

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

**AMADEUS
PHILIPPINES, INC.**

MARKETING CTA EB NO. 2598
(CTA Case No. 10094)

Petitioners,

Present:

**DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, JJ.**

-versus-

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

SEP 13 2023

[Signature] 3:57 p.m.

x

DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court is a Petition for Review,¹ filed on 10 May 2022 by petitioner Amadeus Marketing Philippines, Inc., seeking the reversal and setting aside of the Decision, dated 17 November 2021² (“Assailed Decision”), and Resolution, dated 4 April 2022³ (“Assailed Resolution”), both rendered by the Court in Division. Petitioner prays for this Court to render judgment ordering respondent to refund or issue a tax credit certificate to petitioner in the amount of ₱21,245,798.57 representing unutilized input VAT attributable to zero-rated sales for the 1st to 4th quarters of taxable year (“TY”) 2017.

¹ *EB* Records, pp. 6-29.

² Division Records Vol. 3, pp. 1377-1395.

³ *Id.*, pp. 1433-1442.

The Parties

Petitioner Amadeus Marketing Philippines, Inc. is a corporation duly organized and existing under the laws of the Philippines⁴ with business address at 36/F LKG Tower, 6801 Ayala Avenue, Makati City.⁵ It is registered with the Securities and Exchange Commission (“SEC”) on 11 June 1997⁶ with Company Registration No. A1997-11194⁷ and with the Bureau of Internal Revenue (“BIR”) on 1 January 1998 as VAT-taxpayer under Certificate of Registration No. OCN 9RC0001310469E and Taxpayer’s Identification Number (TIN) 005-374-900-00000.⁸

Petitioner is a wholly-owned subsidiary of Amadeus IT Group S.A. (“Amadeus Spain”), a company domiciled in Madrid, Spain. It is primarily established to market, promote, and distribute the Amadeus System to local users, particularly travel agencies, acting as neutral *agent* for its parent company, Amadeus Spain.⁹ In its Articles of Incorporation, it states that it 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 which performs various functions, such as real-time 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.¹⁰

Meanwhile, respondent Commissioner of Internal Revenue (“CIR”) 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.¹¹

The Facts

The relevant factual antecedents found by the Court in Division and culled from the records of the case follow ✓

⁴ Par. 2, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (“JSFI”), Division Records Vol. 1, p. 392.

⁵ Admission, par. 2, Petition for Review, *id.*, p. 10 and par. 2, Answer, *id.*, p. 80.

⁶ Exhibit “P-6”, TY 2017 Audited Financial Statements with Complete Notes, Division Records Vol. 2, p. 921.

⁷ Exhibit “P-6”, TY 2017 Audited Financial Statements with Complete Notes, *id.*, p. 910

⁸ Exhibit “P-8”, Certificate of Registration (BIR Form 2303), *id.*, p. 470.

⁹ Exhibit “P-6”, TY 2017 Audited Financial Statements with Complete Notes, *id.*, p. 921; Exhibit “P-50”, Par. 4, Recitals ACO (Amadeus Commercial Organization) Agreement, *id.*, p. 486.

¹⁰ Exhibit “P-2”, SEC Registration and Articles of Incorporation and By-Laws, *id.*, p. 972.

¹¹ Par. 4, Summary of Admitted Facts, JSFI, Division Records Vol. 1, p. 392.

On 1 January 2015, Amadeus Philippines entered into an Amadeus Organization (“ACO”) Agreement with its parent company, Amadeus Spain. Under the ACO Agreement, petitioner will promote, make available and facilitate access to the Territory (Philippines) and will act as a neutral agent for all Amadeus Spain participants and subscribers under the agreement. Amadeus System is a fully automated reservations and distribution system with the ability to perform comprehensive information, communications, reservations, ticketing and related functions worldwide. Amadeus System is also defined under the ACO Agreement as the processing facilities related to computerized travel information and distribution hardware and software systems are developed, owned, operated and/or distributed by Amadeus Spain.¹²

Pursuant to the ACO Agreement, Amadeus Philippines rendered services to Amadeus Spain¹³ and issued billing invoices for the year 2017. For the payments received from Amadeus Spain, petitioner issued VAT zero-rated official receipts.¹⁴ In the course of its operations, petitioner allegedly incurred and paid input VAT arising from domestic purchases of goods and services which were attributable to its zero-rated sales.¹⁵

Thereafter, petitioner filed its quarterly VAT returns for 2017.¹⁶

On 1 April 2019, petitioner filed with BIR Revenue District Office No. 50 an administrative claim for refund of its excess and unutilized input VAT and an Application for Tax Credits/ Refunds (BIR Form No. 1914) allegedly incurred from the 1st to 4th quarters of 2017 in the amount of P21,245,798.57.¹⁷

On 21 May 2019, petitioner received an undated letter of the BIR through Revenue District Officer Claire B. Corpus denying petitioner’s administrative claim.¹⁸

Aggrieved, petitioner filed the Petition for Review before the CTA on 19 June 2019.¹⁹

¹² Exhibit “P-50”, Recitals, ACO (Amadeus Commercial Organization) Agreement, Division Records Vol. 2, p. 486.

¹³ Exhibit “P-57”, Amended Sworn Statement of Krizel C. Sansano in lieu of Direct Testimony, *id.*, pp. 448; Manifestation with Attached Motion for Reconsideration, Division Records Vol. 3, p. 1144.

¹⁴ Exhibit “P-58”, Amended Sworn Statement of Myra Luna Davalos in lieu of Direct Testimony, Division Records Vol. 2, pp. 806-810.

¹⁵ Par. 10, Petition for Review, Division Records Vol. 1, pp. 13-15; Exhibit “P-57”, Amended Sworn Statement of Krizel C. Sansano in lieu of Direct Testimony, Division Records Vol. 2, pp. 451-452.

¹⁶ Exhibit “P-57”, Amended Sworn Statement of Krizel C. Sansano in lieu of Direct Testimony, *id.*, pp. 452-453; Exhibits “P-10”, “P-11”, “P-12”, and “P-13”, *id.*, pp. 557-572

¹⁷ Exhibits P-3, P-3a, and P-3b, *id.*, pp. 471-481.

¹⁸ Exhibit P-40, *id.*, p. 1060.

¹⁹ Division Records Vol. 1, pp. 10-22.

On 17 November 2021, the Court in Division rendered the Assailed Decision denying petitioner's claim for refund or for issuance of tax credit certificate.²⁰

On 6 December 2021, petitioner filed its Motion for Reconsideration²¹ of the Assailed Decision while respondent, on 21 February 2022, filed through registered mail his Comment/Opposition (to Petitioner's Motion for Reconsideration dated 03 December 2021).²²

On 4 April 2022, the Court in Division issued the Assailed Resolution.²³

Thus, on 10 May 2022, petitioner filed the instant Petition for Review.²⁴ Respondent filed his Comment thereto on 8 July 2022.²⁵

On 30 August 2022, the Court issued a Resolution submitting the instant case for decision.²⁶

Hence, this Decision.

Issue²⁷

The sole issue submitted for the Court *En Banc*'s resolution is:

Whether the Court in Division's Resolution dated 4 April 2022 is contrary to law, facts, and the evidence submitted in holding that petitioner failed to overturn the administrative findings of respondent.

Arguments of the Parties

Petitioner's Arguments²⁸

Petitioner presents the following arguments:

²⁰ Division Records Vol. 3, pp. 1377-1395.

²¹ *Id.*, pp. 1396-1420.

²² *Id.*, pp. 1424-1431.

²³ *Id.*, pp. 1433-1442.

²⁴ *EB* Records, pp. 6-29.

²⁵ *Id.*, pp. 75-82.

²⁶ *Id.*, pp. 120-122.

²⁷ *See* Assignment of Errors, Petition for Review, *id.*, p. 13.

²⁸ *See* Discussion, Petition for Review, *id.*, pp. 11-25.

First, the Court in Division erred in finding that petitioner failed to overturn the administrative findings of respondent. Petitioner agrees with the Court in Division that it does not need to show that Amadeus Spain is exclusively doing business abroad as it would be enough to show that Amadeus Spain is doing business outside the Philippines for purposes of determining zero-rated transactions.

Second, petitioner is entitled to its tax refund for unutilized input VAT in view of its full compliance with the requisites for refund/tax credit of input VAT attributable to zero-rated sales as follows: (1) it is a VAT-registered taxpayer; (2) its administrative and judicial claims were seasonably filed; and (3) it is engaged in zero-rated or effectively zero-rated sales particularly that: (i) its services are other than processing, manufacturing, or repacking of goods; (ii) the recipient of its services is doing business outside the Philippines; (iii) the payments for its services are in acceptable foreign currency accounted for in accordance with the Bangko Sentral ng Pilipinas (“BSP”) rules; (iv) it had input VAT during the four quarters of taxable year 2017 in the aggregate amount of P21,245,798.57 which are attributable to its zero-rated or effectively zero-rated sales for the same period; and (v) its excess input taxes were not applied against any output VAT liability.

Respondent’s Arguments²⁹

Meanwhile, respondent maintains that petitioner has the burden of proof to establish that the recipient of its service is not doing business in the Philippines. According to respondent, the relationship between petitioner and Amadeus Spain reduces the former to a mere extension of the latter through which it conducts business in the Philippines.

Respondent disagrees with petitioner’s interpretation of the Assailed Decision that petitioner does not need to show that Amadeus Spain is exclusively doing business abroad as it would be enough to show that Amadeus Spain is doing business outside the Philippines. Respondent claims that the Assailed Decision simply stated that petitioners failed to overcome respondent’s finding and basis of denying its administrative claim.

The Ruling of the Court *En Banc*

The Petition for Review is unmeritorious. The Court in Division did not err in finding that petitioner failed to overturn the administrative findings of respondent.

²⁹ See Comment/Opposition, *id.*, pp. 75-78.

Petitioner failed to establish that it is engaged in zero-rated sales pursuant to Section 108(B)(2) of the National Internal Revenue Code of 1997, as amended (“Tax Code”).

After a review of petitioner’s arguments and pertinent records of the instant case, the Court *En Banc* finds no reason to reverse the Assailed Decision and Assailed Resolution of the Court in Division. The arguments raised by petitioner in its Motion for Reconsideration before the Court in Division and in the instant Petition for Review are substantially the same and were exhaustively discussed by the Court in Division. Particularly, in its Motion for Reconsideration before the Court in Division and in the present Petition for Review, petitioner chiefly argues that it is not required for its service-recipient, Amadeus Spain, to be exclusively doing business outside the Philippines for purposes of determining zero-rated transactions.

This was exhaustively discussed by the Court in Division in the Assailed Resolution as follows:

“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, 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*, the Supreme Court reiterated its ruling in the *Burmeister* case that a parallel approach should be accorded to the renumbered provisions of Section 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 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* x x x.

XXX XXX XXX

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; Citations omitted.)

At this juncture it is worthy to revisit the relevant portion in the *Tax Code*:

“SECTION 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –

(A) Rate and Base of Tax – ...

(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, 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);

...”
(Emphasis supplied.)

In the more recent case of *Chevron Holdings, Inc. v. Commissioner of Internal Revenue*,³⁰ the Supreme Court reiterated that to qualify for VAT zero-rating under **Section 108(B)(2) of the Tax Code** requires the concurrence of four (4) conditions: *first*, the services rendered should be other than “processing, manufacturing or repacking of goods”; *second*, the services are performed in the Philippines; *third*, the service-recipient is (a) a person engaged in business conducted outside the Philippines; or (b) a non-resident person not engaged in a business which is outside the Philippines when the services are performed; and, *fourth*, the services are paid for in acceptable foreign currency inwardly remitted and accounted for in conformity with BSP rules and regulations.

In the present case, the *first* and *second requirements* are undisputed. The issue in the case at bar is petitioner’s compliance with the *third requirement*. Following the *Chevron Case*, for purposes of VAT zero-rating, it must be shown that the service-recipient is not doing business in the Philippines. As found by the Court in Division, Amadeus Spain is doing business in the Philippines to petitioner as follows:

“First, the Court notes that Amadeus Philippines is a wholly-owned subsidiary of Amadeus Spain.

Second, to revisit the ACO Agreement between the subsidiary and its parent, it bears stressing that Amadeus Philippines is tasked to promote, make available and facilitate access to the Amadeus System to the subscribers located in the Amadeus ACO Territory (Philippines) and to act as a neutral agent for all Amadeus Spain participants and subscribers under the agreement. More significantly, the ACO Agreement is replete with provisions that govern Amadeus Spain's control and participation in running the marketing and distribution of the Amadeus System in the Philippines, a few of the significant provisions are as follows: ✓

³⁰ G.R. No. 215159, 5 July 2022.

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- Nothing in the agreement shall constitute a license to Amadeus Philippines to use or sub-license its own right to the software which runs the Amadeus System, other than in accordance with the terms of the agreement.
- Ownership of any and all intellectual property, including those generated by Amadeus Philippines in the performance of its obligations such as, without limitation, any developments, improvements, enhancements, modifications, or changes to the Amadeus Products or Amadeus System shall remain the exclusive property of Amadeus Spain.
- Amadeus Philippines, with respect to the performance of the services under the agreement, shall not solicit business, or open its own offices or facilities outside Philippine territory without the prior written consent of Amadeus Spain.
- Amadeus Spain reserves its right to negotiate and contract with multinational subscribers for the provision of services and products by Amadeus Philippines.
- Amadeus Spain is obliged to provide improvements and additions to Amadeus Products and Services, market information and promotional materials, basic and continuing training programs covering all Amadeus Products and Services, sales training, training programs for technical support staff and 24-hour central Customer Services/Help Desk.
- Amadeus Philippines is obliged to follow and comply with all the privacy policies and procedures established by Amadeus Spain.
- Amadeus Spain has the right to terminate the agreement if Amadeus Philippines violates the non-competition provisions, significantly deviates from the business plan or fails to meet the targets set by the parent and subsidiary by a significant margin.

Clearly, the ACO Agreement paved the way for Amadeus Spain through and together with Amadeus Philippines to further advance its purpose to continually promote, market, and distribute the Amadeus System in the Philippines. These and its powers above, fall squarely under the definition of “doing business in the Philippines” under Section 3 (d) of Republic Act No. 7042, to wit:

“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 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: 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.”

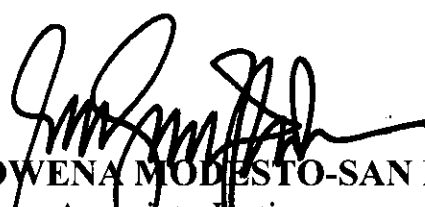
Thus, the Court in Division did not err in denying petitioner’s prayer for refund in the amount of ₱21,245,798.57 representing its unutilized input taxes for the 1st to 4th quarters of TY 2017.

In view of petitioner’s failure to show that it is engaged in zero-rated sales pursuant to **Section 108(B)(2) of the Tax Code**, it becomes unnecessary to determine petitioner’s compliance with the remaining requisites under **Section 112 of the Tax Code, as amended**, to successfully claim a tax refund or tax credit certificate of alleged input VAT.

There being no new matters or issues raised in the Petition for Review before the Court *En Banc* and there being no reversible error committed by the Court in Division, the Court *En Banc* finds no cogent reason to reverse the Assailed Decision and Resolution.

WHEREFORE, in light of the foregoing considerations, the Petition for Review filed by Amadeus Marketing Philippines, Inc. is hereby **DENIED** for lack of merit. The Assailed Decision, dated 17 November 2021, and Assailed Resolution, dated 4 April 2022, are hereby **AFFIRMED**.

SO ORDERED.


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

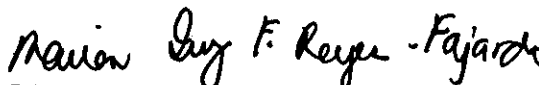
WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice



MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
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.


ROMAN G. DEL ROSARIO
Presiding Justice