COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.PLACER DOME TECHNICAL SERVICES (PHILS.), INC., RESPONDENT.

G.R. No. 164365. June 08, 2007

Ponente: TINGA, J.

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TINGA, J.:

Two years ago, the Court in Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)[1] definitively ruled that under the National Internal Revenue Code of 1986, as amended,[2] "services performed by VAT-registered persons in the Philippines (other than the processing, manufacturing or repacking of goods for persons doing business outside the Philippines), when paid in acceptable foreign currency and accounted for in accordance with the rules and regulations of the [Bangko Sentral ng Pilipinas], are zero-rated."[3] The grant of the present petition entails the extreme step of rejecting American Express as precedent, a recourse which the Court is unwilling to take.

The facts, as culled from the recital in the assailed Decision[4] dated 30 June 2004 of the Court of Appeals, follow.

On 24 March 1996, at the San Antonio Mines in Marinduque owned by Marcopper Mining Corporation (Marcopper), mine tailings from the Taipan Pit started to escape through the Makulapnit Tunnel and Boac Rivers, causing the cessation of mining and milling operations, and causing potential environmental damage to the rivers and the immediate area. To contain the damage and prevent the further spread of the tailing leak, Placer Dome, Inc. (PDI), the owner of 39.9% of Marcopper, undertook to perform the clean-up and rehabilitation of the Makalupnit and Boac Rivers, through a subsidiary. To accomplish this, PDI engaged Placer Dome Technical Services Limited (PDTSL), a non-resident foreign corporation with office in Canada, to carry out the project. In turn, PDTSL engaged the services of Placer Dome Technical Services (Philippines), Inc. (respondent), a domestic corporation and registered Value-Added Tax (VAT) entity, to implement the project in the Philippines.

PDTSL and respondent thus entered into an Implementation Agreement signed on 15 November 1996. Due to the urgency and potentially significant damage to the environment, respondent had agreed to immediately implement the project, and the Implementation Agreement stipulated that all implementation services rendered by respondent even prior to the agreement's signing shall be deemed to have been provided pursuant to the said Agreement. The Agreement further stipulated that PDTSL was to pay respondent "an amount of money, in U.S. funds, equal to all Costs incurred for Implementation Services performed under the Agreement,"[5] as well as "a fee agreed to one percent (1%) of such Costs."[6]

In August of 1998, respondent amended its quarterly VAT returns for the last two quarters of 1996, and for the four quarters of 1997. In the amended returns, respondent declared a total input VAT payment of P43,015,461.98 for the said quarters, and P42,837,933.60 as its total excess input VAT for the same period. Then on 11 September 1998, respondent filed an administrative claim for the refund of its reported total input VAT payments in relation to the project it had contracted from PDTSL, amounting to P43,015,461.98. In support of this claim for refund,

respondent argued that the revenues it derived from services rendered to PDTSL, pursuant to the Agreement, qualified as zero-rated sales under Section 102(b)(2) of the then Tax Code, since it was paid in foreign currency inwardly remitted to the Philippines. When the Commissioner of Internal Revenue (CIR) did not act on this claim, respondent duly filed a Petition for Review with the Court of Tax Appeals (CTA), praying for the refund of its total reported excess input VAT totaling P42,837,933.60. In its Answer to the Petition, the CIR merely invoked the presumption that taxes are collected in accordance with law, and that claims for refund of taxes are construed strictly against claimants, as the same was in the nature of an exemption from taxation.[7]

In its Decision dated 19 March 2002,[8] the CTA supported respondent's legal position that its sale of services to PDTSL constituted a zero-rated transaction under the Tax Code, as these services were paid for in acceptable foreign currency which had been inwardly remitted to the Philippines in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). At the same time, the CTA pointed out that of the US$27,544,707.00 paid by PDTSL to respondent, only US$14,750,473.00 was inwardly remitted and accounted for in accordance with the BSP.[9] The CTA also noted that not all the reported total input VAT payments of respondent were properly supported by VAT invoices and/or official receipts,[10] and that not all of the allowable input VAT of the respondent could be directly attributed to its zero-rated sales.[11] In the end, the CTA found that only the resulting input VAT of P17,178,373.12 could be refunded the respondent.[12]

The CIR filed a Motion for Reconsideration where he invoked Section 4.102-2(b)(2) of Revenue Regulation No. 5-96,[13] and especially VAT Ruling No. 040-98 dated 23 November 1998, which had interpreted the aforecited provision.

The CTA remained unpersuaded despite the cited issuances. In fact, the CTA Resolution[14] dated 20 June 2002, denying the CIR's motion for reconsideration, noted that petitioner's argument was not novel as it had debunked the same when first raised before it, referring to its decision dated 19 April 2002 in CTA Case No. 6099, American Express International, Inc. – Philippine Branch v. Commissioner of Internal Revenue.[15] The CTA reiterated its pronouncement in said case, thus: "x x x it is very clear that VAT Ruling No. 040-98 not only expands the language of Section (108)(B)(2) but also of Revenue Regulation No. 5-96 which interprets the said statute. The same cannot be countenanced. It is a settled rule of legal hermeneutics that the implementing rules and regulations cannot amend the act of Congress x x x for administrative rules and regulations are intended to carry out, not supplant or modify, the law."[16]

The rulings of the CTA were elevated by petitioner to the Court of Appeals on Petition for Review. In a Decision[17] dated 30 June 2004, the appellate court affirmed the CTA rulings. As a consequence, the present petition is now before us.

Our evaluation of the petition must begin with the statutory scope of the "services performed in the Philippines by VAT-registered persons,"[18] referred to in the law applicable at the time of the subject incidents, the National Internal Revenue Code of 1986, as amended[19] (1986 NIRC). Section 102(b) of the 1986 NIRC reads:

> Section 102. Value-Added Tax on Sale of Services and Use or Lease of Properties.
>
> (a) x x x
>
> (b) Transactions Subject to Zero Percent (0%) Rate. â”€ 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);

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> (2) Services other than those mentioned in the preceding subparagraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the [BSP].
> x x x [20]

It is Section 102(b)(2) which finds special relevance to this case. As explicitly provided in the law, a zero-rated VAT transaction includes services by VAT-registered persons other than processing, manufacturing or repacking goods for other persons doing business outside the Philippines, which goods are subsequently exported, the consideration for which is paid in foreign currency and accounted for in accordance with the rules and regulations of the BSP.

Still, this provision was interpreted by the Bureau of Internal Revenue through Revenue Regulation No. 5-96, Section 4.102-2(b)(2) of which states:

> Section 4.102(b)(2)- Services other than processing, manufacturing or repacking for other persons doing business outside the Philippines for goods which are subsequently exported, as well as services by a resident to a non-resident foreign client such as project studies, information services, engineering and architectural designs and other similar services, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.

Although there is nothing in Section 4.102-2(b)(2) that is expressly fatal to respondent's claim, VAT Ruling No. 040-98 interpreted the provision in such fashion. The relevant portion of the ruling reads:

> The sales of services subject to zero percent (0%) VAT under Section 108(B)(2), of the Tax Code of 1997, are limited to such sales which are destined for consumption outside of the Philippines in that such services are tacked-in as part of the cost of goods exported. The zero-rating also extends to project studies, information services, engineering and architectural designs and other similar services sold by a resident of the Philippines to a non-resident foreign client because these services are likewise destined to be consumed abroad. The phrase 'project studies, information services, engineering and architectural designs and other similar services' does not include services rendered by travel agents to foreign tourists in the Philippines following the doctrine of ejusdem generis, since such services by travel agents are not of the same class or of the same nature as those enumerated under the aforesaid section.
>
> Considering that the services by your client to foreign tourists are basically and substantially rendered within the Philippines, it follows that the onus of taxation of the revenue arising therefrom, for VAT purposes, is also within the Philippines. For this reason, it is our considered opinion that the tour package services of your client to foreign tourists in the Philippines cannot legally qualify for zero-rated (0%) VAT but rather subject to the regular VAT rate of 10%.

Petitioner argues that following Section 4.102-2(b)(2) of Revenue Regulation No. 5-96, there are only two categories of services that are subject to zero percent VAT, namely: services other than processing, manufacturing or repacking for other persons doing business outside the Philippines for goods which are subsequently exported; and services by a resident to a non-resident foreign client, such as project studies, information services, engineering and architectural designs and other similar services.[21] Petitioner explains that the services rendered by respondent were not for goods which were subsequently exported. Likewise, it is argued that the services rendered by respondent were not similar to "project studies, information services, engineering and architectural designs" which were destined to be consumed abroad by non-resident foreign clients.

These views, petitioner points out, were reiterated in VAT Ruling No. 040-98. It is clear from that issuance that the location or "destination" where the services were destined for consumption was determinative of whether the zero-rating availed when such services were sold by a resident of the Philippines to a non-resident foreign client. VAT Ruling No. 040-98 expresses that the zero-rating may apply only when the services are destined for

consumption abroad. This view aligns with the theoretical principle that the VAT is ultimately levied on consumption.[22] If the service were destined for consumption in the Philippines, the service provider would have the faculty to pass on its VAT liability to the end-user, thus avoiding having to shoulder the tax itself.

Unfortunately for petitioner, his arguments are no longer fresh. The Court spurned them in Commissioner of Internal Revenue v. American Express.[23]

American Express involved transactions invoked as "zero-rated" by a "VAT-registered person that facilitates the collection and payment of receivables belonging to its non-resident foreign client, for which it gets paid in acceptable foreign currency inwardly remitted and accounted for in conformity with BSP rules and regulations."[24] The CIR in that case relied extensively on the same VAT Ruling No. 040-98 now cited before us. However, the Court would conclude in American Express that the opinion therein that the service must be destined for consumption outside of the Philippines was "clearly ultra vires and invalid."[25]

The discussion of the issues in American Express was comprehensive enough as to address each issue now presently raised before us.

American Express explained the nature of VAT imposed on services in this manner:

> The VAT is a tax on consumption "expressed as a percentage of the value added to goods or services" purchased by the producer or taxpayer. As an indirect tax on services, its main object is the transaction itself or, more concretely, the performance of all kinds of services conducted in the course of trade or business in the Philippines. These services must be regularly conducted in this country; undertaken in "pursuit of a commercial or an economic activity;" for a valuable consideration; and not exempt under the Tax Code, other special laws, or any international agreement.[26]

Yet even as services may be subject to VAT, our tax laws extend the benefit of zero-rating the VAT due on certain services. The aforementioned Section 102(b) of the 1986 NIRC activates such zero-rating on two categories of transactions: (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 BSP; and (2) services other than those mentioned in the preceding subparagraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.[27]

Obviously, it is the second category that begs for further explication, owing to its apparently broad scope, covering as it does "services other than those mentioned in the preceding subparagraph." Yet, as found by the Court in American Express, such broad scope did not mean that Section 102(b) is vague, thus:

> The law is very clear. Under the last paragraph [of Section 102(b)], services performed by VAT-registered persons in the Philippines (other than the processing, manufacturing or repacking of goods for persons doing business outside the Philippines), when paid in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP, are zero-rated.[28]

Since Section 102(b) is, in fact, "very clear," the Court declared that any resort to statutory construction or interpretation was unnecessary.

> As mentioned at the outset, Section 102(b)(2) of the Tax Code is very clear. Therefore, no statutory construction or interpretation is needed. Neither can conditions or limitations be introduced where none is provided for. Rewriting the law is a forbidden ground that only Congress may tread upon.
>
> The Court may not construe a statute that is free from doubt. "[W]here the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application." The Court has no choice but

to "see to it that its mandate is obeyed."[29]

It was from the awareness that Section 102(b) is free from ambiguity in providing so broad an extension of the zero-rated benefit on VAT-registered persons performing services that the Court in American Express proceeded to consider the same Section 4.102-2(b)(2) of Revenue Regulation No. 5-96 now cited by petitioner. The Court in American Express explained that Revenue Regulation No. 5-96 had amended Revenue Regulation No. 7-95, Section 4.102-2 of which had retained the broad language of Section 102(b) in defining "transactions subject to zero-rate," adding only, by way of specific example, the phrase "those [services] rendered by hotels and other service establishments."[30] However, the amendatory Revenue Regulation No. 5-96 opted for a more specific approach, providing, by way of example, an enumeration of those services contemplated as zero-rated.[31] In the present case, it is because of such enumeration that petitioner now argues that "respondent's services likewise do not fall under the second category mentioned in Section 4.102-2(b)(2) [as amended by Revenue Regulation No. 5-96], because they are not similar to "project studies, information services, engineering and architectural designs" which are destined to be consumed abroad by non-resident foreign clients."[32]

However, the Court in American Express clearly rebuffed a similar contention.

> Aside from the already scopious coverage of services in Section 4.102-2(b)(2) of RR 7-95, the amendment introduced by RR 5-96 further enumerates specific services entitled to zero rating. Although superfluous, these sample services are meant to be merely illustrative. In this provision, the use of the term "as well as" is not restrictive. As a prepositional phrase with an adverbial relation to some other word, it simply means "in addition to, besides, also or too."
>
> Neither the law nor any of the implementing revenue regulations aforequoted categorically defines or limits the services that may be sold or exchanged for a fee, remuneration or consideration. Rather, both merely enumerate the items of service that fall under the term "sale or exchange of services."
>
> x x x x
>
> The canon of statutory construction known as ejusdem generis or "of the same kind or specie" does not apply to Section 4.102-2(b)(2) of RR 7-95 as amended by RR 5-96.
>
> First, although the regulatory provision contains an enumeration of particular or specific words, followed by the general phrase "and other similar services," such words do not constitute a readily discernible class and are patently not of the same kind. Project studies involve investments or marketing; information services focus on data technology; engineering and architectural designs require creativity. Aside from calling for the exercise or use of mental faculties or perhaps producing written technical outputs, no common denominator to the exclusion of all others characterizes these three services. Nothing sets them apart from other and similar general services that may involve advertising, computers, consultancy, health care, management, messengerial work – to name only a few.
>
> Second, there is the regulatory intent to give the general phrase "and other similar services" a broader meaning. Clearly, the preceding phrase "as well as" is not meant to limit the effect of "and other similar services."
>
> Third, and most important, the statutory provision upon which this regulation is based is by itself not restrictive. The scope of the word "services" in Section 102(b)(2) of the [1986 NIRC] is broad; it is not susceptible of narrow interpretation. (Emphasis supplied)[33]

The Court in American Express recognized the existence of the contrary holding in VAT Ruling No. 040-98, now relied upon by petitioner especially as he states that the zero-rating applied only when the services are destined for consumption abroad. American Express minced no words in criticizing said ruling.

> VAT Ruling No. 040-98 relied upon by petitioner is a less general interpretation at the administrative level,

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> rendered by the BIR commissioner upon request of a taxpayer to clarify certain provisions of the VAT law. As correctly held by the CA, when this ruling states that the service must be "destined for consumption outside of the Philippines" in order to qualify for zero rating, it contravenes both the law and the regulations issued pursuant to it. This portion of VAT Ruling No. 040-98 is clearly ultra vires and invalid.
>
> Although "[i]t is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts," this interpretation is not conclusive and will have to be "ignored if judicially found to be erroneous" and "clearly absurd x x x or improper." An administrative issuance that overrides the law it merely seeks to interpret, instead of remaining consistent and in harmony with it, will not be countenanced by this Court.(Emphasis supplied)[34]

Petitioner presently invokes the "destination principle," citing that [r]espondent's services, while rendered to a non-resident foreign corporation, are not destined to be consumed abroad. Hence, the onus of taxation of the revenue arising therefrom, for VAT purposes, is also within the Philippines. Yet the Court in American Express debunked this argument when it rebutted the theoretical underpinnings of VAT Ruling No. 040-98, particularly its reliance on the "destination principle" in taxation:

> As a general rule, the VAT system uses the destination principle as a basis for the jurisdictional reach of the tax. Goods and services are taxed only in the country where they are consumed. Thus, exports are zero-rated, while imports are taxed.
>
> Confusion in zero rating arises because petitioner equates the performance of a particular type of service with the consumption of its output abroad. In the present case, the facilitation of the collection of receivables is different from the utilization or consumption of the outcome of such service. While the facilitation is done in the Philippines, the consumption is not. Respondent renders assistance to its foreign clients – the ROCs outside the country – by receiving the bills of service establishments located here in the country and forwarding them to the ROCs abroad. The consumption contemplated by law, contrary to petitioner's administrative interpretation, does not imply that the service be done abroad in order to be zero-rated.
>
> Consumption is "the use of a thing in a way that thereby exhausts it." Applied to services, the term means the performance or "successful completion of a contractual duty, usually resulting in the performer's release from any past or future liability x x x" The services rendered by respondent are performed or successfully completed upon its sending to its foreign client the drafts and bills it has gathered from service establishments here. Its services, having been performed in the Philippines, are therefore also consumed in the Philippines.
>
> Unlike goods, services cannot be physically used in or bound for a specific place when their destination is determined. Instead, there can only be a "predetermined end of a course" when determining the service "location or position x x x for legal purposes." Respondent's facilitation service has no physical existence, yet takes place upon rendition, and therefore upon consumption, in the Philippines. Under the destination principle, as petitioner asserts, such service is subject to VAT at the rate of 10 percent.
>
> x x x x
>
> However, the law clearly provides for an exception to the destination principle; that is, for a zero percent VAT rate for services that are performed in the Philippines, "paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the [BSP]." Thus, for the supply of service to be zero-rated as an exception, the law merely requires that first, the service be performed in the Philippines; second, the service fall under any of the categories in Section 102(b) of the Tax Code; and, third, it be paid in acceptable foreign currency accounted for in accordance with BSP rules and regulations. (Emphasis supplied)[35]
>
> x x x x
>
> Again, contrary to petitioner's stand, for the cost of respondent's service to be zero-rated, it need not be tacked

> in as part of the cost of goods exported. The law neither imposes such requirement nor associates services with exported goods. It simply states that the services performed by VAT-registered persons in the Philippines – services other than the processing, manufacturing or repacking of goods for persons doing business outside this country – if paid in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP, are zero-rated. The service rendered by respondent is clearly different from the product that arises from the rendition of such service. The activity that creates the income must not be confused with the main business in the course of which that income is realized. (Emphasis supplied)[36]
>
> x x x x
>
> The law neither makes a qualification nor adds a condition in determining the tax situs of a zero-rated service. Under this criterion, the place where the service is rendered determines the jurisdiction to impose the VAT. Performed in the Philippines, such service is necessarily subject to its jurisdiction, for the State necessarily has to have "a substantial connection" to it, in order to enforce a zero rate. The place of payment is immaterial; much less is the place where the output of the service will be further or ultimately used.[37]

Finally, the Court in American Express found support from the legislative record that revealed that consumption abroad is not a pertinent factor to imbue the zero-rating on services by VAT-registered persons performed in the Philippines.

> Interpellations on the subject in the halls of the Senate also reveal a clear intent on the part of the legislators not to impose the condition of being "consumed abroad" in order for services performed in the Philippines by a VAT-registered person to be zero-rated. We quote the relevant portions of the proceedings:
> "Senator Maceda: Going back to Section 102 just for the moment. Will the Gentleman kindly explain to me – I am referring to the lower part of the first paragraph with the 'Provided'. Section 102. 'Provided that the following services performed in the Philippines by VAT registered persons shall be subject to zero percent.' There are three here. What is the difference between the three here which is subject to zero percent and Section 103 which is exempt transactions, to being with?
>
> "Senator Herrera: Mr. President, in the case of processing and manufacturing or repacking goods for persons doing business outside the Philippines which are subsequently exported, and where the services are paid for in acceptable foreign currencies inwardly remitted, this is considered as subject to 0%. But if these conditions are not complied with, they are subject to the VAT.
>
> "In the case of No. 2, again, as the Gentleman pointed out, these three are zero-rated and the other one that he indicated are exempted from the very beginning. These three enumerations under Section 102 are zero-rated provided that these conditions indicated in these three paragraphs are also complied with. If they are not complied with, then they are not entitled to the zero ratings. Just like in the export of minerals, if these are not exported, then they cannot qualify under this provision of zero rating.
>
> "Senator Maceda: Mr. President, just one small item so we can leave this. Under the proviso, it is required that the following services be performed in the Philippines.
>
> "Under No. 2, services other than those mentioned above includes, let us say, manufacturing computers and computer chips or repacking goods for persons doing business outside the Philippines. Meaning to say, we ship the goods to them in Chicago or Washington and they send the payment inwardly to the Philippines in foreign currency, and that is, of course, zero-rated.
>
> "Now, when we say 'services other than those mentioned in the preceding subsection[,'] may I have some examples of these?
>
> "Senator Herrera: Which portion is the Gentleman referring to?
>
> "Senator Maceda: I am referring to the second paragraph, in the same Section 102. The first paragraph is when

> one manufactures or packages something here and he sends it abroad and they pay him, that is covered. That is clear to me. The second paragraph says 'Services other than those mentioned in the preceding subparagraph, the consideration of which is paid for in acceptable foreign currency. . . .'
>
> "One example I could immediately think of–I do not know why this comes to my mind tonight–is for tourism or escort services. For example, the services of the tour operator or tour escort–just a good name for all kinds of activities–is made here at the Midtown Ramada Hotel or at the Philippine Plaza, but the payment is made from outside and remitted into the country.
>
> "Senator Herrera: What is important here is that these services are paid in acceptable foreign currency remitted inwardly to the Philippines.
>
> "Senator Maceda: Yes, Mr. President. Like those Japanese tours which include $50 for the services of a woman or a tourist guide, it is zero-rated when it is remitted here.
>
> "Senator Herrera: I guess it can be interpreted that way, although this tourist guide should also be considered as among the professionals. If they earn more than P200,000, they should be covered.
>
> x x x x
>
> Senator Maceda: So, the services by Filipino citizens outside the Philippines are subject to VAT, and I am talking of all services. Do big contractual engineers in Saudi Arabia pay VAT?
>
> "Senator Herrera: This provision applies to a VAT-registered person. When he performs services in the Philippines, that is zero-rated.
>
> "Senator Maceda: That is right."[38]

It is indubitable that petitioner's arguments cannot withstand the Court's ruling in American Express, a precedent warranting stare decisis application and one which, in any event, we are disinclined to revisit at this juncture.

WHEREFORE, the petition is DENIED. No pronouncement as to costs.

SO ORDERED.

Quisumbing, Carpio, Carpio-Morales, and Velasco, Jr., JJ., concur.

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[1] G.R. No. 152609, 29 June 2005, 462 SCRA 197.

[2] Otherwise known as Presidential Decree No. 1158, as amended. The National Internal Revenue Code of 1997, which was enacted through Republic Act No. 8424, took effect only on 1 January 1998. See Section 8, Republic Act No. 8424. See Commissioner of Internal Revenue v. Court of Appeals, 385 Phil. 875, 883 (2000).

[3] CIR v. American Express, supra note 1, at 208.

[4] Penned by Associate Justice N. Tijam of the 4th Division, and concurred in by Associate Justices G. Jacinto and J. Sabio, Jr. See rollo, pp. 38-47.

[5] See CA rollo, p. 92.

[6] Id. at 83.

[7] Id. at 173-175.

[8] Id. at 22-37.

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[9] Id. at 30.

[10] Id. at 33.

[11] Id.

[12] Id. at 36.

[13] Dated 20 February 1996.

[14] CA rollo, pp. 50-54.

[15] See CA rollo, p. 52.

[16] Id. at 53, citing American Express v. CIR, CTA Case No. 6099, 19 April 2002. Citations omitted.

[17] CA rollo, pp. 218-227.

[18] See National Internal Revenue Code, Sec. 102

[19] Otherwise known as Presidential Decree No. 1158, as amended. The National Internal Revenue Code of 1997, which was enacted through Republic Act No. 8424, took effect only on 1 January 1998. See Section 8, Republic Act No. 8424. See Commissioner of Internal Revenue v. CA, 385 Phil. 875, 883 (2000).

[20] See Sec. 102(b)(2), National Internal Revenue Code of 1986, as amended. Under the National Internal Revenue Code of 1997, these same definitions are now found in Sec. 108(B)(1) and (2).

[21] See rollo, p. 24.

[22] "[A]nother key characteristic of the VAT – that no matter how many the taxable transactions that precede the final purchase or sale, it is the end-user, or the consumer, that ultimately shoulders the tax. Despite its name, VAT is generally not intended to be a tax on value added, but rather as a tax on consumption. Hence, there is a mechanism in the VAT system that enables firms to offset the tax they have paid on their own purchases of goods and services against the tax they charge on their sales of goods and services." See ABAKADA v. Ermita, Abakada Guro Party List v. Ermita, G.R. Nos. 168056, 168207, 168461, 168463, 168730, 1 September 2005, 469 SCRA 1, 282, J. Tinga, Dissenting and Concurring Opinion; CIR v. Magsaysay Lines, G.R. No. 146984, 28 July 2006, 497 SCRA 63, 69.

[23] Supra note 1.

[24] Id. at 208.

[25] Id. at 224.

[26] Id. at 215. Citations omitted.

[27] See Sec. 102(b)(2), National Internal Revenue Code of 1986, as amended. Under the National Internal Revenue Code of 1997, these same definitions are now found in Section 108(B)(1) and (2).

[28] Supra note 1 at 208.

[29] Id. at 219-220. Citations omitted.

[30] Section 4.102-2 of Revenue Regulation No. 5-96 reads in full:

"SECTION 4.102-2 Zero-Rating. – (a) In general.–A zero-rated sale by a VAT registered person, which is a taxable transaction for VAT purposes, shall not result in any output tax. However, the input tax on his purchases

of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these regulations.

"(b) Transaction subject to zero-rate. – The following services performed in the Philippines by VAT-registered persons shall be subject to 0%:

'(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 BSP;

'(2) Services other than those mentioned in the preceding subparagraph, e.g. those rendered by hotels and other service establishments, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.'"

[31] Supra.

[32] Rollo, p. 26.

[33] Supra note 1 at 222-223. Citations omitted.

[34] Id. at 224-225. Citations omitted.

[35] Id. at 216-218. Citations omitted.

[36] Id. at 218-219. Citations omitted.

[37] Id. at 219. Citations omitted.

[38] Id. at 227-229, citing Journal of the Senate, 2nd Regular Session (1993-1994), Vol. III, Monday, 21 March 1994, p. 70.

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