

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AMADEUS MARKETING
PHILIPPINES, INC.,

Petitioner,

CTA EB No. 2685
(CTA Case No. 9664)

- versus -

Present:

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

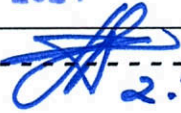
COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

JAN 24 2024

X-----X

 2:25 p.m.

DECISION

REYES-FAJARDO, J.:

THE CASE

For action is the Petition for Review filed on September 29, 2022, by Amadeus Marketing Philippines, Inc., challenging the Decision¹ dated February 22, 2021 and the Resolution² dated August 17, 2022 in CTA Case No. 9664, whereby the Third Division of the Court (Court in Division) denied its refund of unutilized input Value-Added Tax

¹ Rollo, pp. 49-67.

² *Id.* at pp. 43-47.



(VAT), attributable to its zero-rated sales of services for the 1st to 4th quarters of taxable year (TY) 2015 in the amount of ₱16,846,916.29.

THE PARTIES

Petitioner Amadeus Marketing Philippines, Inc. is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 36th Floor, LKG Tower, 6801 Ayala Avenue, Makati City. It is a VAT-registered entity with Bureau of Internal Revenue (BIR) Certificate of Registration No. OCN 9RC0000133815 and Taxpayer Identification No. 005-374-900-000. Its primary purpose is to market an automated computerized reservations system, the "Amadeus Global Travel Distribution" (Amadeus System) which incorporates a software package performing various functions, including real line *[sic]* airlines seat reservations, schedules bookings for a variety of air, boat, train, package tours, car rental and hotel services, automatic ticketing, and fare pricing displays in the Philippines.

Respondent Commissioner of Internal Revenue (CIR) is the duly appointed official of the Bureau of Internal Revenue (BIR), empowered to perform the duties, including, among others, to act and approve claims for refund as provided by law. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

On March 31, 2017, petitioner filed with BIR an *Application for Tax Credits/Refunds* (BIR Form No. 1914), seeking for the refund or tax credit of its unutilized input VAT in the amount of ₱16,846,916.29 for the 1st to 4th quarters of TY 2015.

On August 25, 2017, petitioner filed a *Petition for Review* before the Court in Division, claiming inaction on its administrative claim for refund on the part of respondent.³

³ Docket (Volume I), pp. 10-27.

On February 22, 2021, the Court in Division rendered the challenged Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

The Court in Division explained that petitioner's zero-rated sales of services are moored on Section 108(B)(2) of the 1997 National Internal Revenue Code (NIRC), as amended. Among the conditions for its entitlement is that the refund claimant's client is a non-resident foreign corporation not doing business in the Philippines. The Court in Division held that the transactions entered into by petitioner and the recipient of its sales of services, Amadeus IT Group, S.A. (Amadeus SA) as revealed in the Amadeus Commercial Organization (ACO) Agreement⁴ fall under the category of "doing business" in the Philippines under Section 3(d) of Republic Act (R.A.) No. 7042 or the Foreign Investments Act of 1991 (FIA). Since petitioner failed to prove that Amadeus SA is a non-resident foreign corporation doing business outside the Philippines, its sale of services to Amadeus SA are ineligible for VAT zero-rating under Section 108(B)(2) of the NIRC, as amended. As such, petitioner is not entitled to its claim for input VAT refund for the period covering the 1st to 4th quarters of TY 2015.

On March 22, 2021, petitioner filed a *Motion for Reconsideration* with the Court in Division.⁵

On August 17, 2022, the Court in Division rendered the challenged Resolution, denying petitioner's Motion for Partial Reconsideration, the dispositive portion of which reads:

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

SO ORDERED.

⁴ Exhibit "P-4." Docket (Volume II), pp. 839-870.

⁵ Docket (Volume III), pp. 1195-1211.

On September 29, 2022, petitioner filed a *Petition for Review* with the Court *En Banc*,⁶ sans comment from respondent.⁷

On January 24, 2023, the Court promulgated a Resolution submitting the case for decision.⁸

THE ISSUE

Did the Court in Division err in denying petitioner's claim for refund of unutilized VAT on the ground of its failure to prove that its sales of services to Amadeus SA for the 1st to 4th quarters of TY 2015 qualify for VAT zero-rating under Section 108(B)(2) of the NIRC, as amended?

THE ARGUMENTS

Petitioner maintains that Amadeus IT Group S.A. (Amadeus SA) is a foreign corporation doing business outside the Philippines, and that its sales of services to Amadeus SA were zero-rated under Section 108 (B) (2) of the NIRC, as amended, on the following basis:

First. Based on its Amended Articles of Incorporation, its primary purpose is not limited to the act of selling the Amadeus System only. While the ACO Agreement prohibits petitioner from distributing and/or participating in equity in any venture that competes with directly or indirectly with Amadeus SA in the Philippines without its prior consent, petitioner is not prohibited from engaging in other businesses outside the Philippines.

Second. Petitioner is acting independently of Amadeus Spain in performing its obligations under the ACO Agreement with its subscribers. Particularly, a) it is responsible for marketing the Amadeus system and the Amadeus products and services in the Philippines; b) setting up of a sales demonstration and customer training facility at its own cost; c) provision of appropriate hardware, software and maintenance services to its subscribers; d) provision of customer service

⁶ *Rollo*, pp. 6-41. Filed within the extended period granted, per Minute Resolution dated September 16, 2022.

⁷ Records Verification dated January 10, 2023. *Id.* at p. 83.

⁸ *Id.* at p. 85.

services and help desk facility to its subscribers at its own cost; and e) collection and retention of revenues from its subscribers.

Third. Petitioner presented the pertinent Certificate of Non-Registration of Amadeus SA issued by the Securities and Exchange Commission (SEC), along with Amadeus SA's Articles of Association, Tax Residency Certificate, Certificate of Business Registration, and printout screenshot of the website of the *Comision Nacional del Mercado de Valores* (CNMV), or Spain's National Securities Market Commission.

Petitioner further asserts that: 1) it is a VAT-registered entity; 2) its administrative and judicial claims for input VAT refund were timely filed; 3) it had zero-rated or effectively zero-rated sales; 4) it had input VAT which were attributable to zero-rated or effectively zero-rated sales; and 5) its input VAT were not applied against any output VAT liability.

THE COURT'S RULING

The *Petition for Review* is denied.

Section 108(B)(2) of the NIRC, as amended, states:

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,⁹ 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

⁹ These services are processing, manufacturing, packing of goods. See Section 108(B)(1), NIRC, as amended.

foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP); ...

In *Accenture, Inc. v. Commissioner of Internal Revenue*,¹⁰ the Supreme Court ruled that to come within the coverage of Section 108(B)(2) of the NIRC, as amended, the taxpayer must show that the entity to whom it rendered services is a foreign corporation not doing 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:

...

(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. (*Emphasis in the original*)

Consequently, to come within the purview of Section 108(B)(2), it is not enough that the recipient of the service be proven to be a foreign corporation; rather, it must be specifically proven to be a nonresident foreign corporation. ...

Indeed, VAT zero-rating under Section 108 (B)(2) of the NIRC, as amended requires the concurrence of four 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

¹⁰ G.R. No. 190102, July 11, 2012.

conformity with BSP rules and regulations.¹¹ Of the four (4) requisites just mentioned, the sole issue in this case is petitioner's compliance with the *third* requisite.

Petitioner posits that by presenting in evidence Amadeus SA's SEC Certificate of Non-Registration, along with Amadeus SA's Articles of Association, Tax Residency Certificate, Certificate of Business Registration, and printout screenshot of the website of the *Comision Nacional del Mercado de Valores* (CNMV), or Spain's National Securities Market Commission, it had already demonstrated that Amadeus SA is a non-resident foreign corporation doing business outside the Philippines.

Petitioner's position is untenable.

Indeed, in a slew of cases,¹² it has been consistently ruled that presentation of *both* Foreign Articles of Association/Certificates of Incorporation *and* SEC Certificate of Non-Registration would ordinarily prove that the taxpayer-claimant's client is foreign corporation not doing business in the Philippines. However, what sets this case apart from the others are the provisions set forth in the ACO Agreement¹³ executed by petitioner and Amadeus SA.

Under the ACO Agreement,¹⁴ Amadeus SA's principal objective is the widespread availability of computerized information, products and services stored in the Amadeus System.¹⁵ To achieve such purpose, Amadeus SA and petitioner agreed that the latter would promote, make available, facilitate access to the Amadeus System and act as a neutral agent for all Amadeus subscriber in the Philippines subject to the payment of a Distribution Fee.¹⁶

¹¹ *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*, G.R. No. 215159, July 5, 2022.

¹² *Commissioner of Internal Revenue v. Deutsche Knowledge Services PTE. LTD.*, G.R. No. 234445, July 15, 2020; *Macquarie Offshore Services PTY. LTD.- Philippine Branch v. Commissioner of Internal Revenue*, CTA EB No. 2431, January 25, 2023; *Nokia (Philippines), Inc. v. Commissioner of Internal Revenue*, CTA EB No. 1313, September 22, 2016; *Deutsche Knowledge Service Pte. Ltd. v. Commissioner of Internal Revenue*, CTA EB No. 1290, August 16, 2016; and *Chevron Holdings, Inc. v. Commissioner of Internal Revenue*, CTA EB No. 940, October 28, 2014.

¹³ Exhibit "P-4." Docket (Volume II), pp. 839-870.

¹⁴ Exhibit "P-4." Docket (Volume II), pp. 839-870.

¹⁵ 2nd Whereas clause, Recitals, *id.*

¹⁶ 4th Whereas clause, Recitals, *id.*

Section 3(d), of RA No. 7042,¹⁷ enumerates the act or acts which are considered doing business in the Philippines, as follows:

...

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 totalling 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:** ...

...

Magna Ready Mix Concrete Corporation v. Andersen Bjornstad Kane Jacobs, Inc.,¹⁸ reiterates the two general tests to determine whether a foreign corporation can be considered as "doing business" in the Philippines:

...The first of these is the substance test, thus:

The true test [for doing business], however, seems to be whether the foreign corporation is continuing the body of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another.

The second test is the continuity test, expressed thus:

The term [doing business] 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 the progressive prosecution of, the purpose and object of its organization.

...

¹⁷ Foreign Investments Act of 1991.

¹⁸ G.R. No. 196158, January 20, 2021. Citations omitted.

Several indicators in the ACO Agreement show Amadeus SA's active participation through the services of petitioner in the marketing and distribution process of the Amadeus System in the Philippines. For instance: *first*, Amadeus SA shall be responsible for negotiating and entering into agreements with international providers. Any such agreements may provide for assignment to petitioner of obligations undertaken by Amadeus SA to the international providers;¹⁹ *second*, Amadeus SA may review subscriber contracts entered into by petitioner, and petitioner shall cooperate in all reasonable requests by Amadeus SA for actions intended to ensure compliance with applicable laws, rules and regulations;²⁰ *third*, in the event of a subscriber's misuse or abuse of the Amadeus System, Amadeus SA may direct petitioner to require the subscriber to stop such misuse and/or to terminate the agreement with the subscriber on account of such abuse and/or require the Subscriber to pay petitioner a fee for such excessive use;²¹ *fourth*, Amadeus SA is permitted to contract directly with multinational subscribers having headquarters or branches in the Philippines;²² *fifth*, Amadeus SA is allowed to contract with subscribers in the Philippines who intend to use the Global Distribution System, (commonly referred to as a computerized reservation system) through Amadeus online and corporate products. In addition, Amadeus SA may request petitioner to provide support and services in connection therewith;²³ and *sixth*, Amadeus SA may assign its rights and obligations under the ACO Agreement to any Amadeus Group entity²⁴ upon written notification to petitioner.²⁵

Indeed, Amadeus SA is doing business in the Philippines, as contemplated by Section 3(d) of RA No. 7042. For this reason, the services rendered by petitioner to Amadeus SA do not qualify for VAT zero-rating under Section 108(B)(2) of the NIRC, as amended.

¹⁹ Paragraph 8.1, *id.*

²⁰ Paragraph 9.4, *id.*

²¹ Paragraph 9.5, *id.*

²² Paragraph 9.7, *id.*

²³ Paragraph 9.8, *id.*

²⁴ 1.1 Definition, *id.*

"Amadeus Group" shall mean the group of legal entities established in order to organize, develop, operate and/or distribute the Amadeus System.

²⁵ Paragraph 11.1, *id.*

In *Commissioner of Internal Revenue v. British Overseas Airways Corporation*,²⁶ the Supreme Court ruled that the appointment by a foreign corporation of a local agent in the Philippines is an act constitutive of doing business in the Philippines, thus:

...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 commercial gain or for the purpose and object of the business organization. **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.**²⁷

Article 1868 of the Civil Code defines agency as a contract whereby a person binds himself to render some service or to do something in representation or on behalf of another.²⁸ The contract of agency requires the presence of the following essential elements: (1) there is consent, express or implied of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for himself, and (4) the agent acts within the scope of his authority.²⁹ All of these elements are present in this case.

For the *first* requisite, under the ACO Agreement,³⁰ Amadeus SA appointed petitioner as its authorized representative on an exclusive basis to market, distribute and provide access to the Amadeus System to subscribers in the Philippines,³¹ in consideration of a distribution fee dictated by the latter.³²

For the *second* requisite, the same ACO Agreement allowed petitioner to grant subscribers in the Philippines the non-exclusive and

²⁶ G.R. Nos. L-65773-74, April 30, 1987. This principle was subsequently elucidated in *Air Canada v. Commissioner of Internal Revenue*, G.R. No. 169507, January 11, 2016.

²⁷ Boldfacing supplied.

²⁸ Article 1868. 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.

²⁹ *Spouses Vilorio vs. Continental Airlines, Inc.*, G.R. No. 188288, January 16, 2012.

³⁰ Exhibit "P-4." Docket (Volume II), pp. 839-870.

³¹ Paragraph 2.1, *id.*

³² Paragraph 6.1, *id.*

non-transferable right to use Amadeus products and services for the purpose of reservation functions.³³ Certainly, Amadeus SA utilized petitioner's services to extend its personality in dealing with Philippine subscribers relative to Amadeus products and services.

For the *third* requisite, the ACO Agreement is replete with provisions which militates against petitioner's claim that it is acting independently of Amadeus SA in marketing and distributing the Amadeus System in the Philippines. As exhaustively discussed in the challenged Decision:

Second, the ACO Agreement provides numerous instances showing Amadeus SA's participation in running the marketing and distribution of the Amadeus System in the Philippines, which include:

a) Amadeus SA is permitted to directly contract with multinational subscribers whether the same is based within or outside the Philippines;

b) Amadeus SA may contract with subscribers within the Philippines who wish to make use of the global distribution system services through Amadeus' online and corporate products;

c) Petitioner is duty bound to honor any obligation undertaken by Amadeus SA with third-party licensors relative to the Amadeus' products; and

d) Amadeus SA may, on its own, terminate the agreement entered between any Philippine subscriber in the event of misuse or abuse of the Amadeus System.

Clearly, the ACO Agreement paved the way for Amadeus SA, through petitioner, to further its purpose to continually promote, market, and distribute the Amadeus System in the Philippines consistent with the definition of "doing business" in the Philippines under *Section 3 (d) of the Foreign Investments Act*. The foregoing circumstances contradict petitioner's claim that it is acting under its own name in its role as sole distributor of the Amadeus System in the Philippines.³⁴

For the *fourth* requisite, the provisions of the ACO Agreement confine the authority of petitioner only to the marketing and distribution of Amadeus systems and the Amadeus products and

³³ Paragraph 2.3, *id.*

³⁴ Pp. 64-66, challenged Decision. Citations omitted. Boldfacing supplied.



services, as well as the necessary actions accompanying such distribution to subscribers, i.e., installation, delivery, sales demonstration, customer training, sales support, maintenance, technical assistance. Relevantly, an examination of the Amended Articles of Incorporation of petitioner shows that it was organized for the following primary purpose:

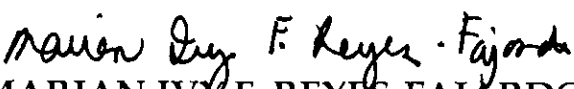
To market an automated computerized reservations system "Amadeus Global Travel Distribution" which incorporates a software package which performs various functions, including real-time airlines seat reservations, schedule bookings for a variety of air, boat, train, package tours, car rental and hotel services, automatic ticketing and fare pricing displays in the Philippines.³⁵

Undoubtedly, Amadeus SA is doing business in the Philippines through Amadeus SA's appointment of petitioner as its local agent.

Any claim for refund or tax credit of unutilized input VAT must be clearly established by evidence showing the existence of zero-rated or effectively zero-rated sales to which the input VAT being refunded must be attributable.³⁶ Petitioner failed in this regard.

WHEREFORE, the Petition for Review filed on September 29, 2022 by Amadeus Marketing Philippines, Inc. is **DENIED**, for lack of merit. The Decision dated February 22, 2021 and the Resolution dated August 17, 2022, both rendered by the Court in Division are **AFFIRMED**.

SO ORDERED.


MARIAN IVY F. REYES-FAJARDO
Associate Justice

³⁵ Exhibit "P-3." Docket (Volume II), p. 830.

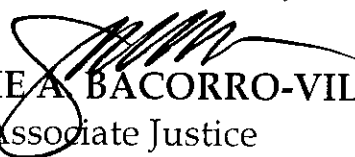
³⁶ *Maibarara Geothermal, Inc. v. Commissioner of Internal Revenue*, G.R. No. 250479, July 18, 2022, citing *Luzon Hydro Corporation v. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013.

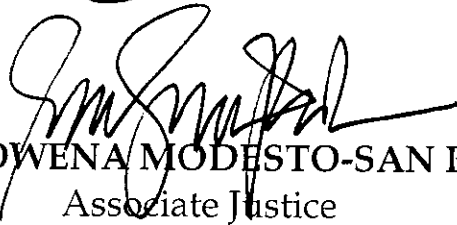
WE CONCUR:


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


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice


HENRY A. 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.

A handwritten signature in black ink, appearing to read 'Roman G. Del Rosario', with a large, stylized initial 'R'.

ROMAN G. DEL ROSARIO
Presiding Justice