REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Baguio City

SECOND DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **January 11, 2023** *which reads as follows*:

"G.R. No. 260851 (Commissioner of Internal Revenue, *petitioner v.* **Vestas Services Philippines, Inc.,** *respondent.*) – Assailed in this petition for review on *certiorari*[1] under Rule 45 of the Rules of Court are the Decision[2] dated January 25, 2022 and the Resolution[3] dated May 19, 2022 of the Court of Tax Appeals *En Banc* (CTA EB) in CTA EB No. 2255 affirming the Decision[4] dated September 20, 2019 of the Court of Tax Appeals Second Division (CTA Division) in CTA Case No. 9480 which granted respondent Vestas Services Philippines, Inc.'s (Vestas PH) claim for Value-Added Tax (VAT) refund.

The Facts

This case stems from a claim for refund of VAT filed by Vestas PH with the Bureau of Internal Revenue (BIR), represented herein by the Commissioner of Internal Revenue (CIR). Vestas PH averred that for the 2nd quarter of calendar year (CY) 2014, its income was sourced from the following transactions:

> 1) Engineering, Procurement and Construction (EPC) Contract with EDC Burgos Wind Power Corporation (EDC), a Renewable Energy Developer (RE Developer) of wind energy resources, located in the Municipality of Burgos, Province of Ilocos Norte;
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> 2) Intercompany Service Agreement with Vestas Wind Systems A/S (Vestas Denmark), a non-resident foreign corporation not doing business in the Philippines; and

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1 *Rollo*, pp. 12-32.

2 Id. at 39-53. Penned by Associate Justice Ma. Belen M. Ringpis-Liban with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, Maria Rowena Modesto-San Pedro, Marian Ivy F. Reyes-Fajardo, and Lanee S. Cui-David, concurring.

3 Id. at 55-60.

4 Not attached the *rollo*. See id. at 41-42.

3) Sublease Agreement with Bayview Technologies, Inc. (Bayview), a Cagayan Special Economic Zone and Freeport enterprise currently registered with the Cagayan Economic Zone Authority (CEZA).[5]

In this regard, Vestas PH reported the above transactions as zero-rated sales for the 2nd quarter of CY 2014 as follows:[6]

Client	Amount
EDC	[Php]2,035,150,294.24
Vestas Denmark	62,659,044.87
Bayview	4,094,204.34
TOTAL	**[Php]2,101,903,543.45**

Vestas PH further averred that a portion of the above zero-rated sales constituted accrued revenue and that it did not report any VATable or VAT-exempt sales for the 2nd Quarter of CY 2014. Vestas PH imported and/or purchased goods and services in the amount of ₱1,673,531,238.66 for which it paid input VAT in the amount of ₱200,823,748.64. Thus, on June 30, 2016, respondent filed before the Revenue District Office No. (RDO) 50 of the BIR an administrative claim for refund of its excess and/or unutilized creditable input VAT for the taxable period covering April 2, 2014 to June 30, 2014.[7] In a letter dated July 25, 2016, the BIR denied the claim on the ground that Vestas PH failed to submit the mandatory requirements under Revenue Memorandum Circular (RMC) No. 54-2014.[8]

Hence, Vestas PH filed a petition for review[9] with the CTA on October 7, 2016.[10]

The CTA Division Ruling

In a Decision[11] dated September 20, 2019, the CTA Division partially granted Vestas PH's petition, and accordingly, ordered the CIR to refund or issue a Tax Credit Certificate (TCC) in favor of Vestas PH in the amount of ₱134,298,376.32 representing unutilized excess input VAT attributable to its zero-rated sales/receipts for the 2nd Quarter of CY 2014. The CIR moved for reconsideration, but the same was denied in a Resolution[12] dated February 13, 2020.[13]

Aggrieved, the CIR filed a petition for review[14] with the CTA EB.

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5 Id. at 40.
6 Id. at 41.
7 Id.
8 Id. at 20.
9 Not attached to the *rollo*.
10 *Rollo*, p. 41.
11 Not attached to the *rollo*. See id. at 41-42.
12 Not attached to the *rollo*. See id. at 42.
13 Id. at 41-42.
14 Not attached to the *rollo*.

The CTA En Banc Ruling

In a Decision[15] dated January 25, 2022, the CTA EB affirmed the CTA Division ruling. The CTA EB held that the services rendered by Vestas PH to its customer Vestas Denmark qualifies for VAT Zero Rating considering that: (*a*) Vestas PH was able to present proof that Vestas Denmark is a non-resident foreign corporation (NRFC) only doing business outside the Philippines; (*b*) Vestas PH and Vestas Denmark are two distinct corporate entities separately registered in two different countries, regardless of the fact that Vestas Denmark wholly owns Vestas PH; and (*c*) the CIR failed to establish that the doctrine of piercing the veil of corporate fiction applies to this case.[16]

Further, the CTA EB opined that it is not limited to the evidence presented in the administrative claim. Under Section 2 (a), Rule 12 of the Revised Rules of the Court of Tax Appeals[17] (RRCTA), the CTA may receive evidence in all cases falling within the original jurisdiction of the Court in Division pursuant to Section 3, Rule 4 of the RRCTA; hence, failure to submit documents at the administrative level is not fatal to a judicial claim for refund as CTA cases are litigated *de novo* and decided based on what has been presented and formally offered by parties at the trial. Contrary to the CIR's argument, failure to submit documents is only fatal where the taxpayer did not submit additional documents despite notice or request to do so. In this case, however, no notification or request for additional documents was made by petitioner. Hence, the said rule does not apply.[18]

The CTA EB also held that neither Section 112 (A) of the National Internal Revenue Code[19] (NIRC) of 1997 nor Revenue Regulations No. (RR) 16-2005, as amended, which implements Section 112 (A) of the NIRC, requires the taxpayer-claimant to prove the actual remittance of taxes withheld, in order to grant a refund of unutilized input VAT.[20] The CTA EB adopted the CTA Division's declaration that only the following requisites must be established in order to prove entitlement to tax refund or tax credit of VAT:

1. the taxpayer-claimant must be VAT-registered;
2. there must be zero-rated or effectively zero-rated sales;
3. that input taxes were incurred or paid;
4. that such input taxes are attributable to zero-rated or effectively zero-rated sales;
5. that the input taxes have not been applied against output taxes during and in the succeeding quarters; and

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15 *Rollo*, pp. 39-53.
16 Id. at 45-48.
17 A.M. No. 05-11-07-CTA dated November 22, 2005
18 *Rollo*, pp. 48-49.
19 Republic Act No. (RA) 8424 entitled "AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES" (December 11, 1997), as amended by RA 10963, RA 11256, RA 11346, RA 11467, and RA 11534.
20 *Rollo*, pp. 49-50.

6. the claim for refund was filed within the prescriptive period [both] in the administrative and judicial levels.[21] (Citation omitted)

The CIR moved for reconsideration, but the same was denied in a Resolution[22] dated May 19, 2022. Hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not Vestas PH is entitled to refund of VAT for the 2nd quarter of CY 2014.

The Court's Ruling

The petition is without merit.

Prefatorily, the Court notes that the CIR failed to attach the CTA Division's Decision dated September 20, 2019 to its petition for review on *certiorari*. Thus, the case is immediately dismissible on this ground following Section 4, in relation to Section 5 of Rule 45 of the Rules of Court. It also bears emphasizing that the findings and conclusions of the CTA are accorded great weight and will not be lightly set aside as, by its very nature, the CTA is dedicated exclusively to the resolution of tax problems and has accordingly developed an expertise on the subject.[23] This is especially true where the findings of the CTA Division are affirmed by the CTA EB, as in this case.

In any case, even if the Court brushes aside the foregoing procedural mishap on the part of the CIR, the petition stands to be dismissed outright for lack of merit.

First, as to the CIR's argument that the CTA had no jurisdiction,[24] Section 112 (D) of the NIRC states that the taxpayer may appeal either within 30 days from receipt of the decision denying the claim, or from inaction of the BIR after the 120-day period to decide claims for refund or tax credit. It should be noted that petitioner CIR omitted to indicate in its petition the date of Vestas PH's receipt of the CIR's letter denying the claim for refund, and the same date is also not indicated in the CTA EB Decision dated January 25, 2022 attached to said petition. Although the Decision of the CTA Division was not attached to the instant petition, the Court has held that it can take

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21 Id. at 50.

22 Id. at 55-60.

23 *Edison (Bataan) Cogeneration Corp. v. Commissioner of Internal Revenue*, 817 Phil. 495, 508 (2017) [Per J. Del Castillo, First Division], citing *Commissioner of Internal Revenue v. Liquigaz Philippines Corp.*, 784 Phil. 874, 898 (2016) [Per J. Mendoza, Second Division] and *Fortune Tobacco Corporation v. Commissioner of Internal Revenue*, 762 Phil. 450, 459 (2015) [Per J. Mendoza, Second Division].

24 *Rollo*, pp. 17-22.

judicial notice of proceedings even in other causes for expediency and convenience, provided there is a close connection with the matter in controversy.[25] Here, a perusal of the Decision[26] dated September 20, 2019 of the CTA Division shows that Vestas PH received the letter denying its claim for VAT refund on September 8, 2016. Thus, the petition for review filed on October 7, 2016 was well within the prescriptive period for appeals for claims of refund of input VAT under Section 112 of the NIRC, and the CTA had jurisdiction over the petition for review following Section 7 (a) (1) of Republic Act No. (RA) 9282.[27]

Second, the CIR argues that Vestas Denmark is doing business in the Philippines; thus, transactions conducted with it are not zero-rated.[28] However, the Court has ruled that for a foreign corporation to be "doing business" in the Philippines, it "must actually transact business in the Philippines, that is, perform specific business transactions within the Philippine territory on a continuing basis in its own name and for its own account."[29] The CIR argues that Vestas Denmark is using Vestas PH as its proxy, as evidenced by the Service Agreement between them and the fact that Vestas Denmark wholly owns Vestas PH. However, absent any indication that Vestas Denmark conducts business in the Philippines in its own name and account, Vestas Denmark cannot be said to be "doing business" in the Philippines. The mere fact that Vestas Denmark is the sole shareholder of Vestas PH does not constitute "doing business" within the meaning contemplated by Philippine law. Section 1 of the Implementing Rules and Regulations (IRR) of the Foreign Investments Act of 1991[30] (FIA) expressly excludes investments as a shareholder from the definition of "doing business" in the Philippines.

Third, the CIR claims that the doctrine of piercing the veil of corporate fiction applies in this case because Vestas PH is wholly owned by Vestas Denmark.[31] It is, however, a well-established rule in jurisprudence that the mere fact that a single stockholder owns all or nearly all of the capital stock of a corporation is not in itself sufficient ground to disregard the separate corporate personality.[32] Neither does the similarity or interrelatedness of the

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25 *Degayo v. Magbanua-Dinglasa*, 757 Phil. 376, 386 (2015) [Per J. Brion, Second Division].

26 CTA Case No. 9480 dated September 20, 2019 <https://cta.judiciary.gov.ph/home/download/7d5ef5582463abf370f8014234344f97> (last accessed January 6, 2023).

27 Entitled "AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEAS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES," approved on March 30, 2004.

28 *Rollo*, pp. 22-24.

29 *B. Van Zuiden Bros., Ltd. v. GTVL Manufacturing Industries, Inc.*, 551 Phil. 231, 237 (2007) [Per J. Carpio, Second Division].

30 Entitled "IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 7042 (FOREIGN INVESTMENT ACT OF 1991) AS AMENDED BY REPUBLIC ACT NO. 8179" approved on June 13, 1991.

31 *Rollo*, pp. 22-24.

32 Aquino & Aquino, *Commentaries and Jurisprudence on the Revised Corporation Code of the Philippines*, p. 69, 2020 Edition, citing *Aboitiz Equity Ventures, Inc v. Chiongbian*, 738 Phil. 773 (2013)

business of the sole stockholder and the corporation justify disregarding the separate corporate personality.[33] Thus, where it is not sufficiently shown that the corporate entity was purposely used as a shield to defraud creditors and third persons of their rights, the doctrine of piercing the veil of corporate fiction cannot apply.[34]

Fourth, the CIR argues that Vestas PH's sale of goods and services to EDC is not zero-rated since although EDC is a registered renewable energy (RE) developer, Vestas PH is not. The CIR anchors its argument on its interpretation of Section 15 (g) of RA 9513, otherwise known as the "Renewable Energy Act of 2008". Essentially, the CIR argues that the third paragraph of Section 15 (g) requires that the subcontractors and/or contractors of an RE developer also register with the DOE,[35] to wit:

> Section 15. *Incentives for Renewable Energy Projects and Activities*. – RE developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:
>
> x x x x
>
> (g) Zero Percent Value-Added Tax Rate. – x x x x
>
> This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors.

A plain reading of the said provision, however, reveals that the descriptor "as duly certified by the DOE" applies only to RE developers, and does not extend to their subcontractors and/or contractors. This interpretation is consistent with Section 108 (B) (3) of the NIRC which provides that "[s]ervices rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate." Thus, it is sufficient that the entity for whom the services are rendered is registered as an RE developer with DOE.

Fifth, the CIR avers that although Bayview is duly registered with CEZA, since the sublease agreement between Bayview and Vestas PH involves a property located in RCBC Plaza, Makati City, the sublease with Bayview is not zero-rated.[36] However, under Section 4 (c) of RA 7922,

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[Per J. Leonen, Third Division]; *Wensha Spa Center, Inc. v. Yung*, 642 Phil. 460 (2010) [Per J. Mendoza, Second Division]; *et al.*

33 *China Banking Corporation v. Dyne-Sem Electronics Corp.*, 527 Phil. 74, 83 (2006) [Per J. Corona, Second Division].

34 Id., citing *Umali v. Court of Appeals*, 267 Phil. 553, 575 (1990) [Per J. Regalado, Second Division].

35 *Rollo*, pp. 25-28.

36 Id. at 28-29.

otherwise known as the "Cagayan Special Economic Zone Act of 1995", Bayview, a company registered with CEZA, is exempt from all national and local taxes except for the preferential tax rate of 5% on gross income. Consequently, the rental fees received by petitioner from Bayview are also effectively subject to 0% VAT pursuant to Section 108 (B) (3) of the NIRC.

Sixth, as to the alleged requirement of Certificates of Remittance to the BIR of creditable VAT withheld,[37] the Court agrees with the CTA that nothing in Section 112 (A) of the NIRC or in the regulation implementing it (*i.e.*, Section 4.112-1(a) of RR 16-2005), suggests that a certificate evidencing remittance of creditable taxes withheld is necessary to obtain a VAT refund. The same is also not included in the list of documents required under Annex A of RMC 54-2015. Where there are input tax payments made to non-residents, such payments may need to be substantiated by BIR Form No. 1600 or the Monthly Remittance Return of Value Added Tax Withheld; significantly however, it is not alleged by the CIR that Vestas PH did not submit the said form. Thus, clearly, the failure to submit the certificates of remittance should not be fatal to a claim for refund.

Finally, the CIR avers that the CTA cannot accept additional evidence not presented before the CIR in the administrative claim for refund.[38] The Court disagrees. It bears emphasizing that CTA cases are litigated *de novo*; thus, the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.[39] However, it should be noted that while the CTA correctly interpreted the doctrine under *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[40] – particularly that it is only failure to submit additional documents despite notice or request which results in the taxpayer being barred to cure the deficiency by presenting the documents with the CTA – it can be gleaned from the same case that this rule applies only when: (*a*) the additional documents requested are not among those required under RMC 54-2014; and (*b*) the appeal is from the BIR's inaction and not a denial of the refund due to incomplete documents. In this case, although the appeal is from a denial of the claim for refund, it is not clear from the petition nor from the CTA EB Decision attached thereto if the allegedly unsubmitted documents were required under RMC 54-2014. Further, it appears that the CIR failed to object to the evidence of Vestas PH when it was formally offered in the CTA Second Division and only raised an objection for the first time on appeal to the CTA EB.[41] "In order to exclude evidence, the objection to admissibility of evidence must be made at the proper time, and the grounds specified. Objection to evidence must be made at the time it is formally offered."[42]

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37 Id. at 24.

38 *Rollo*, pp. 17-22.

39 *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc.*, 851 Phil. 1078, 1090 (2019) [Per J. Mendoza, Second Division].

40 774 Phil. 473 (2015) [Per J. Mendoza, *En Banc*].

41 *Rollo*, pp. 43-44.

42 *Lorenzana v. Lelina*, 793 Phil. 271, 282 (2016) [Per J. Jardeleza, Third Division].

In view of the foregoing, the Court finds that there are no cogent reasons to reverse the findings of the CTA EB.

FOR THESE REASONS, the petition is **DENIED.** The Decision dated January 25, 2022 and the Resolution dated May 19, 2022 of the Court of Tax Appeals in CTA EB No. 2255 are hereby **AFFIRMED.**

SO ORDERED."

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court
11 SEP 2023

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