690 Phil. 679

SECOND DIVISION

[G.R. No. 190102, July 11, 2012]

ACCENTURE, INC., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

SERENO, J.:

This is a Petition filed under Rule 45 of the 1997 Rules of Civil Procedure, praying for the reversal of the Decision of the Court of Tax Appeals *En Banc* (CTA *En Banc*) dated 22 September 2009 and its subsequent Resolution dated 23 October 2009.[1]

Accenture, Inc. (Accenture) is a corporation engaged in the business of providing management consulting, business strategies development, and selling and/or licensing of software.[2] It is duly registered with the Bureau of Internal Revenue (BIR) as a Value Added Tax (VAT) taxpayer or enterprise in accordance with Section 236 of the National Internal Revenue Code (Tax Code).[3]

On 9 August 2002, Accenture filed its Monthly VAT Return for the period 1 July 2002 to 31 August 2002 (1st period). Its Quarterly VAT Return for the fourth quarter of 2002, which covers the 1st period, was filed on 17 September 2002; and an Amended Quarterly VAT Return, on 21 June 2004.[4] The following are reflected in Accenture's VAT Return for the fourth quarter of 2002:[5]

Purchases	Amount	Input VAT
Domestic Purchases- Capital Goods	12,312,722.00	P1,231,272.20
Domestic Purchases- Goods other than capital Goods	64,789,507.90	6,478,950.79
Domestic Purchases- Services	16,455,868.10	1,645,586.81
Total Input Tax		**P9,355,809.80**
Zero-rated Sales		P316,113,513.34
Total Sales		P335,640,544.74

Accenture filed its Monthly VAT Return for the month of September 2002 on 24 October 2002; and that for October 2002, on 12 November 2002. These returns were amended on 9 January 2003. Accenture's Quarterly VAT Return for the first quarter of 2003, which included the period 1 September 2002 to 30 November 2002 (2nd period), was filed on 17 December 2002; and the Amended Quarterly VAT Return, on 18 June 2004. The latter contains the following information:[6]

Purchases	Amount	Input VAT
Domestic Purchases- Capital Goods	80,765,294.10	P8,076,529.41

Domestic Purchases- Goods other than capital Goods	132,820,541.70	13,282,054.17
Domestic Purchases-Services	63,238,758.00	6,323,875.80
Total Input Tax		**P27,682,459.38**
Zero-rated Sales		P545,686,639.18
Total Sales		P572,880,982.68

The monthly and quarterly VAT returns of Accenture show that, notwithstanding its application of the input VAT credits earned from its zero-rated transactions against its output VAT liabilities, it still had excess or unutilized input VAT credits. These VAT credits are in the amounts of P9,355,809.80 for the 1st period and P27,682,459.38 for the 2nd period, or a total of P37,038,269.18.[7]

Out of the P37,038,269.18, only P35,178,844.21 pertained to the allocated input VAT on Accenture's "domestic purchases of taxable goods which cannot be directly attributed to its zero-rated sale of services."[8] This allocated input VAT was broken down to P8,811,301.66 for the 1st period and P26,367,542.55 for the 2nd period.[9]

The excess input VAT was not applied to any output VAT that Accenture was liable for in the same quarter when the amount was earned—or to any of the succeeding quarters. Instead, it was carried forward to petitioner's 2nd Quarterly VAT Return for 2003.[10]

Thus, on 1 July 2004, Accenture filed with the Department of Finance (DoF) an administrative claim for the refund or the issuance of a Tax Credit Certificate (TCC). The DoF did not act on the claim of Accenture. Hence, on 31 August 2004, the latter filed a Petition for Review with the First Division of the Court of Tax Appeals (Division), praying for the issuance of a TCC in its favor in the amount of P35,178,844.21.

The Commissioner of Internal Revenue (CIR), in its Answer,[11] argued thus:

1. The sale by Accenture of goods and services to its clients are not zero-rated transactions.
2. Claims for refund are construed strictly against the claimant, and Accenture has failed to prove that it is entitled to a refund, because its claim has not been fully substantiated or documented.

In a 13 November 2008 Decision,[12] the Division denied the Petition of Accenture for failing to prove that the latter's sale of services to the alleged foreign clients qualified for zero percent VAT.[13]

In resolving the sole issue of whether or not Accenture was entitled to a refund or an issuance of a TCC in the amount of P35,178,844.21,[14] the Division ruled that Accenture had failed to present evidence to prove that the foreign clients to which the former rendered services did business outside the Philippines.[15] Ruling that Accenture's services would qualify for zero-rating under the 1997 National Internal Revenue Code of the Philippines (Tax Code) only if the recipient of the services was

doing business outside of the Philippines,[16] the Division cited *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc. (Burmeister)*[17] as basis.

Accenture appealed the Division's Decision through a Motion for Reconsideration (MR).[18] In its MR, it argued that the reliance of the Division on *Burmeister* was misplaced[19] for the following reasons:

1. The issue involved in *Burmeister* was the entitlement of the applicant to a refund, given that the recipient of its service was doing business in the Philippines; it was not an issue of failure of the applicant to present evidence to prove the fact that the recipient of its services was a foreign corporation doing business outside the Philippines.[20]

2. *Burmeister* emphasized that, to qualify for zero-rating, the recipient of the services should be doing business outside the Philippines, and Accenture had successfully established that.[21]

3. Having been promulgated on 22 January 2007 or after Accenture filed its Petition with the Division, *Burmeister* cannot be made to apply to this case.[22]

Accenture also cited *Commissioner of Internal Revenue v. American Express (Amex)* [23] in support of its position. The MR was denied by the Division in its 12 March 2009 Resolution.[24]

Accenture appealed to the CTA *En Banc*. There it argued that prior to the amendment introduced by Republic Act No. (R.A.) 9337,[25] there was no requirement that the services must be rendered to a person engaged in business conducted outside the Philippines to qualify for zero-rating. The CTA *En Banc* agreed that because the case pertained to the third and the fourth quarters of taxable year 2002, the applicable law was the 1997 Tax Code, and not R.A. 9337.[26] Still, it ruled that even though the provision used in *Burmeister* was Section 102(b)(2) of the earlier 1977 Tax Code, the pronouncement therein requiring recipients of services to be engaged in business outside the Philippines to qualify for zero-rating was applicable to the case at bar, because Section 108(B)(2) of the 1997 Tax Code was a mere reenactment of Section 102(b)(2) of the 1977 Tax Code.

The CTA *En Banc* concluded that Accenture failed to discharge the burden of proving the latter's allegation that its clients were foreign-based.[27]

Resolute, Accenture filed a Petition for Review with the CTA *En Banc*, but the latter affirmed the Division's Decision and Resolution.[28] A subsequent MR was also denied in a Resolution dated 23 October 2009.

Hence, the present Petition for Review[29] under Rule 45.

In a Joint Stipulation of Facts and Issues, the parties and the Division have agreed

to submit the following issues for resolution:

1. Whether or not Petitioner's sales of goods and services are zero-rated for VAT purposes under Section 108(B)(2)(3) of the 1997 Tax Code.

2. Whether or not petitioner's claim for refund/tax credit in the amount of P35,178,884.21 represents unutilized input VAT paid on its domestic purchases of goods and services for the period commencing from 1 July 2002 until 30 November 2002.

3. Whether or not Petitioner has carried over to the succeeding taxable quarter(s) or year(s) the alleged unutilized input VAT paid on its domestic purchases of goods and services for the period commencing from 1 July 2002 until 30 November 2002, and applied the same fully to its output VAT liability for the said period.

4. Whether or not Petitioner is entitled to the refund of the amount of P35,178,884.21, representing the unutilized input VAT on domestic purchases of goods and services for the period commencing from 1 July 2002 until 30 November 2002, from its sales of services to various foreign clients.

5. Whether or not Petitioner's claim for refund/tax credit in the amount of P35,178,884.21, as alleged unutilized input VAT on domestic purchases of goods and services for the period covering 1 July 2002 until 30 November 2002 are duly substantiated by proper documents.[30]

For consideration in the present Petition are the following issues:

1. Should the recipient of the services be "doing business outside the Philippines" for the transaction to be zero-rated under Section 108(B)(2) of the 1997 Tax Code?

2. Has Accenture successfully proven that its clients are entities doing business outside the Philippines?

Recipient of services must be doing business outside the Philippines for the transactions to qualify as zero-rated.

Accenture anchors its refund claim on Section 112(A) of the 1997 Tax Code, which allows the refund of unutilized input VAT earned from zero rated or effectively zero-rated sales. The provision reads:

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 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.

Section 108(B) referred to in the foregoing provision was first seen when Presidential Decree No. (P.D.) 1994[31] amended Title IV of P.D. 1158,[32] which is also known as the National Internal Revenue Code of 1977. Several Decisions have referred to this as the 1986 Tax Code, even though it merely amended Title IV of the 1977 Tax Code.

Two years thereafter, or on 1 January 1988, Executive Order No. (E.O.) 273[33] further amended provisions of Title IV. E.O. 273 by transferring the old Title IV provisions to Title VI and filling in the former title with new provisions that imposed a VAT.

The VAT system introduced in E.O. 273 was restructured through Republic Act No. (R.A.) 7716.[34] This law, which was approved on 5 May 1994, widened the tax base. Section 3 thereof reads:

SECTION 3. Section 102 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

"SEC. 102. *Value-added tax on sale of services and use or lease of properties*. x x x

x x x x x x x x x

"(b) *Transactions 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