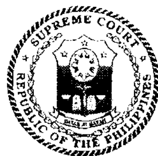

Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ACCENTURE, INC., Petitioner,	**G.R. No. 190102**
	Present:
- versus -	CARPIO, *J.*, Chairperson, BRION, PEREZ, SERENO, and REYES, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 1 1 2012

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DECISION

SERENO, *J.*:

This is a Petition filed under Rule 45 of the 1997 Rules of Civil Procedure, praying for the reversal of the Decision of the Court of Tax Appeals *En Banc* (CTA *En Banc*) dated 22 September 2009 and its subsequent Resolution dated 23 October 2009.[1]

Accenture, Inc. (Accenture) is a corporation engaged in the business of providing management consulting, business strategies development, and selling and/or licensing of software.[2] It is duly registered with the Bureau of Internal Revenue (BIR) as a Value Added

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[1] *Rollo*, Decision, pp. 35-49; *rollo*, Resolution, pp. 51-31; C.T.A. EB No. 477, penned by Associate Justice Juanito C. Castañeda, Jr., and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez.

[2] Id. at 11.

Tax (VAT) taxpayer or enterprise in accordance with Section 236 of the National Internal Revenue Code (Tax Code).[3]

On 9 August 2002, Accenture filed its Monthly VAT Return for the period 1 July 2002 to 31 August 2002 (1st period). Its Quarterly VAT Return for the fourth quarter of 2002, which covers the 1st period, was filed on 17 September 2002; and an Amended Quarterly VAT Return, on 21 June 2004.[4] The following are reflected in Accenture's VAT Return for the fourth quarter of 2002:[5]

Purchases	Amount	Input VAT
Domestic Purchases- Capital Goods	12,312,722.00	₱1,231,272.20
Domestic Purchases- Goods other than capital Goods	64,789,507.90	6,478,950.79
Domestic Purchases- Services	16,455,868.10	1,645,586.81
Total Input Tax		**₱9,355,809.80**
Zero-rated Sales		₱316,113,513.34
Total Sales		₱335,640,544.74

Accenture filed its Monthly VAT Return for the month of September 2002 on 24 October 2002; and that for October 2002, on 12 November 2002. These returns were amended on 9 January 2003. Accenture's Quarterly VAT Return for the first quarter of 2003, which included the period 1 September 2002 to 30 November 2002 (2nd period), was filed on 17 December 2002; and the Amended Quarterly VAT Return, on 18 June 2004. The latter contains the following information:[6]

Purchases	Amount	Input VAT
Domestic Purchases- Capital Goods	80,765,294.10	₱8,076,529.41
Domestic Purchases- Goods other than capital Goods	132,820,541.70	13,282,054.17
Domestic Purchases-Services	63,238,758.00	6,323,875.80
Total Input Tax		**₱27,682,459.38**
Zero-rated Sales		₱545,686,639.18
Total Sales		₱572,880,982.68

[3] Id. at 139.
[4] Id. at 140-141.
[5] Id. at 161.
[6] Id.

The monthly and quarterly VAT returns of Accenture show that, notwithstanding its application of the input VAT credits earned from its zero-rated transactions against its output VAT liabilities, it still had excess or unutilized input VAT credits. These VAT credits are in the amounts of ₱9,355,809.80 for the 1st period and ₱27,682,459.38 for the 2nd period, or a total of ₱37,038,269.18.[7]

Out of the ₱37,038,269.18, only ₱35,178,844.21 pertained to the allocated input VAT on Accenture's "domestic purchases of taxable goods which cannot be directly attributed to its zero-rated sale of services."[8] This allocated input VAT was broken down to ₱8,811,301.66 for the 1st period and ₱26,367,542.55 for the 2nd period.[9]

The excess input VAT was not applied to any output VAT that Accenture was liable for in the same quarter when the amount was earned—or to any of the succeeding quarters. Instead, it was carried forward to petitioner's 2nd Quarterly VAT Return for 2003.[10]

Thus, on 1 July 2004, Accenture filed with the Department of Finance (DoF) an administrative claim for the refund or the issuance of a Tax Credit Certificate (TCC). The DoF did not act on the claim of Accenture. Hence, on 31 August 2004, the latter filed a Petition for Review with the First Division of the Court of Tax Appeals (Division), praying for the issuance of a TCC in its favor in the amount of ₱35,178,844.21.

The Commissioner of Internal Revenue (CIR), in its Answer,[11] argued thus:

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[7] *Rollo,* pp. 140-141.
[8] Id. at 140.
[9] Id.
[10] *Rollo*, pp. 142-143.
[11] Id. at 99-100.

1. The sale by Accenture of goods and services to its clients are not zero-rated transactions.
2. Claims for refund are construed strictly against the claimant, and Accenture has failed to prove that it is entitled to a refund, because its claim has not been fully substantiated or documented.

In a 13 November 2008 Decision,[12] the Division denied the Petition of Accenture for failing to prove that the latter's sale of services to the alleged foreign clients qualified for zero percent VAT.[13]

In resolving the sole issue of whether or not Accenture was entitled to a refund or an issuance of a TCC in the amount of ₱35,178,844.21,[14] the Division ruled that Accenture had failed to present evidence to prove that the foreign clients to which the former rendered services did business outside the Philippines.[15] Ruling that Accenture's services would qualify for zero-rating under the 1997 National Internal Revenue Code of the Philippines (Tax Code) only if the recipient of the services was doing business outside of the Philippines,[16] the Division cited *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc*. (*Burmeister*)[17] as basis.

Accenture appealed the Division's Decision through a Motion for Reconsideration (MR).[18] In its MR, it argued that the reliance of the Division on *Burmeister* was misplaced[19] for the following reasons:

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[12] Id. at 160-171; CTA Case No. 7046, penned by Associate Justice Lovell R. Bautista, and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova.
[13] Id. at 170.
[14] Id. at 165.
[15] Id. at 168.
[16] Id. at 167.
[17] G.R. No. 153205, 22 January 2007, 515 SCRA 124.
[18] *Rollo*, pp. 172-179.
[19] Id. at 173.

1. The issue involved in *Burmeister* was the entitlement of the applicant to a refund, given that the recipient of its service was doing business in the Philippines; it was not an issue of failure of the applicant to present evidence to prove the fact that the recipient of its services was a foreign corporation doing business outside the Philippines.[20]
2. *Burmeister* emphasized that, to qualify for zero-rating, the recipient of the services should be doing business outside the Philippines, and Accenture had successfully established that.[21]
3. Having been promulgated on 22 January 2007 or after Accenture filed its Petition with the Division, *Burmeister* cannot be made to apply to this case.[22]

Accenture also cited *Commissioner of Internal Revenue v. American Express (Amex)*[23] in support of its position. The MR was denied by the Division in its 12 March 2009 Resolution.[24]

Accenture appealed to the CTA *En Banc*. There it argued that prior to the amendment introduced by Republic Act No. (R.A.) 9337,[25] there was no requirement that the services must be rendered to a person engaged in business conducted outside the Philippines to qualify for zero-rating. The CTA *En Banc* agreed that because the case pertained to the third and the fourth quarters of taxable year 2002, the applicable law was the 1997 Tax Code, and not R.A. 9337.[26] Still, it ruled that even though the provision used in *Burmeister* was Section 102(b)(2) of the earlier 1977 Tax Code, the pronouncement therein requiring recipients of services to be engaged in business outside the Philippines to qualify for zero-rating was applicable to

[20] Id.
[21] *Rollo*, pp. 173-174.
[22] Id. at 21.
[23] 500 Phil. 586 (2005).
[24] *Rollo*, pp. 181-183.
[25] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES
[26] *Rollo*, p. 41.

the case at bar, because Section 108(B)(2) of the 1997 Tax Code was a mere reenactment of Section 102(b)(2) of the 1977 Tax Code.

The CTA *En Banc* concluded that Accenture failed to discharge the burden of proving the latter's allegation that its clients were foreign-based.[27]

Resolute, Accenture filed a Petition for Review with the CTA *En Banc,* but the latter affirmed the Division's Decision and Resolution.[28] A subsequent MR was also denied in a Resolution dated 23 October 2009.

Hence, the present Petition for Review[29] under Rule 45.

In a Joint Stipulation of Facts and Issues, the parties and the Division have agreed to submit the following issues for resolution:

1. Whether or not Petitioner's sales of goods and services are zero-rated for VAT purposes under Section 108(B)(2)(3) of the 1997 Tax Code.

2. Whether or not petitioner's claim for refund/tax credit in the amount of ₱35,178,884.21 represents unutilized input VAT paid on its domestic purchases of goods and services for the period commencing from 1 July 2002 until 30 November 2002.

3. Whether or not Petitioner has carried over to the succeeding taxable quarter(s) or year(s) the alleged unutilized input VAT paid on its domestic purchases of goods and services for the period commencing from 1 July 2002 until 30 November 2002, and applied the same fully to its output VAT liability for the said period.

4. Whether or not Petitioner is entitled to the refund of the amount of ₱35,178,884.21, representing the unutilized input VAT on domestic purchases of goods and services for the period commencing from 1 July 2002 until 30 November 2002, from its sales of services to various foreign clients.

5. Whether or not Petitioner's claim for refund/tax credit in the amount of ₱35,178,884.21, as alleged unutilized input VAT on domestic purchases of goods and services for the period covering 1 July 2002 until 30 November 2002 are duly substantiated by proper documents.[30]

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[27] Id. at 48.
[28] Id.
[29] *Rollo*, pp. 9-33.
[30] Id. at 164.

For consideration in the present Petition are the following issues:

1. Should the recipient of the services be "doing business outside the Philippines" for the transaction to be zero-rated under Section 108(B)(2) of the 1997 Tax Code?

2. Has Accenture successfully proven that its clients are entities doing business outside the Philippines?

Recipient of services must be doing business outside the Philippines for the transactions to qualify as zero-rated.

Accenture anchors its refund claim on Section 112(A) of the 1997 Tax Code, which allows the refund of unutilized input VAT earned from zero-rated or effectively zero-rated sales. The provision reads:

> **SEC. 112.** ***Refunds or Tax Credits of Input Tax. -***
>
> **(A)** ***Zero-Rated or Effectively Zero-Rated Sales.*** - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

Section 108(B) referred to in the foregoing provision was first seen when Presidential Decree No. (P.D.) 1994 [31] amended Title IV of

[31] FURTHER AMENDING CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE.

P.D. 1158,[32] which is also known as the National Internal Revenue Code of 1977. Several Decisions have referred to this as the 1986 Tax Code, even though it merely amended Title IV of the 1977 Tax Code.

Two years thereafter, or on 1 January 1988, Executive Order No. (E.O.) 273[33] further amended provisions of Title IV. E.O. 273 by transferring the old Title IV provisions to Title VI and filling in the former title with new provisions that imposed a VAT.

The VAT system introduced in E.O. 273 was restructured through Republic Act No. (R.A.) 7716.[34] This law, which was approved on 5 May 1994, widened the tax base. Section 3 thereof reads:

> SECTION 3. Section 102 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:
>
> > "SEC. 102. *Value-added tax on sale of services and use or lease of properties*. x x x
> >
> > x x x x x x x x x
> >
> > "(b) *Transactions 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 *Bangko Sentral ng Pilipinas* (BSP).
> >
> > "(2) Services other than those mentioned in the preceding sub-paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP)."

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[32] A DECREE TO CONSOLIDATE AND CODIFY ALL THE INTERNAL REVENUE LAWS OF THE PHILIPPINES.

[33] ADOPTING A VALUE-ADDED TAX, AMENDING FOR THIS PURPOSE CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AND FOR OTHER PURPOSES.

[34] AN ACT RESTRUCTURING THE VALUE-ADDED TAX (VAT) SYSTEM, WIDENING ITS TAX BASE AND ENHANCING ITS ADMINISTRATION, AND FOR THESE PURPOSES AMENDING AND REPEALING THE RELEVANT PORTIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES.

Essentially, Section 102(b) of the 1977 Tax Code—as amended by P.D. 1994, E.O. 273, and R.A. 7716—provides that if the consideration for the services provided by a VAT-registered person is in a foreign currency, then this transaction shall be subjected to zero percent rate.

The 1997 Tax Code reproduced Section 102(b) of the 1977 Tax Code in its Section 108(B), to wit:

> **(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 paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP); x x x.

On 1 November 2005, Section 6 of R.A. 9337, which amended the foregoing provision, became effective. It reads:

> **SEC. 6.** Section 108 of the same Code, as amended, is hereby further amended to read as follows:
>
> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* -
>
> (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 ilipinas (BSP);

> "(2) Services other than those mentioned in the preceding **paragraph rendered to a person engaged in business conducted outside the Philippines** or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP); x x x." (Emphasis supplied)

The meat of Accenture's argument is that nowhere does Section 108(B) of the 1997 Tax Code state that services, to be zero-rated, should be rendered to clients doing business outside the Philippines, the requirement introduced by R.A. 9337.[35] Required by Section 108(B), prior to the amendment, is that the consideration for the services rendered be in foreign currency and in accordance with the rules of the *Bangko Sentral ng Pilipinas* (BSP). Since Accenture has complied with all the conditions imposed in Section 108(B), it is entitled to the refund prayed for.

In support of its claim, Accenture cites *Amex*, in which this Court supposedly ruled that Section 108(B) reveals a clear intent on the part of the legislators not to impose the condition of being "consumed abroad" in order for the services performed in the Philippines to be zero-rated.[36]

The Division ruled that this Court, in *Amex* and *Burmeister*, did not declare that the requirement—that the client must be doing business outside the Philippines—can be disregarded, because this requirement is expressly provided in Article 108(2) of the Tax Code.[37]

Accenture questions the Division's application to this case of the pronouncements made in *Burmeister*. According to petitioner, the provision applied to the present case was Section 102(b) of the 1977 Tax Code, and

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[35] *Rollo*, p. 194.
[36] Id. at 192-193.
[37] Id. at 182.

not Section 108(B) of the 1997 Tax Code, which was the law effective when the subject transactions were entered into and a refund was applied for.

In refuting Accenture's theory, the CTA *En Banc* ruled that since Section 108(B) of the 1997 Tax Code was a mere reproduction of Section 102(b) of the 1977 Tax Code, this Court's interpretation of the latter may be used in interpreting the former, *viz*:

> In the Burmeister case, the Supreme Court harmonized both Sections 102(b)(1) and 102(b)(2) of the 1977 Tax Code, as amended, pertaining to zero-rated transactions. A parallel approach should be accorded to the renumbered provisions of Sections 108(B)(2) and 108(B)(1) of the 1997 NIRC. This means that Section 108(B)(2) must be read in conjunction with Section 108(B)(1). Section 108(B)(2) requires as follows: a) services other than processing, manufacturing or repacking rendered by VAT registered persons in the Philippines; and b) the transaction paid for in acceptable foreign currency duly accounted for in accordance with BSP rules and regulations. The same provision made reference to Section 108(B)(1) further imposing the requisite c) that the recipient of services must be performing business outside of Philippines. Otherwise, if both the provider and recipient of service are doing business in the Philippines, the sale transaction is subject to regular VAT as explained in the *Burmeister* case x x x.
>
> x x x x x x x x x
>
> Clearly, the Supreme Court's pronouncements in the Burmeister case requiring that the recipient of the services must be doing business outside the Philippines as mandated by law govern the instant case.[38]

Assuming that the foregoing is true, Accenture still argues that the tax appeals courts cannot be allowed to apply to *Burmeister* this Court's interpretation of Section 102(b) of the 1977 Tax Code, because the Petition of Accenture had already been filed before the case was even promulgated on 22 January 2007,[39] to wit:

> x x x. While the Burmeister case forms part of the legal system and assumes the same authority as the statute itself, however, the same cannot

[38] Id. at 43-45.
[39] Id. at 196.

> be applied retroactively against the Petitioner because to do so will be prejudicial to the latter.[40]

The CTA *en banc* is of the opinion that Accenture cannot invoke the non-retroactivity of the rulings of the Supreme Court, whose interpretation of the law is part of that law as of the date of its enactment.[41]

We rule that the recipient of the service must be doing business outside the Philippines for the transaction to qualify for zero-rating under Section 108(B) of the Tax Code.

This Court upholds the position of the CTA *en banc* that, because Section 108(B) of the 1997 Tax Code is a verbatim copy of Section 102(b) of the 1977 Tax Code, any interpretation of the latter holds true for the former.

Moreover, even though Accenture's Petition was filed before *Burmeister* was promulgated, the pronouncements made in that case may be applied to the present one without violating the rule against retroactive application. When this Court decides a case, it does not pass a new law, but merely interprets a preexisting one.[42] When this Court interpreted Section 102(b) of the 1977 Tax Code in *Burmeister*, this interpretation became part of the law from the moment it became effective. It is elementary that the interpretation of a law by this Court constitutes part of that law from the date it was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.[43]

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[40] Id. at 21.
[41] Id. at 46, citing *National Amnesty Commission v. Commission on Audit*, 481 Phil. 279 (2004).
[42] *Columbia Pictures, Inc. v. Court of Appeals*, 329 Phil. 875, 907-908 (1996).
[43] *Senarillos v. Hermosisima*, 100 Phil. 501 (1956).

Accenture questions the CTA's application of *Burmeister*, because the provision interpreted therein was Section 102(b) of the 1977 Tax Code. In support of its position that Section 108 of the 1997 Tax Code does not require that the services be rendered to an entity doing business outside the Philippines, Accenture invokes this Court's pronouncements in *Amex*. However, a reading of that case will readily reveal that the provision applied was Section 102(b) of the 1977 Tax Code, and not Section 108 of the 1997 Tax Code. As previously mentioned, an interpretation of Section 102(b) of the 1977 Tax Code is an interpretation of Section 108 of the 1997 Tax Code, the latter being a mere reproduction of the former.

This Court further finds that Accenture's reliance on *Amex* is misplaced.

We ruled in *Amex* that Section 102 of the 1977 Tax Code does not require that the services be consumed abroad to be zero-rated. However, nowhere in that case did this Court discuss the necessary qualification of the recipient of the service, as this matter was never put in question. In fact, the recipient of the service in *Amex* is a nonresident foreign client.

The aforementioned case explains how the credit card system works. The issuance of a credit card allows the holder thereof to obtain, on credit, goods and services from certain establishments. As proof that this credit is extended by the establishment, a credit card draft is issued. Thereafter, the company issuing the credit card will pay for the purchases of the credit card holders by redeeming the drafts. The obligation to collect from the card holders and to bear the loss—in case they do not pay—rests on the issuer of the credit card.

The service provided by respondent in *Amex* consisted of gathering the bills and credit card drafts from establishments located in the Philippines

and forwarding them to its parent company's regional operating centers outside the country. It facilitated in the Philippines the collection and payment of receivables belonging to its Hong Kong-based foreign client.

The Court explained how the services rendered in *Amex* were considered to have been performed and consumed in the Philippines, to wit:

> Consumption is "the use of a thing in a way that thereby exhausts it." 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." 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.[44]

The effect of the place of consumption on the zero-rating of the transaction was not the issue in *Burmeister*. Instead, this Court addressed the squarely raised issue of whether the recipient of services should be doing business outside the Philippines for the transaction to qualify for zero-rating. We ruled that it should. Thus, another essential condition for qualification for zero-rating under Section 102(b)(2) of the 1977 Tax Code is that the recipient of the business be doing that business outside the Philippines. In clarifying that there is no conflict between this pronouncement and that laid down in *Amex*, we ruled thus:

> x x x. As the Court held in *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, the place of payment is immaterial, much less is the place where the output of the service is ultimately used. An essential condition for entitlement to 0% VAT under Section 102 (b) (1) and (2) is that the recipient of the services is a person doing business outside the Philippines. **In this case, the recipient of the services is the Consortium, which is doing business not outside, but within the Philippines because it has a 15-year contract to operate and maintain NAPOCOR's two 100-megawatt power barges in Mindanao**. (Emphasis in the original)[45]

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[44] Supra note 23, at 605, citing Garner (ed. in chief).
[45] Supra note 17, at 139.

In *Amex* we ruled that the place of performance and/or consumption of the service is immaterial. In *Burmeister*, the Court found that, although the place of the consumption of the service does not affect the entitlement of a transaction to zero-rating, the place where the recipient conducts its business does.

Amex does not conflict with *Burmeister*. In fact, to fully understand how Section 102(b)(2) of the 1977 Tax Code—and consequently Section 108(B)(2) of the 1997 Tax Code—was intended to operate, the two aforementioned cases should be taken together. The zero-rating of the services performed by respondent in *Amex* was affirmed by the Court, because although the services rendered were both performed and consumed in the Philippines, the recipient of the service was still an entity doing business outside the Philippines as required in *Burmeister.*

That the recipient of the service should be doing business outside the Philippines to qualify for zero-rating is the only logical interpretation of Section 102(b)(2) of the 1977 Tax Code, as we explained in *Burmeister*:

> This can only be the logical interpretation of Section 102 (b) (2). If the provider and recipient of the "other services" are both doing business in the Philippines, the payment of foreign currency is irrelevant. Otherwise, those subject to the regular VAT under Section 102 (a) can avoid paying the VAT by simply stipulating payment in foreign currency inwardly remitted by the recipient of services. To interpret Section 102 (b) (2) to apply to a payer-recipient of services doing business in the Philippines is to make the payment of the regular VAT under Section 102 (a) dependent on the generosity of the taxpayer. The provider of services can choose to pay the regular VAT or avoid it by stipulating payment in foreign currency inwardly remitted by the payer-recipient. Such interpretation removes Section 102 (a) as a tax measure in the Tax Code, an interpretation this Court cannot sanction. A tax is a mandatory exaction, not a voluntary contribution.
>
> x x x x x x x x x
>
> Further, when the provider and recipient of services are **both** doing business in the Philippines, their transaction falls squarely under Section 102 (a) governing **domestic** sale or exchange of services. Indeed, this is a purely local sale or exchange of services subject to the regular VAT,

> unless of course the transaction falls under the other provisions of Section 102 (b).
>
> Thus, when Section 102 (b) (2) speaks of "**[s]ervices other than those mentioned in the preceding subparagraph**," the legislative intent is that only the services are different between subparagraphs 1 and 2. The requirements for zero-rating, including the essential condition that the recipient of services is doing business outside the Philippines, remain the same under both subparagraphs. (Emphasis in the original)[46]

Lastly, it is worth mentioning that prior to the promulgation of *Burmeister*, Congress had already clarified the intent behind Sections 102(b)(2) of the 1977 Tax Code and 108(B)(2) of the 1997 Tax Code amending the earlier provision. R.A. 9337 added the following phrase: "rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed."

Accenture has failed to establish that the recipients of its services do business outside the Philippines.

Accenture argues that based on the documentary evidence it presented,[47] it was able to establish the following circumstances:

1. The records of the Securities and Exchange Commission (SEC) show that Accenture's clients have not established any branch office in which to do business in the Philippines.
2. For these services, Accenture bills another corporation, Accenture Participations B.V. (APB), which is likewise a foreign corporation with no "presence in the Philippines."
3. Only those not doing business in the Philippines can be required under BSP rules to pay in acceptable currency for their purchase of

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[46] *Rollo*, pp. 136-137.

[47] Official Receipts, Intercompany Payment Request, Billing Statements, Memo Invoices-Receivable, Memo Invoices-Payable, and Bank Statements.

> goods and services from the Philippines. Thus, in a domestic transaction, where the provider and recipient of services are both doing business in the Philippines, the BSP cannot require any party to make payment in foreign currency.[48]

Accenture claims that these documentary pieces of evidence are supported by the Report of Emmanuel Mendoza, the Court-commissioned Independent Certified Public Accountant. He ascertained that Accenture's gross billings pertaining to zero-rated sales were all supported by zero-rated Official Receipts and Billing Statements. These documents show that these zero-rated sales were paid in foreign exchange currency and duly accounted for in the rules and regulations of the BSP.[49]

In the CTA's opinion, however, the documents presented by Accenture merely substantiate the existence of the sales, receipt of foreign currency payments, and inward remittance of the proceeds of these sales duly accounted for in accordance with BSP rules. Petitioner presented no evidence whatsoever that these clients were doing business outside the Philippines.[50]

Accenture insists, however, that it was able to establish that it had rendered services to foreign corporations doing business outside the Philippines, unlike in *Burmeister*, which allegedly involved a foreign corporation doing business in the Philippines.[51]

We deny Accenture's Petition for a tax refund.

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[48] *Rollo*, pp. 23-24.
[49] Id. at 25.
[50] Id. at 47.
[51] Id. at 138.

The evidence presented by Accenture may have established that its clients are foreign. This fact does not automatically mean, however, that these clients were doing business outside the Philippines. After all, the Tax Code itself has provisions for a foreign corporation engaged in business within the Philippines and vice versa, to wit:

> SEC. 22. *Definitions* - When used in this Title:
>
> x x x x x x x x x
>
> (H) The term "*resident foreign corporation*" applies to a foreign corporation engaged in trade or business within the Philippines.
>
> (I) The term '*nonresident foreign corporation*' applies to a foreign corporation not engaged in trade or business within the Philippines. (Emphasis in the original)

Consequently, to come within the purview of Section 108(B)(2), it is not enough that the recipient of the service be proven to be a foreign corporation; rather, it must be specifically proven to be a nonresident foreign corporation.

There is no specific criterion as to what constitutes "doing" or "engaging in" or "transacting" business. We ruled thus in *Commissioner of Internal Revenue v. British Overseas Airways Corporation*:[52]

> x x x. There is no specific criterion as to what constitutes "doing" or "engaging in" or "transacting" business. Each case must be judged in the light of its peculiar environmental circumstances. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization. "In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character."[53]

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[52] 233 Phil. 406 (1987).

[53] Id. at 420 citing *The Mentholatum Co., Inc. vs. Anacleto Mangaliman,* 72 Phil. 524 (1941); Section 1, R.A. No. 5455; and *Pacific Micronesian Line, Inc. v. Del Rosario and Pelingon*, 96 Phil. 23, 30 (1954), which in turn cited Thompson on Corporations, Vol. 8, 844-847 (3rd ed.); and Fisher, PHILIPPINE LAW OF STOCK CORPORATION, 415.

A taxpayer claiming a tax credit or refund has the burden of proof to establish the factual basis of that claim. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.[54]

Accenture failed to discharge this burden. It alleged and presented evidence to prove *only* that its clients were foreign entities. However, as found by both the CTA Division and the CTA *En Banc*, no evidence was presented by Accenture to prove the fact that the foreign clients to whom petitioner rendered its services were clients doing business outside the Philippines.

As ruled by the CTA *En Banc*, the Official Receipts, Intercompany Payment Requests, Billing Statements, Memo Invoices-Receivable, Memo Invoices-Payable, and Bank Statements presented by Accenture merely substantiated the existence of sales, receipt of foreign currency payments, and inward remittance of the proceeds of such sales duly accounted for in accordance with BSP rules, all of these were devoid of any evidence that the clients were doing business outside of the Philippines.[55]

WHEREFORE, the instant Petition is **DENIED**. The 22 September 2009 Decision and the 23 October 2009 Resolution of the Court of Tax Appeals *En Banc* in C.T.A. EB No. 477, dismissing the Petition for the refund of the excess or unutilized input VAT credits of Accenture, Inc., are **AFFIRMED**.

SO ORDERED.

MARIA LOURDES P. A. SERENO
Associate Justice

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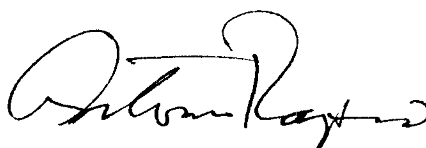
[54] *Paseo Realty & Development Corporation v. Court of Tax Appeals, et al.*, 483 Phil. 254 (2004).
[55] *Rollo*, p. 47.

WE CONCUR:



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

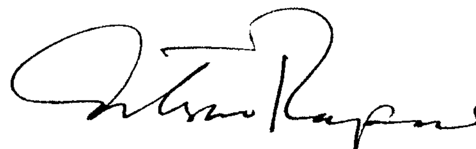
ARTURO D. BRION
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)