REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AVALOQ PHILIPPINES OPERATING HEADQUARTERS, *Petitioner,*	**CTA CASE NO. 10248**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 2 2025 11:21 AM

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RESOLUTION

RINGPIS-LIBAN, J.:

Submitted before this Court is petitioner's *Motion for Reconsideration (Re: Decision promulgated on 3 February 2025)* filed on February 25, 2025, with respondent's *Comment and Opposition (Re: Motion for Reconsideration of Decision dated 25 February 2025)* filed on April 2, 2025.

On February 3, 2025, the Court promulgated a *Decision,* which denied petitioner's claim for refund of unutilized and/or excess input value-added tax (VAT) attributable to its zero-rated sales of service for the third and fourth quarters of calendar year 2017, in the amount of ₱3,055,913.90, for failing to sufficiently establish its entitlement thereto, the dispositive portion of which is quoted as follows:

> "**WHEREFORE**, in light of the foregoing disquisition, the present *Petition for Review* is **DENIED** for lack of merit.
>
> **SO ORDERED**."

In its motion, petitioner insists that the Court erred in concluding that petitioner failed to prove that is engaged in zero-rated sales of services in accordance with Section 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended. Petitioner argues that its services to its other affiliates fall within the scope of "services other than processing, manufacturing or repacking of goods," and that such services were paid for in acceptable foreign currency exchange via the intercompany offsetting agreement, as testified by its witness, Ms. Mary Lalaine V. Munar. Petitioner likewise asserts that it has sufficiently proven that the foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). Petitioner further contends that in billing and collecting the payment for the services it rendered to its foreign clients, the intent of the contracting parties in the *General Framework Services Agreement (GFSA)* and *Short Term Credit Facility Agreement (STCFA)* is to adopt the intercompany offsetting arrangement as an equivalent of the acceptable foreign currency payment and accounted for in accordance with the BSP rules and regulations for VAT zero-rating purposes.

Petitioner asserts that since it is a regional operating headquarters (ROHQ), the execution of a separate and individual offsetting arrangement agreement by and between petitioner and its various affiliates is *not* a requirement, if not counterproductive, to its existence and effectivity. Petitioner reiterates that the transactions subject of the offsetting arrangement can be traced in the pieces of evidence it adduced during trial and that the said transactions in question were payments for services provided by Avaloq Philippines to its clients, rather than mere transfers of funds representing loans. Petitioner likewise maintains that being an ROHQ –an administrative arm of its mother company, Avaloq Group AG, it may not be treated as a separate entity. Lastly, petitioner submits that *strictissimi juris* must conform to substantial justice, equity, and fair play.

On the other hand, in his comment, respondent contends that petitioner raised no points of contention in its motion that would warrant the reversal of the Court's decision. Respondent reiterates that petitioner's *GFSA* lacks any indication that the services were indeed performed in the Philippines. As such, respondent submits that the Court correctly ruled that petitioner is not entitled to the claimed refund since it failed to prove that it was engaged in zero-rated or effectively zero-rated sales of service during the period July 1, 2018 to December 31, 2018. Lastly, respondent avers that partaking the nature of an exemption, claims for refund are strictly construed against the claimant and the latter has the burden of proof to establish the factual of its claim for tax credit or refund. After all tax refunds, like tax exemptions, are construed strictly against the taxpayer.

After due consideration, the Court finds petitioner's motion bereft of merit.

The Court found that petitioner fell short in proving that the corresponding payments from its clients for the said services were inwardly remitted through the Philippine banking system and duly accounted for in accordance with BSP rules and regulations.

To stress, while the Court held that offsetting arrangements are recognized by the BIR as an alternative to proof of foreign currency inward remittances, the right to offset between petitioner and other affiliates cannot be presumed but must be established by evidence. If there is indeed an *offsetting arrangement* among Avaloq Group AG *affiliates*, the same should have been covered by a separate agreement executed between and among them. Petitioner merely reiterated the same portion of its witness' testimony to support its assertions, which had already been exhaustively considered and resolved in the assailed decision, alongside the terms of the *GFSA* and the *STCFA*, and the *Schedule of Offsetting of Receivables*. Petitioner was still unable to establish that there exists a *valid* offsetting arrangement that may serve as an alternative to actual inward remittance of foreign currency in consideration for the services petitioner rendered to its non-resident foreign corporation clients.

Petitioner argues that the intention of the parties in executing the *GFSA* and the *STCFA* is to adopt an intercompany offsetting arrangement as an equivalent of the acceptable foreign currency payment and accounted for in accordance with BSP rules and regulations for VAT zero-rating purposes. In this regard, petitioner states that being a ROHQ, it has no separate and distinct legal personality from Avaloq Group AG. As such, petitioner contends that accepting the Court's interpretation would create an absurd situation wherein petitioner could only offset its receivables for services rendered to the head office, but not its receivables for services rendered to its affiliates. Petitioner submits that this interpretation would render the *GFSA* and *STCFA* ineffective, despite the clear intention of the contracting parties therein to adopt the intercompany offsetting arrangement as a method of payment.

The Court is not swayed.

It must be stressed that petitioner has the burden to prove that there exists a valid offsetting arrangement between it and the other *affiliates* of Avaloq Group AG. To reiterate, for the purposes of its claim for refund, in cases filed before this Court, which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[1] Thus, petitioner must show compliance with *each* of the necessary requisites for refund. The absence of *any* of the requisites is already a valid ground to deny the claim. It is not sufficient to insist on the intent of the parties to the agreement in order to prove its compliance with the requirements under the rules when such intent is *not* apparent in the documents submitted. Mere intent without proof cannot be considered by the Court.

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[1] *Edison (Bataan) Cogeneration Corporation v. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon v. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

Verily, it suffices that the Court to deal generally and summarily with the motion for reconsideration and merely state a legal ground for its denial, for it will be a useless formality invariably involving merely a reiteration of the reasons already set forth in the judgment for rejecting the arguments advanced by the movant, as held in the case of *Social Justice Society (SJS) Officers, et al. v. Alfredo S. Lim, et seq.*:[2]

> "The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. **This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant**; and it would be a needless act, too, with respect to issues raised for the first time, these being, deemed waived because not asserted at the first opportunity. **It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial** (Sec. 14, Art. VIII, Constitution); *i.e.*, the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc." *(Emphases added)*

Furthermore, the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue v. Far East Bank & Trust Company, (Now Bank of the Philippine Islands)*,[3] is instructive on the matter, to wit:

> "The burden is on the taxpayer to prove its entitlement to the refund.
>
> Moreover, the fact that the petitioner failed to present any evidence or to refute the evidence presented by respondent does not *ipso facto* entitle the respondent to a tax refund. It is not the duty of the government to disprove a taxpayer's claim for refund. Rather, the burden of establishing the factual basis of a claim for a refund rests on the taxpayer.
>
> And while the petitioner has the power to make an examination of the returns and to assess the correct amount of tax, his failure to exercise such powers does not create a presumption in favor of the correctness of the returns. The taxpayer must still present substantial evidence to prove his claim for refund. As we have said, there is no automatic grant of a tax refund."

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[2] G.R. No. 187836, March 10, 2015 (Resolution on Motion for Reconsideration), citing *Ortigas and Company Limited Partnership v. Judge Tirso Velasco, et al., et seq.*, G.R. No. 109645, March 4, 1996 (324 Phil. 483).

[3] G.R. No. 173854, March 15, 2010.

It is clear from the above that tax refunds partake of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer. Being treated as such, the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[4] Again, it is not the duty of the government to disprove a taxpayer's claim for refund but, rather, the burden of establishing the factual basis of a claim for a refund rests on the taxpayer, which must still present substantial evidence to prove its right thereto. Hence, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[5]

In view of the foregoing, there being no new matter or substantial issue raised by petitioner in its motion, the Court finds no compelling reason to justify the reversal or modification of its findings in the Decision promulgated on February 3, 2025.

ACCORDINGLY, petitioner's *Motion for Reconsideration (Re: Decision promulgated on 3 February 2025)* is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

We Concur:

MARIA ROWENA MODESTO SAN-PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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[4] See *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

[5] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015, citing *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.