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THIRD DIVISION

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

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **AMERICAN EXPRESS INTERNATIONAL, INC. (PHILIPPINE BRANCH),** *respondent.*

SYLLABUS

1. TAXATION LAW; NATIONAL INTERNAL REVENUE CODE; VALUE-ADDED TAX; TRANSACTIONS SUBJECT TO ZERO PERCENT RATE; SERVICES PERFORMED BY VAT-REGISTERED PERSONS IN THE PHILIPPINES WHEN PAID IN ACCEPTABLE FOREIGN CURRENCY AND ACCOUNTED FOR IN ACCORDANCE WITH THE RULES OF BSP ARE ZERO-RATED; CASE AT BAR.— [S]ervices 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-rate. Respondent is 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. Certainly, the service it renders in the Philippines is not in the same category as "processing, manufacturing or repacking of goods" and should, therefore, be zero-rated. ... Service has been defined as "the art of doing something useful for a person or company for a fee" or "useful labor or work rendered or to be rendered by one person to another." For facilitating in the Philippines the collection and payment of receivables belonging to its Hong Kong-based foreign client, and getting paid for it in duly accounted acceptable foreign currency, respondent renders service falling under the category of zero rating. Pursuant to the Tax Code, a VAT of zero percent should, therefore, be levied upon the supply of that service.

2. ID.; ID.; ID.; DEFINED.— The VAT is a tax on consumption "expressed as a percentage of the value added to goods or services" purchased by the producer or tax payer. As an indirect tax on services,

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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.

3. **ID.; ID.; ID.; THE VAT SYSTEM GENERALLY USES THE DESTINATION PRINCIPLE AS A BASIS FOR THE JURISDICTIONAL REACH OF THE TAX.**— 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.

4. **ID.; ID.; ID.; ID.; EXCEPTION; REQUIREMENTS FOR EXEMPTION FROM THE DESTINATION PRINCIPLE; PRESENT IN CASE AT BAR.**— [T]he 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. Indeed, these three requirements for exemption from the destination principle are met by respondent. Its facilitation service is performed in the Philippines. It falls under the second category found in Section 102(b) of the Tax Code, because it is a service other than "processing, manufacturing or repacking of goods" as mentioned in the provision. Undisputed is the fact that such service meets the statutory condition that it be paid in acceptable foreign currency duly accounted for in accordance with BSP rules. Thus, it should be zero-rated.

5. **ID.; ID.; ID.; TRANSACTIONS SUBJECT TO ZERO PERCENT RATE; THE PLACE WHERE THE SERVICE IS RENDERED DETERMINES THE JURISDICTION TO IMPOSE THE VAT; CASE AT BAR.**— The law neither makes a qualification nor

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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.

6. ID.; ID.; ID.; ID.; UNDER A ZERO-RATING SCHEME, THE SALE OR EXCHANGE OF A PARTICULAR SERVICE IS COMPLETELY FREED FROM THE VAT; CASE AT BAR.— [U]nder a zero-rating scheme, the sale or exchange of a particular service is completely freed from the VAT, because the seller is entitled to recover, by way of a refund or as an input tax credit, the tax that is included in the cost of purchases attributable to the sale or exchange. "[T]he tax paid or withheld is not deducted from the tax base." Having been applied for within the reglementary period, respondent's refund is in order.

APPEARANCES OF COUNSEL

The Litigation Division (BIR) for petitioner.
Sycip Salazar Hernandez & Gatmaitan for 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.

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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:

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[1] *Rollo*, pp. 8-23.

[2] *Id.*, pp. 25-39. Fifth Division. Penned by Justice Josefina Guevara-Salonga, with the concurrence of Justices Godardo A. Jacinto (Division chair) and Eloy R. Bello, Jr. (member, now retired).

[3] CA Decision, p. 15; *rollo*, p. 38.

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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	₱59,597.20	₱5,959.72	₱17,513,801.11	₱6,778,182.30	₱677,818.23
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	5,231,225.22	3,080,822.10	1,308,082.21
Total	₱247,045.30	₱24,704.53	₱80,309,633.20	₱37,630,604.30	₱3,763,060.43

"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 ₱3,751,067.04, which amount was arrived at after deducting from its total input VAT paid of ₱3,763,060.43 its applied output VAT liabilities only for the third and fourth quarters of 1997 amounting to ₱5,193.66 and ₱6,799.43, 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.

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"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) xxx xxx xxx
> (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:

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'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 result in any output tax. The input tax on his purchases of goods or services related to such zero-rated sale shall be available as tax credit or refundable in accordance with Section 16 of these Regulations. x x x'. [Section 8(a), [RR] 5-87].'[6]

"[Petitioner], in his Answer filed on May 6, 1999, claimed by way of Special and Affirmative Defenses that:

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[4] Outer brackets copied verbatim.

[5] *Ibid.*

[6] *Ibid.*

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7. The claim for refund is subject to investigation by the Bureau of Internal Revenue;

8. Taxes paid and collected are presumed to have been made in accordance with laws and regulations, hence, not refundable. Claims for tax refund are construed strictly against the claimant as they partake of the nature of tax exemption from tax and it is incumbent upon the [respondent] to prove that it is entitled thereto under the law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statu[t]e law. An exemption from the common burden [cannot] be permitted to exist upon vague implications;

9. Moreover, [respondent] must prove that it has complied with the governing rules with reference to tax recovery or refund, which are found in Sections 204(c) and 229 of the Tax Code, as amended, which are quoted as follows:

> *'Section 204.* Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. — The Commissioner may — x x x.
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after payment of the tax or penalty: *Provided, however*, That a return filed with an overpayment shall be considered a written claim for credit or refund.'
>
> 'Section 229. ***Recovery of tax erroneously or illegally collected.*** — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner

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> wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be begun (*sic*) after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.'

"From the foregoing, the [CTA], through the Presiding Judge Ernesto D. Acosta rendered a decision[7] in favor of the herein respondent holding that its services are subject to zero-rate pursuant to Section 108(b) of the Tax Reform Act of 1997 and Section 4.102-2 (b)(2) of Revenue Regulations 5-96, the decretal portion of which reads as follows:

> *'WHEREFORE,* in view of all the foregoing, this Court finds the [petition] meritorious and in accordance with law. Accordingly, [petitioner] is hereby *ORDERED* to *REFUND* to [respondent] the amount of ₱3,352,406.59 representing the latter's excess input VAT paid for the year 1997.'"[8]

Ruling of the Court of Appeals

In affirming the CTA, the CA held that respondent's services fell under the first type enumerated in Section 4.102-2(b)(2) of RR 7-95, as amended by RR 5-96. More particularly, its "services were not of the same class or of the same nature as project studies, information, or engineering and architectural designs" for non-resident foreign clients; rather, they were "services

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[7] CTA Decision, pp. 1-15; *rollo*, pp. 40-54. Penned by then Presiding Judge (now Presiding Justice) Ernesto D. Acosta, with the concurrence of then Judges Ramon O. de Veyra and Amancio Q. Saga (both retired).

[8] CA Decision pp. 2-7; *rollo*, pp. 26-31. Boldface characters, underscoring and italics copied verbatim.

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other than the processing, manufacturing or repacking of goods for persons doing business outside the Philippines." The consideration in both types of service, however, was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

Furthermore, the CA reasoned that reliance on VAT Ruling No. 040-98 was unwarranted. By requiring that respondent's services be consumed abroad in order to be zero-rated, petitioner went beyond the sphere of interpretation and into that of legislation. Even granting that it is valid, the ruling cannot be given retroactive effect, for it will be harsh and oppressive to respondent, which has already relied upon VAT Ruling No. 080-89 for zero rating.

Hence, this Petition.[9]

The Issue

Petitioner raises this sole issue for our consideration:

"Whether or not the Court of Appeals committed reversible error in holding that respondent is entitled to the refund of the amount of ₱3,352,406.59 allegedly representing excess input VAT for the year 1997."[10]

The Court's Ruling

The Petition is unmeritorious.

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[9] This case was deemed submitted for decision on July 23, 2003, upon this Court's receipt of petitioner's Memorandum, signed by Solicitor General Alfredo L. Benipayo, Assistant Solicitor General Fernanda Lampas Peralta and Associate Solicitor Romeo D. Galzote. Respondent's Memorandum — signed by Attys. Rolando V. Medalla, Jr., Ramon G. Songco, and Ma. Elizabeth E. Peralta-Loriega — was received by this Court on May 16, 2003.

[10] Petitioner's Memorandum, p. 9; temporary *rollo*, p. 9. Original in upper case.

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Sole Issue:
Entitlement to Tax Refund

Section 102 of the Tax Code[11] provides:

"Sec. 102. Value-added tax on sale of services and use or lease of properties. — (a) Rate and base of tax. — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services x x x.

"The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by x x x persons engaged in milling, processing, manufacturing or repacking goods for others; x x x services of banks, non-bank financial intermediaries and finance companies; x x x and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase 'sale or exchange of services' shall likewise include:

x x x x x x x x x

'(3) The supply of x x x commercial knowledge or information;

'(4) The supply of any assistance that is ancillary and subsidiary to and is furnished as a means of enabling the application or enjoyment of x x x any such knowledge or information as is mentioned in subparagraph (3);

x x x x x x x x x

'(6) The supply of technical advice, assistance or services rendered in connection with technical management or administration of any x x x commercial undertaking, venture, project or scheme;

x x x x x x x x x

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[11] In the case at bar, the applicable Tax Code refers to the National Internal Revenue Code (NIRC) of 1986 as amended by Executive Order (EO) No. 273 and Republic Act (RA) Nos. 7716 and 8241 dated July 25, 1987, May 5, 1994, and December 20, 1996, respectively.

Today, the Tax Code refers to RA 8424 as amended, otherwise known as the "Tax Reform Act of 1997," which took effect on January 1, 1998 (*Commissioner of Internal Revenue v. CA*, 385 Phil. 875, 883, March 30, 2000).

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"The term 'gross receipts' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.

"(b) Transactions subject to zero percent (0%) rate. — 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);

'(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 x x x x x x

Zero Rating of "Other" Services

The law is very clear. Under the last paragraph quoted above, 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.

Respondent is 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. Certainly, the service it renders in the Philippines is not in the same category as "processing, manufacturing or repacking of goods" and should, therefore, be zero-rated. In reply to a query of respondent, the BIR opined in VAT Ruling No. 080-89 that the income respondent earned from its parent company's

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regional operating centers (ROCs) was automatically zero-rated effective January 1, 1988.[12]

Service has been defined as "the art of doing something useful for a person or company for a fee"[13] or "useful labor or work rendered or to be rendered by one person to another."[14] For facilitating in the Philippines the collection and payment of receivables belonging to its Hong Kong-based foreign client, and getting paid for it in duly accounted acceptable foreign currency, respondent renders service falling under the category of zero rating. Pursuant to the Tax Code, a VAT of zero percent should, therefore, be levied upon the supply of that service.[15]

The Credit Card System and Its Components

For sure, the *ancillary* business of facilitating the said collection is different from the *main* business of issuing credit cards.[16] Under the credit card system, the credit card company extends credit accommodations to its card holders for the purchase of goods and services from its member establishments, to be reimbursed by them later on upon proper billing. Given the complexities of present-day business transactions, the components of this system can certainly function as separate billable services.

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[12] In fact, per VAT Ruling No. 080-89 addressed to Spencer F. Lenhart, vice-president and general manager of American Express International, Inc. (AEII Philippines), BIR Deputy Commissioner Eufracio D. Santos wrote that "there is no need to file an application" for zero rating.

[13] Garner (ed. in chief), *Black's Law Dictionary* (8th ed., 1999), p. 1399.

[14] Smith, *West's Law Dictionary* (1993), p. 737.

[15] §99 [now §105] and §102(b)(2) [now §108(B)(2)] of the Tax Code. See footnote 11; and Deoferio, Jr. and Mamalateo, *The Value Added Tax in the Philippines* (2000), p. 33.

[16] These are unlike some widely used credit cards, such as Visa and MasterCard, that are issued by banks. See Meigs and Meigs, *Accounting: The Basis for Business Decisions* (5th ed., 1982), pp. 355-356.

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Under RA 8484,[17] the credit card that is issued by banks[18] in general, or by non-banks in particular, refers to "any card x x x or other credit device existing for the purpose of obtaining x x x goods x x x or services x x x on credit;"[19] and is being used "usually on a revolving basis."[20] This means that the consumer-credit arrangement that exists between the issuer and the holder of the credit card enables the latter to procure goods or services "on a continuing basis as long as the outstanding balance does not exceed a specified limit."[21] The card holder is, therefore, given "the power to obtain present control of goods or service on a promise to pay for them in the future."[22]

Business establishments may extend credit sales through the use of the credit card facilities of a non-bank credit card company to avoid the risk of uncollectible accounts from their customers. Under this system, the establishments do not deposit in their bank accounts the credit card drafts[23] that arise from the credit sales. Instead, they merely record their receivables from the credit card company and periodically send the drafts evidencing those receivables to the latter.

The credit card company, in turn, sends checks as payment to these business establishments, but it does not redeem the drafts at full

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[17] This is also known as the "Access Devices Regulation Act of 1998" approved on February 11, 1998.

[18] For example, "Visa and MasterCard are complex entities in that they are owned by their member banks, provide network services to their member banks, and provide currency conversion as part of the network services, but have no contracts with cardholders." *Schwartz v. Visa International Corp.*, 2003 WL 1870370 (Cal. Superior), p. 50, April 7, 2003, per Sabraw, *J.*

[19] §3(f) of RA 8484.

[20] Garner (ed. in chief), *supra*, p. 396.

[21] *Ibid.*

[22] Editorial staff of Prentice-Hall, Inc., *Encyclopedic Dictionary of Business Finance* (1960), p. 181.

[23] Credit card drafts are multi-part business forms signed by customers who make purchases using credit cards. These forms are similar to checks that are drawn upon the funds of credit card companies rather than upon the personal bank accounts of customers. Meigs and Meigs, *supra*, p. 355.

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price. The agreement between them usually provides for discounts to be taken by the company upon its redemption of the drafts.[24] At the end of each month, it then bills its credit card holders for their respective drafts redeemed during the previous month. If the holders fail to pay the amounts owed, the company sustains the loss.[25]

In the present case, respondent's role in the consumer credit[26] process described above primarily consists of gathering the bills and credit card drafts of different service establishments located in the Philippines and forwarding them to the ROCs outside the country. Servicing the bill is not the same as billing. For the former type of service alone, respondent already gets paid.

The parent company — to which the ROCs and respondent belong — takes charge not only of redeeming the drafts from the ROCs and sending the checks to the service establishments, but also of billing the credit card holders for their respective drafts that it has redeemed. While it usually imposes finance charges[27] upon the holders, none may be exacted by respondent upon either the ROCs or the card holders.

Branch and Home Office

By designation alone, respondent and the ROCs are operated as branches. This means that each of them is a unit, "an offshoot,

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[24] *Id.*, p. 356.

[25] *Id.*, p. 355.

[26] Consumer credit refers to the credit granted "to an individual to facilitate the purchase of consumer goods and services." Garner (ed. in chief), *supra*, p. 396.

Also known as personal credit, it "may be extended by means of a charge account, an installment sale, or by a personal loan." Editorial staff of Prentice-Hall, Inc., *supra*, p. 164.

[27] In general, this term refers to amounts paid on a percentage basis "for the privilege of making purchases on a deferred payment basis." Smith, *supra*, p. 314.

Under §3(h) of RA 8484, more specifically, these are amounts "to be paid by the debtor incident to the extension of credit such as interest or discounts, collection fees, credit investigation fees, and other service charges."

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lateral extension, or division"[28] located at some distance from the home office[29] of the parent company; carrying separate inventories; incurring their own expenses; and generating their respective incomes. Each may conduct sales operations in any locality as an extension of the principal office.[30]

The extent of accounting activity at any of these branches depends upon company policy,[31] but the financial reports of the entire business enterprise — the credit card company to which they all belong — must always show its financial position, results of operation, and changes in its financial position as a single unit.[32] Reciprocal accounts are reconciled or eliminated, because they lose all significance when the branches and home office are viewed as a single entity.[33]

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[28] Garner (ed. in chief), *supra*, p. 199.

[29] In general, a home office refers to "the use of a residence for business purposes." Smith, *supra*, p. 389.

More specifically, it is the "principal place of business" where the main office is located as appearing in the corporation's articles of incorporation. 5th paragraph, §4.107-1 of RR 7-95, dated December 9, 1995.

[30] 4th paragraph, §4.107-1 of RR 7-95, dated December 9, 1995.

[31] Meigs, Mosich, and Larsen, *Modern Advanced Accounting* (2nd ed., 1979), p. 145.

"Indeed, accounting operations x x x are inevitable, and have to be effected in the ordinary course of business, wherever the home office x x x extends its trade to another land through a branch office x x x" *Koppel (Philippines), Inc. v. Yatco*, 77 Phil. 496, 512, October 10, 1946, per Hilado, *J.*

[32] Meigs, Mosich, and Larsen, *supra*, p. 148.

[33] "Reciprocal accounts" are *account titles* found in the *books of accounts* of a home office and its branches that may be likened to two sides of the same coin. When one account — the *Investment in Branch* account — is debited by the home office in its own books for a particular transaction with a branch, the other account — the *Home Office* account — is credited by the latter, also in its own books to show how that transaction affected it. Thus, if reciprocal accounts are offset against each other at the end of the financial reporting period of the entire business enterprise, an intra-company transfer of assets will show neither an increase nor a decrease in *total assets*, precisely because the transferred assets merely changed location from one unit of the same entity to another; that is, from the home office to any of its branches or vice versa. In this scenario, there is obviously no change in ownership. See Meigs, Mosich, and Larsen, *supra*, pp. 144-146, 149-150, 165.

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In like manner, intra-company profits or losses must be offset against each other for accounting purposes.

Contrary to petitioner's assertion,[34] respondent can sell its services to another branch of the same parent company.[35] In fact, the business concept of a transfer price allows goods and services to be sold between and among intra-company units at cost or above cost.[36] A branch may be operated as a revenue center, cost center, profit center or investment center, depending upon the policies and accounting system of its parent company.[37]

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[34] Petitioner's Memorandum, p. 27; temporary *rollo*, p. 27.

[35] For financial accounting purposes, the parent company in Delaware is a single entity composed of its home office, the various ROCs and respondent. Though viewed as one, the parent company and respondent are, in law, separate and distinct juridical entities. Applying Art. 44 of the Civil Code, each is a corporation for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder. While the former is duly organized and existing under and by virtue of the laws of Delaware, the latter is registered and operates under Philippine laws.

"The act of one corporation crediting or debiting the other for certain items x x x is perfectly compatible with the idea of the domestic entity being or acting as a mere branch x x x of the parent organization. Such operations were called for [anyway] by the exigencies or convenience of the entire business." *Koppel (Philippines), Inc. v. Yatco, supra*, pp. 511-512.

[36] A "transfer price" is "[t]he price charged by one segment of an organization for a product or service supplied to another segment of the same organization x x x" Garner (ed. in chief), *supra,* p. 1227.

There are three general methods for determining transfer prices; namely, market-based, cost-based, and negotiated. The method chosen must lead each sub-unit manager to make optimal decisions for the organization as a whole, in order to meet the three criteria of goal congruence, managerial effort, and sub-unit autonomy. Horngren & Foster, *Cost Accounting: A Managerial Emphasis* (7th ed., 1991), pp. 855-856 & 860.

[37] Under a responsibility accounting system in which the plans and actions of each responsibility center is measured, a manager may be held accountable for sales only (of a revenue center); or for expenses only (of a cost center); or for both revenues and costs (of a profit center); or for revenues, costs and investments (of an investment center). Horngren & Foster, *id.,* p. 186.

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Furthermore, the latter may choose not to make any sale itself, but merely to function as a control center, where most or all of its expenses are allocated to any of its branches.[38]

Gratia argumenti that the sending of drafts and bills by service establishments to respondent is equivalent to the act of sending them directly to its parent company abroad, and that the parent company's subsequent redemption of these drafts and billings of credit card holders is also attributable to respondent, then with greater reason should the service rendered by respondent be zero-rated under our VAT system. The service partakes of the nature of export sales as applied to goods,[39] especially when rendered in the Philippines by a VAT-registered person[40] that gets paid in acceptable foreign currency accounted for in accordance with BSP rules and regulations.

VAT Requirements for the Supply of Service

The VAT is a tax on consumption[41] "expressed as a percentage of the value added to goods or services"[42] purchased by the producer or taxpayer.[43] As an indirect tax[44] on

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[38] Meigs, Mosich, and Larsen, *supra,* p. 146.

[39] Under §100 of the Tax Code, "export sales" as applied to goods "means the sale and shipment or exportation of goods from the Philippines to a foreign country x x x or foreign currency denominated sales." "Foreign currency denominated sales" refers to "sales to non-residents of goods assembled or manufactured in the Philippines, for delivery to residents in the Philippines and paid for in convertible foreign currency remitted through the banking system in the Philippines."

[40] *Commissioner of Internal Revenue v. Cebu Toyo Corp.*, GR No. 149073, February 16, 2005.

[41] Deoferio, Jr. and Mamalateo, *supra*, pp. 33 & 67.

[42] Smith, *supra*, p. 892.

[43] See *Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. v. Tan*, 163 SCRA 371, 378-379, June 30, 1988.

[44] An indirect tax "is imposed upon goods [before] reaching the consumer who ultimately pays for it, not as a tax, but as a part of the purchase price." *Maceda v. Macaraig, Jr.*, 223 SCRA 217, 235, June 8, 1993, per Nocon, *J.*; referring to Paras, *Taxation Fundamentals* (1966), pp. 24-25.

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services,[45] its main object is the transaction[46] itself or, more concretely, the performance of all kinds of services[47] conducted in the course of trade or business in the Philippines.[48] These services must be regularly conducted in this country; undertaken in "pursuit of a commercial or an economic activity";[49] for a valuable consideration; and not exempt under the Tax Code, other special laws, or any international agreement.[50]

Without doubt, the transactions respondent entered into with its Hong Kong-based client meet all these requirements.

First, respondent regularly renders in the Philippines the service of facilitating the collection and payment of receivables belonging to a foreign company that is a clearly separate and distinct entity.

Second, such service is commercial in nature; carried on over a sustained period of time; on a significant scale; with a reasonable degree of frequency; and not at random, fortuitous or attenuated.

Third, for this service, respondent definitely receives consideration in foreign currency that is accounted for in conformity with law.

Finally, respondent is not an entity exempt under any of our laws or international agreements.

See Guzman, *Crisis Under Arroyo Rages: People Bear the Brunt,* IBON Birdtalk: Economic and Political Briefing, PSSC Auditorium, PSSC Bldg., Commonwealth Ave., Quezon City, January 13, 2005, p. 14.

[45] See *Tolentino v. Secretary of Finance*, 235 SCRA 630, 657, August 25, 1994, and *Tolentino v. Secretary of Finance*, 319 Phil. 755, 792 & 797, October 30, 1995.

[46] Deoferio, Jr. and Mamalateo, *supra*, pp. 49 & 89.

[47] *Commissioner of Internal Revenue v. CA, supra*, pp. 883-884.

[48] 2nd paragraph of §102(a) [now 2nd paragraph of §108(A)] of the Tax Code. See Deoferio, Jr. and Mamalateo, *supra*, pp. 89-90.

[49] *Commissioner of Internal Revenue v. CA, supra*, p. 884, per Pardo, *J.*

[50] Deoferio, Jr. and Mamalateo, *supra*, pp. 81, 82, 91, 92 & 204.

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Services Subject to Zero VAT

As a general rule, the VAT system uses the destination principle as a basis for the jurisdictional reach of the tax.[51] 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,[52] 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."[53] 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."[54] 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,

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[51] Deoferio, Jr. and Mamalateo, *id.*, pp. 43 & 93.

[52] Per VAT Ruling No. 040-98, relied upon by petitioner. See Petition, p. 9; *rollo*, p. 16.

[53] Garner (ed. in chief), *supra*, p. 336.

[54] *Id.*, p. 1173.

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there can only be a "predetermined end of a course"[55] when determining the service "location or position x x x for legal purposes."[56] 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.

Respondent's Services Exempt from the Destination Principle

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]."[57] 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.

Indeed, these three requirements for exemption from the destination principle are met by respondent. Its facilitation service is performed in the Philippines. It falls under the second category found in Section 102(b) of the Tax Code, because it is a service other than "processing, manufacturing or repacking of goods" as mentioned in the provision. Undisputed is the fact that such service meets the statutory condition that it be paid in acceptable foreign currency duly accounted for in accordance with BSP rules. Thus, it should be zero-rated.

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[55] *Id.*, p. 479.

[56] *Id.*, p. 1421.

[57] §102(b)(2) of the Tax Code.

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Performance of Service versus Product Arising from Performance

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.[58] 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.[59]

Tax Situs of a Zero-Rated Service

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[60] to impose the VAT.[61] Performed in the Philippines, such service is necessarily subject to its jurisdiction,[62] for the State necessarily has to have "a substantial connection"[63] to it, in order to enforce a zero rate.[64] The place of payment

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[58] See 5th paragraph of item 1 in the reply portion of VAT Ruling No. 040-98, dated November 23, 1998.

[59] See *Alexander Howden & Co., Ltd. v. The Collector (Now Commissioner) of Internal Revenue*, 121 Phil. 579, 583-584, April 14, 1965.

[60] "[N]o state may tax anything not within its jurisdiction without violating the due process clause of the [C]onstitution." *Manila Gas Corp. v. Collector of Internal Revenue*, 62 Phil. 895, 900, January 17, 1936, per Malcolm, *J.*

[61] Deoferio, Jr. and Mamalateo, *supra*, p. 93.

[62] Alejandro, *The Law on Taxation* (1966 rev. ed.), p. 33.

[63] Garner (ed. in chief), *supra*, p. 1503.

[64] De Leon, *The Fundamentals of Taxation* (12th ed., 1998), p. 3.

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is immaterial;[65] much less is the place where the output of the service will be further or ultimately used.

Statutory Construction or Interpretation 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.[66] "[W]here the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application.[67] The Court has no choice but to "see to it that its mandate is obeyed."[68]

No Qualifications Under RR 5-87

In implementing the VAT provisions of the Tax Code, RR 5-87 provides for the zero rating of services other than the processing, manufacturing or repacking of goods — in general and without qualifications — when paid for by the person to whom such services are rendered in acceptable foreign currency inwardly remitted and duly accounted for in accordance with the BSP (then Central Bank) regulations. Section 8 of RR 5-87 states:

"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 result in any output tax. The input tax on his purchases of goods or services related to such zero-rated sale shall be available

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[65] Deoferio, Jr. and Mamalateo, *supra*, pp. 93.

[66] Agpalo, *Statutory Construction* (2nd ed., 1990), p. 45.

[67] *Cebu Portland Cement Co. v. Municipality of Naga, Cebu*, 133 Phil. 695, 699, August 22, 1968, per Fernando, *J.* (later *CJ.*).

[68] *Luzon Surety Co., Inc. v. De Garcia*, 30 SCRA 111, 116, October 31, 1969, per Fernando, *J.* (later *CJ.*).

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as tax credit or refundable in accordance with Section 16 of these Regulations.

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"(c) Zero-rated sales of services. — The following services rendered by VAT-registered persons are zero-rated:

'(1) Services in connection with the processing, manufacturing or repacking of goods for persons doing business outside the Philippines, where such goods are actually shipped out of the Philippines to said persons or their assignees and the services are paid for in acceptable foreign currency inwardly remitted and duly accounted for under the regulations of the Central Bank of the Philippines.

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'(3) Services performed in the Philippines other than those mentioned in subparagraph (1) above which are paid for by the person or entity to whom the service is rendered in acceptable foreign currency inwardly remitted and duly accounted for in accordance with Central Bank regulations. Where the contract involves payment in both foreign and local currency, only the service corresponding to that paid in foreign currency shall enjoy zero-rating. The portion paid for in local currency shall be subject to VAT at the rate of 10%.'"

RR 7-95
Broad Enough

RR 7-95, otherwise known as the "Consolidated VAT Regulations,"[69] reiterates the above-quoted provision and further presents as examples only the services performed in the Philippines by VAT-registered hotels and other service establishments. Again, the condition remains that these services must be paid in acceptable foreign currency inwardly remitted and accounted for in accordance with the rules and regulations of the BSP. The term "other service

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[69] *Contex Corp. v. Commissioner of Internal Revenue*, 433 SCRA 376, 387, July 2, 2004.

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establishments" is obviously broad enough to cover respondent's facilitation service. Section 4.102-2 of RR 7-95 provides thus:

"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'";

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Meaning of "as well as" in RR 5-96

Section 4.102-2(b)(2) of RR 7-95 was subsequently amended by RR 5-96 to read as follows:

"Section 4.102-2(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.'"

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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."[70]

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."[71]

***Ejusdem Generis* Inapplicable**

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.[72] 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

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[70] Gove (ed. in chief) and the Merriam-Webster editorial staff, *Webster's Third New International Dictionary of the English Language Unabridged* (1976), p. 136.

[71] 2nd paragraph of §102(a) [now 2nd paragraph of §108(A)] of the Tax Code.

[72] See Agpalo, *supra*, pp. 153-160.

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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.[73] 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 Tax Code is broad; it is not susceptible of narrow interpretation.[74]

VAT Ruling Nos. 040-98 and 080-89

VAT Ruling No. 040-98 relied upon by petitioner is a less general interpretation at the administrative level,[75] 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"[76] in order to qualify for zero rating, it contravenes both the law and the regulations issued pursuant to it.[77] This portion of VAT Ruling No. 040-98 is clearly *ultra vires* and invalid.[78]

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,"[79] this interpretation

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[73] *Ibid.*

[74] See *Regalado v. Yulo*, 61 Phil. 173, 179, February 15, 1935.

[75] De Leon, *supra*, p. 83.

[76] See 5th paragraph of item 1 in the reply portion of VAT Ruling No. 040-98, dated November 23, 1998.

[77] CA Decision, p. 11; *rollo*, p. 34.

[78] See *Hilado v. Collector of Internal Revenue*, 100 Phil. 288, 295, October 31, 1956.

[79] *Philippine Bank of Communications v. Commissioner of Internal Revenue*, 361 Phil. 916, 929, January 28, 1999, per Quisumbing, *J.*

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is not conclusive and will have to be "ignored if judicially found to be erroneous"[80] and "clearly absurd x x x or improper."[81] 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.[82]

In the present case, respondent has relied upon VAT Ruling No. 080-89, which clearly recognizes its zero rating. Changing this status will certainly deprive respondent of a refund of the substantial amount of excess input taxes to which it is entitled.

Again, assuming *arguendo* that VAT Ruling No. 040-98 revoked VAT Ruling No. 080-89, such revocation could not be given retroactive effect if the application of the latter ruling would only be prejudicial to respondent.[83] Section 246 of the Tax Code categorically declares that "[a]ny revocation x x x of x x x any of the rulings x x x promulgated by the Commissioner shall not be given retroactive application if the revocation x x x . will be prejudicial to the taxpayers."[84]

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[80] *Ibid,* (citing *People v. Hernandez*, 59 Phil. 272, 276, December 22, 1933, and *Molina v. Rafferty*, 37 Phil. 545, 555, February 1, 1918.)

[81] *Commissioner of Internal Revenue v. Central Luzon Drug Corp.*, GR No. 159647, April 15, 2005, p. 26, per Panganiban, *J.*

[82] See *Commissioner of Internal Revenue v. CA*, 240 SCRA 368, 372, January 20, 1995.

[83] See *Commissioner of Internal Revenue v. CA*, 335 Phil. 219, 226-227, February 6, 1997 (citing *Commissioner of Internal Revenue v. Telefunken Semiconductor Philippines, Inc.*, 319 Phil. 523, 530, October 23, 1995; *Bank of America NT & SA v. CA*, 234 SCRA 302, 306-307, July 21, 1994; *Commissioner of Internal Revenue v. CTA*, 195 SCRA 444, 460-461, March 20, 1991; *Commissioner of Internal Revenue v. Mega General Merchandising Corp.*, 166 SCRA 166, 172, September 30, 1988; *Commissioner of Internal Revenue v. Burroughs Ltd.*, 226 Phil. 236, 240-241, June 19, 1986; and *ABS-CBN Broadcasting Corp. v. CTA,* 195 Phil. 33, 41 & 44, October 12, 1981).

[84] This section has been retained in RA 8424 as amended, with a slight modification: "preceding section" was changed to "preceding Sections."

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It is also basic in law that "no x x x rule x x x shall be given retrospective effect[85] unless explicitly stated."[86] No indication of such retroactive application to respondent does the Court find in VAT Ruling No. 040-98. Neither do the exceptions enumerated in Section 246[87] of the Tax Code apply.

Though vested with the power to interpret the provisions of the Tax Code[88] and not bound by predecessors' acts or rulings, the BIR commissioner may render a different construction to a statute[89] *only if* the new interpretation is in congruence with the law. Otherwise, no amount of interpretation can ever revoke, repeal or modify what the law says.

"Consumed Abroad" Not Required by Legislature

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:

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[85] *The Municipality Government of Pagsanjan, Laguna v. Reyes*, 98 Phil. 654, 658, March 23, 1956.

[86] *Dueñas v. Santos Subdivision Homeowners Association*, 431 SCRA 76, 89, June 4, 2004, per Quisumbing, *J.* (quoting *Republic v. Sandiganbayan*, 355 Phil. 181, 198, July 31, 1998, per Panganiban, *J.*). See *Home Development Mutual Fund v. COA*, GR No. 157001, October 19, 2004, per Carpio, *J.*

[87] §246 of the Tax Code provides:

"*Non-retroactivity of rulings.* — Any revocation, modification, or reversal of x x xthe rulings x x x promulgated by the Commissioner shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayers except in the following cases: (a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the [BIR]; (b) where the facts subsequently gathered by the [BIR] are materially different from the facts on which the ruling is based; or (c) where the taxpayer acted in bad faith."

[88] 1st paragraph of §4 of RA 8424, the Tax Code now in effect.

[89] *Hilado v. Collector of Internal Revenue, supra*, p. 294.

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"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,

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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. x x x'

"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 ₱200,000, they should be covered.

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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."[90]

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[90] Interpellations during the second reading of Committee Report No. 349 on Senate Bill No. 1630 — VAT Refinements, *Record of the Senate*, 2nd Regular Session (February 21, 1994 to April 20, 1994), Vol. IV, No. 65, Monday, March 21, 1994, pp. 536-537. Italics and boldface copied verbatim, but underscoring ours. See *Journal of the Senate*, 2nd Regular Session (1993-1994), Vol. III, Monday, March 21, 1994, p. 70.

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Legislative Approval By Reenactment

Finally, upon the enactment of RA 8424, which substantially carries over the particular provisions on zero rating of services under Section 102(b) of the Tax Code, the principle of legislative approval of administrative interpretation by reenactment clearly obtains. This principle means that "the reenactment of a statute substantially unchanged is persuasive indication of the adoption by Congress of a prior executive construction."[91]

The legislature is presumed to have reenacted the law with full knowledge of the contents of the revenue regulations then in force regarding the VAT, and to have approved or confirmed them because they would carry out the legislative purpose. The particular provisions of the regulations we have mentioned earlier are, therefore, re-enforced. "When a statute is susceptible of the meaning placed upon it by a ruling of the government agency charged with its enforcement and the [l]egislature thereafter [reenacts] the provisions [without] substantial change, such action is to some extent confirmatory that the ruling carries out the legislative purpose."[92]

In sum, having resolved that transactions of respondent are zero-rated, the Court upholds the former's entitlement to the refund as determined by the appellate court. Moreover, there is no conflict

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[91] *ABS-CBN Broadcasting Corp. v. CTA, supra*, p. 43, per Melencio-Herrera, *J.* (citing *Alexander Howden & Co., Ltd. v. Collector of Internal Revenue*, 121 Phil. 579, 587, April 14, 1965, and *Biddle v. Commissioner of Internal Revenue*, 302 U.S., 573, 582, 58 S.Ct. 379, 383, January 10, 1938). See *In re R. Mcculloch Dick,* 38 Phil. 41, 77-78, April 16, 1918, per Carson, *J.* (quoting Sutherland, *Statutory Construction*, Vol. II, [2nd ed.], Sections 403 and 404).

[92] *Commissioner of Internal Revenue v. Solidbank Corp.*, 416 SCRA 436, 455, November 25, 2003, per Panganiban, *J.* (footnoting *Alexander Howden & Co., Ltd. v. The Collector [Now Commissioner] of Internal Revenue, supra*, p. 587, per Bengzon, J.P., *J.*); the latter case citing *Laxamana v. Baltazar*, 92 Phil. 32, 34-35, September 19, 1952, and *Mead Corporation v. Commissioner of Internal Revenue*, 116 F.2d. 187, 194, November 29, 1940, per Jones, *Circuit J.*

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between the decisions of the CTA and CA. This Court respects the findings and conclusions of a specialized court like the CTA "which, by the nature of its functions, is dedicated exclusively to the study and consideration of tax cases and has necessarily developed an expertise on the subject."[93]

Furthermore, under a zero-rating scheme, the sale or exchange of a particular service is completely freed from the VAT, because the seller is entitled to recover, by way of a refund or as an input tax credit, the tax that is included in the cost of purchases attributable to the sale or exchange.[94] "[T]he tax paid or withheld is not deducted from the tax base."[95] Having been applied for within the reglementary period,[96] respondent's refund is in order.

WHEREFORE, the Petition is hereby *DENIED*, and the assailed Decision *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

Sandoval-Gutierrez, Corona, Carpio Morales, and *Garcia, JJ.,* concur.

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[93] *Commissioner of Internal Revenue v. CA, supra*, pp. 885-886, (citing *Commissioner of Internal Revenue v. CA*, 204 SCRA 182, 189-190, November 21, 1991).

[94] *Commissioner of Internal Revenue v. Cebu Toyo Corp., supra.* §110(B) of the Tax Code.

[95] *Bank of America NT & SA v. CA, supra*, p. 307, per Vitug, *J.*

[96] "x x x within two (2) years after the close of the taxable quarter x x x" per §106 (now §112) of the Tax Code.