SECOND DIVISION

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

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. DEUTSCHE KNOWLEDGE SERVICES PTE. LTD., RESPONDENT.

D E C I S I O N

INTING, J.:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by the Commissioner of Internal Revenue (CIR) the Decision[2] dated March 30, 2017 and the Resolution[3] dated September 18, 2017 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Nos. 12i4 and 1345. In the assailed issuances, the CTA *En Banc* affirmed the Decision[4] dated July 7, 2014 of the CTA Second Division (CTA Division) in CTA Case No. 8443 which partially granted Deutsche Knowledge Services Pte. Ltd. (DKS)'s application for refund or issuance of tax credit certificate (TCC).

The Antecedents

DKS is the Philippine branch of a multinational company organized and existing under and by virtue of the laws of Singapore.[5] The branch is licensed to operate as a regional operating headquarters (ROHQ)[6] in the Philippines that provides the following services to DKS's foreign affiliates/related parties, its clients (foreign affiliates clients): "general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; training and personnel management; logistic services; product development; technical support and maintenance; data processing and communication; and business development" (qualifying services).[7]

By virtue of several Intra-Group Services Agreements (service agreements), DKS rendered qualifying services to its foreign affiliates clients,[8] from which it generated service revenues.

DKS is a value-added tax (VAT)-registered enterprise.[9] On October 21, 2011, DKS filed with the Bureau of Internal Revenue (BIR) Large Taxpayers Regular Audit Division an Application for Tax Refund/Credit (BIR Form No. 1914) and a letter claim for refund, supported by the relevant documents (hereinafter collectively referred to as "administrative claim"). DKS declared that its sales of services to 34[10] foreign affiliates-clients are zero-rated sales for VAT purposes. Thus, it sought to refund an amount of P33;868,101.19, representing unutilized input VAT attributable to zero-rated sales incurred during the first quarter of 2010.[11]

Alleging that the CIR had not acted upon their administrative claim, DKS filed a

petition for review before the CTA on March 19, 2012 (judicial claim).

In its Answer, the CIR, represented by the Office of the Solicitor General, refuted DKS's entitlement to a tax refund or credit as follows: *First*, DKS failed to submit the documents necessary to support its claim. *Second*, its claim is subject to administrative routine investigation and examination by the BIR. *Third*, it also failed to prove that it rendered services to persons engaged in business conducted outside the Philippines, the payments of which were made in Euro and other acceptable foreign currency in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). *Finally*, the filing of its judicial claim was premature.[12]

During the proceedings, DKS presented the following evidence to prove that its foreign affiliates-clients are non-resident foreign corporations doing business outside the Philippines (NRFCs): (1) SEC Certifications of Non-Registration of Company; (2) Authenticated Articles of Association and/or Certificates of Registration/Good Standing/Incorporation; (3) Service Agreements;[13] and foreign business registration printouts retrieved from the AMInet database.

The CTA Division Ruling

In the Decision[14] dated July 7, 2014, the. CTA Division partially granted DKS's claim. At the onset, the CTA Division resolved that both DKS's administrative and judicial claims were timely filed.[15] On the substantive aspect, it reduced DKS's claim to P14,882,227.02 computed as follows:

Input VAT claimed for refund		P 33,868,101.19
Less: Disallownaces		
Unamorized Input VAT on Capital Goods exceeding P1 million	P719,723.72	
Input VAT on Capital Goods exceeding P1 million without supporting documents	514,698.21	
Input VAT on purchases of services and goods other than capital goods	11,556,290.62	12,790,712.55
Valid Input VAT		P21,077,388.64
Less: Output VAT		713,041.78
Valid Excess Input VAT		P20,364,346.86
Multiply by: Portion pertaining to duly-established zero-rated sales[16]		73,0798%
Excess Input VAT attributable to the VAlid Zero-Rated Sales/Receipts		P 14,882,227.02[17]

The CTA. Division found as follows:

First, DKS initially claimed for refund total input VAT from current transactions amounting to P33,868,101.19,[18] purportedly from the purchases of capital goods,

domestic purchases of services and goods other than capital goods, and services rendered by non-residents. However, it did not properly support its input VAT claims in accordance with prevailing VAT invoicing and substantiation requirements. This resulted in the disallowance of input VAT amounting to P12,790,712.55,[19] reducing the amount of valid excess input VAT subject to refund to P20,364,346.86.[20]

Second, DKS reported zero-rated sales amounting to P858,315,870.09 in its VAT return.[21] However, "[t]o be considered as [an NRFC] each entity must be supported, at the very least, by both SEC certificate of non-registration of corporation/partnership and certificate/articles of foreign incorporation/association."[22] Based on the evidence presented, out of 34 entities it claimed to be foreign, DKS established the NRFC status of only 15 foreign affiliates-clients. Thus, only sales to these 15 entities (P627,255,650.48), which comprised 73.0798%[23] of the total zero-rated sales declared (P858,315,870.09), was proven to be derived from foreign affiliates-clients. Concomitantly, only input VAT to the extent of P14,882,227.02[24] may be granted as a refund or credit or 73.0798% of the above-mentioned validated excess input VAT amounting to P20,364,346.86.

From this Decision, the CIR filed a Motion for Reconsideration (MR). On the other hand, DKS filed an Omnibus Motion for Partial Reconsideration and to Re-open Trial to Present Supplemental Evidence (omnibus motion). The CTA Division denied[25] the CIR 's MR, but allowed DKS to present additional evidence, despite the CIR's opposition.[26] Ultimately, the CTA Division still denied DKS's motion for partial reconsideration.

Aggrieved, the CIR and DKS filed petitions for review on *certiorari* before the CTA *En Banc* docketed as CTA EB Nos. 1244 and 1345, respectively.

The CTA En Banc Ruling

In its assailed Decision, the court *a quo* partially granted the CIR's petition put denied for lack of merit that of DKS. It. mainly echoed the CTA Division's rulings on evidentiary matters, *viz*.:

> We agree with the Court in Division that to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both a certificate of non-registration of corporation/partnership issued by the [SEC] and certificate/articles of foreign incorporation/association. Parenthetically, it must be emphasized that notwithstanding the presentation of the said documents. there must not be any indication that the recipient of the services is doing business in the Philippines, consistent with the above-quoted ruling in the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*
>
> The said basic documents are necessary because the Philippine SEC"s negative certification establishes that the recipient of the service has no registered business in the Philippines; while the said certificate/articles of

> incorporation/association will prove that the recipient is indeed foreign. [27]

However, after further evaluation, the CTA *En Banc* found that OKS established the NRFC status of only 11 foreign affiliates-clients, as opposed to the CTA Division 's findings of 15 entities. The court *a quo* excluded four[28] entities because these entities' NRFC status could not have been establish e d by mere printouts from DKS's own database, *viz*. :

> x x x [The] foreign business registration print-outs retrieved from the AMInet database (Exhibits "P-1 " to "P-33"), which is a database set up by Deutsche Bank Global (the head office of Deutsche Knowledge in Germany) x x x are self-serving and can be easily manipulated to favor Deutsche Knowledge in view of its affinity with the entity that maintains or keeps the said database.[29]

Resultantly, this reduced DKS's claim to P14,527,282.57 because only 71.3368%[30] (not 73.0798% as found by the CTA Division) of its reported sales were valid zero-rated sales, *viz*.:

Valid Excess Input VAT. as found by the CTA Division	P 20,364.346.86
Multiply by: Portion pertaining to duly-established zero-rated sales[31]	71.3368%
Excess Input VAT attributable to the Valid Zero-Rated Sales/Receipts	P 14,527,282.5732

Both parties moved for reconsideration, but the CTA EB denied them. Hence, the CIR filed the present petition.

Issue

The sole issue for the Court's resolution is whether DKS is entitled to a tax refund/credit amounting to P14,527,282.57.

The Courts Ruling

The petition is unmeritorious.

The CIR insists that DKS is not entitled to a tax refund/credit because: *First*, its judicial claim was filed prematurely.[33] And *second*, it failed to prove that its clients are foreign corporations doing business outside the Philippines. Being a procedural matter, the Court shall first resolve the former then proceed to the substantive matters.

Timeliness of DKS's Judicial Claim

Section 112(C) of the National Internal Revenue Code of 1997 (Tax Code) gives the CIR 120 days from the date of submission of complete documents (date of

completion) supporting the application for credit or refund excess input VAT attributable to zero-rated sales to resolve the administrative claim. If it remains unresolved after this period, the law allows the taxpayer to appeal the unacted claim to the CTA within 30 days from the expiration of the 120-day period (120 and 30-day periods).[34]

Stated differently, the date of completion commences the CIR's 120-day period to resolve the claim. In turn, the expiration of the 120-day period triggers the running of the 30-day period to appeal an unacted claim.

The CIR argues that Revenue Memorandum Order No. (RMO) 53-98 provides a list of documents that the taxpayer must submit to substantiate his claim for tax refund or credit. It points out that, when DKS filed its administrative claim, it failed to submit the complete documents. Thus, the 120 and 30-day periods did not begin to run.

This content on directly contravenes law, applicable tax regulations, and jurisprudence.

First, the Court pronounced in *Commissioner of Internal Revenue v. Team Sual Corp.*[35] that inasmuch as RMO 53-98 enumerates the documentary requirements during an audit investigation, its provisions do not apply to applications for tax refund or credit.[36]

Second, in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*,[37] the Court -emphasized that the law accords the claimant sufficient latitude to determine the completeness of his submission for the purpose of ascertaining the date of completion from which the 120- day period shall be reckoned[38] He "enjoys relative freedom to submit such evidence to prove his claim" because, in the first place, he bears the burden of proving his entitlement to a tax refund or credit.[39]

This benefit, a component of the claimant's fundamental right to due process,[40] allows him: (a) to declare that he had already submitted complete supporting documents upon filing his claim and that he no longer intends to make additional submissions thereafter; or (b) to further substantiate his application within 30 days after filing, as allowed by Revenue Memorandum Circular No. (RMC) 49-03.[41]

To counterbalance the claimant's liberty to do so, he may be required by the tax authorities in the course of their evaluation, to submit additional documents for the proper evaluation thereof. In which case, the CIR shall duly notify the claimant of his request from which the claimant has 30 days to comply.

Notably, both parties are given the occasion to determine the completeness of documents supporting a claim for tax refund or credit. However, the Court must differentiate between these two functions.

On the one hand, the claimant has the prerogative to determine whether he had completed his submissions upon filing or within 30 days thereafter. This procedural determination of completeness is aimed at ascertaining the date of completion from which the 120-day period shall commence.