REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

FOUNDEVER PHILIPPINES CORPORATION (formerly Sitel Philippines Corporation), Petitioner,	**CTA CASE NO. 10395**
	Members:
-versus-	**RINGPIS-LIBAN,** *Chairperson, and* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 05 2024

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court is a *Petition for Review,*[1] filed on November 6, 2020, praying that the Court declare petitioner entitled to a refund in the amount of ₱33,994,045.37, representing unutilized input value-added tax (VAT) arising from petitioner's domestic purchases of goods (other than capital goods) and services and purchases of capital goods attributable to zero-rated transactions, for the 1st to 4th quarters of taxable year 2018, and order respondent to grant petitioner a refund in the said amount.

The Parties

Petitioner Foundever Philippines Corporation (formerly Sitel Philippines Corporation, Clientlogic Philippines, Inc., and Contact World, Inc.) is a corporation duly organized and existing under the laws of the Philippines.[2] It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer under Tax Identification Number (TIN) 208-780-708-000, with

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[1] *Rollo* Vol. 1, pp. 6 to 33.
[2] Exhibits "P-1", "P-1.1", "P-1.2", and "P-1.3", *Rollo* Vol. 3, pp. 936 to 1007; petitioner's Manifestation, dated July 13, 2023, with attached SEC Certificate of Filing of Amended Articles of Incorporation, *Rollo* Vol. 4, pp. 1663 to 1665.

address at Ground Floor, One Julia Vargas Bldg., Ortigas Home Depot Complex 1, Julia Vargas Ave., Brgy. Ugong, Pasig City, Metro Manila.[3]

It is also registered with the Philippine Economic Zone Authority (PEZA) as an Ecozone Information Technology (IT) Enterprise at the Baguio City Economic Zone, Wynsum Corporate Plaza, One Julia Vargas Building, Eastwood City Cyberpark, Robinsons Cyberpark, Eton Cyberpod Corinthian, Robinsons Luisita, and SM Baguio Cyberzone Building.[4]

Respondent Commissioner of Internal Revenue is represented by the Litigation Division of the Bureau of Internal Revenue (BIR) National Office and may be served with pleadings and other court processes at the BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

The Facts

On July 10, 2020, petitioner filed with the Office of the Deputy Commissioner – Operations Group of the BIR its letter, dated July 8, 2020,[6] submitting an application for VAT refund relating to its unutilized input VAT attributable to zero-rated sales for the four quarters of taxable year 2018, in the amount of ₱33,994,045.37. While the BIR issued a letter, dated October 1, 2020,[7] denying petitioner's claim for VAT refund for the said period, the same was received by petitioner only after the present Petition for Review was filed with this Court.

With no action on its application, petitioner filed the present Petition for Review on November 6, 2020, to which respondent filed an Answer[8] on January 2, 2021.

After Pre-Trial,[9] petitioner presented Mr. Ronald P. Portula,[10] its Senior Tax Analyst, and Mr. Emmanuel Y. Mendoza,[11] the Court-commissioned Independent Certified Public Accountant (ICPA),[12] who submitted an ICPA Report on April 18, 2022.[13] The Court would eventually admit all of

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3 Exhibit "P-2", *Rollo* Vol. 3, p. 1008.
4 Exhibits "P-28", "P-28.1", "P-28.2", "P-28.3", "P-28.4", and "P-28.5", *Rollo* Vol. 4, pp. 1524 to 1539.
5 Joint Stipulation of Facts and Issues (JSFI), *Rollo* Vol. 2, p. 679.
6 Exhibit "P-24", *Rollo* Vol. 4, pp. 1515 to 1517.
7 Memorandum for Petitioner, *id.* at 1631.
8 *Rollo* Vol. 2, pp. 608 to 617.
9 Minutes of the hearing held on, and Order dated, October 13, 2021, *id.* at 670 to 672.
10 Exhibit "P-30", *Rollo* Vol. 1, pp. 34 to 63; Minutes of the hearing held on, and Order dated, February 10, 2022, *Rollo* Vol 2., pp. 750 to 752.
11 Exhibit "P-31", *id.* at 852 to 857; Minutes of the hearing held on, and Order dated, June 21, 2022, *id.* at 872 to 874.
12 Oath of Commission dated March 15, 2022, *id.* at 754; Minutes of the hearing held on, and Order dated, March 15, 2022, *id.* at 753, and 755 to 756, respectively.
13 Transmittal Memo dated April 18, 2022, with attached ICPA Report dated April 18, 2022, *id.* at 757 to 843.

petitioner's offered evidence except for Exhibits "P-34-7-102a" to "P-34-7-117a" for failure to submit these.[14]

Respondent, meanwhile, presented Revenue Officer Jelly Anne T. Mateo.[15] The Court eventually admitted all of his offered evidence.[16]

After petitioner filed its Memorandum[17] on June 1, 2023, and respondent filed his Memorandum[18] on June 8, 2023, the Court submitted this case for decision on September 8, 2023.[19]

Hence, this Decision.

The Issues

The parties failed to agree on the issue to put forward in the instant case. Rather, they proposed their respective issues for the Court's determination, to wit:

> Issue for Petitioner:
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> WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND OF ITS UNUTILIZED INPUT VAT ARISING FROM DOMESTIC PURCHASES OF GOODS (OTHER THAN CAPITAL GOODS) AND SERVICES, AND PURCHASES OF CAPITAL GOODS, ATTRIBUTABLE TO ZERO-RATED SALES FOR THE 1st to 4th QUARTERS OF TAXABLE YEAR 2018 IN THE AMOUNT OF P33,994,045.37.
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> Issue for Respondent:
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> WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND OR TAX CREDIT REPRESENTING ALLEGED UNUTILIZED INPUT VAT FOR THE 1st to 4th QUARTERS OF TAXABLE YEAR 2018 IN THE AMOUNT OF THIRTY-THREE MILLION NINE HUNDRED NINETY-FOUR THOUSAND FORTY-FIVE PESOS AND THIRTY-SEVEN CENTAVOS. (PHP33,994,045.37).[20]

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[14] Resolution, dated September 14, 2022, *Rollo* Vol. 4, pp. 1550 to 1551; Resolution, dated October 27, 2022, *id.* at 1567 to 1568,
[15] Exhibit "R-7", *Rollo* Vol. 2, pp. 662 to 667; Minutes of the hearing held on, and Order dated, January 26, 2023, *Rollo* Vol. 4, pp. 1569, and 1571 to 1572, respectively.
[16] Resolution, dated April 26, 2023, *id.* at 1595 to 1596; Resolution, dated September 8, 2023, *id.* at 1670 to 1671.
[17] *Id.* at 1604 to 1636.
[18] *Id.* at 1639 to 1653.
[19] Resolution, dated September 8, 2023, *id.* at 1670 to 1671.
[20] JSFI, *Rollo* Vol. 2, pp. 679 to 680.

Arguments of the Parties

Petitioner's Arguments

Petitioner raises the following arguments:

(a) It is a VAT-registered entity;
(b) It was engaged in zero-rated export sale of services, other than processing, manufacturing, or repacking goods, during the 1st to 4th quarters of taxable year 2018 rendered to a nonresident person not engaged in business who was outside the Philippines when the services were performed, the consideration for which was paid for in acceptable foreign currency and accounted for in accordance with Bangko Sentral ng Pilipinas (BSP) rules and regulations;
(c) It incurred or paid input taxes, which are not transitional input taxes;
(d) The input taxes were not applied against output tax liability during the 1st to 4th quarters of taxable year 2018 and in the succeeding quarters;
(e) The claim is filed within two years after the close of the taxable quarter when the sales were made; and
(f) Respondent incorrectly denied its administrative claim for refund.

Respondent's Arguments

Respondent counters the above with the following:

(a) Petitioner is not entitled to the refund claimed;
(b) It is already an established fact that since a decision has already been rendered by respondent, the Supreme Court has held that the duty of the court is now limited to determining whether such decision was proper;
(c) Petitioner should not be allowed to submit documents not submitted to the BIR for its administrative claim for refund;
(d) The claim for refund should be denied for petitioner's failure to prove its entitlement to the refund sought; and
(e) Petitioner must prove that it has submitted valid and acceptable supporting documents to substantiate its administrative claim for refund, and without such requirement, the administrative body has sufficient reason to deny the claim.

The Ruling of the Court

The Petition for Review must be denied.

Requisites for the grant of a refund or issuance of a tax credit certificate under the law

Sections 112(a) and (c) of the National Internal Revenue Code of 1997, as amended (NIRC) provide as follows:

> 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: Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> . . . .
>
> (C) Period within which Refund of Input Taxes shall be Made. — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: Provided, however, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.

Pursuant to the above provision, jurisprudence has laid down requisites which the taxpayer-applicant must comply with to successfully obtain a credit or refund of input VAT, as follows:

As to the timeliness of the filing of the administrative and judicial claims:

1. The refund claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[21]
2. In case of full or partial denial of the refund claim rendered within a period of 90 days from the date of submission of the official receipts or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within 30 days from receipt of the decision;[22]

With reference to the taxpayer's registration with the BIR:

3. the taxpayer is a VAT-registered person;[23]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[24]
5. for zero-rated sales under *Sections 106(A)(2)(1) and (2), 106(B), and 108(B)(1) and (2) of the NIRC*, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the BSP rules and regulations;[25]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[26]
7. the input taxes are due or paid;[27]
8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[28] and
9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[29]

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21 *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.

22 *Energy Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 203367, March 17, 2021; *Commissioner of Internal Revenue v. CE Casecnan Water And Energy Company, Inc.*, G.R. No. 212727, February 1, 2023; and *Commissioner of Internal Revenue v. Vestas Services Philippines, Inc.*, G.R. No. 255085, March 29, 2023.

23 *Supra* note 21.

24 *Id.*

25 *Id.*

26 *Id.*

27 *Id.*

28 *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, supra*; and *San Roque Power Corporation v. Commissioner of Internal Revenue, supra.*

29 *Supra* note 21.

In addition, in claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the *NIRC* and other implementing rules and regulations.[30] Thus, petitioner's compliance with all the VAT invoicing requirements is required to be able to file a claim for input taxes attributable to zero-rated sales.[31] Compliance with all the VAT invoicing requirements provided by tax laws and regulations is thus mandatory.[32]

Strict compliance with said requirements is necessary considering the nature of VAT and the VAT system's tax credit method, where tax payments are based on output and input taxes and where the seller's output tax becomes the buyer's input tax that is available as tax credit or refund in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates computation of tax credits, and provides accurate audit trail or evidence for BIR monitoring purposes.[33] As such, these requirements must be followed as they are the only way to determine the veracity of the taxpayer's claims.[34]

Finally, in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[35] Petitioner must thus show compliance with each of the foregoing requisites and invoicing requirements, as the absence of any of the said requisites would be a valid ground to deny the refund claim.

The Court finds that while petitioner complied with the *first* and *second* requisites, it failed to comply with the *third* and *fourth* requisites for claiming a refund or credit of input VAT.

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30 *Team Energy Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 197663 and 197770, March 14, 2018.

31 *JRA Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.

32 *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

33 *Supra* note 30.

34 *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.

35 *Edison (Bataan) Cogeneration Corporation v. Commissioner of Internal Revenue*, 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*, 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.

The Court has jurisdiction over this case as petitioner timely filed its administrative and judicial claims

The first requisite provided in *Section 112(A) of the NIRC* instructs the taxpayer to file an administrative claim for input VAT refund within two years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the 1st to 4th quarters of taxable year 2018. Counting two years from the close of the subject taxable quarters, petitioner had until the following respective dates to file its administrative claim:

Period Covered (2018)	**Close of Taxable Quarter**	**Last Day to File Administrative Claim**
1st Quarter	March 31, 2018	March 31, 2020
2nd Quarter	June 30, 2018	June 30, 2020
3rd Quarter	September 30, 2018	September 30, 2020
4th Quarter	December 31, 2018	December 31, 2020

Importantly, pursuant to *Section 4(z) of Republic Act (RA) No. 11469*, the Secretary of Finance issued *Revenue Regulations (RR) No. 7-2020, 11-2020, and 16-2020*, which cumulatively extended the deadline for applications for VAT Credit/Refund Claims covering the 1st and 2nd quarters of 2018 from March 31, 2020 and June 30, 2020, respectively to July 15, 2020 and August 31, 2020, respectively. Since petitioner's administrative claim for the 1st to 4th quarters of taxable year 2018 was filed with the BIR on July 10, 2020,[36] the same was timely made within the above prescribed and extended period.

The second requisite stated in *Section 112(C) of the NIRC* grants the BIR a period of 90 days from date of submission of the official receipts or invoices and other documents in support of the application, to decide on the taxpayer's administrative claim for input VAT refund.

Relative thereto, *Section 7(a)(1) and (2) of RA No. 1125*, as amended, provides as follows:

> SEC. 7. Jurisdiction. – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under

36 Exhibit "P-24, Docket – Vol. 4, pp. 1515 to 1517.

> the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>
> (2) *Inaction by the Commissioner of Internal Revenue in cases involving* disputed assessments, *refunds of internal revenue taxes*, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, *where the National Internal Revenue Code provides* ***a specific period of action****, in which case* ***the inaction shall be deemed a denial****;*
> (Emphasis and italics supplied)

Interpreting the foregoing provision, the Supreme Court, in *Commissioner of Internal Revenue vs. San Roque Power Corporation*[37] (*San Roque case*), held as follows, to wit:

> The charter of the CTA expressly provides that its jurisdiction is to review on appeal "decisions of the Commissioner of Internal Revenue in cases involving x x x refunds of internal revenue taxes." When a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the Commissioner, there is no "decision" of the Commissioner to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal. *The charter of the CTA also expressly provides that if the Commissioner fails to decide within "a specific period" required by law, such "inaction shall be deemed a denial" of the application for tax refund or credit. It is the Commissioner's decision, or inaction "deemed a denial," that the taxpayer can take to the CTA for review. Without a decision or an "inaction x x x deemed a denial" of the Commissioner, the CTA has no jurisdiction over a petition for review.*
> (Italics supplied)

Simply stated, *Section 7(a)(1) and (2) of RA No. 1125, as amended,* clearly provides for this Court's jurisdiction over refunds such that this Court has exclusive appellate jurisdiction (a) to review respondent's decisions, and (b) to review respondent's inaction "where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial." In other words, under this Court's charter, respondent's inaction on a claim for refund is considered a "denial" thereof, which may be appealed before this Court within 30 days from the expiration of the period fixed by law for action.

While the *San Roque case* was decided under the old *Section 112 of the NIRC*, it must be emphasized that the amendment introduced by *RA No. 10963* or the said *TRAIN Law* to the said *Section 112* has still provided "a specific period of action", albeit in the reduced period of 90 days, for respondent. Thus, despite the deletion of the phrase "or the failure on the part of the Commissioner to act on the application within the period prescribed above" found under the former *Section 112(C)*, the aforequoted *Section 7(a)(2) of RA No. 1125, as amended*, should still be applied.

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[37] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

In this case, as already stated, petitioner's administrative claim was timely filed on July 10, 2020. Thus, respondent or the BIR had 90 days from the said date or until October 8, 2020, within which to act on the said claim.

While the BIR issued the letter dated October 1, 2020, denying petitioner's administrative claim, the said letter was received by petitioner only after the present Petition for Review was filed with this Court.[38] Thus, petitioner is justified in alleging respondent's inaction in the said Petition for Review,[39] since at the point of filing the same, there was indeed an inaction of respondent over its administrative claim. Correspondingly, this Court shall treat the present case as one of respondent's inaction. Considering that the same Petition for Review was filed on November 6, 2020, or within the 30-day period, after the lapse of the 90-day period, both under *Section 112 of the NIRC*, petitioner's judicial claim was also timely made. Pertinently then, this Court properly acquired jurisdiction over this case as petitioner fulfilled both the first and second requisites.

The same cannot be said of the *third* requisite.

Petitioner cannot be considered a "VAT-registered person"

The *third* requisite pertains to a taxpayer being a VAT-registered person.

Petitioner submits that its Palawan and Technopoint Sites were correctly registered as "facilities" as defined under *RR No. 7-2012*. Under said issuance, a "facility" means a place of production, showroom, warehouse, storage place, garage, bus terminal, or real property for lease with no sales activity. A facility shall be registered as a branch whenever sales transactions/activities are conducted thereat. Finally, registration of a facility with no sales activity is not subject to payment of Annual Registration Fee.[40]

According to petitioner, its registered facilities, including the Palawan and Technopoint Sites, are similar to a place of production for a manufacturing business where services are performed. However, non-production related services such as monitoring, billing, invoicing, receipting, marketing, and collection are conducted by its Main Office. Allegedly, these facilities do not operate independently from its Main Office considering that the services being performed by its contact center agents are monitored and recorded in the Main Office.[41]

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[38] Refer to par. 91, Memorandum for Petitioner, *Rollo* Vol. 4, p. 1631.
[39] Refer to par. 22, Petition for Review, Docket – Vol. I, p. 11.
[40] Memorandum for Petitioner, *Rollo* Vol. 4, p. 1632.
[41] *Id.*

In other words, petitioner claims that the sites it established were intended to be places where its contact center agents would be located and would perform contact center services, but no invoices or official receipts would be issued therefrom. Due to the nature of the transactions being performed in the said sites, petitioner deemed it proper to register these as "facilities" rather than "branches."[42]

The Court is not convinced.

Section 236 of the NIRC reads, in part, as follows:

> SEC. 236. Registration Requirements. –
>
> (A) Requirements. – Every person subject to any internal revenue tax shall register once with the appropriate Revenue District Officer:
>
> (1) Within ten (10) days from date of employment, or
>
> (2) *On or before the commencement of business*, or
>
> (3) Before payment of any tax due, or
>
> (4) Upon filing of a return, statement or declaration as required in this Code.
>
> The registration shall contain the taxpayer's name, style, place of residence, business, and such other information as may be required by the Commissioner in the form prescribed therefor.
>
> *A person maintaining a head office, branch or **facility** shall register with the Revenue District Officer having jurisdiction over the head office, branch or **facility**. For purposes of this Section, the term "**facility**" may include but not limited to sales outlets, places of production, warehouses or storage places.*
>
> (B) Annual Registration Fee. – *An annual registration fee in the amount of Five hundred pesos (₱500) for **every separate or distinct establishment or place of business, including facility types where sales transactions occur**, shall be paid upon registration and every year thereafter on or before the last day of January:* . . . .
>
> *The registration fee shall be paid* to an authorized agent bank located within the revenue district, or to the Revenue Collection Officer, or duly authorized Treasurer of the city or municipality where each place of business or branch is registered.
>
> . . . .

(Emphasis and italics supplied)

[42] Judicial Affidavit of Ronald P. Portula, *Rollo* Vol. 1, p. 37.

Based on the foregoing provisions, it is clear that every person subject to any internal revenue tax, within a certain period of time, is mandated to register with the BIR, and that if such person maintains a head office, a branch, or facility, such registration shall be made with the BIR office having jurisdiction thereover. Moreover, the said person is required to pay an annual registration fee in the amount of ₱500.00 for every separate or distinct establishment or place of business, which specifically includes "facility types where sales transactions occur." Thus, on the basis of *Section 236 of the NIRC*, a facility is required to be registered with the BIR, and in case sales transactions occur therein, the annual registration fee of ₱500.00 must be paid.

Moreover, implementing the said *Section 236* for VAT purposes, *Section 9.236-1(a) of RR No. 16-2005* provides as follows:

> SEC. 9.236-1. Registration of VAT Taxpayers. —
>
> (a) In general. — *Any person who, in the course of trade or business, sells, barters, exchanges goods or properties, or engaged in the sale of services subject to VAT imposed in Secs. 106 and 108 of the Tax Code shall register with the appropriate RDO using appropriate BIR forms and pay an annual registration fee in the amount of Five Hundred Pesos (₱500) using BIR Form No. 0605* ***for every separate and distinct establishment or place of business*** *(save a warehose without sale transactions)* before the start of such business and every year thereafter on or before the 31st day of January.
>
> *"Separate or distinct establishment" shall mean any branch or* ***facility where sales transaction occur.***
>
> *"Branch" means* ***a fixed establishment in a locality which conducts sales operations of the business as an extension of the principal office.***
>
> "Principal place of business" refers to the place where the head or main office is located as appearing in the corporation's Articles of Incorporation. In the case of an individual, the principal place of business shall be the place where the head or main office is located and where the books of accounts are kept.
>
> "Warehouse" means the place or premises where the inventory of goods for sale are kept and from which such goods are withdrawn for delivery to customers, dealers, or persons acting in behalf of the business.
>
> *Any person who maintains a head or main office* ***and branches*** *in different places shall register with the RDO which has jurisdiction over* ***the place wherein the*** *main or head office or* ***branch is located.*** However, the registration fee shall be paid to any accredited bank in the Revenue District where the head office or branch is registered provided that in areas where there are not accredited banks, the same shall be paid to the RDO, collection agent, or duly authorized treasurer of the municipality where each place of business or branch is situated.

> *Each VAT-registered person shall be assigned only one TIN. The branch shall use the 9-digit TIN of the Head Office plus a 3-digit Branch Code.*
>
> ***"VAT-registered person" refers to any person registered in accordance with this section.***
> (Emphasis and italics supplied)

On the basis thereof, for VAT purposes, it is explicit that any person who, in the course of trade or business, sells, barters, exchanges goods or properties, or is engaged in the sale of services subject to VAT under the law must register with the appropriate Revenue District Office (RDO) for every separate and distinct establishment or place of business, save in the case of warehouses without sale transactions. Notably, the phrase "separate or distinct establishment" is defined as "any branch or facility where sales transaction occur," while the term "branch" is "a fixed establishment in a locality which conducts sales operations of the business as an extension of the principal office." Correspondingly, a facility is considered a branch if it conducts sales transactions or operations of the business as an extension of the principal office. Relative thereto, any person who maintains a head or main office and branches in different places must register with the RDO having jurisdiction over the place where such main or head office or branch is located and must pay the corresponding annual registration fee of ₱500.00.

Furthermore, each VAT-registered person shall be assigned only one TIN, and any branch shall use the 9-digit Taxpayer Identification Number (TIN) of the head office plus a 3-digit branch code.

The term "VAT-registered person" is likewise defined to mean "any registered in accordance with" the above-quoted provision. Conversely, if the concerned person is not registered in accordance with *Section 9.236-1 of RR No. 16-2005*, such person cannot be treated as a "VAT-registered person".

Consistent with Section 236 of the NIRC of 1997 and Section 9.236-1 of RR No. 16-2005, pertinent portions of RR No. 7-2012 provide:

> SECTION 3. DEFINITION OF TERMS. For purposes of these Regulations, the following words and/or phrases shall be defined as follows:
>
> . . . .
>
> 3. "Taxpayer Identification Number (TIN)" – shall pertain to the system-generated reference index number issued and assigned by the BIR to each and every person registered in its database. . . .
>
>   *The TIN comprises of a 9 to 13 digit numeric code where the first 9 digits is the TIN proper and the last 4 digits is the **branch code**.* The branch code digits

may be increased depending on future systems enhancements and policy declarations of the Commissioner of Internal Revenue (CIR).

. . . .

6. "Head Office (HO)" – refers to the declared specific or identifiable principal place/head office of business as stated in the Articles of Incorporation/Articles of Partnership/Articles of Cooperation/DTI Certificate of Registration, as the case may be, or, in the absence thereof, the place where the complete books of accounts are kept. . . .

7. "**Branch**" – means a separate or distinct establishment or place of business where sales transactions are conducted independently from the HO. For purposes of these Regulations, branch shall include the following:

i. Sales outlet or establishment situated in another location/address other than at the HO;

ii. **Facility with sales activity**;

. . . .

8. "Facility" – may include but not limited to place of production, showroom, warehouse, storage place, garage, bus terminal, or real property for lease with no sales activity. ***A facility shall be registered as a branch whenever sales transactions/activities are conducted thereat***. Registration of the 'Facility' with no sales activity is not subject to payment of Annual Registration Fee (ARF).

. . . .

SECTION 6. PRESCRIBED PERIODS TO COMPLETE PRIMARY REGISTRATION – Every person subject to any internal revenue tax to be filed/paid periodically shall complete its registration with the BIR as follows:

1. *On or before the commencement of business* – Self-employed individuals, estates and trusts, *corporations and their* ***branches***, if any: –

Commencement of business shall be reckoned as defined in Section 3(6) hereof. *A person shall be considered to have violated this provision when he/it proceeded to this stage after the lapse of thirty (30) days from* the issuance of Mayor's Permit/PTR by the concerned LGU, or COR issued by the SEC or *the date of its first sales transaction prior to its registration.*

. . . .

(Emphasis and italics supplied)

Based on the foregoing provisions, the term "branch" includes "(f)acility with sales activity," and that "(a) facility shall be registered as a branch whenever sales transactions/activities are conducted thereat." Moreover, the registration of a branch shall be made on or before the commencement of business, and such rule is considered to have been violated by a taxpayer when the latter proceeds to such state after the lapse of thirty (30) days from, *inter alia*, the date of its first sales transaction prior to its registration.

Anent the TIN of a branch, the same is now made to have an additional four digits representing the branch code, unlike as that mandated under the earlier quoted Section 9.236-1(a) of the RR No. 16-2005 which only required three additional digits, for the said branch code.

Applying the above disquisitions, petitioner evidently has not complied with the foregoing laws, rules, and regulations. The Court thus cannot consider it a VAT-registered person.

Petitioner's Technopoint Facility (in Pasig City) was not yet registered during the period of the subject refund claim, *i.e.*, the four quarters of taxable year 2018, given that the Certificate of Registration of Facility therefor was issued only on October 31, 2019[43] or subsequent to the said period, and yet, allegedly, it was able to generate sales of call center services to certain entities in the same period.

Since the sales transactions supposedly occur and emanate from the Palawan and Technopoint Facilities, petitioner should have registered these with the BIR as branches before the commencement or start of the business therein and paid the corresponding annual registration fee of ₱500.00, in accordance with the above provisions, especially *Section 9.236-1(a) of RR No. 16-2005*.

Furthermore, the fact that petitioner was able to obtain a Certificate of Registration of Facility for its Palawan Facility[44] and a Certificate of Registration of Facility for its Technopoint Facility[45] is of no moment. These sites were registered contrary to the aforequoted provisions regarding the requirement of BIR registration. Said facilities were not properly registered with the BIR as both Certificates of Registration of Facility stated that "No Sales Transactions are conducted in this Facility, otherwise, it shall be registered as a branch office." The TINs indicated in both Certificates also do not bear an additional four (4) digits which should represent the branch code.

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43 Exhibit "P-27", *Rollo*, p. 1521.
44 Exhibit "P-26", *id.* at 913.
45 *Supra* note 43.

Hence, the Palawan and Technopoint Facilities were not registered with the BIR as branches, simply as a "facilities," i.e., with no sales activity.

Considering that petitioner alleges sales of call center services conducted in its Palawan and Technopoint Facilities during the subject period, however, it should have registered these facilities with the BIR as branches as required under *Section 236 of the NIRC of 1997*, *Section 9.236-1(a) of RR No. 16-2005*, and the pertinent provisions of *RR No. 7-2012*.

Petitioner thus cannot be considered as a "VAT-registered person", since the said establishments were not registered in accordance with, and pursuant to, *Section 9.236-1(a) of RR No. 16-2005*, during the 1st to 4th quarters of taxable year 2018, and even thereafter. As such, petitioner failed to comply with the *third* requisite.

Petitioner also failed to establish that it was engaged in zero-rated or effectively zero-rated sales for 2018

The fourth requisite requires that the taxpayer should be engaged in zero-rated or effectively zero-rated sales.

Petitioner claims that the zero-rated sales amounting to ₱2,104,386,533.23 generated during the taxable year 2018 were services rendered in Palawan and Technopoint Facilities to its non-resident foreign affiliates, the consideration for which was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.[46]

Corollary thereto, *Section 108(B) of the NIRC* reads, in part, 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 of goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency

[46] Pars. 12 and 13, Statement of Facts and the Case, Memorandum for Petitioner, *id.* at 1607 to 1608; Q/A-32 & 33, Judicial Affidavit of Ronald P. Portula, *Rollo* Vol. I, p. 42.

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 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)*;

(Italics supplied)

Based on the foregoing provision, certain essential elements must be present for a sale or supply of services to be subject to the VAT rate of 0%, to wit:

1) The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a nonresident person not engaged in business who is outside the Philippines when the services were performed;[47]

2) The services fall under any of the categories under Section 108(B)(2),[48] or simply, the services rendered should be other than "processing, manufacturing or repacking goods;"[49]

3) The services must be performed in the Philippines[50] by a VAT-registered person; and

4) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[51]

As to the *first* essential element, in order to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by *both* a Certification of Non-Registration of Corporation/Partnership issued by the Philippine Securities and Exchange Commission (SEC) *and* proof of incorporation/registration in a foreign country (e.g., Articles/Certificate of Incorporation/Registration

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47 *Sitel Philippines Corporation (Formerly Clientlogic Phils. Inc.) v. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017; *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007; *Accenture, Inc. v. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012.

48 *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

49 *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007.

50 *Id.*; *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, *supra*.

51 *Id.*

and/or Tax Residence Certificate). The former establishes that the recipient of the service has no registered business in the Philippines, and that it is not engaged in trade or business within the Philippines. The latter proves that the said recipient of the service is indeed foreign. The said documents have been consistently required by this Court, for purposes of the said *first* essential element. In fact, in *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*,[52] the Supreme Court affirmed the necessity of presenting the said documents:

> For purposes of zero-rating under Section 108(B)(2) of the Tax Code, the claimant must establish the two components of a client's [nonresident foreign corporation (NRFC)] status, viz.: (1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of both of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines.
>
> . . . .
>
> To recall, the CTA found that the SEC Certification of Non-Registration of Company and Authenticated Articles of Association and/or Certificates of Registration/Good Standing/Incorporation sufficiently established the NRFC status of 11 of DKS's affiliates clients
>
> The Court upholds these findings.
>
> The Court accords the CTA's factual findings with utmost respect, if not finality, because the Court recognizes that it has necessarily developed an expertise on tax matters. Significantly, both the CTA Division and CTA En Banc gave credence to the aforementioned documents as sufficient proof of NRFC status. The Court shall not disturb its findings without any showing of grave abuse of discretion considering that the members of the tax court are in the best position to analyze the documents presented by the parties.
>
> In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court a quo's findings. *To the Court's mind, the SEC Certifications of Non-Registration show that these affiliates are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are prima facie evidence that their clients are not engaged in trade or business in the Philippines.*
> (Italics supplied)

Per its Amended Quarterly VAT Returns for the 1st to 4th quarters of 2018, petitioner declared total sales of ₱10,733,714,131.03, broken down as follows:[53]

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[52] G.R. No. 234445, July 15, 2020.

[53] Exhibits "P-6", "P-6.1", "P-6.2", "P-6.3", "P-6.4", "P-6.5", "P-6.6", and "P-6.7", *Rollo* Vol. III, pp. 1024 to 1031.

Quarter (2018)	Vatable	VAT Zero-Rated	VAT Exempt	Total Sales
1st	₱6,981,298.13	₱740,582,879.96	₱1,468,537,724.17	₱2,216,101,902.26
2nd	11,549,041.45	934,154,717.77	1,216,640,892.90	2,162,344,652.12
3rd	18,245,422.31	1,127,281,183.00	1,751,099,175.50	2,896,625,780.81
4th	8,200,899.84	1,143,022,438.00	2,307,418,458.00	3,458,641,795.84
Total	**₱44,976,661.73**	**₱3,945,041,218.73**	**₱6,743,696,250.57**	**₱10,733,714,131.03**

As ascertained by the ICPA, only ₱2,104,386,533.24 of the total zero-rated sales pertains to Palawan and Technopoint sites,[54] which consists of sales by petitioner to its affiliates, namely, (1) Sitel Operating Corporation; and (2) Sitel UK Limited; and (3) Sitel Australia Pty Ltd.

A scrutiny of the documents submitted by petitioner shows that the foregoing clients of petitioner are considered as non-resident foreign corporations doing business outside the Philippines, for purposes of *Section 108(B)(2) of the NIRC*, to wit:

NAME OF COMPANY	**SEC CERTIFICATION OF NON-REGISTRATION** (Exhibit No.)	**PROOF OF FOREIGN INCORPORATION/REGISTRATION** (Exhibit No.)
1. SITEL OPERATING	P-18[55]	P-17[56]
2. SITEL UK LIMITED	P-18.1[57]	P-17.1[58]
3. SITEL AUSTRALIA PTY LTD.	P-18.2[59]	P-17.2[60]

Thus, petitioner is compliant with the *first* essential element.

With regard to the *second* essential element, petitioner submitted the following documents:

1. Amended and Restated Services Agreement[61] and Confirmation Agreements[62] with Sitel Operating Corporation;

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[54] Par. 2, Findings and Observations, ICPA Report, *Rollo* Vol. II, p. 765.
[55] *Rollo* Vol. III, p. 1298.
[56] *Id.* at 1197 to 1238.
[57] *Id.* at 1299.
[58] *Id.* at 1239 to 1284.
[59] *Id.* at 1300.
[60] *Id.* at 1285 to 1287.
[61] Exhibit "P-15", *id.* at 1124 to 1131.
[62] Exhibits "P-15.3" and "P-15.4", *id.* at 1149 to 1163.

2. Amended and Restated Services Agreement[63] and Confirmation Agreements[64] with Sitel UK Limited; and
3. Amended and Restated Services Agreement[65] and Confirmation Agreements[66] with Sitel Australia Pty Ltd.

Based thereon, the scope of services provided by petitioner consists of Customer Care, Client Retention, Technical Support, Collection Services, Item Processing, or Outbound Call Services. Clearly, these services fall within the scope of "services other than processing, manufacturing or repacking goods;" hence, the *second* essential element was satisfied.

However, petitioner failed to comply with the *third* essential element, since nothing has been stipulated in any of the aforementioned agreements as to where the said services are to be performed. Accordingly, petitioner failed to establish that the services provided to its non-resident foreign affiliates were performed in the Philippines.

Assuming *arguendo* that the subject services were performed in the Philippines, petitioner cannot still be considered as to have complied with said element. To recall, it failed to properly register with the BIR its Palawan and Technopoint Facilities in accordance with, and pursuant to, *Section 9.236-1(a) of RR No. 16-2005*, as earlier discussed. It thus cannot be treated as a "VAT-registered person."

Petitioner has consequently fallen short in establishing that its sale of call center services qualifies for VAT zero-rating under *Section 108(B)(2) of the NIRC*. The present claim for refund or tax credit of petitioner's unutilized input VAT must thus fail.

To emphasize, it is only when the sales of a VAT-registered person are zero-rated or effectively zero-rated that it may have the option of applying for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales.[67] Considering this Court's findings that petitioner is not a VAT-registered person and that its sales of call center services are not subject to VAT zero-rating, discussion on petitioner's compliance with the remaining requisites to successfully obtain a credit/refund of input VAT pursuant to *Section 112 of the NIRC* is unnecessary.

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63 Exhibit "P-15.1", *id.* at 1132 to 1141.
64 Exhibits "P-15.5" and "P-15.6", *id.* at pp. 1164 to 1178.
65 Exhibit "P-15.2", *id.* at 1142 to 1148.
66 Exhibit "P-15.7", *id.* at 1178 to 1193.
67 *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, July 19, 2018.

The taxpayer-claimant has the burden of proof to establish the factual basis of its claim for tax credit or refund.[68] Tax refunds are in the nature of tax exemptions. They are regarded as in derogation of sovereign authority and are to be construed *strictissimi* juris against the person or entity claiming the exemption.[69] Thus, 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.[70] Strict adherence to the conditions prescribed by law is required of the taxpayer.[71]

Applying these mandates to the case at bar, and in light of Our findings, the Court cannot grant petitioner's claim for refund or credit.

ACCORDINGLY, the instant Petition for Review, filed on November 6, 2020, is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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68 *Citibank N.A. v. Court of Appeals*, G.R. No. 107434, October 10, 1997.
69 *Commissioner of Internal Revenue v. Interpublic Group of Companies, Inc.*, G.R. No. 207039, August 14, 2019.
70 *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015, citing J.R.A. Philippines, Inc. vs. CIR, G.R. No. 171307, August 28, 2013.
71 *Steag State Power, Inc. (Formerly State Power Development Corporation) v. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019.

ATTESTATION

I attest that the conclusion in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice