

THIRD DIVISION

[G.R. NO. 152609, June 29, 2005]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER,
AMERICAN EXPRESS INTERNATIONAL, INC. (PHILIPPINE
BRANCH), RESPONDENT.**

D E C I S I O N

PANGANIBAN, J.:

As a general rule, the value-added tax (VAT) system uses the destination principle. However, our VAT law itself provides for a clear exception, under which the supply of service shall be zero-rated when the following requirements are met: (1) the service is performed in the Philippines; (2) the service falls under any of the categories provided in Section 102(b) of the Tax Code; and (3) it is paid for in acceptable foreign currency that is accounted for in accordance with the regulations of the Bangko Sentral ng Pilipinas. Since respondent's services meet these requirements, they are zero-rated. Petitioner's Revenue Regulations that alter or revoke the above requirements are *ultra vires* and invalid.

The Case

Before us is a Petition for Review^[1] under Rule 45 of the Rules of Court, assailing the February 28, 2002 Decision^[2] of the Court of Appeals (CA) in CA-GR SP No. 62727. The assailed Decision disposed as follows:

"**WHEREFORE**, premises considered, the petition is hereby **DISMISSED** for lack of merit. The assailed decision of the Court of Tax Appeals (CTA) is **AFFIRMED** in toto."^[3]

The Facts

Quoting the CTA, the CA narrated the undisputed facts as follows:

"[Respondent] is a Philippine branch of American Express International, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, U.S.A., with office in the Philippines at the Ground Floor, ACE Building, corner Rada and de la Rosa Streets, Legaspi Village, Makati City. It is a servicing unit of American Express International, Inc. - Hongkong Branch (Amex-HK) and is engaged primarily to facilitate the collections of Amex-HK receivables from card members situated in the Philippines and payment to service establishments in the Philippines.

"Amex Philippines registered itself with the Bureau of Internal Revenue (BIR), Revenue District Office No. 47 (East Makati) as a value-added tax

(VAT) taxpayer effective March 1988 and was issued VAT Registration Certificate No. 088445 bearing VAT Registration No. 32A-3-004868. For the period January 1, 1997 to December 31, 1997, [respondent] filed with the BIR its quarterly VAT returns as follows:

Exhibit

Period Covered

Date Filed

D

1997 1st Qtr.

April 18, 1997

F

2nd Qtr.

July 21, 1997

G

3rd Qtr.

October 2, 1997

H

4th Qtr.

January 20, 1998

"On March 23, 1999, however, [respondent] amended the aforesaid returns and declared the following:

Exh 1997

Taxable

Sales

Output

VAT

Zero-rated

Sales

Domestic

Purchases

Input

VAT

I 1st qtr

P59,597.20

P5,959.72

P17,513,801.11

P6,778,182.30

P677,818.23

J 2nd qtr

67,517.20

6,751.72

17,937,361.51

9,333,242.90

933,324.29

K 3rd qtr

51,936.60

5,193.66

19,627,245.36

8,438,357.00

843,835.70

L 4th qtr

67,994.30

6,799.43

25,231,225.22

13,080,822.10

1,308,082.21

Total

P247,045.30

P24,704.53

P80,309,633.20

P37,630,604.30

P3,763,060.43

"On April 13, 1999, [respondent] filed with the BIR a letter-request for the refund of its 1997 excess input taxes in the amount of P3,751,067.04, which amount was arrived at after deducting from its total input VAT paid of P3,763,060.43 its applied output VAT liabilities only for the third and fourth quarters of 1997 amounting to P5,193.66 and P6,799.43, respectively. [Respondent] cites as basis therefor, Section 110 (B) of the 1997 Tax Code, to state:

'Section 110. Tax Credits. -

x x x x x x x x x

'(B) Excess Output or Input Tax. - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.'

"There being no immediate action on the part of the [petitioner], [respondent's] petition was filed on April 15, 1999.

"In support of its Petition for Review, the following arguments were raised by [respondent]:

A. Export sales by a VAT-registered person, the consideration for which is paid for in acceptable foreign currency inwardly remitted to the Philippines and accounted for in accordance with existing regulations of the Bangko Sentral ng Pilipinas, are subject to [VAT] at zero percent (0%). According to [respondent], being a VAT-registered entity, it is subject to the VAT imposed under Title IV of the Tax Code, to wit:

'Section 102.(sic) Value-added tax on sale of services.-

(a) *Rate and base of tax.* - There shall be levied, assessed and

collected, a value-added tax equivalent to 10% percent of gross receipts derived by any person engaged in the sale of services. The phrase "sale of services" means the performance of all kinds of services for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors: stock, real estate, commercial, customs and immigration brokers; lessors of personal property; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; and similar services regardless of whether o[r] not the performance thereof calls for the exercise or use of the physical or mental faculties: Provided That the following services performed in the Philippines by VAT-registered persons shall be subject to 0%:

(1) x x x

(2) Services other than those mentioned in the preceding subparagraph, the consideration is paid for in acceptable foreign currency which is remitted inwardly to the Philippines and accounted for in accordance with the rules and regulations of the BSP. x x x.'

In addition, [respondent] relied on VAT Ruling No. 080-89, dated April 3, 1989, the pertinent portion of which reads as follows:

'In Reply, please be informed that, as a VAT registered entity whose service is paid for in acceptable foreign currency which is remitted inwardly to the Philippines and accounted for in accordance with the rules and regulations of the Central [B]ank of the Philippines, your service income is automatically zero rated effective January 1, 1998. [Section 102(a)(2) of the Tax Code as amended].^[4] For this, there is no need to file an application for zero-rate.'

B. Input taxes on domestic purchases of taxable goods and services related to zero-rated revenues are available as tax refund in accordance with Section 106 (now Section 112) of the [Tax Code] and Section 8(a) of [Revenue] Regulations [(RR)] No. 5-87, to state:

'Section 106. Refunds or tax credits of input tax. -

(A) *Zero-rated or effectively Zero-rated Sales.* - Any VAT-registered person, except those covered by paragraph (a) above, whose sales are zero-rated or are effectively zero-rated, may, within two (2) years after the close of the taxable quarter when such sales were made, apply for the issuance of tax credit certificate or refund of the input taxes due or attributable to such sales, to the extent that such input tax has not been applied against output tax. x x x. [Section 106(a) of the Tax Code]^[5]

'Section 8. Zero-rating. - (a) In general. - A zero-rated sale is a taxable transaction for value-added tax purposes. A sale by a VAT-registered person of goods and/or services taxed at zero rate shall not