

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF
INTERNAL REVENUE,

Petitioner,

- versus -

MAERSK GLOBAL SERVICES
CENTRES (PHILIPPINES) LTD.,

Respondent.

CTA EB No. 2665
(CTA Case No. 10022)

Present:

DEL ROSARIO, PJ,
RINGPIS-LIBAN,
MANAHAN,
BOCORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.

Promulgated:

OCT 11 2023

[Signature]
11:50 am

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DECISION

REYES-FAJARDO, J.:

This Petition for Review filed on July 28, 2022,¹ by the Commissioner of Internal Revenue, seeks to overturn the Decision dated January 26, 2022² and the Resolution dated July 4, 2022,³ in CTA Case No. 10022. The challenged Decision and Resolution partially granted Maersk Global Services Centres (Philippines) Ltd.'s unutilized input value-added tax (VAT) refund, attributable to its zero-rated sales, for the four (4) quarters of taxable year (TY) 2017, in the total amount of Thirty-Five Million Two Hundred Thirty-Six Thousand Three Hundred Seventy-Nine and 03/100 Pesos (₱35,236,379.03).

¹ Rollo, pp. 1-18.

² *Id.*, pp. 25-46.

³ *Id.*, at pp. 48-53.

PARTIES

Petitioner is the duly appointed Commissioner of Internal Revenue with office address at Bureau of Internal Revenue (BIR) Building, Diliman, Quezon City where he may be served with summons, processes, orders, and notices, from the Honorable Court.⁴

Respondent is a foreign corporation, duly organized and existing under the laws of Hong Kong, and licensed to do business in the Philippines as a regional operating headquarter, with principal office at Levels 5-8, North Wing, Estancia Office, Capitol Commons, Meralco Avenue, Brgy. Oranbo, Pasig City.⁵

FACTS

On September 12, 2018, respondent filed with the BIR, an application for VAT refund, seeking for the refund or tax credit of input VAT in the amount of ₱37,943,875.08, for the four (4) quarters of TY 2017.⁶

On January 8, 2019, respondent received a letter dated December 4, 2018, issued by petitioner, through Ms. Erlinda A. Simple, Assistant Commissioner of Internal Revenue Assessment Service of the BIR, denying its claim for VAT refund on the ground that respondent's zero-rated sales of services were supposedly rendered to its ultimate parent company.⁷

On February 7, 2019, respondent filed a Petition for Review with the Court of Tax Appeals (CTA),⁸ docketed as CTA Case No. 10022.

On January 26, 2022, the Court in Division rendered the challenged Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the *Petition for Review* filed by [respondent] Maersk Global Services Centres (Philippines), Ltd. on February 7, 2019, is **PARTIALLY GRANTED**. Accordingly, [petitioner] is **ORDERED TO REFUND OR TO**

⁴ Par. 1, Summary of Admitted Facts, Joint Stipulation of Issues ("JSI"), Docket, p. 214.

⁵ Petition for Review, Docket, p. 10.

⁶ Par. 2, Summary of Admitted Facts, JSI, Docket, p. 214.

⁷ Par. 3, Summary of Admitted Facts, JSI, Docket, p. 214.

⁸ Docket (CTA Case No. 10022), pp. 10-21.

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ISSUE A TAX CREDIT CERTIFICATE in favor of [respondent] in the total amount of **₱35,236,379.03**, representing its excess and unutilized input VAT attributable to its zero-rated sales for the four quarters of taxable year 2017.

SO ORDERED.

On March 10, 2022, petitioner filed a Motion for Partial Reconsideration (Re: Decision promulgated on 26 January 2022) with the Court in Division.⁹

On July 4, 2022, the Court in Division rendered the challenged Resolution, denying petitioner's Motion for Partial Reconsideration, the dispositive portion of which reads:

WHEREFORE, in light of the foregoing considerations, the instant **MOTION FOR PARTIAL RECONSIDERATION (Re: Decision Promulgated on 26 January 2022)** is hereby **DENIED** for lack of merit.

SO ORDERED.

On July 28, 2022, petitioner filed a Petition for Review with the Court *En Banc*,¹⁰ to which respondent filed its comment on September 16, 2022.¹¹

By Resolution dated October 12, 2022, this case was submitted for decision.¹²

ISSUES

1. Did the Court in Division err in ruling that evidence not presented during administrative proceedings may be considered in determining respondent's claim for refund?
2. Did the Court in Division err in ruling that respondent is entitled to a partial refund amounting to **₱35,236,379.03**,

⁹ *Id.* at pp. 602-616.

¹⁰ *Rollo*, pp. 1-19.

¹¹ *Id.* at pp. 59-71.

¹² *Id.* at pp. 92-93.

representing its unutilized input VAT attributable to its zero-rated sales for the four quarters of TY 2017?

ARGUMENTS

Petitioner states that the Court in Division erred in considering respondent's evidence presented for the first time at the judicial level in partly granting the latter's input VAT refund claim. In support thereof, petitioner invokes *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue (Pilipinas Total Gas)*,¹³ as authority.

Petitioner further imputes fault on the Court in Division's ruling that respondent is entitled to a partial refund amounting to ₱35,236,379.03, representing unutilized input VAT attributable to its zero-rated sales covering the four quarters of TY 2017 because the latter has no zero-rated sales from which the input taxes may be attributed. Specifically, respondent failed to establish that its client Maersk Line A/S is a non-resident foreign corporation not doing business in the Philippines, as required by Section 108(B)(2) of the 1997 National Internal Revenue Code (NIRC), as amended.

Petitioner, too, contends that respondent failed to demonstrate that its services were rendered to a person engaged in international shipping under Section 108 (B)(4) of NIRC, as amended.

On the other hand, respondent points out that petitioner's Petition for Review is a replica of his contentions in his Motion for Partial Reconsideration (Re: Decision promulgated on 26 January 2022), all of which have already been weighed, and found wanting by the Court in Division in the challenged Decision and Resolution.

RULING

The Petition is denied.

Lacking in merit is petitioner's assertion that the Court in Division is precluded to consider evidence presented for the first time at the judicial level. In an administrative claim for input VAT refund,

¹³ G.R. No. 207112, December 8, 2015, citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007.

Pilipinas Total Gas envisaged two (2) situations, namely: (1) dismissal thereof by the BIR due to the taxpayer's failure to submit complete documents, despite the former's express notice or request; or (2) inaction tantamount to a denial, or denial *other than* due to taxpayer's failure to submit complete documents despite notice or request.

Under the *first* situation, the refund claimant must show the Court its entitlement to a VAT refund under substantive law, and submission of complete supporting documents at the administrative level explicitly requested by the BIR.

Under the *second* situation, the refund claimant may present all evidence to prove its entitlement to a VAT refund, and the Court will consider all evidence offered, even those **not** presented before respondent at the administrative level.¹⁴

Petitioner's denial of respondent's administrative claim for input VAT refund falls under the *second* situation. Specifically, the BIR did *not* deny said administrative claim on account of respondent's failure to submit complete documents, despite its express notice or request. Rather, petitioner rejected respondent's input VAT refund claim because of the following reasons:¹⁵

Evaluation of your claim disclosed the following observations/ finding which are vital in the processing of the same, to wit:

1. Unallowable input tax of ₱1,921,791.16...
2. Disallowed input taxes in the aggregate amount of ₱2,983,437.19...
3. Overclaimed input VAT of ₱36,699.02...
4. Disallowed input tax amounting to ₱74, 521.74...
5. Output Vat of ₱119,884.20...
6. Unsupported ripened portion of prior years' deferred input tax amounting to ₱3,830,189.59...
7. Absence of Official Receipt (OR) Nos. 246 and 247.

¹⁴ See *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015 citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007 as cited in *Stefanini Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 10188, November 23, 2022 and *Commissioner of Internal Revenue v. CE Luzon Geothermal Power Company, Inc.*, CTA EB Case No. 2132 (CTA Case Nos. 7180 & 7279), January 28, 2021.

¹⁵ Exhibit "P-14.," Docket, pp. 470-471.

8. Aside from the aforementioned adjustments and deductions, pertinent documents revealed a fatal observation, viz:

“The recipient of the export sales of services is not properly established.” ...

Following *Pilipinas Total Gas*, the Court may consider respondent’s evidence, irrespective of whether such evidence was presented at the administrative level. *Philippine Airlines, Inc. v. Commissioner of Internal Revenue (PAL)*¹⁶ confirmed that in the exercise of the Court’s appellate jurisdiction, it is *not* precluded from considering evidence that was not presented in the administrative claim before the BIR:

Section 8. Court of record; seal; proceedings. - The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the forms of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.

As such, parties are expected to litigate and prove every aspect of their case anew and formally offer all their evidence. No value is given to documentary evidence submitted in the Bureau of Internal Revenue unless it is formally offered in the Court of Tax Appeals. Thus, the review of the Court of Tax Appeals is not limited to whether or not the Commissioner committed gross abuse of discretion, fraud, or error of law, as contended by the Commissioner. As evidence is considered and evaluated again, the scope of the Court of Tax Appeals’ review covers factual findings.

More recently, *Commissioner of Internal Revenue v. Philippine Bank of Communications (PBC)*¹⁷ pronounced that in a judicial claim for refund, what is crucial is the evidence presented by the claimant before the Court:

As applied in the instant case, since the claim for tax refund/credit was litigated anew before the CTA, the

¹⁶ G.R. Nos. 206079-80 and 206309, January 17, 2018.

¹⁷ G.R. No. 211348, February 23, 2022.

latter's decision should be solely based on the evidence formally presented before it, notwithstanding any pieces of evidence that may have been submitted (or not submitted) to the CIR....

Consistent with *PAL* and *PBC*, the Court in Division correctly ruled that as a court of record, it may consider all evidence formally offered and admitted in this case, even if some of it has not been submitted at the administrative level.

Also misplaced is petitioner's invocation of Section 108(B)(2) of the NIRC, as amended, to justify the rejection of respondent's input VAT refund claim.

True, the allowance of a refund claim of excess and unutilized input VAT is predicated upon the existence of refund claimant's zero-rated or effectively zero-rated sales, as required in Section 112(A)¹⁸ of the NIRC, as amended.¹⁹ Equally true is that among the provisions on zero-rated sales is Section 108(B)(2)²⁰ of same Code. Yet, even if we assume that respondent failed to adhere to Section 108(B)(2) of the same Code, it would *not* adversely affect respondent's input VAT refund claim here. The reason is obvious – respondent's claim of zero-rated sales is founded on Section 108(B)(4) of the NIRC, as amended, and *not* Section 108(B)(2) of the same Code.

Equally unavailing is petitioner's claim that respondent failed to successfully prove that its client Maersk Line A/S is engaged in international shipping, as required under Section 108(B)(4) of the NIRC, as amended.

¹⁸ 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 ...

¹⁹ See *Maibarara Geothermal, Inc. v. Commissioner of Internal Revenue*, G.R. No. 250479, November 14, 2022.

²⁰ SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* -

...
(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:

...
(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);

Section 108(B)(4) of the NIRC, as amended, reads:

SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties.— The following services performed in the Philippines by VAT- registered persons shall be subject to zero percent (0%) rate:

...

(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:

...

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

...²¹

Indeed, Section 108(B)(4) of the NIRC, as amended, requires the recipient of refund claimant's services to be a person engaged in international shipping, among others. However, *en contra* with petitioner's posture, the pieces of evidence presented by respondent collectively and successfully show that its client Maersk Line A/S is engaged in international shipping. For instance:

First. The authenticated Articles of Association for Maersk Line A/S²² attested that the main objects of the latter are to carry on shipping, chartering and other transport business, commercial, service, and industrial activities at home and abroad, investment in fixed assets and financing and other related activities along with authenticated Certificate of Residence issued by Danish Customs and Tax Administration²³ and Certification of Non-Registration of Maersk Line A/S issued by the Securities and Exchange Commission.²⁴

Second. Under the Service Agreement dated October 15, 2007, executed by and between A.P. Moller-Maersk A/S and respondent, the former owns container vessels and containers, and operates worldwide, through its subsidiaries contracted the

²¹ Boldfacing supplied.
²² Exhibit "P-4," Docket, pp. 447-453.
²³ Exhibit "P-5," Docket, pp. 454-456.
²⁴ Exhibit "P-6," Docket, p. 457.

services of the latter related to back-office tasks including documentation and certain other processes.²⁵

Subsequently, A.P. Moller-Maersk A/S, Maersk Line A/S and respondent entered into a Novation Agreement dated January 31, 2015, whereby A.P. Moller-Maersk A/S transferred all its container shipping activities to Maersk Line A/S, and respondent agreed to render services stated in the Service Agreement dated October 15, 2007, to Maersk Line A/S effective February 1, 2015.²⁶

Third. Witness Rochelle V. Duclay testified that beginning February 1, 2015, A.P. Moller-Maersk A/S transferred its container shipping activities to Maersk Line A/S and respondent performed corporate and administrative services for Maersk Line A/S in connection with its international shipping operations.²⁷

In fine, respondent satisfactorily demonstrated compliance with all the conditions for VAT zero-rating under Section 108(B)(4) of

²⁵ BIR Records, pp. 93-104.
Novation Agreement

On this 31st of day of January, 2015, the following novation agreement (the "Novation Agreement" is concluded between:

- (i) A.P. Moller-Maersk A/S (hereinafter "APMM"), company reg. no. (CVR No.) 22756214, with its principal place of business at Esplanaden 50, 1098, Copenhagen K, Denmark;
- (ii) Maersk Line A/S (hereinafter "ML"), company reg. no. (CVR No.) 32345794, with its principal place of business at Esplanaden 50, 1098, Copenhagen K, Denmark; and
- (iii) Maersk Global Service Centres (Philippines) Ltd. (hereinafter "GSC"), company SEC reg. A199809559, with its principal place of business at Level 5-8, North Wing, Estancia Offices Capitol Commons, Meralco Avenue, Barangay Oranbo, Pasig City 1600, Philippines.

....

WHEREAS:

- (I) APMM and GSC entered into Service Agreement dated October 15, 2007 (hereinafter the "Contract");
- (II) APMM intends to transfer all its container shipping activities to ML, with such transfer to take effect on 1 February 2015 or such later date to be announced (hereinafter the "Effective Date"); and
- (III) APMM wishes to novate to ML, ML wishes to accept, and GSC wishes to consent, to the novation of all APMM's rights, benefits, obligations, and liabilities under the Contract. (Boldfacing supplied)

²⁶ Exhibit "P-2," Docket, pp. 434-437.

²⁷ Exhibit "P-16," Docket, pp. 94-109.

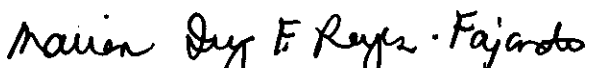
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the NIRC, as amended. As such, the Court in Division may *not* be blamed for partially granting respondent's refund of unutilized input VAT refund attributable thereto, covering the four (4) quarters of TY 2017, to the extent of ₱35,236,379.03.


To conclude, "[a]lthough the burden of proof to establish entitlement to a refund is on the taxpayer-claimant, the Court has consistently held that once the minimum statutory requirements have been complied with, the claimant should be considered to have successfully discharged their burden to prove its entitlement to the refund. After the claimant has successfully established a *prima facie* right to the refund by complying with the requirements laid down by law, the burden is shifted to the opposing party, *i.e.*, the BIR, to disprove such claim."²⁸

WHEREFORE, the Petition for Review filed on July 28, 2022, by the Commissioner of Internal Revenue in CTA EB No. 2665, is **DENIED**, for lack of merit. The Decision dated January 26, 2022 and the Resolution dated July 4, 2022 in CTA Case No. 10022 are **AFFIRMED**.

SO ORDERED.


MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice

²⁸ *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*, G.R. No. 215159, July 5, 2022.

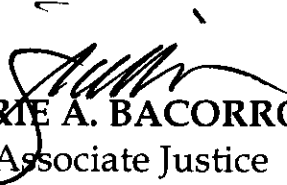
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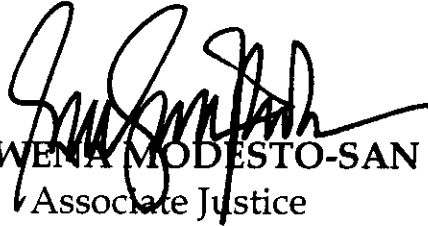
MA. BELEN M. RINGPIS-LIBAN
Associate Justice



CATHERINE T. MANAHAN
Associate Justice



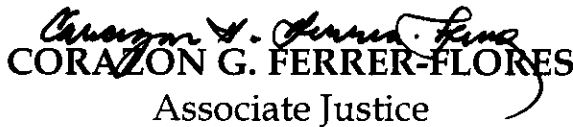
JEAN MARIE A. BACORRO-VILLENA
Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



LANEÉ S. CUI-DAVID
Associate Justice




CORAZON G. FERRER-FLORES
Associate Justice

ON LEAVE

HENRY S. ANGELES
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