640 Phil. 612

THIRD DIVISION

[G.R. No. 182364, August 03, 2010]

AT&T COMMUNICATIONS SERVICES PHILIPPINES, INC., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

CARPIO MORALES, J.:

AT&T Communications Services Philippines, Inc. (petitioner) is a domestic corporation primarily engaged in the business of providing information, promotional, supportive and liaison services to foreign corporations such as AT&T Communications Services International Inc., AT&T Solutions, Inc., AT&T Singapore, Pte. Ltd.,, AT&T Global Communications Services, Inc. and Acer, Inc., an enterprise registered with the Philippine Economic Zone Authority (PEZA).

Under Service Agreements forged by petitioner with the above-named corporations, remuneration is paid in U.S. Dollars and inwardly remitted in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP).

For the calendar year 2002, petitioner incurred input VAT when it generated and recorded zero-rated *sales* in connection with its Service Agreements in the peso equivalent of P56,898,744.05. Petitioner also incurred input VAT from *purchases* of capital goods and other taxable goods and services, and importation of capital goods.

Despite the application of petitioner's input VAT against its output VAT, an excess of unutilized input VAT in the amount of P2,050,736.69 remained. As petitioner's unutilized input VAT could not be directly and exclusively attributed to either of its zero-rated sales or its domestic sales, an allocation of the input VAT was made which resulted in the amount of P1,801,826.82 as petitioner's claim attributable to its zero-rated sales.

On March 26, 2004, petitioner filed with the Commissioner of Internal Revenue (respondent) an application for tax refund and/or tax credit of its excess/unutilized input VAT from zero-rated sales in the said amount of P1,801,826.82.[1]

To prevent the running of the prescriptive period, petitioner subsequently filed a petition for review with the Court of Tax Appeals (CTA) which was docketed as CTA Case No. 6907 and lodged before its First Division.

In support of its claim, petitioner presented documents including its Summary of Zero-Rated Sales (Exhibit "DD") with corresponding supporting documents; VAT invoices on which were stamped "zero-rated" and bank credit advices (Exhibits "EE-1" to "EE-56"); copies of Service Agreements (Exhibits "N" to "Q"); and report of

the commissioned certified public accountant (Exhibit "AA" to "AA-22").

After petitioner presented its evidence, respondent did not, despite notice, proffer any opposition to it. He was eventually declared to have waived his right to present evidence.

By Decision of February 23, 2007,[2] the CTA First Division, conceding that petitioner's transactions fall under the classification of zero-rated sales, nevertheless denied petitioner's claim "for lack of substantiation," disposing as follows:

> In reiteration, considering that the subject revenues pertain to gross receipts from services rendered by petitioner, **valid VAT official receipts** and not mere sales invoices **should have been submitted** in support thereof. Without proper VAT official receipts, the foreign currency payments received by petitioner from services rendered for the four (4) quarters of taxable year 2002 in the sum of US$1,102,315.48 with the peso equivalent of P56,898,744.05 cannot qualify for zero-rating for VAT purposes. Consequently, the claimed input VAT payments allegedly attributable thereto in the amount of P1,801,826.82 cannot be granted. It is clear from the provisions of Section 112 (A) of the NIRC of 1997 that there must be zero-rated or effectively zero-rated sales in order that a refund of input VAT could prosper.
>
> x x x x[3] (emphasis and underscoring supplied)

The CTA First Division, relying on Sections 106[4] and 108[5] of the Tax Code, held that since petitioner is engaged in sale of *services*, VAT Official Receipts should have been presented in order to substantiate its claim of zero-rated sales, not VAT invoices which pertain to sale of *goods* or properties.

On petition for review, the CTA *En Banc*, by Decision of February 18, 2008,[6] *affirmed* that of the CTA First Division. Petitioner's motion for reconsideration having been denied by Resolution of April 2, 2008, the present petition for review was filed.

The petition is impressed with merit.

A taxpayer engaged in zero-rated transactions may apply for tax refund or issuance of tax credit certificate for unutilized input VAT, subject to the following requirements: (1) the taxpayer is engaged in sales which are zero-rated (*i.e.*, export sales) or effectively zero-rated; (2) the taxpayer is VAT-registered; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax; and (5) in case of zero-rated sales under Section 106 (A) (2) (a) (1) and (2), Section 106 (B) and Section 108 (B) (1) and (2), the acceptable foreign currency exchange proceeds thereof have been duly accounted for in accordance with BSP rules and regulations.[7]

Commissioner of Internal Revenue v. Seagate Technology (Philippines)[8] teaches