REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AMADEUS MARKETING PHILIPPINES, INC., *Petitioner*,	**CTA *EB* NO. 2496** (CTA Case No. 9904)
	Present:
- versus -	**DEL ROSARIO,** *PJ,* **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 1 6 2023 2:17pm

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review*[1] filed by petitioner Amadeus Marketing Philippines, Inc. through registered mail on July 21, 2021, assailing the Decision[2] dated January 15, 2021 (assailed Decision) and the Resolution[3] dated June 15, 2021 (assailed Resolution), both rendered by this Court's Second Division (Court in Division) in CTA Case No. 9904 entitled "*Amadeus Marketing Philippines, Inc. vs. Commissioner of Internal Revenue.*" The dispositive portion of the assailed Decision and Resolution read as follows:

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[1] *En Banc (EB)* docket, pp. 6-31.
[2] *EB* docket, pp. 42-60.
[3] *EB* docket, pp. 62-66.

Assailed Decision dated January 15, 2021:

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

Assailed Resolution dated June 15, 2021:

> **WHEREFORE**, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.
>
> **SO ORDERED**.

Petitioner prays that the aforesaid Decision and Resolution be reversed and a new one be issued ordering respondent Commissioner of Internal Revenue (CIR) to refund and/or issue a tax credit certificate in its favor the amount of ₱16,818,797.89, representing its alleged unutilized input value-added tax (VAT) attributable to its zero-rated sales for the 1st, 2nd, 3rd, and 4th quarters of the taxable year (TY) 2016.

THE PARTIES

Petitioner Amadeus Marketing Philippines, Inc. is a corporation duly organized and existing under the laws of the Philippines, with business address at 36th Floor, LKG Tower, 6801 Ayala Avenue, Makati City.[4] It is a corporation duly registered with the Securities and Exchange Commission (SEC) with Company Registration No. A1997-11194.[5] As stated in its Articles of Incorporation, petitioner 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 that 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.[6]

Petitioner is also a VAT-registered entity, as evidenced by its Bureau of Internal Revenue (BIR) Certificate of Registration No. OCN 9RC0000133815 and Taxpayer's Identification

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[4] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Division Docket — Vol. I, p. 327.
[5] Par. 4, Summary of Admitted Facts, JSFI, Division Docket — Vol. I, p. 328.
[6] Par. 5, Summary of Admitted Facts, JSFI, Division Docket — Vol. I, p. 328.

Number (TIN) 005-374-900-000. Such registration was made on January 1, 1998.[7]

Respondent CIR, on the other hand, 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.[8]

THE FACTS

On March 28, 2018, petitioner filed with the BIR an administrative claim for refund of unutilized input VAT, allegedly incurred in the 1st to 4th quarters of 2016, in the amount of ₱16,818,797.89.[9]

However, petitioner's administrative claim for refund was denied per *VAT Refund/Credit Notice* dated June 21, 2018, a copy of which was received by petitioner on July 9, 2018.[10]

On August 8, 2018, petitioner filed a *Petition for Review* with the Court in Division, questioning the denial of its administrative claim for refund.

In his *Answer*[11] filed on September 26, 2018, respondent interposed, among others, the following special and affirmative defenses:

1. Petitioner's claim for refund or issuance of tax credit certificate was denied because it failed to satisfy that it is engaged in a zero-rated or effectively zero-rated sale;

2. Petitioner's claim for refund or issuance of tax credit certificate in the amount of P16,818,797.89 representing its alleged excess and unutilized input VAT paid for the taxable year 2016, were not fully substantiated by proper documents, such as sales invoices and official receipts, under Revenue Regulations No. 7-95 in relation to Sections 113 and 237 of the 1997 Tax Code; and

[7] Par. 6, Summary of Admitted Facts, JSFI, Division Docket — Vol. I, p. 328.
[8] Par. 3, Summary of Admitted Facts, JSFI, Division Docket — Vol. I, p. 327.
[9] Exhibits "P-12" and "P-13", Division Docket — Vol. II, pp. 581-590.
[10] Exhibit "P-66", Division Docket — Vol. II, pp. 450, and 690.
[11] Division Docket — Vol. I, pp. 83-85.

3. Claims for refund are construed strictly against petitioner since the same partakes the nature of exemption from taxation and, as such, are looked upon with disfavor.

During the trial, only petitioner presented evidence supporting its case, and respondent did not present any despite the opportunity granted.

Petitioner filed its *Memorandum* on June 30, 2020. Respondent, however, did not file his memorandum.

On January 15, 2021, the Court in Division rendered the assailed Decision denying petitioner's claim for refund or issuance of tax credit certificate. In arriving at its decision, the Court in Division explained that when a judicial claim for refund or tax credit is an appeal of an unsuccessful administrative claim, the taxpayer must convince the Court that the BIR had no reason to deny its claim. The taxpayer must show to the Court that not only is he entitled under substantive law to his claim for refund or tax credit but also that he has satisfied all the documentary and evidentiary requirements for an administrative claim. It is, therefore, 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. For the Court in Division, the finding of the BIR should be affirmed for the failure of petitioner to show that respondent or the BIR erred in finding that Amadeus IT Group S.A. (AGSA) is doing business in the Philippines.

Not satisfied, petitioner moved for reconsideration, but the same was denied in the equally assailed Resolution dated June 15, 2021.

Undeterred, petitioner filed the instant *Petition for Review* with this Court *En Banc* on July 21, 2021.

On November 4, 2021, the Court *En Banc* issued a Resolution directing respondent to file a comment to petitioner's Petition for Review within ten (10) days from notice.

However, despite due notice, respondent still failed to file his comment. Thus, on March 28, 2022, the instant *Petition* was submitted for decision.

Hence, this Decision.

THE ISSUE

The only issue for the resolution of the Court *En Banc* is:

> **Whether the Honorable Court in Division's Decision dated January 15, 2021, is contrary to law, facts, and the evidence submitted in holding that:**
>
> **a. It remained Petitioner's burden to further prove that Amadeus IT Group S.A. is not engaged in business in the Philippines; and**
>
> **b. Petitioner is not entitled to a tax refund for its unutilized input VAT.**

Petitioner's Arguments:

Petitioner claims that the Court in Division erred in not upholding the *prima facie* evidence it established, which was never rebutted by respondent. Allegedly, the Court in Division ruled that petitioner failed to prove every minute aspect of its case, including the fact that AGSA was not engaged in business in the Philippines. According to petitioner, this is incorrect as it is respondent who failed to overcome the burden of proof shifted to it. In the case of *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte Ltd.*,[12] the Supreme Court clarified that the SEC Certification of Non-Registration proves that an entity is a foreign corporation, while the Articles of Incorporation of the foreign client is *prima facie* evidence that it is not engaged in trade or business in the Philippines. Petitioner submits that it actually went beyond the minimum requirement as it presented more than just the Articles of Incorporation (Company Statute) of AGSA. Hence, petitioner asserts that it was able to show *prima facie* evidence that AGSA was not engaged in business in the Philippines, and therefore, the burden of proof is shifted to respondent to rebut this *prima facie* evidence.

However, instead of rebutting petitioner's *prima facie* evidence, respondent manifested in open court that he would no longer present any evidence. Respondent also did not file any formal offer of evidence. Thus, respondent failed to overcome the *prima facie* fact established that AGSA is a non-

[12] G.R. No. 234445, July 15, 2020.

resident foreign corporation not engaged in business within the Philippines.

Further, in the assailed Resolution, the Court in Division ruled that evidence not formally offered during trial cannot be considered. This rule, according to petitioner, applies with equal force to respondent as a party litigant. Petitioner pointed out that both parties had access to the Travel Agency Management Agreement Systems (TAMS) Distribution Agreement, as this was even the basis of respondent in denying petitioner's application for a VAT refund. For petitioner, the fact that it did not offer the TAMS Distribution Agreement cannot be equated to willfully suppressing evidence as respondent had access to it and could formally offer it since it was also his duty to present the same.

Hence, there being no proof that petitioner's client AGSA is actually doing business in the Philippines, its application for refund should be granted.

In closing, petitioner asserts that it is entitled to the refund of its unutilized input VAT for having satisfied all the requisites that must be complied with by a taxpayer-applicant to successfully obtain a credit/refund of input VAT.

THE COURT'S RULING

Timeliness of the Petition:

Before delving into the merits of the case, the Court *En Banc* shall first determine whether the present *Petition for Review* was timely filed.

Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals states:

> **SEC. 3**. *Who may appeal; period to file petition.* — xxx
>
> xxx xxx xxx
>
> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the

> reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Boldfacing supplied*)

Records show that petitioner received the assailed Resolution on June 21, 2021. Thus, petitioner had fifteen (15) days from June 21, 2021 or until July 6, 2021, to file its *Petition for Review* before the Court *En Banc.*

On July 5, 2021, petitioner filed a *Motion for Extension to file Petition for Review*, asking for an additional period of fifteen (15) days from July 6, 2021 or until July 21, 2021, to file its *Petition for Review.* Said motion was granted in the *Minute Resolution* dated July 9, 2021.

Considering that the present *petition* was filed through registered mail on July 21, 2021, which is within the extended period granted by the Court, the same was timely filed.

The Court shall now proceed to determine the merits of the instant *Petition for Review.*

The core of the instant controversy rests on the determination of whether AGSA, to whom petitioner rendered services, is doing business in the Philippines.

Central to the resolution of this petition is Section 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended, since it is undisputed that the services rendered by petitioner to AGSA are other than the processing, manufacturing, or repacking of goods. For easy reference, Section 108(B)(2) of the same law provides:

> 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**. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate.
>
> (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) 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); (*Boldfacing supplied*)

Based on the foregoing provisions, for the sale of services to be subject to a 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.*"

In *Accenture, Inc. vs. Commissioner of Internal Revenue*,[13] the Supreme Court ruled that to come within the coverage of Section 108(B)(2) of the NIRC of 1997, as amended, the taxpayer must show that the entity to whom it rendered services is a foreign corporation not engaged in business in the Philippines, thus:

The evidence presented by Accenture may have established that its clients are foreign. This fact does not automatically mean, however, that these clients were doing business outside the Philippines. After all, the Tax Code itself has provisions for a foreign corporation engaged in business within the Philippines and vice versa, to wit:

SEC. 22. *Definitions*. — When used in this Title:

xxx xxx xxx

(H) The term "resident foreign corporation" applies to a foreign corporation engaged in trade or business within the Philippines.

(I) The term nonresident foreign corporation applies to a foreign corporation not engaged in trade or business within the Philippines.

Consequently, **to come within the purview of Section 108(B)(2), it is not enough that the recipient of**

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

> **the service be proven to be a foreign corporation; rather, it must be specifically proven to be a nonresident foreign corporation**. (*Boldfacing supplied*)

Accordingly, for the zero-rating of services under Section 108(B)(2) of the NIRC of 1997, as amended, to apply, the following preconditions must concur:

1. The services rendered must be other than processing, manufacturing, or repacking of goods;

2. The recipient of such services must be a foreign corporation doing business outside the Philippines; and

3. The consideration for such services is paid in foreign currency and duly accounted for pursuant to existing BSP rules and regulations.[14]

Under the obtaining circumstances, the Court *En Banc* finds that petitioner failed to satisfy the *second* requisite, justifying the denial of its claim for refund.

We explain.

Petitioner believes that by presenting in evidence AGSA's Foreign Articles/Certificate of Association, along with the SEC Certificate of Non-Registration, it had already demonstrated that AGSA is a foreign entity doing business outside of the Philippines.

We are not convinced.

Indeed, the Court *En Banc*, in a litany of cases,[15] ruled that the presentation of *both* Foreign Articles/Certificate of Incorporation and SEC Certificate of Non-Registration will ordinarily prove that an entity is a foreign corporation not doing business in the Philippines. However, an exception to this rule is when there is clear and convincing evidence that would prove *otherwise*.

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[14] See *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor of Mindanao, Inc.*, G.R. No. 153205, January 22, 2007.

[15] *Nokia (Philippines), Inc. vs. Commissioner of Internal Revenue*, CTA *EB* No. 1313, September 22, 2016; *Deutsche Knowledge Service Pte. Ltd. vs. Commissioner of Internal Revenue*, CTA *EB* No. 1290, August 16, 2016; and *Chevron Holdings, Inc. vs. Commissioner of Internal Revenue*, CTA *EB* No. 940, October 28, 2014.

In the instant case, it must be recalled that in the *VAT Refund/Credit Notice*[16] dated June 21, 2018, the BIR denied petitioner's administrative claim, as follows:

> Verification disclosed that the taxpayer renders services to Amadeus IT Group S.A. for the year under audit. Further, **investigation disclosed that Amadeus IT Group S.A. to whom the taxpayer claims to have zero-rated sales, have rendered services to the taxpayer in the Philippines as shown in the Travel Agency Management Agreement Systems (TAMS) Distribution Agreement. In the said agreement, the taxpayer shall pay Amadeus IT Group S.A. a standard fee per month per terminal installed with Amadeus Pro Tempo, Pro Wed, and Vista**.
>
> In view thereof, **the sale to Amadeus IT Group S.A. cannot be considered as zero-rated sales since the former to whom the taxpayer renders to service is doing business in the Philippines**. This violates the third requirement pursuant to Section 108 of NIRC to be considered as zero-rated sales.
>
> In the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, the Supreme Court held that in order to for the supply of services to be considered VAT zero-rated under Section 108 (B)(2) of the NIRC of 1997, as amended the following requisites must be satisfied:
>
> > 1. The services by a VAT-registered person must be other than processing, manufacturing, or repacking of goods;
> >
> > 2. The payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and
> >
> > 3. The recipient of such services is doing business outside the Philippines. (*Boldfacing and underscoring supplied*)

Based on the foregoing, the BIR denied petitioner's claim for refund finding that the entity to which petitioner rendered services, *i.e.*, AGSA, was doing business in the Philippines, based on the TAMS Distribution Agreement.

[16] Exhibit "P-66", Division Docket — Vol. II, pp. 450 and 690.

Citing the Supreme Court's ruling in *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*,[17] the Court in Division pointed out that when a judicial claim for refund or tax credit is an appeal of an unsuccessful administrative claim, the taxpayer must convince the Court that respondent or the BIR had no reason to deny its claim. The pertinent portion of the Supreme Court's ruling reads:

> Verily, the Court has emphasized in *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue* that **a judicial claim for tax refund or tax credit brought to the CTA is by no means an original action but an appeal by way of a petition for review of the taxpayer's unsuccessful administrative claim; hence, the taxpayer has to convince the CTA that the quasi-judicial agency a quo should not have denied the claim, and to do so the taxpayer should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA, including whatever was required for the successful prosecution of the administrative claim as the means of demonstrating to the CTA that its administrative claim should have been granted in the first place**. (*Boldfacing supplied*)

In this case, petitioner appealed its unsuccessful administrative claim for refund with the BIR. Thus, it is imperative for petitioner to illustrate before this Court not only that it is entitled to a refund, but also that the CIR should not have denied it in the first place.

However, as aptly observed by the Court in Division in the assailed Decision:

> **While notably, petitioner made certain allegations and arguments, in the instant *Petition for Review*, against the findings of the BIR for denying its claim, thereby admitting the existence of the TAMS Distribution Agreement entered into by Amadeus IT Group S.A. referred to the denial letter of the BIR, petitioner never presented or offered any evidence to prove the said allegations**. Needless to state, the basic rule is that mere allegation is not evidence and is not equivalent to proof. Interestingly, despite the admission of petitioner of the existence of the said Distribution Agreement, it did not offer the same in evidence for this Court's examination. This then calls for the application of the presumption "[t]*hat evidence willfully suppressed would be adverse if produced.*"

[17] G.R. No. 188260, November 13, 2013.

> Moreover, **it is noted that the main allegations or arguments of petitioner, in the instant *Petition for Review*, is that what is being earned by Amadeus IT Group S.A., under the said TAMS Distribution Agreement, are royalties, and that the same are merely "*passive income*," which is allegedly defined as "*separate from general income earned from active pursuit of business.*"** Thus, according to petitioner, on the basis thereof, Amadeus IT Group S.A. cannot qualify as doing business in the Philippines. To show that royalties are passive income, petitioner cites, as legal basis, the following provisions of the NIRC of 1997, as amended by RA No. 9337, to wit: xxx (*Boldfacing supplied*)

Indeed, petitioner's failure to present the TAMS Distribution Agreement, which is the basis of the denial of its administrative claim, is fatal to its judicial appeal of an unsuccessful administrative claim for refund. In fact, as the Court in Division correctly ruled, the failure of petitioner to present the TAMS Distribution Agreement effectively deprived the Court to determine whether the finding of respondent or the BIR was erroneous.

Even assuming for the sake of argument that the TAMS Distribution Agreement is considered, as the same was attached in petitioner's *Motion for Reconsideration* of the assailed Decision, the same will only bolster the finding that AGSA is doing business in the Philippines.

Under the said Distribution Agreement [18] (wherein Amadeus Global Travel Distribution S.A. is referred to as "AMADEUS," while petitioner is referred to as "AMADEUS NMC"), the following provisions are found:

> The Main Agreement Definitions are applicable under this Agreement.
>
> 'Subscriber' means any travel agent or other entity which has entered into a Subscriber Agreement with AMADEUS NMC for access to the AMADEUS System, and enters into a License Agreement with AMADEUS NMC pursuant to Article 2 below;
>
> xxx xxx xxx

[18] Division Docket, pp. 811-830.

'Product' means any software and service described in Appendix A hereto, and any related Documentation, as updated from time to time by AMADEUS, distributed by AMADEUS NMC pursuant to this Agreement;

xxx xxx xxx

'Documentation' means technical data and printed materials related to the Product, and any user or operator manuals provided to AMADEUS NMC for use with the Product;

xxx xxx xxx

2.1 **AMADEUS appoints AMADEUS NMC as its sole distributor of the Product to Subscribers in the Territory defined under Article 3 below.**

2.2 AMADEUS NMC shall be responsible for marketing the Product to Subscribers located in AMADEUS NMC Territory.

2.3 Subject to the terms and conditions of this Agreement, AMADEUS hereby authorizes AMADEUS NMC to grant to Subscribers, non-exclusive, non-transferable licenses to use the Product for the purpose of facilitating the provision of reservation functions and related services, and to interface with agreed upon travel agency third party software. AMADEUS NMC shall enter into a License Agreement substantially in the form of Appendix C attached hereto, with each Subscriber.

On a case by case basis, AMADEUS-NMC may be authorized by AMADEUS to enter into such License Agreements with providers headquartered in the AMADEUS-NMC Territory.

2.4 Subject to the prior written consent of AMADEUS, which consent shall not be unreasonably withheld, AMADEUS NMC may be authorized to grant such non-exclusive, non-transferable licenses to affiliate offices owned by shareholders of AMADEUS NMC.

xxx xxx xxx

3.1 AMADEUS NMC is granted the following Territory:

THE PHILIPPINES

xxx xxx xxx

> 12.1 Except as provided in Section 4.4, AMADEUS NMC agrees and acknowledges that AMADEUS has and shall retain all title, copyright and other proprietary rights in and to the Product and that AMADEUS NMC shall obtain only such rights to use or market the Product as are expressly provided in this Agreement. (*Boldfacing supplied*)

Admittedly, Amadeus Global Travel Distribution S.A. and AGSA are one and the same.[19] Thus, based on the foregoing, while AGSA designated petitioner as its "sole distributor" in the Philippines, the former has, in effect, appointed petitioner as its agent in the Philippines.

By the contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.[20]

In *MR Holdings, Ltd. vs. Sheriff Carlos P. Bajar, et al.* ("MR Holdings case"),[21] the Supreme Court made the following pronouncements as to what constitutes "doing business in the Philippines" on the part of a foreign corporation, to wit:

> .... The question whether or not a foreign corporation is doing business is dependent principally upon the facts and circumstances of each particular case, considered in the light of the purposes and language of the pertinent statute or statutes involved and of the general principles governing the jurisdictional authority of the state over such corporations.
>
> Batas Pambansa Blg. 68, otherwise known as 'The Corporation Code of the Philippines,' is silent as to what constitutes 'doing' or 'transacting' business in the Philippines. Fortunately, jurisprudence has supplied the deficiency and has held that the term 'implies a continuity of commercial dealings and arrangements, and contemplates, 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, the purpose and object for which the corporation was organized.' In *Mentholatum Co., Inc. vs. Mangaliman,*[22] this Court laid down the test to determine whether a foreign company is 'doing business,' thus:
>
> > '... **The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it**

[19] Paragraph 8, Petitioner's Motion for Reconsideration dated February 1, 2021, Division Docket, pp. 794-809.
[20] Article 1868 of the Civil Code of the Philippines (Republic Act No. 386).
[21] G.R. No. 138104, April 11, 2002.
[22] 72 Phil. 524 (1941).

> **and turned it over to another.** (*Traction Cos. vs. Collectors of Int. Revenue* [C.C.A., Ohio], 223 F. 984,987.) ...'

The traditional case law definition has metamorphosed into a statutory definition, having been adopted with some qualifications in various pieces of legislation in our jurisdiction. For instance, Republic Act No. 7042, otherwise known as the 'Foreign Investment Act of 1991,' defines 'doing business' as follows:

> '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 eight(y) (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.' (*Boldfacing supplied*)

Likewise, Section 1 of Republic Act No. 5455, [23] provides that:

> SECTION 1. *Definition and scope of this Act.* — (1) x x x the phrase 'doing business' shall include soliciting orders, purchases, service contracts, opening offices, whether called 'liaison' offices or branches; appointing representatives or distributors who are domiciled in the Philippines or who in any calendar year stay in the Philippines for a period or periods totaling one

[23] An Act to Require that the Making of Investments and the Doing of Business within the Philippines by Foreigners or Business Organizations Owned in Whole or in Part by Foreigners Should Contribute to the Sound and Balanced Development of the National Economy on a Self-Sustaining Basis, and for Other Purposes, Enacted without executive approval, September 30, 1968 (65 O.G. No. 29, p. 7410).

> hundred eighty 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**.
>
> There are other statutes[24] defining the term 'doing business' in the same tenor as those above-quoted, and as may be observed, **one common denominator among them all is the concept of 'continuity**. (*Boldfacing supplied*)

Likewise, in *Commissioner of Internal Revenue vs. British Overseas Airways Corporation, et al.*,[25] the Supreme Court ruled, thus:

> ... **In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character**. (*Boldfacing supplied*)

Simply put, in order that a foreign corporation may be considered engaged in trade or business, its business transaction must be continuous.[26] And such continuity may be shown by "*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 for the purpose and object of the business organization*" and is exemplified by "*the appointment of a local agent.*"

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[24] Article 65 of Presidential Decree No. 1789 ("A Decree to Revise, Amend, and Codify the Investment, Agricultural and Export Incentives Acts to be Known as the Omnibus Investment Code"), which took effect on January 16, 1981, defines "doing business" to include soliciting orders, purchases, service contracts, opening offices, whether called "liaison" offices or branches; appointing representatives or distributors who are domiciled in the Philippines or who in any calendar year stay in the Philippines 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.

See also Article 44 of the Omnibus Investments Code of 1987 (Executive Order No. 226, effective July 16, 1987).

[25] G.R. Nos. L-65773-74, April 30, 1987.

[26] *N.V. Reederij "Amsterdam" and Royal Interocean Lines vs. Commissioner of Internal Revenue*, G.R. No. L-46029, June 23, 1988.

In this case, petitioner acts as the representative of AGSA in that while the latter retains all title, copyright, and other proprietary rights in and to the subject Product, petitioner has been authorized to grant to Subscribers, non-exclusive, non-transferable licenses to use the same. In other words, instead of AGSA itself granting licenses to Subscribers, as the owner of the said Product, it is being done by petitioner on behalf of the former in the Philippines. Thus, there can be no doubt that petitioner is constituted as the local agent of AGSA in the Philippines.

Further, by entering into the TAMS Distribution Agreement dated January 1, 2001 with petitioner, AGSA clearly intended to establish a *continuous business* in the Philippines.

Correspondingly, with petitioner acting as an agent of AGSA, the finding that AGSA is doing business in the Philippines will even be bolstered, if not, strengthened, considering the TAMS Distribution Agreement.

In fine, since petitioner's services do not qualify as zero-rated for VAT purposes, it is not entitled to claim a refund of input VAT for the 1st, 2nd, 3rd, and 4th quarters of TY 2016.

Given the foregoing disquisition, the Court *En Banc* finds no cogent reason to deviate from the conclusions reached by the Court in Division in the assailed Decision and Resolution.

WHEREFORE, premises considered, the *Petition for Review* filed by Amadeus Marketing Philippines, Inc. is **DENIED** for lack of merit.

The Decision dated January 15, 2021 and Resolution dated June 15, 2021 rendered by the Court in Division in CTA Case No. 9904 are **AFFIRMED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

We Concur:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN RINGPIS-LIBAN
Associate Justice

(With due respect, I join PJ's Concurring Opinion)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA G. MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

AMADEUS MARKETING PHILIPPINES, INC., Petitioner,	**CTA EB No. 2496** (CTA Case No. 9904)
	Present:
- versus -	**DEL ROSARIO, *P.J.*, UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** and **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 16 2023 2:17

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by Amadeus Marketing Philippines, Inc. and affirming the assailed Decision dated January 15, 2021 and assailed Resolution dated June 15, 2021 of the Court in Division in CTA Case No. 9904.

In addition, I wish to point out that petitioner's judicial claim for refund was belatedly filed and the Court in Division had no jurisdiction to take cognizance of the case.

Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, specifies the requisites in claiming refund of input value-added tax (VAT), including the taxpayer's remedy of appeal to the Court of Tax Appeals (CTA), *viz.*:

"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: xxx

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: *Provided*, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.

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." (*Boldfacing supplied*)

Section 112(C) of the NIRC of 1997, as amended, speaks of two (2) periods:

(1) The ninety (90)-day period, which serves as a waiting period to give time for the CIR to act on the administrative claim for refund or credit; and,
(2) The thirty (30)-day period, which refers to the period for filing a judicial claim with the Court.[1]

Complementing Section 112(C) of the NIRC of 1997, as amended, is Section 7(a)(1) and (2) of Republic Act (RA) No. 1125,[2] as amended by RA No. 9282,[3] which vests exclusive appellate jurisdiction to the CTA to review by appeal the decision or inaction of the CIR in cases involving refunds of internal revenue taxes, *viz.*:

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[1] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.
[2] An Act Creating the Court of Tax Appeals.
[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 of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

> "Sec. 7. *Jurisdiction.* - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>
> 2. **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial**; x x x" (*Boldfacing supplied*)

Stated otherwise, the taxpayer may file the appeal within thirty (30) days after the CIR denies the administrative claim within the ninety (90)-day waiting period, **or** it may file the appeal within thirty (30) days from the expiration of the ninety (90)-day period if there is inaction on the part of the CIR.[4] It bears to emphasize, however, that the judicial claim must be filed within a period of 30 days after the receipt of the CIR's decision or ruling or after the expiration of the 90-day (previously 120-day) period, **whichever is sooner**.[5]

The inaction of the CIR on a claim during the ninety (90)-day period is, by express provision of law, "deemed a denial" of a claim, and the taxpayer has thirty (30) days from the expiration of the ninety (90)-day period to file its judicial claim with the Court; otherwise, its failure to do so renders the "deemed a denial" decision of the CIR final and unappealable.[6]

Both the ninety (90)-day period for the CIR to decide on the refund claim and the thirty (30)-day period to file the appeal before the Court are jurisdictional, and the failure to observe both periods is cause for dismissal of the action for lack of jurisdiction.[7]

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[4] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015, *citing Commissioner of Internal Revenue vs. San Roque Power Corporation,* G.R. No. 187485, February 12, 2013.
[5] *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016.
[6] *Commissioner of Internal Revenue vs. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013.
[7] *Applied Foods Ingredients Company, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 184266, November 11, 2013.

From the filing of petitioner's administrative claim for refund on **March 28, 2018**,[8] respondent had ninety (90) days therefrom, or until **June 26, 2018** within which to decide the refund claim. *Sans* a decision being rendered on June 26, 2018, petitioner had thirty (30) days therefrom, or until **July 26, 2018** within which to file its judicial claim.

Records reveal that petitioner's administrative claim for refund was denied by the BIR, through Regional Director Glen A. Geraldino, in a VAT Refund/Credit Notice dated June 21, 2018.[9] However, said Notice was received by petitioner only on **July 9, 2018**, or beyond the ninety (90)-day period for the CIR to decide the administrative claim. Needless to say, such Notice did not in any way alter the jurisdictional period within which an appeal should be made in Court, as mandated by law. Thus, the filing of the Petition for Review before the Court in Division on **August 8, 2018** is beyond the prescribed period.

To reiterate, the ninety (90)-day period for the CIR to decide on the refund claim, and the thirty (30)-day period for the filing of the judicial claim with the Court, are both **mandatory and jurisdictional**.[10] Strict compliance with the mandatory and jurisdictional conditions is essential and necessary for such claim to prosper. Noncompliance with the mandatory periods and non-observance of the prescriptive periods bar a taxpayer's claim for tax refund.[11] Thus, petitioner's failure to comply with the said periods is fatal to its cause.

In fine, I submit that petitioner's judicial claim for refund was filed beyond the period prescribed by law and the Court in Division had no jurisdiction to take cognizance of the case.

All told, I VOTE to DENY the present Petition for Review for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice

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[8] Exhibits "P-12" and "P-13", Docket, Vol. II, pp. 581-590.
[9] Exhibit "P-66", Docket, Vol. II, p. 690.
[10] *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 203249, July 23, 2018.
[11] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 173241, March 25, 2015.