BDB Law wts

DU-BALADAD AND ASSOCIATES

SUMMARY OF SIGNIFICANT CTA DECISIONS (FEBUARY 2018)

1. **Discrepancies between the Certificate of Product Registration (CPR) and the actual imported product constitute probable cause for seizure under the Tariff and Customs Code of the Philippines (TCCP).**

   The taxpayer imported soya bean powder. Upon securing its release from customs, it submitted a Certificate of Product Registration (CPR) for soya milk powder, among others. The Bureau of Customs refused to release the shipment given the discrepancy, and instituted proceedings for the forfeiture of the product. (*Unlimited Exchange Global Corp. v. Commissioner of Customs, CTA Case No. 9488, February 27, 2018*)

2. **A taxpayer may pay for its assessed deficiency tax, and subsequently file for a refund. Supreme Court Rulings apply retroactively when interpreting existing law.**

   The taxpayer was assessed for deficiency Documentary Stamp Tax (DST) for Taxable year 2010. The alleged deficiency DST stems from intercompany advances. The assessment was based on a Supreme Court ruling, promulgated on the year 2011. The taxpayer argues that the SC ruling should not be given retroactive application. Further, it was argued that there were no documents executed for the intercompany advances. The BIR merely based its assessment on the notes in its financial statements. The taxpayer, however, paid for the said assessment but indicated its protest on the assessment. It subsequently filed for a refund. The Court ruled that the taxpayer pursued the correct remedy of refund of erroneously paid taxes. However, the CTA also found that it is liable for deficiency DST based on the 2011 SC Ruling. The CTA ruled that Supreme Court Rulings apply retroactively when interpreting existing law. However, since the taxpayer relied on previous BIR Rulings and SC decisions, it is in good faith, and thus should not have been subject to penalties. The CTA partially granted the refund, to the extent of the interest and penalties paid. (*South Premiere Power Corp. v. Commissioner of Internal Revenue, CTA Case No. 9337, February 27, 2018*)

   Dissent from Justice Manahan: Since the SC decision is prejudicial to the taxpayer, it should not have been given retroactive effect.

3. **An assessment based on third-party matching without validation from the third parties is void.**

   The taxpayer was assessed with deficiency income tax and VAT from undeclared purchases. The BIR arrived at the assessment using third-party matching. The taxpayer contested the assessment, and the same was cancelled by the CTA second division. The CTA division ruled that the third party matching was not verified in accordance with RMO

No. 46-04. Further, the CTA division ruled that since what was undeclared were purchases, the BIR has the burden to prove that the same undeclared purchases resulted in deficiency taxes. Upon reaching the CTA En Banc, the Court upheld the ruling of the Second Division. (*Commissioner of Internal Revenue v. G&W Architects, Engineers, and Project Consultants, Co., CTA EB No. 1572, February 23, 2018*)

Concurring Opinion from PJ Del Rosario: The LOA is invalid for being received by the taxpayer beyond the 30-day validity, and that the FLD/FAN has no date of demand.

4. **The computation for interests and penalties under the TRAIN Law takes effect as of January 1, 2018.**

   The taxpayer was found liable for deficiency taxes by the CTA. The decision was promulgated on Janaury 3, 2018. The taxpayer filed for reconsideration of the decision, arguing that the amendments brought about by TRAIN Law prohibits the simultaneous application of deficiency and delinquency interest. The CTA ruled that given the effectivity period of the TRAIN Law, the computation of interests from January 1, 2018 onwards should follow the said law. In other words, the computation of interests using the tax code prior to the amendments of the TRAIN Law should apply, but only up to December 31, 2017. From January 1, 2018 onwards, the interests as imposed by TRAIN Law should apply. (*Moog Controls Corporation, Philippines v. Commissioner of Internal Revenue, CTA Case No. 9077, February 22, 2018*)

5. **The primary purpose of a holding company is not sufficient to consider it as a financial intermediary.**

   The taxpayer was assessed with deficiency Local Business Tax (LBT) on its dividend income. Upon contesting the same, the RTC found that the primary purpose of the holding company is sufficient to include activities of a non-bank financial intermediary. The CTA, however, reversed the conclusion of the RTC, saying that the same is not sufficient to treat a holding company as a financial intermediary. The primary purpose, without actual proof that the holding company primarily functions as a financial intermediary is insufficient ground to consider a holding company as a financial intermediary, and thus liable to LBT on dividend income. (*City of Davao v. Randy Allied Ventures, Inc., CTA EB No. 1591, February 20, 2018*)

6. **The CIR cannot raise for the first time on appeal, a new argument that the returns filed by CSPCC are false returns.**

   The Respondent was assessed for deficiency IT, VAT, and EWT for the taxable years 2003 to 2006. The CTA Division ruled to cancel and withdraw the assessment after it found out that the BIR's LOA failed to comply with Section 3(C) of RMO No. 43-1990. Accordingly, the assessment was declared void for lack of valid LOA for the years 2003 to 2005. Further, the CTA Division likewise cancelled the assessment for the taxable year 2006. As noticed, the 3-year prescriptive period had lapsed. The CIR filed its MR and assailed for the first time the issue on false returns and that the 10-year prescription shall apply. The CTA Division denied the allegation because the same was raised only in the MR. When elevated to the CTA En Banc, it affirmed the assailed decision of the Division. Thereby, assessment to Petitioner was cancelled and withdrawn. *(Commissioner of Internal Revenue v. China State Philippines Construction Corporation, CTA EB No 1558, February 08, 2018)*

7. **The nature of the contract entered into by FII and Respondent treated the software maintenance fees between them as non-taxable business profits and not royalties under the OECD Commentaries.**

   Respondent sought for the cancellation of assessment on FWT for the taxable year 2008 and petition to claim for refund on the erroneous payment of FWT on royalties. The CTA Division cancelled the assessment on the ground that software maintenance fees paid by Respondent to Fluor Intercontinental Inc. (FII) may not be treated as royalty payments but business profits. Under the contract between FII and respondent, respondent acquires the following rights: a non-exclusive, non-transferable free authority to access or use the software; and, respondent is permitted to make and distribute to its employees copies of the documentation and related materials, but only to the extent that such reproduction and distribution shall be necessary for respondent's access or use of the software. These rights fall under paragraph 14 and 14.2 of OECD Commentaries, and are to be treated as business profits and not royalties. Business profits will be taxable in the Philippines when there is a PE here. FII having no PE in the Philippines, the payments it received from respondent for software maintenance services are not taxable in the Philippines. *(Commissioner of Internal Revenue v. Fluor Daniel Philippines, Inc., CTA EB 1555, February 12, 2018)*

8. **The CTA may not acquire jurisdiction over a Petition which was based on a tax assessment that has become final, executory, and enforceable.**

   The taxpayer sought for the cancellation of assessment on deficiency taxes for the taxable year 2009. The CTA Division which was affirmed by the CTA En Banc ruled that the taxpayer filed its protest 31 days from the issuance of the FLD and other assessment notices. The period to file the protest had lapsed rendering the tax assessment final. The CTA may no longer acquire jurisdiction since the assessment was not disputed beforehand. *(Himalayang Pilipino Plans v. Commissioner of Internal Revenue, CTA EB 1513, February 12, 2018)*

9. **The City of Makati may not impose Local Business Tax on the taxpayer because it is not a bank or a financial institution falling within the ambit of 3A.02(p) and 3A.03(h) of the Revised Makati Revenue Code nor the Local Government Code.**

   Taxpayer claims for a cash refund of the alleged erroneously collected Local Business Tax assessed by the City of Makati. Both the CTA Division and CTA En Banc ruled for the taxpayer stating. The taxpayer may not be treated as a bank or a financial institution even under the BSP Manual of Regulations. As such, the CTA granted its claim for refund as the payment made was erroneous. *(The City of Makati and the City Treasurer of Makati v. Metro Pacific Investments Corporation, CTA EB 1350, February 09, 2018)*

10. **FANs must indicate not only the legal and factual bases for the assessment but must also state a clear and categorical demand for payment of the computed tax liabilities within a specific period.**

    Taxpayer was assessed for deficiency IT, VAT, and DST for the taxable year 2010. The CTA relieved the taxpayer from payment of the deficiency taxes for failure of the BIR to demand to pay the taxes due within a specific period. The BIR erroneously left the spaces for due dates in the enclosed FANs blank. The taxpayer then was deprived of the date to pay the assessment amount. The assessment was likewise cancelled for failure to issue LOA anew despite the reassignment of the tax assessment case to other revenue officers. *(San Miguel Foods, Inc. v. Commissioner of Internal Revenue, CTA No. 9046, February 12, 2018)*

11. **The Court's jurisdiction to review respondent's denial or inaction on disputed assessments includes the authority to determine the proper taxes to be paid.**

    Taxpayer claimed that the CTA has no authority to impose deficiency assessment as the same falls within the powers of the BIR. The CTA however denied imposing assessment but merely determining the proper taxes to be paid. Accordingly, the taxpayer's claim for refund of FWT is closely related with the issue of the proper taxes that are due from the taxpayer. The CTA held that the petitioner's shouldering of the tax expenses of its assigned foreign employees is considered compensation that benefitted the employees, which is taxable. In such a case, no refund may be claimed therefrom. However, this decision was reversed when CTA was convinced with the taxpayer's reconsideration that WTC on payments made to foreign employees were computed based on the grossed-up value of the guaranteed net take home pay. *(NES Global Talent v. Commissioner of Internal Revenue, CTA No. 9065, February 09, 2018, Amended Decision)*

12. **One of the requisites for claiming creditable withholding tax refunds is that it must be shown in the return of the recipient that the income payment received was declared as part of the gross income.**

    The taxpayer seeks the issuance of a tax credit certificate (TCC) pertaining to its alleged excess or unutilized creditable withholding tax (CWT) for calendar years (CY) 2012 and 2013. Although the taxpayer filed its administrative and judicial claim within 2 years from the filing of the Final/Adjusted Return, it was found out that **not all the amount claimed as refunds which corresponds to the income payments which were verified to have been included in petitioner's taxable gross income per its Annual Income Tax Returns for CYs 2012 and 2013**. Accordingly, only a portion of the taxpayer's claim was allowed, that is, those that were proven to have been declared as part of gross income**.** *(Ayala Corporation Vs. Commissioner of Internal Revenue, CTA No. 9024, February 13, 2018)*

13. **CTA Division has no jurisdiction over a Petition for Certiorari assailing the interlocutory order issued by RTC when the case pending before the RTC is not in relation to the exercise of the CTA's jurisdiction.**

    The City Treasurer of Makati made an assessment for deficiency local taxes against the taxpayer. Meanwhile, the taxpayer tried to apply for the renewal of its business permit via Business Permit Application Form (Form 101-A) of Makati City, but the latter refused to issue the same due to an alleged business tax deficiency for taxable year 2014 . The taxpayer filed a Petition for Declaratory Relief with prayer for the issuance of an injunction with the RTC of Makati City, with the end goal of securing its business permit. The court a quo issued a Writ of Preliminary Injunction in favor of the taxpayer. City Treasurer assailed the said order before the CTA via Rule 65. The CTA ruled that it does not have jurisdiction over a Petition for Certiorari assailing the interlocutory order issued by RTC when the case filed in the RTC does involve a local tax case nor an appeal pursuant to Sections 195 and 196 of the Local Government Code. (*The City Government of Makati Vs RTC Makati City Branch 59 and MACTEL Corporation, CTA EB No. 1465, February 14, 2018*)

14. **Sales returns and discounts need not be ordinary and necessary expenses under Section 34 of the NIRC of 1997, as amended**.

The BIR assessed the taxpayer with deficiency Income Tax. In its assessment, Respondent CIR disallowed as deduction sales returns and discounts. Petitioner filed a Petition for Review with the CTA arguing that Respondent erred in applying Section 34(A)(1)(b) of the NIRC of 1997 in disallowing the Sales Returns and Discounts and contending that not being ordinary and necessary expenses. The Court stated that by the nature of returns and discounts, the same are indeed not ordinary and necessary expenses contemplated under the said Section, but are allowed as a deduction. (*Ale Mart Corporation Vs. Commissioner of Internal Revenue, CTA No. 8998, February 14, 2018*)

15. The highest bidder in an Extrajudicial Foreclosure Sale has legal right or personality to question the payment of real property taxes he made under protest in order to consolidate ownership over the subject properties.

The BSP was the highest bidder in an Extra Judicial Foreclosure sale and eventually became the owner of the properties subject of the foreclosure sale. However, to effect the said consolidation, it had to pay for the real property back taxes of the property in question. The BSP paid for, and eventually sought to refund the Real Property Taxes paid. The Local Treasurer, LBAA and CBAA denied the claim for refund contending that the BSP has no legal interest to assail the assessment since it is not the registered or declared owner thereof during the relevant period. The CTA ruled that the BSP, being the highest bidder on the foreclosure sale, became the legal owner of the property. Thus, it gained legal interest over the property, and thus became the proper party to refund the taxes paid thereon. (*Bangko Sentral ng Pilipinas Vs. CBAA, CTA EB No. 1438, February 18, 2018*).

16. Under its franchise, particularly pursuant to Section 13 of PD 1590, as amended by RA 9337, PAL is obliged to pay corporate income tax and value-added tax (VAT), in lieu of all other taxes, including excise taxes on commissary and catering supplies, provided that such articles, supplies or materials are imported for its use in its transport and non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality or price.

Petitioner PAL filed a claim for refund of excise taxes paid on its importations of "Inflight Materials" under the column "Description of Articles" of the Informal Import Declaration and Entry documents submitted by it. The Court remanded the case to the CTA Division for the determination of the amount of refundable, substantiated excise taxes paid on petitioner's importation of its Inflight Materials. The Court En Banc ruled that in order to be exempt from excise tax, materials are imported for its use in its transport and non-transport operations and other activities incidental thereto and are **not locally available in reasonable quantity, quality or price, meaning , the price list must be substantiated to prove that indeed the cost of importing inflight material is lower than purchasing**

them locally or that they are not locally available in reasonable quantity, quality or price. Testimonial evidence is insufficient. (*Philippine Airlines, Inc. Vs. Commissioner of Internal Revenue, CTA EB No. 1363, February 13, 2018*)

17. **Mere "Tax Verification Notice" is not the valid LOA contemplated under the law. The subsequent issuance of the Revalidation Notice to substitute Revenue Officers directing them to continue the audit did not cure the said infirmity in the process.**

    BIR ROO No. 43 issued a Tax Verification Notice (TVN) No. 00121502 authorizing Revenue Officer (RO) to examine the taxpayer's records. Due to the transfer of the first RO, a Revalidation Notice was issued authorizing a new RO to continue the examination. Thereafter, the taxpayer received the Final Assessment Notice (FAN) with FLO No. 043A-B110-0715, finding it liable for deficiency IT, VAT and EWT. The taxpayer assailed the validity of the FAN. The Court ruled that mere **"Tax Verification Notice" is not the valid LOA contemplated under the law**. Thus, considering that the revenue officer who conducted the examination was not validly authorized to do so, the assessment is void. **The subsequent issuance of the Revalidation Notice to RO Ma. Lourdes Morales and Group Supervisor Aurea S. Guevarra directing them to continue the audit did not cure the said infirmity in the process**. (*Tektite Insurance Brokers, INC. Vs. CIR, CTA No. 8555, February 14, 2018*).

18. **A Petition filed out of time will be dismissed.**

    Petnet (Petitioner) filed a Petition for Review praying that it be refunded/credited for its alleged unutilized input VAT for the period from April 2012 to December 2012. The administrative claim was filed on time. Petitioner admitted that it has submitted complete documents in support of its administrative claim upon the filing thereof. Thus, the 120-day period shall be reckoned from December 19, 2013 and ended on April 18, 2014. Since Respondent failed to act on the claim, Petitioner had 30 days from April 18, 2014, or until May 18, 2014, to file a judicial appeal. However, Petitioner filed the judicial claim for refund/credit only last August 12, 2015. Thus, the case was dismissed. *(Petnet, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 1479 [CTA Case No. 9113], February 1, 2018)*

19. **A Petition for Review, before the CTA *En Banc*, containing only an argument that was already fully addressed and discussed by the CTA in Division is not sufficient to disturb the CTA Division's findings.**

    CIR (Petitioner) is assailing the decision and resolution of the CTA Division which partially granted Sony's (Respondent's) claim for refund of its unutilized input VAT. The instant Petition before the CTA *En Banc* contains the sole argument that Sony failed to substantiate its claim for refund/credit of its unutilized input VAT for failure to comply with the invoicing requirements. This argument was merely a rehash of the CIR's argument before the CTA Division. The CTA Division has already explained this point, in detail, through its assailed Decision and Resolution. Hence, the instant petition was denied. *(Commissioner of Internal Revenue vs. Sony Mobile Communications International AB, CTA EB No. 1534 [CTA Case No. 8713], February 1, 2018)*

20. **A taxpayer's error in the computation and payment of its tax liability is a ground for refund/credit.**

Petitioner erroneously computed and paid DST, in the amount of P2,500,000.00, on the subscription of its shares of stock by its incorporators. The correct DST due from the aforementioned transaction was only P25,000.00. Since the administrative claim and judicial claim for refund/credit were filed on time, the CTA Division granted the Petition. *(Nube Storage Systems, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9189, February 1, 2018)*

21. First Doctrine – **DST may be levied despite the absence of a debt instrument evidencing advances.**

Second Doctrine – **A Supreme Court doctrine may be applied retroactively if there is no old Supreme Court doctrine was overruled therein.**

Third Doctrine - **Taxpayer's reliance on court decisions and BIR Rulings, existing at the time of payment of the tax, is a sufficient justification to delete the imposition of surcharges and interest.**

CIR (Respondent) assessed San Miguel (Petitioner) for deficiency DST, with surcharges and interest, on the latter's Advances from Related Parties by virtue of the Supreme Court's promulgation of the Filinvest case and BIR's issuance of RMC 48-2011. Petitioner paid the DST, with surcharges and interest, under protest, and subsequently filed an administrative claim and a judicial claim for refund/credit. Petitioner argues that: (1) the assessment merely relied on the Notes to the Audited Financial Statements and there was no debt instrument evidencing the advances; (2) the assessment violated the principle of non-retroactivity of laws and rulings; and (3) it merely relied on court decisions and BIR rulings existing at the time of payment of the tax. The CTA Division partially granted the Petition and ruled that: (i) Petitioner is liable for DST despite the absence of a debt instrument evidencing the advances; (ii) there was no violation of the principle of non-retroactivity of laws and rulings as a Supreme Court doctrine may be applied retroactively if there is no old Supreme Court doctrine was overruled therein; and (iii) it is not liable for surcharges and interest as it merely relied on court decisions and BIR rulings existing at the time of payment. *(San Miguel Energy Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9221, February 2, 2018)*

22. **A Preliminary Collection Letter (PCL) from the BIR is among the "other matters arising under the NIRC" from which a taxpayer may file an appeal with the CTA.**

Petitioner was assessed for deficiency income tax and VAT for the taxable year 2009. The BIR OIC-Regional Director eventually issued an FDDA, from which the Petitioner filed a motion for reconsideration. Thereafter, BIR Revenue Region No. 6 issued a Preliminary Collection Letter against Petitioner. Petitioner argues that it was constrained to treat the PCL as a denial of its protest. Thus, within 30 days after it received the PCL, Petitioner filed with the CTA the instant Petition. However, Respondent argues that the Petition was filed out of time and that the CTA did not have jurisdiction. The Court ruled that a Preliminary Collection Letter (PCL) from the BIR is among the "other matters arising under the NIRC" from which a taxpayer may file an appeal with the CTA, thus, the Petition was filed on time. *(8199 Convenience Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8853, February 2, 2018)*

23. Non-compliance with the substantiation requirements under Section 113 (A), (B), and (C) of the 1997 NIRC is fatal to a taxpayer's claim for refund/credit of its unutilized input VAT.

Petitioner filed a claim for refund/credit of its alleged unutilized input VAT. However, Respondent opposed on the ground that Petitioner filed to fully substantiate its claim. The Court partially granted the Petition. It, therefore, disallowed the refund/credit of a portion of the total input taxes claimed for non-compliance with the substantiation requirements under Section 113 (A), (B), and (C) of the 1997 NIRC. Examples of the violations, among others, are: (a) input taxes supported by documents other than a VAT invoice for purchase of goods; (b) input taxes supported by a VAT invoice but not an original copy; and (c) VAT invoice not issued in the name of Petitioner but with the TIN and address of the Petitioner *(CBK Power Company Limited vs. Commissioner of Internal Revenue, CTA Case No. 8246 & 8302 [CTA EB No. 1225 and G.R. Nos. 203054-55], February 2, 2018)*

24. The seller of the qualified product is exempt from income tax under Section 6 of RA7459, on its commercial sale of the qualified invented products, for a period of ten years from the date of first sale of the inventions involved.

For CY 2010, BIR assessed Petitioner for income tax deficiency. Upon protest by Petitioner, BIR argued that only sales made by inventor and/or patent holders are exempt from payment of income tax pursuant to RA 7459, the term "inventor" under the said law does not include business conduit selling the technologies and inventions, and that Petitioner and its inventor Dr. Hortaleza and distinct personalities. The CTA rules in favor of Petitioner applying Section 6 of RA 7459 and its decision in the case of CIR vs. Splash Corporation, CTA Case No. 8530 and CTA Eb Case No. 330, dated May 19, 2016 and May 5, 2008, respectively. *(Splash Corporation vs. CIR, CTA Case No. 8904, February 2, 2018)*

25. A SEC certification of Non-registration of Company, an Articles of Incorporation, a Tax Residence Certificate, A screenshot of chevron subsidiary governance website, a screenshot of US SEC website, or a service agreement, standing alone, in inadequate proof that Petitioner's client is a non-resident foreign corporation, doing business outside the Philippines.

Petitioner filed a claim for refund of its unutilized input VAT claiming that the services it rendered to its affiliates abroad which were paid in foreign currency, are zero rated transactions. BIR argues that Petitioner failed to establish that the recipients of its services do business outside the Philippines, for it to be entitled to a refund or issuance of TCC. The court ruled that in order to be considered as non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both SEC certificate of Non Registration AND proof of incorporation/registration in a foreign country, and there is no other indication which would disqualify said entity in being classified as a non-resident foreign corporation. Thus, only those clients of Petitioner, with the two aforementioned documents shall be considered as non-resident foreign corporation for purposes of zero-rating. (*Chevron Holdings Inc. vs. CIR, CTA Case No. 9021, February 5, 2018)*

26. When a FLD/FAN becomes final and executory, the assessment does not become a "disputed assessment", and shall not be subject to CTA's review.

Petitioner claims that it received the FLD/FAN on September 26, 2014 and filed its protest on October 27, 2014 via a private courier, which was received by BIR on October 29, 2014. Respondent however, argues that Petitioner failed to file its protest on time since Petitioner received the FLD/FAN on September 24, 2014 but filed its protest only on October 29, 2014, which is beyond the thirty day period for filing a protest. The court ruled that the Petitioner's protest was filed out of time. Both parties had admitted that Respondent actually received the protest on October 29, 2014. Basing it on Petitioner's allegation of its receipt of the assessment on September 26, 2014, it was two days late when it filed its protest on October 29, 2014. Further, Court emphasized that in filing of pleadings, the rules does not include filing via private courier. Though it is not prohibited, it is established that in filing via a private courier, the date of the actual receipt by the court is the date of filing. In this case, Petitioner is two days late. Thus, CTA did not acquire jurisdiction to review the case. (*ARDCI NGO Group, Inc. vs. CIR, CTA Case no. 9056, February 5, 2018).*

27. A taxpayer can file a judicial claim in either of the following: (1) File within 30 days after the CIR denies the claim within the 120 day period; or (2) file within 30 days from the expiration of the 120 day period, in case CIR does not act within the 120 day period.

Petitioner filed its administrative claim for its unutilized input VAT covering the first quarter of TY 2013 on June 26, 2015. Due to inaction of the BIR, Petitioner filed its Petitioner for review on November 23, 2015. Respondent argues that the Petition for Review is premature since its administrative claim is still pending for investigation. The court ruled that the Petitioner was filed on time, applying Section 112 (C) of the NIRC and the case of Rohm Apollo Semiconductor Phils. vs. CIR (GR 168950). The court held that upon the lapse of the 120days and there is inaction on the part of CIR, the inaction is deemed denial of the claim and the taxpayer must filed its appeal within 30days from the lapse of the 120-day period. Thus, Petitioner timely filed its judicial claim on November 23, 2015. Nonetheless, the court denied Petitioner's Petition for review because even if Petitioner has more than enough excess input VAT to cover its output tax liability, and were carried over to the succeeding periods, Petitioner failed to provide evidence that its excess input VAT was deducted as VAT refund /TCC claimed. *(COLT Commercial, Inc. vs. CIR, CTA Case No. 9205, February 6, 2018).*

***28.* A final Resolution of the Court of Tax Appeals decision requires the presence at the deliberation and the affirmative vote of at least two justices.**

This is an amended decision of the court En Banc on this very same case, by virtue of Petitioner's motion for reconsideration. In said motion, Petitioner raised, as one of its arguments, that the Division Order is null and void for being contrary to Section 4, Rule VIII of the NIRC. Applying Section 4, Rule 2 of the RRCTA, the Court ruled in favor of Petitioner holding that while the Division correctly found Petitioner's motion for reconsideration of the Division decision to be a mere scrap of paper, the required quorum was not met in the issuance of said Decision order, requiring at least the presence and affirmation of at least two justices. The division is mandated to act as collegiate body in the deliberation of final resolution. Thus, the Division order, ruling on Petitioner's Motion for reconsideration was improperly issued. (*UNISYS Philippines Limited vs. CIR, CTA EB Case No. 1450, February 7, 2018).*

29. **Petitioner is not entitled to VAT zero-rating of its sales of services to Amadeus Spain since the recipient of its services (Amadeus Spain) is doing business in the Philippines.**

Petitioner asserts that its sales of services to Amadeus IT Group, SA (Amadeus Spain) qualify as zero rated transactions. Respondent on the other hand argues that Petitioner was not able to fully substantiate its claim and was not able to satisfy all the documentary and evidentiary requirements to prove its claim. The court ruled in favor of Respondent holding that Petitioner failed to prove the requisite that the recipient of its services is doing business outside the Philippines, in order to be entitled in the zero-rating of the sale of its services. The court found that although Amadeus Spain is incorporated under the laws of Spain, it is doing business in the Philippines as shown in Petitioner's VAT returns where Petitioner incurred input VAT on services rendered by Amadeus Spain. Petitioner's argument that Amadeus Spain is not doing business in the Philippines as it is merely collecting royalties from Petitioner is unmeritorious. The Amadeus Commercial Organization Agreement and the Distribution agreement between Amadeus Spain and Petitioner, which were existing for several years, indicate continuous commercial dealings and manifests the intention of Amadeus Spain to pursue its business in the Philippines. *(Amadeus Marketing Philippines, Inc. vs. CIR, CTA Case No. 9107, February 6, 2018)*