpreted by the Supreme Court in the *Burmeister* case is Section 102(b)(2) of the NIRC prior to its amendment by RA No. 9337. We quote:

> "The Tax Code not only requires that the services be 'other than processing, manufacturing or repacking of goods and that payment for such services be in acceptable foreign currency accounted for in accordance with BSP rules. **Another essential condition for qualification to zero-rating under Section 102(b)(2) [now 108(B)(2)] is that the recipient of such services is doing business outside the Philippines. While this requirement is not expressly stated in the second paragraph of Section 102(b), this is clearly provided in the first paragraph of Section 102(b) [now 108(B)] where the listed services must be 'for other persons doing business outside the Philippines'. The phrase 'for other persons doing business outside the Philippines' not only refers to the services enumerated in the**

[10] G.R. No. 153205, January 22, 2007.

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first paragraph of Section 102(b) [now 108(B)], but also pertains to the general term 'services' appearing in the second paragraph of Section 102(b) [now 108(B)]. In short, services other than processing, manufacturing, or repacking of goods must likewise be performed for persons doing business outside the Philippines

This can only be the logical interpretation of Section 102(b)(2) [now 108(B)(2)]. 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) [now 108(B)] 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) [now 108(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) [now 108(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) [now 108(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.

When Section 102(b)(2) [now 108(B)(2)] stipulates payment in 'acceptable foreign currency' under BSP rules, the law clearly envisions the payer-recipient of services to be doing business outside the Philippines. Only those not doing business in the Philippines can be required under BSP rules to pay in acceptable foreign currency for their purchase of goods or services from the Philippines. In a domestic transaction, where the provider and recipient of services are both doing business in the Philippines, the BSP cannot require any party to make payment in foreign currency.

Services covered by Section 102(b) [now 108(B)] (1) and (2) are in the nature of export sales since the payer-recipient of services is doing business outside the Philippines. Under BSP rules, the proceeds of export sales must be reported to the Bangko Sentral ng Pilipinas. Thus, there is reason to require the provider of services under Section 102(b) [now 108(B)] (1) and (2) to account for the foreign currency proceeds to the BSP. The same rationale does not apply if the provider and recipient of the services are both doing business in the Philippines since their transaction is not in the nature of an export sale even if payment is denominated in foreign currency.

Further, when the provider and recipient of services are both doing business in the Philippines, their transaction falls squarely under Section 102(a) [now 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 102(b) [now 108(B)].

Thus, when Section 102(b)(2) [now 108(B)(2)l speaks of [s]ervices 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.

Significantly, the amended Section 108([B]) [previously Section 102 (b)] of the present Tax Code clarifies this legislative intent. Expressly included among the transactions subject to 0% VAT are '[s]ervices other than those mentioned in the [first] paragraph [of Section 108(b)] **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 BSP.'
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> **The Court recognizes the rule that the VAT system generally follows the 'destination principle' (exports are zero-rated whereas imports are taxed). However, as the Court stated in American Express, there is an exception to this rule. This exception refers to the 0% VAT on services enumerated in Section 102 [now 108] and performed in the Philippines. For services covered by Section 102(b)(1) and (2) [now 108(B)(2)(1) and (2)], the recipient of the services must be a person doing business outside the Philippines. Thus, to be exempt from the destination principle under Section 102(b)(1) and (2) [now 108(B)(2)(1) and (2)], the services must be (a) performed in the Philippines; (b) for a person doing business outside the Philippines**; and (c) paid in acceptable foreign currency accounted for in accordance with BSP rules. (Emphases supplied)"

Simply stated, the afore-stated provision and jurisprudence contemplates two (2) situations wherein sales can be regarded as zero-rated for VAT purposes, to wit:

1. **Services were rendered to a person engaged in business conducted outside the Philippines**, and the consideration for which is paid for in foreign currency and accounted for in accordance with the rules and regulations of the Banko Sentral ng Pilipinas (BSP); or

2. **Services were rendered to a non-resident person not engaged in business who is outside the Philippines when the services are performed**, and the consideration for which is paid for in foreign currency and accounted for in accordance with the rules and regulations of the BSP.

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In this regard, the Court En Banc believes that when the Supreme Court extended the requirement under the second paragraph of Section 108(B)(2) (*i.e. that the recipient of such services is doing business outside the Philippines*) to the first paragraph, it had the intention to give effect to all provisions of the law.

The cardinal rule in statutory construction requires the Court to give effect to the general legislative intent if that can be discovered within the four corners of the Act. **When the object intended to be accomplished by the statute is once clearly ascertained, general words may be restrained to it and those of narrower import may be expanded to embrace it, to effectuate the intent. Along with this fundamental principle is another, equally well-established, that such a construction is, if possible, to be adopted, as will give effect to all provision of the statute**.[11]

The foregoing law is clear, therefore, to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported at the very least by **BOTH**:

1. SEC Certificate of Non-Registration of Corporation/ Partnership; **AND**

2. Proof of Certificate/ Articles of Foreign Incorporation/ Association or printed screenshots of the US SEC Website showing the state/province/country where the entity was organized.

The presentation of the above stated documents is indispensable for the following reasons:

1. That the recipient of the service is indeed foreign; and

2. It is engaged in business in the country of incorporation/ association (*i.e., a showing of a continuity of commercial dealings and intention to establish a continuous business*).

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[11] Andres Borromeo vs. Fermin Mariano, G.R. No. L-16808, January 3, 1921; *citing* 2 Lewis Sutherland, Statutory Construction, pp. 662, et., seq.; In re Allen [1903], 2 Phil., 630; Code of Civil Procedure, sec. 287.

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In showing that its client-affiliates are non-resident foreign corporations doing business outside the Philippines, Citco presented the following documents:

1. Certification of Authentication (Certificate of Registered Office);[12]

2. Articles of Incorporation of Foreign Affiliates;[13]

3. SEC Certificate of Non-Registration of Company;[14] and

4. Master Service Agreement.[15]

Applying the foregoing, there is no dispute that Citco was able to submit both the SEC Certificate of Non-Registration of Company and Articles of Incorporation of Foreign Affiliates necessary to establish *prima facie* its right to the claim for refund of input VAT representing unutilized input value added tax arising from its zero-rated sales for CY 2013.

Considering that Citco complied with the requirements provided for under NIRC, the grant of refund is proper.

All told, there is no error in the disquisition of judgment rendered by the Court in Division, the same being in accord with the evidence on record and with the applicable law and jurisprudence.

WHEREFORE, premises considered, the Petition for review filed by the CIR is hereby **DENIED**. The Decision dated 02 July 2018 and the Resolution dated 04 February 2019 rendered by the Third Division of this Court are hereby **AFFIRMED.** No pronouncement as to costs.

SO ORDERED.

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

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[12] Division Docket, Vol. II, Exhibits "P-4" to "P-10", pp. 757-780.
[13] ICPA Exhibits "P-449" to "P-470".
[14] Id., Exhibits "P-471" to "P-491".
[15] Division Docket, Vol. II, Exhibit "P-22".

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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 *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice