

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

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PARLANCE SYSTEMS, INC.,
Petitioner,

CTA EB NO. 570
(CTA CASE No. 7459)

~ versus ~

Present:

Acosta, *PJ*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, *and*
Cotangco-Manalastas, *JJ*.

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

JUN 24 2010 *last preliminary*
3:30 p.m.

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DECISION

ACOSTA, PJ:

This is an appeal, pursuant to Section 18 of Republic Act (R.A.) No. 1125, as amended by Section 11 of R.A. No. 9282, and Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), from the November 13, 2009 Resolution of the Court of Tax Appeals Second Division denying the motion for

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reconsideration of the decision of the same Court promulgated on July 9, 2009 which dismissed the petition for review for lack of merit.

The pertinent facts which were aptly narrated in the assailed Decision of the Court *a quo* are hereunder reproduced:

“Petitioner Parlance Systems, Inc. is a corporation duly organized and existing under the Philippine Laws, with principal office at the G/F PLDT Jupiter Warehouse, Reposo, corner Jupiter Street. It is registered with the Board of Investments (BOI) under the *Omnibus Investments Code of 1997 (Executive Order No. 226, as amended)*, with BOI Certificate of Registration No. 2002-074 and was granted a Pioneer Status under the category of New IT Export Service Firm.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with authority to exercise the functions of said office including *inter alia*, the power to refund unutilized input VAT attributable to zero-rated sales. He holds office at the BIR National Office Building, Diliman, Quezon City.

On the following dates, petitioner filed its Quarterly VAT Returns for taxable year 2004:

Quarter	Date Filed	Exhibit
1 st Quarter	April 20, 2004	D
2 nd Quarter	July 19, 2004	E
3 rd Quarter	October 19, 2004	F
4 th Quarter	January 24, 2005	G
4 th Quarter (amended)	February 10, 2005	H

On the other hand, the Quarterly VAT Returns for taxable year 2005 was filed on the following dates:

Quarter	Date Filed	Exhibit
1 st Quarter	April 21, 2005	I
1 st Quarter (amended)	April 20, 2006	J
2 nd Quarter	July 20, 2005	K
3 rd Quarter	October 25, 2005	L
3 rd Quarter (amended)	April 20, 2006	M
4 th Quarter	January 26, 2006	N
4 th Quarter (amended)	April 20, 2006	O



On March 30, 2006, petitioner filed its administrative claim with the BIR. However, due to respondent's failure to act on such claim, petitioner filed the present Petition for Review on April 20, 2006." (*References omitted*)

After trial, the Court *a quo* handed a decision on July 09, 2009 denying due course to the petition for review and consequently, dismissed the same for lack of merit. This conclusion was reached after finding that petitioner failed to prove the two other requirements for zero-rating of sale of service enunciated in the case of Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,¹ namely: that the services is paid in acceptable foreign currency and accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations; and that the recipient of such services is doing business outside the Philippines. Accordingly, without zero-rated receipts, petitioner's claimed input tax of P45,293,942.48 allegedly attributable thereto for the second, third and fourth quarters of 2004 and the four quarters of 2005 cannot be refunded. The *fallo* of the questioned Decision reads:

"WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED DUE COURSE** and accordingly **DISMISSED** for lack of merit.

SO ORDERED."

Undaunted, petitioner filed a Motion for Reconsideration on August 10, 2009 but the same was denied in the Court *a quo*'s Resolution promulgated on November 13, 2009. The dispositive part thereof reads:



¹ G.R. No. 153205, January 22, 2007.

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

SO ORDERED.”

Dissatisfied, petitioner filed on December 28, 2009, within the extended period, the present Petition for Review. The Court gave due course to the said Petition on February 16, 2010 and later submitted the case for decision on April 30, 2010 after taking note that petitioner already filed its Memorandum on March 25, 2010 and that respondent has failed to file his Memorandum within the given period.

In this present Petition for Review, petitioner argued that its sale of service solely to a non-resident foreign corporation which were paid for in acceptable foreign currency and accounted for under the BSP rules and regulations is subject to Value-Added Tax (VAT) at zero percent pursuant to the provisions of Section 108(B) of the National Internal Revenue Code, *as amended*, and Revenue Regulations No. 7-95 and 16-2005 and the ruling of the Supreme Court in the case of Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch).²

It argued that the ultimate user of its services is Echostar Satellite LLC but the invoices were coursed through Echostar Global Services Corporation and Echostar Communications Corporation, all of which are non-resident foreign corporation being organized under the laws of the United States of America, and are not doing business in the Philippines. Petitioner alleged that Echostar Satellite LLC is a provider of satellite television services in the United States, and is the one in need of its call center

² G.R. No. 152609 dated June 29, 2005.

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services; that Echostar Global Services Corporation, which is licensed to transact in the Philippines, only handled representation but did not avail of its services; and that Echostar Communications Corporation is the holding company of both corporations. To support this allegation, petitioner attached as annexes ZZ, AAA and BBB of its Petition the certifications issued by the Securities and Exchange Commission stating that Echostar Communication Corporation is not a registered corporation while Echostar Global Services Corporation is only a holder of license to transact business in the Philippines; and the affidavit of Ms. Sylvia Altizer.

Petitioner also argued that its services were paid in acceptable foreign currency and accounted for in accordance with the BSP rules and regulations citing the affidavit of the commissioned independent CPA which is attached as Annex YY of the Petition. Specifically, it argued that it received check payments denominated in US dollars from its client Echostar Satellite LLC via international courier which were then deposited either to its dollar savings account or dollar time deposit account both maintained with the Philippine Bank of Communications.

Petitioner further argued that the report of the commissioned independent CPA complied with Section 2, Rule 13 of RRCTA. Accordingly, the commissioned independent CPA examined and subsequently submitted a report attaching thereto the summaries of invoices and other supporting relevant documents. The said report and the summaries, inclusive of all its sub-markings, were testified upon by the commissioned independent CPA based on the previously executed affidavit and the same were formally offered as evidence before the Court *a quo*.

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Finally, petitioner argued that the audit of the commissioned independent CPA and the other one conducted by the respondent both confirmed the fact that it is entitled to the claim for refund on input tax attributable to zero-rated sales albeit of different amounts, and although these findings are not binding upon this Court, the same should be given weight considering that these were conducted by two independent parties not related in any way to the petitioner.

The lone issue for consideration of this Court is whether or not petitioner is entitled to a refund or issuance of tax credit certificate in the amount of P47,690,215.83 representing the alleged unutilized input tax attributable to zero-rated sales for taxable years 2004 and 2005 pursuant to Section 112(A) of the 1997 National Internal Revenue Code (NIRC), as amended, in relation to Section 108(B)(2) of the same Code. Corollary thereto is the determination of whether the Court *a quo* erred in denying due course petitioner's appeal.

The instant Petition for Review must fail. Petitioner's arguments presented before this Court were already correctly addressed in the assailed Decision and Resolution of the Court *a quo*.

The remedy to claim for refund or tax credits of input tax attributable to zero-rated sales is specifically governed by Section 112(A) of the 1997 National Internal Revenue Code (NIRC), as amended, which provides:

"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

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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 of 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.”

Based on the foregoing provisions of the NIRC, it is indispensable that in claims for the issuance of a tax credit certificate or refund of unutilized input tax the claimant must have zero-rated or effectively zero-rated sales.

As earlier mentioned, it is petitioner’s allegation that it rendered call center service to Echostar Satellite LLC, a non-resident foreign company, not doing business in the Philippines, and that the consideration for such services were paid in acceptable foreign currency and accounted for in accordance with the BSP rules and regulations. Petitioner therefore argued that its sales qualify for VAT zero-rating under Section 108(B)(2) of the NIRC, *as amended*, which provides:

“Section 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) Service 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).”

Apparently, the services under the foregoing provisions of the NIRC other than processing, manufacturing or repacking of goods mentioned in Section 108(B)(1) of the NIRC, is subject to zero percent value added tax. However, in order that such

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services will qualify for VAT zero rating, the Supreme Court held in the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*³ that 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 for zero-rating under Section 102(b)(2) [now Section 108(B)(2)] is that the recipient of such services is doing business outside the Philippines.

The basis and importance of the other condition that the recipient of such services must be doing business outside the Philippines to qualify for zero-rating was explained by the Supreme Court in the same Burmeister case, viz:

“xxx 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) 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 first paragraph of Section 102(b), but also pertains to the general term ‘services’ appearing in the second paragraph of Section 102(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). If the provider and recipient of the ‘other services’ are both doing business in the Philippines, the payment of foreign currency is irrelevant. Otherwise, those subject to the regular VAT under Section 102(a) can avoid paying the VAT by simply stipulating payment in foreign currency inwardly remitted by the recipient of services. To interpret Section 102(b)(2) to apply to a payer-recipient of services doing business in the Philippines is to make the payment of the regular VAT under Section 102(a) dependent on the generosity of the taxpayer. The provider of services can choose to pay the regular VAT or avoid it by stipulating payment in foreign currency inwardly remitted by the payer-recipient. Such interpretation removes Section 102(a) as a tax measure in the Tax Code, an interpretation this Court cannot sanction. A tax is a mandatory exaction, not a voluntary contribution.”



³ Note 1, *supra*.

In the case at bar, while it was established that petitioner is engaged in the operation of a customer interaction center, commonly known as call center,⁴ which is obviously a form of service other than processing, manufacturing, or repacking of goods, petitioner however failed to prove that the recipient of such services is doing business outside the Philippines. Therefore, petitioner's reliance on the ruling of the Supreme Court in the case of Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)⁵ is misplaced since that case involved a recipient of services doing business outside the Philippines as emphasized in the *Burmeister* case.

Review of the record of the case reveals that the documents⁶ presented as evidence before the Court *a quo* are indeed not enough to prove that the recipient of the call center services rendered by petitioner is doing business outside the Philippines, or stated differently, is not engaged in business in the Philippines. The Court *a quo* correctly noted the following findings:

"The Court finds the foregoing submitted evidence insufficient to prove that petitioner's client is a non-resident foreign corporation doing business outside the Philippines. The identity, corporate existence, and place of business had not been clearly established. Petitioner failed to present the duly executed contract between petitioner and Echostar Satellite LLC and the latter's articles of incorporation or registration. With these documentary evidence, the Court could have determined whether Echostar Satellite LLC is doing business within or outside of the Philippines. The SEC "certification of non-registration" only proves that the records of SEC do not show the registration of a particular corporation or partnership. It does not prove that a corporation or partnership is duly existing and is doing business outside the Philippines."

⁴ Page 89, *Rollo*.

⁵ Note 2, *Supra*.

⁶ Certification from the Securities and Exchange Commission (SEC) attesting to the fact that Echostar Global Services Corporation is a foreign corporation, not doing business in the Philippines and maintains only a representative office in the country (Exhibit C); Certificate of Corporate Filing/Information (Exhibit DDD); Certification of Non-registration of Echostar Communication Corporation (Exhibit BBB); and Certification of Non-registration of Echostar Satellite LLC issued by the SEC (Exhibit FFF).

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Certainly, the Court could not properly determine whether petitioner's client is not doing business in the Philippines without the foregoing documents being presented as evidence before the Court *a quo*. Failing to prove that its client is not doing business in the Philippines, petitioner's sale of service would therefore not qualify for zero-rating.

Aside from the fact that herein petitioner has failed to prove that its client is not doing business in the Philippines, it likewise failed to prove that its services was paid for in acceptable foreign currency and accounted for in accordance with the BSP rules and regulations.

In an attempt to establish this important requirement that the services were paid for in acceptable foreign currency and accounted in accordance with the BSP rules and regulations, petitioner cited the report of the commissioned independent CPA, which states:

“[p]etitioner receives check payments from Echostar via international courier, which are then deposited either to petitioner's dollar savings account at Philippine Bank of Communications (PBCom) or placed in a dollar time deposit in the same bank. Collections of zero-rated sales are supported by official receipts and the corresponding bank-validated deposits slips or certificates of time deposit (DTD). The official receipts issued to acknowledge collections are imprinted with petitioner's TIN-V and BIR's permit to print and the words 'zero-rated'.”

The foregoing report of the commissioned independent CPA is insufficient to prove compliance of this requirement without the supporting documents, from which the findings and conclusion in the report are based, being formally offered as evidence. Petitioner's allegation that it already submitted the relevant supporting documents together with its Formal Offer of Evidence on October 11, 2007 before the

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Court *a quo* is pointless considering that in this jurisdiction no evidentiary value can be given the pieces of evidence submitted by the parties, as the rules on evidence require that the documents must be formally offered before the court.⁷ Here, it is unfortunate that the records of the case itself reveal that petitioner failed to formally offer those mentioned documents as evidence. The Court *a quo* correctly ruled in this wise:

“This Court cannot ascertain the accuracy of the Report of the Independent CPA because petitioner failed to submit and formally offer in evidence the aforesaid pertinent documents, such as its official receipts, passbooks or bank statements for dollar savings account with PBCom, bank-validated deposit slips, certificates of time deposit, and other relevant documents, which will prove petitioner’s receipt of foreign currency remittances for call center services rendered for the subject period of claim.”

The conclusion reached by the Court *a quo* is in accordance with the ruling of the Supreme Court in the case of Commissioner of Internal Revenue vs. Manila Mining Corporation⁸ that CTA Circular No. 1-95, as amended by CTA Circular No. 10-97, in the interest of speedy administration of justice, was promulgated to avoid the time-consuming procedure of presenting, identifying and marking of documents before the Court. Accordingly, the respondent in that case is not relieve of its imperative task of pre-marking photocopies of sales invoice and receipts and submitting the same to the court after the independent CPA shall have examined and compared them with the originals. Without presenting the pre-marked documents as evidence, from which the summary and schedules were based, the court cannot verify the authenticity and veracity of the independent auditor’s conclusions.

⁷ Section 34, Rule 132 of the Revised Rules on Evidence and Rafael Arsenio S. Dizon, in his capacity as the Judicial Administrator of the Estate of the deceased Jose P. Fernandez, vs. Court of Tax Appeals and Commissioner of Internal Revenue, G.R. No. 140944, April 30, 2008.

⁸G.R. No. 153204, August 31, 2005.



It is to be emphasized that cases filed before the Court of Tax Appeals (CTA) are litigated *de novo* and the petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA.⁹ While the CTA is not governed strictly by technical rules of evidence, as rules of procedure are not ends in themselves but are primarily intended as tools in the administration of justice, the presentation of the official receipts, passbooks or bank statements for dollar savings account with PBCom, bank-validated deposit slips, certificates of time deposit, and other relevant documents mentioned in the assailed Decision, which will prove petitioner's receipt of foreign currency remittances for call center services rendered for the subject period of claim, similar to the presentation of purchase invoices and/or receipts in the Manila Mining Corporation case,¹⁰ is not a mere procedural technicality which may be disregarded considering that it is the only means by which the Court may ascertain and verify the truth of petitioner's claim.

Moreover, the alleged favorable findings of the Bureau of Internal Revenue on petitioner's claim for refund, which is sought to be considered in this case, was likewise correctly disposed of by the Court *a quo*, viz:

"Although, records shows that respondent issued a Post Reporting Notice dated March 17, 2008 (*Exhibit "1"*) and a Memorandum Report of Revenue Officer Ryan L. Dagalangit (*Exhibit "2"*), favoring the grant of petitioner's claim for refund of input tax for taxable years 2004 and 2005, said favorable findings is not binding upon this Court. The said Memorandum Report and the Post Reporting Notice were not even signed and approved by Manuel V. Mapoy, the Revenue District Officer of RDO No. 49, North Makati."

⁹ Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 145526, March 16, 2007.

¹⁰ Note 8, *supra*.

It is well-established in our jurisdiction that statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority and that tax refunds in relation to VAT are in the nature of such exemptions.¹¹ Petitioner, as claimant, has the burden of proof to establish the factual basis of its claim for tax credit or refund.¹² Petitioner's failure to discharge this burden is fatal to its cause.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. The assailed Decision dated July 9, 2009 as well as the questioned Resolution dated November 13, 2009 of the Court *a quo* is hereby **AFFIRMED** *in toto*.

SO ORDERED.


ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


ERLINDA P. UY
Associate Justice

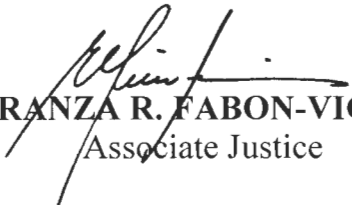

LOVELL R. BAUTISTA
Associate Justice


CAESAR A. CASANOVA
Associate Justice

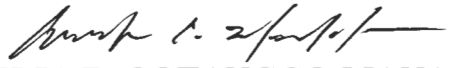
¹¹ Panasonic Communications Imaging Corporation of the Philippines (*formerly Matsushita Business Machine Corporation*) vs. Commissioner of Internal Revenue, G.R. No. 178090, February 8, 2010.

¹² Citibank, N.A. vs. Court of Appeals and the Commissioner of Internal Revenue, 280 SCRA 459.


OLGA PALANCA-ENRIQUEZ
Associate Justice

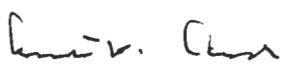

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice


AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.


ERNESTO D. ACOSTA
Presiding Justice

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