REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

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TELOWORKS PHILIPPINES INCORPORATED, Petitioner,	**CTA Case No. 9380**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** DEC 11 2020 11:30 a.m.

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DECISION

UY, *J.*:

Before this Court is a *Petition for Review*[1] filed on July 4, 2016 by petitioner Teloworks Philippines, Incorporated, against the Commissioner of Internal Revenue (CIR), seeking the issuance of tax credit certificate (TCC) in the amount of ₱286,378.54, allegedly representing its creditable input value-added tax (VAT) attributable to its zero-rated sales for the first and second quarters of calendar year (CY) 2014.

THE FACTS

As culled from the records of the case and evidence admitted in Court, the facts are as follows:

Petitioner is a corporation organized and existing under Philippine laws, originally registered as Enterworks Philippines, Inc.,

[1] Docket – Vol. 1, pp. 10 to 20.

before its name was changed to Teloworks Philippines, Incorporated in 2006, and primarily engaged in the development and testing of software products. It is registered with the Securities and Exchange Corporation (SEC) under Certificate of Registration No. A200016062, with principal office at 6/F SyCip Law Center, 105 Paseo de Roxas, Makati City, Philippines. It is VAT-registered with OCN No. 9RC0000366729 and Tax Identification Number (TIN) 208-353-657-000.[2]

On the other hand, respondent is the duly appointed CIR, vested with power to decide, approve, and grant refunds or tax credits of overpaid internal revenue taxes, as provided by law, and represented in this case by the legal officers of the Legal Division, Revenue Region No. 8 of the Bureau of Internal Revenue (BIR), pursuant to Executive Order No. 175 dated November 3, 1999, as implemented by Revenue Administrative Order No. 10-2000 dated August 7, 2000.[3]

Petitioner filed its Quarterly VAT Returns for the 1st and 2nd quarters of CY 2014 on April 21, 2014[4] and July 21, 2014[5], respectively.

On March 30, 2016, petitioner filed with Revenue District Office (RDO) No. 47, an *Application for Tax Credits/Refunds* (BIR Form No. 1914)[6], together with *Cover Letter*[7], requesting for the refund or tax credit of its input VAT for the 1st and 2nd quarters of 2014 in the total amount of ₱286,378.54.

On June 2, 2016[8], petitioner received a *Letter* dated May 31, 2016, issued by RDO Shirley A. Calapatia of RDO No. 47, East Makati City, denying its claim.

Thereafter, petitioner filed the instant *Petition for Review*[9] on July 4, 2016, praying that the Court render judgment and order

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[2] Par. 2, Summary of Admitted Facts, *Joint Stipulation of Facts (JSFI)*, Docket – Vol. 2, pp. 606 to 607.
[3] Par. 3, Summary of Admitted Facts, *JSFI*, Docket – Vol. 2, p. 607.
[4] Exhibit "P-7.13", Docket – Vol. 2, p. 701.
[5] Exhibit "P-7.11", Docket – Vol. 2, p. 699.
[6] Exhibit "P-11", Docket – Vol. 1, p. 129.
[7] Exhibit "P-1", Docket – Vol. 1, p. 103.
[8] Exhibit "P-2", Docket – Vol. 1, p. 104.
[9] Docket – Vol. 1, pp. 10 to 20.

respondent to issue a tax credit certificate in the amount of ₱286,378.54.

Within the thirty (30) day extension period granted by the Court, respondent filed his *Answer*[10] on August 26, 2016, *via* registered mail, which the Court received on September 15, 2016, interposing special and affirmative defenses, which include among others the following:

1) petitioner's claim for refund or issuance of tax credit certificate was denied due to its failure to deduct from input tax the amount being claimed in their quarterly VAT returns, pursuant to Revenue Memorandum Circular (RMC) No. 54-2014, in relation to Revenue Regulation (RR) No. 16-2005, as amended;

2) taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;

3) petitioner's claim were not fully substantiated by proper documents, such as sales invoices and official receipts pursuant to RR No. 7-95, in relation to Sections 113 and 237 of the 1997 Tax Code; and

4) claims for refund are construed strictly against petitioner since the same partakes the nature of exemption.

After the Pre-Trial Conference held on November 29, 2016[11], the parties filed their *Joint Stipulation of Facts and Issues*[12] on December 6, 2016. Thereafter, the Pre-Trial Conference was terminated with the issuance of a *Pre-Trial Order* on March 6, 2017.[13]

During trial, petitioner presented its Finance and Accounting Manager, Norma E. Fernandez, as its sole witness.[14] Petitioner filed its *Formal Offer of Evidence*[15] on July 7, 2017. On the same day, respondent filed his *Comment*[16] *via* registered mail and received by the Court on July 20, 2017.

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[10] Docket – Vol. 1, pp. 73 to 75.
[11] *Notice of Pre-Trial Conference,* Docket – Vol. 1, pp. 77 to 78.
[12] Docket – Vol. 2, pp. 606 to 613.
[13] Docket - Vol. 2, pp. 626 to 633.
[14] *Amended Judicial Affidavit of Norma E. Fernandez*, Exhibits "P-52" and "P-52.1", Docket – Vol. 2, pp. 666 to 677; *Supplemental Judicial Affidavit of Norma E. Fernandez,* Exhibits "P-60" and "P-60.1", Docket – Vol. 2, pp. 819 to 823.
[15] Docket – Vol. 2, pp. 681 to 688.
[16] Docket – Vol. 2, pp. 722 to 723.

On July 10, 2017, petitioner filed a *Motion to Refile Formal Offer of Evidence of Petitioner* [17] with attached corrected *Formal Offer of Evidence*[18], stating that Exhibits "P-52" and "P-52.1" were erroneously indicated as Exhibits "P-53"and "P-53.1" on page 8 of the *Formal Offer of Evidence* filed on July 7, 2017.

Petitioner then filed a *Motion to Submit Soft Copies of Documentary Evidence of Petitioner*[19] on July 12, 2017, submitting the soft copies of its documentary evidence, pursuant to CTA *En Banc* Resolution No. 8-2016.

On August 9, 2017, a *Records Verification Report*[20] was issued by the Judicial Records Division stating that respondent failed to file his comment on petitioner's *Motion to Refile Formal Offer of Evidence of Petitioner.*

Another *Records Verification Report*[21] was issued by the Judicial Records Division on August 11, 2017, stating that respondent failed to file his comment on petitioner's *Motion to Submit Soft Copies of Documentary Evidence of Petitioner.*

In the Resolution dated September 11, 2017[22], the Court granted petitioner's *Motion to Refile Formal Offer of Evidence*; and admitted most of petitioner's documentary evidence. As regards to petitioner's *Motion to Submit Soft Copies of Documentary Evidence*, the same was merely noted by the Court considering that a perusal of the soft copies submitted by petitioner shows that these were not actually pre-marked and examined by the ICPA. Hence, petitioner need not submit soft copies of these documentary exhibits.

Meanwhile, during the h*earing* held on September 11, 2017. respondent's counsel manifested in open court that he will not present evidence in this case.[23] On the other hand, upon motion, petitioner's counsel was granted a period of fifteen (15) days until September 26, 2017, to file a Motion for Reconsideration of the

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[17] Docket – Vol. 2, pp. 707 to 708.
[18] Docket – Vol. 2, pp. 709 to 716.
[19] Docket – Vol. 2, pp. 717 to 721.
[20] Docket – Vol. 2, p. 729.
[21] Docket – Vol. 2, p. 730.
[22] Docket – Vol. 2, pp. 732 to 735.
[23] Docket – Vol. 2, p. 736.

Resolution dated September 11, 2017 on its Formal Offer of Evidence.

On September 26, 2017, petitioner filed a *Motion for Reconsideration on the Denial to Admit Several Exhibits in Petitioner's Formal Offer of Evidence*[24], praying that the exhibits which were denied admission in the Resolution dated September 11, 2017, be admitted as evidence in this case.

On September 27, 2017, respondent filed his *Comment (to Petitioner's Motion for Reconsideration dated September 26, 2017)*[25], *via* registered mail and received by the Court in October 4, 2017.

The Court set the case for a Commissioner's Hearing for the marking and comparison of Exhibits "P-22.7" to "P-22.18", "P-22.20", "P-22.30", "P-22.109" and "P-28" & "P-28.2" in the Resolution[26] dated February 6, 2018. On February 23, 2018, petitioner filed a *Manifestation*[27], stating that during the Commissioner's Hearing held on February 22, 2018, what was marked as Exhibit "P-28" was the certified true copy of the BIR authority document found on pages 767 to 770.

In the Resolution dated August 1, 2018[28], the Court (1) granted petitioner's *Motion for Reconsideration on the Denial to Admit Several Exhibits in Petitioner's Formal Offer of Evidence* and admitted Exhibits "P-22.7" to "P-22.18", "P-22.20", "P-22.30", "P-22.109" and "P-28" and (2) noted petitioner's *Manifestation*. Further, in view of the manifestation of respondent's counsel that he will no longer present any evidence, the Court directed the parties to file their respective memoranda within thirty (30) days from notice.

On September 6, 2018, petitioner filed an *Urgent Omnibus Motion A) To Reopen Proceedings; B) To Recall Witness for Identification of Denied Exhibit and Additional Evidence; C) To Allow Submission of Additional Evidence; D) To Defer Filing of Memorandum*[29]. Respondent filed his *Comment (to Petitioner's Urgent Omnibus Motion dated September 6, 2018)*[30], on October 16,

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[24] Docket – Vol. 2, pp. 739 to 742.
[25] Docket – Vol. 2, pp. 775 to 776.
[26] Docket – Vol. 2, pp. 782 to 784.
[27] Docket – Vol. 2, p. 789.
[28] Docket – Vol. 2, pp. 791 to 793.
[29] Docket – Vol. 2, pp. 798 to 802.
[30] Docket – Vol. 2, pp. 806 to 809.

2018 *via* registered mail, and received by the Court on October 24, 2018.

In the Resolution[31] dated January 29, 2019, the Court (1) granted petitioner's *Urgent Omnibus Motion A) To Reopen Proceedings; B) To Recall Witness for Identification of Denied Exhibit and Additional Evidence; C) To Allow Submission of Additional Evidence; D) To Defer Filing of Memorandum;* (2) set the case for Commissioner's Hearing for the comparison and marking of petitioner's additional evidence; (3) set the recall petitioner's witness, Norma E. Fernandez on May 2, 2019; and (4) held in abeyance the submission of petitioner's memorandum.

On September 20, 2019, petitioner filed a *Supplemental Formal Offer of Evidence of Petitioner*[32], praying that Exhibits "P-7" to "P-7.14", "P-53" to "P-58", "P-59.1", "P-59.2", "P-60", "P-60.1", be admitted as proof of the facts therein stated and for all other relevant purposes.

On October 11, 2019, a *Records Verification Report*[33] was issued by the Judicial Records Division stating that respondent failed to file his comment on petitioner's *Supplemental Formal Offer of Evidence of Petitioner*.

In the Resolution[34] dated November 28, 2019, the Court admitted petitioner's exhibits except Exhibit "P-7.1", for failure to identify the said exhibit and for not being found in the records of the case; and ordered petitioner to file its memorandum within thirty (30) days from notice. Further, respondent was directed to submit his supplemental memorandum within thirty (30) days from receipt of petitioner's memorandum.

The instant case was submitted for decision in the Resolution[35] dated February 21, 2020,, taking into consideration respondent's *Memorandum for Respondent* filed on August 29, 2018,[36] without respondent's Supplemental Memorandum as per *Records Verification*

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[31] Docket – Vol. 2, pp. 814 to 818.
[32] Docket – Vol. 3, pp. 1041 to 1043.
[33] Docket – Vol. 3, p. 1236.
[34] Docket – Vol. 3, pp. 1238 to 1239.
[35] Docket – Vol. 3, p. 1253.
[36] Docket – Vol. 2, pp. 794 to 796.

Report[37] dated February 18, 2020; and petitioner's *Memorandum* filed on January 3, 2020[38]. Hence, this Decision.

THE ISSUE

The parties presented a sole issue for this Court's resolution, *to wit*:

> "Whether or not petitioner is entitled to claim a refund or tax credit in the amount of ₱286,378.54, as alleged unutilized input VAT for the 1st and 2nd quarters of taxable year 2014." [39]

Petitioner's arguments:

Petitioner argues that it is entitled to claim a refund or tax credit in the amount of ₱286,378.54, as unutilized input VAT for the 1st and 2nd quarters of TY 2014.

According to petitioner, its claim for refund was denied by respondent for its alleged failure to deduct from input tax the amount being claimed for VAT refund/tax credit pursuant to RMC No. 54-2014 in relation to RR No. 16-2005, as amended. Petitioner, however, maintains that it complied with the requirements of deducting the amount being claimed from the available input taxes as evidenced by its Monthly VAT Declaration (Form 2550-M) for January 2016.

Petitioner further contends that respondent's denial of its claim has no factual and legal basis. Allegedly, the records of the case, including the testimony of its witness, show that it was able to substantiate with supporting documents the requisites for the grant of refund or tax credit.

Respondent's counter arguments:

Respondent counter argues that petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected. Taxes paid and collected are

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[37] Docket – Vol. 3, p. 1251.
[38] Docket -Vol. 3, pp. 1242 to 1249.
[39] Issue to be Tried or Resolved, *JSFI*, Docket – Vol. 2, p. 607.

presumed to be made in accordance with the laws and regulations, hence, not refundable.

Allegedly, it is incumbent upon petitioner to show that it has complied with the provisions of Section 204(C) in relation to Section 229 of the 1997 Tax Code, as amended.

Further, respondent posits that since petitioner's claim for refund/tax credit is by nature a tax exemption, it is construed *strictissimi juris* against petitioner. As such, the fact that petitioner failed to fully substantiate by proper documents its claim, the same must necessarily fail.

THE COURT'S RULING

After careful and thorough evaluation of the applicable laws, rules and regulations in the instant case, and the evidence presented by petitioner, the Court finds that the instant *Petition for Review* must be denied.

Requisites for the grant of the refund or issuance of a TCC under the law.

In an action claiming for the refund or issuance of tax credit certificate for input taxes such as the instant petition, Section 112 of the NIRC of 1997, as amended, provides:

> "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: xxx

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue a tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Pursuant to the foregoing legal provision, and in line with the jurisprudential pronouncements of the Supreme Court, certain requisites must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT. Said requisites are categorized as follows:

<u>Prescriptive period for the filing of the administrative and judicial claims</u>:

1. the claim is filed with the BIR within two years after the close of the taxable quarter when the sales were

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made;[40]

2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner of Internal Revenue (CIR) to act on the said claim within a period of 120 days, the judicial claim has been filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[41]

Taxpayer's registration with the BIR:

3. the taxpayer is a VAT registered person;[42]

In relation to the taxpayer's output VAT, it must be shown:

4. that the taxpayer is engaged in zero-rated or effectively zero-rated sales;[43]

5. that for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[44]

As regards the taxpayer's input VAT being refunded, it must be shown:

6. that the input taxes are due or paid;[45]

7. that 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

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

[41] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

[42] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.

[43] *Ibid.*

[44] *Ibid.*

[45] *Ibid.*

cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[46] and

8. that the input taxes have not been applied against output taxes during and in the succeeding quarters.[47]

First and second requisites: Timeliness of administrative and judicial claims.

The *first requisite* pertains to the filing of the claim for tax credit or refund of input VAT before the BIR.

Pursuant to Section 112(A) of the NIRC of 1997, as amended, the administrative claim for the issuance of a TCC or refund of input VAT must be filed within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

In the instant case, the petitioner's claim covers the 1st and 2nd quarters of TY 2014. Counting two (2) years from the close of each quarter, petitioner had until March 31, 2016 and June 30, 2016, respectively, within which to file its administrative claims for tax refund or issuance of tax credit certificate for its input VAT, *to wit*:

Taxable Quarter (2014)	**Close of the Taxable Quarter**	**Last Day of Filing of Administrative Claim**
1st Quarter	March 31, 2014	March 31, 2016
2nd Quarter	June 30, 2014	June 30, 2016

Thus, petitioner's administrative claim [Application for Tax Credits / Refunds (BIR Form No. 1914)][48] for the said quarters filed with the BIR on March 30, 2016[49] was timely filed.

The *second requisite* pertains to the timeliness of the judicial claim and is taken from Section 112 (C) of the NIRC of 1997, as amended. The legal provision speaks of two periods: (1) the period

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[46] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.
[47] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.
[48] Exhibit "P-11", Docket – Vol. 1, p. 129
[49] Exhibit "P-1", Docket – Vol. 1, p. 103.

of 120 days, which serves as a waiting period to give time for the BIR Commissioner to act on the administrative claim for refund or tax credit; and (2) the period of 30 days which refers to the period for filing a judicial claim with this Court.[50]

In this case, counting from the filing of petitioner's administrative claim on March 30, 2016, respondent had 120 days or until July 28, 2016 to act on the said claim. Within the said 120-day, the CIR through RDO Shirley A. Calapatia issued a *Letter* dated May 31, 2016, denying petitioner's administrative claim. The said denial *Letter* was received by petitioner on June 2, 2016[51]. Thus, petitioner had a period of thirty (30) days from June 2, 2016 or until July 2, 2016 to file its judicial claim.

Considering that July 2, 2016 fell on a Saturday, petitioner had until July 4, 2016, the next working day, within which to file its appeal before this Court. It appearing that the instant *Petition for Review*[52], was filed on July 4, 2016, the judicial claim was likewise filed on time. Correspondingly, petitioner complied with the *first* and *second* requisites.

Petitioner is VAT registered.

The *third requisite* pertains to the taxpayer's VAT registration. As stipulated by both parties, petitioner is a VAT-registered taxpayer.[53] Notably, petitioner presented its *Certificate of Registration* issued by the BIR with TIN 208-353-657-000, indicating that it is liable for VAT.[54] Thus, the *third requisite* has also been complied with.

Fourth and fifth requisites: Petitioner failed to prove that it was engaged in zero-rated or effectively zero-rated sales for the first and second quarters of CY 2014.

The *fourth* and *fifth* conditions, respectively, require that the taxpayer is engaged in zero-rated or effectively zero-rated sales; and

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[50] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015
[51] Exhibit "P-2", Docket-Vol. 1, p. 104.
[52] Docket – Vol. 1, pp. 10 to 20.
[53] Summary of Admitted Facts, *JSFI*, Docket-Vol. 2, par. 2, pp. 606 to 607.
[54] Exhibit "P-8", Docket-Vol. 1, p. 114.

that for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations.

In its Quarterly VAT Returns for the 1st and 2nd quarters of 2014, petitioner declared total zero-rated sales/receipts in the total amount of ₱26,117,302.59, *to wit:*

1st Quarter[55]	2nd Quarter[56]	Total
₱11,717,151.26	₱14,400,151.33	₱26,117,302.59

Petitioner claims that its sales of services to Telos Corporation, a foreign entity located in the USA, are zero-rated sales and paid for in foreign currency.

Since petitioner claims that it renders services to foreign entities, Section 108 (B) of the NIRC of 1997, as amended, is the applicable provision. It provides, in part, as follows:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.—*
>
> xxx xxx xxx
>
> The phrase 'sale or exchange of service' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, xxx.
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* — **The following services <u>performed in the Philippines</u> 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);

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[55] Exhibit "P-7.13", Line 17, Docket – Vol. 2, p. 701.
[56] Exhibit "P-7.11", Line 17, Docket – Vol. 2, p. 699.

(2) **Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted <u>outside the Philippines</u> or to a nonresident person not engaged in business who is <u>outside the Philippines</u> 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);**" *(Emphases and underscoring supplied.)*

Based on the foregoing provisions, a sale or supply of services will be subject to the VAT rate of zero percent (0%) under Section 108(B)(2) of the NIRC of 1997, as amended, provided the following essential elements are present, *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;[57]

2) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules;[58]

3) The services fall under any of the categories under Section 108(B)(2),[59] or simply, the services rendered should be other than *"processing, manufacturing or repacking goods"*;[60] and

4) The services must be performed in the Philippines[61] by a VAT-registered person.

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

[58] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, supra;

[59] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

[60] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra.

[61] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, supra.

Relative to the *first essential element*, the Supreme Court in the case of *Accenture, Inc. vs. Commissioner of Internal Revenue*[62], ruled that it is not enough that the recipient of the service be proven to be a foreign corporation, it must likewise be established that the said recipient is a "non-resident foreign corporation".

Further, in *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[63], the Supreme Court emphasized that the service-recipient must **not** be doing business in the Philippines.

Hence, to be considered as non-resident foreign corporation doing business outside the Philippines, each entity must be supported **at the very least** by **both** *SEC certificate of Non-Registration of Corporation/ Partnership* **and** proof of incorporation, association or registration in a foreign country *(e.g., certificate/articles of foreign incorporation/ association/ registration).* As a corollary, notwithstanding the presentation of the said documents, there must be no indication that any of the recipients of petitioner's services is doing business in the Philippines, consistent with the ruling in the *Burmeister case.*

In this case, petitioner was able to establish the *first* essential element by presenting: (1) the *Certification of Non-Registration of Company*[64] dated March 29, 2016 issued by the SEC to the effect that the records of the latter do not show the registration of petitioner's sole client, Telos Corporation, as a corporation or partnership, and (2) the *Articles of Amendment*[65] of C3 Inc. changing its name to Telos Corporation; *Articles of Amendment and Restatement*[66] of C3, Inc. both issued by the State of Maryland, USA; and US-SEC Telos Corporation's *Financial Statement and Annual Report*[67] for the year 2014, indicating that Telos Corporation was incorporated in Maryland, USA.

Taken together, the foregoing documents establish that Telos Corporation is a non-resident foreign corporation.

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[62] G.R. No. 190102, July 11, 2012.
[63] G.R. No. 153205, January 22, 2007.
[64] Exhibit "P-34", BIR Records, p. 264
[65] Exhibit "P-59.2", Docket – Vol. 3, pp. 1229 to 1232.
[66] Exhibit "P-59.1", Docket – Vol. 3, pp. 1066 to 1228.
[67] Exhibit "P-33", Docket – Vol. 1 & 2, pp. 476 to 541.

With respect to the *second essential element*, petitioner presented the *Certification* dated Aril 14, 2016[68] issued by UCPB certifying that it received inward remittances in favor of petitioner and the corresponding Bank Credit Memos[69]. We find that the foregoing documents are sufficient proof to establish compliance with the second essential element.

Anent the *third essential element*, petitioner' compliance therewith is shown in the *Professional Service Agreement* entered into by petitioner and Telos Corporation.[70] Pursuant thereto, the services to be rendered by the former to the latter shows that the same is other than *"processing, manufacturing or repacking goods"*, to wit:

> "2. Scope of Work. Under this Agreement, the Company shall provide the following services ("Services") to the Client:
>
> 1.1 Development, Quality Assurance, Documentation, and Content Management for the COD Development Group/Xacta Project ("XACTA")
> 1.2 Development and Quality Assurance for
> Internal Applications ("Internal Apps")
> 1.3 IT Services
> 1.4 Help Desk Services"

With regard to the *fourth essential element*, however, *i.e.*, that the subject services were performed in the Philippines, the same has not been established. No evidence was presented by petitioner to prove that the said services were performed in the Philippines. In fact, in its *Formal Offer of Evidence*[71] and *Supplemental Formal Offer of Evidence*[72] filed by petitioner on July 7, 2017 and September 20, 2019, respectively,[73] petitioner did not offer any specific evidence to show that the subject services were performed in the Philippines. Thus, the *fourth essential element* has not been complied with.

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[68] Exhibit "P-41", BIR Records, p. 520.
[69] Exhibits "P-29.2" to "P-29.7", Docket – Vol. 1, pp. 467 to 472.
[70] Exhibits "P-32" & "P-32.2", Docket – Vol. 1, pp. 474 to 475; Exhibit "P-44", BIR Records, pp. 521 to 522.
[71] Docket – Vol. 2, pp. 681 to 688.
[72] Docket – Vol. 3, pp. 1041 to 1043.
[73] Docket – Vol. 1, pp. 424 to 435.

In view of the foregoing, petitioner failed to satisfy all the requirements to prove that its sales to Telos Corporation qualify for VAT zero-rating under Section 108 (B) of the NIRC of 1997.

Petitioner failed to substantiate its zero-rated sales of services with relevant official receipts.

It is noted that petitioner failed to offer as evidence the official receipts in support of its reported zero-rated sales for the 1st and 2nd quarters of CY 2014.

Pursuant to Section 113 of the NIRC of 1997, as amended, a VAT taxpayer, like herein petitioner, shall for every lease of goods or properties and for every sale, barter or exchange of services, issue a VAT official receipt, *to wit*:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* —
>
> (A) *Invoicing Requirements.* — **A VAT-registered person shall issue**:
>
> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
>
> **(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.**
>
> xxx xxx xxx " (*Emphasis supplied.*)

Accordingly, to substantiate its reported zero-rated sales of services to Telos Corporation, petitioner must present the relevant official receipts.

In the instant case, however, while copies of official receipts issued by petitioner to Telos Corporation are found in the BIR records, these were not identified and marked as exhibits during trial, nor formally offered in evidence, hence, the same cannot be considered by the Court. It must be remembered that the rules of procedure and jurisprudence do not sanction the grant of evidentiary value to evidence which was not formally offered.[74] Further, an

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[74] *Jose R. Catacutan vs. People of the Philippines*, G.R. No. 175991, August 31, 2011.

examination of the said official receipts show that the same are mere photocopies and thus cannot be given any probative value by the Court. Evidently, petitioner failed to fully substantiate its reported zero-rated sales.

It bears emphasis that as cases filed before the Court are litigated *de novo*, party-litigants should prove every minute aspect of their cases.[75] It is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[76]

Further, in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[77], the Supreme Court ruled that actions for tax refund are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.

In sum, the Court finds that petitioner failed to establish that the services it rendered to Telos Corporation are zero-rated sales. Such being the case, the subject refund claim on petitioner's alleged excess and unutilized input VAT must perforce fail.

Correspondingly, it is no longer necessary to determine whether or not petitioner fulfilled the remaining requisites in granting a credit/refund of input VAT for the subject periods.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[75] *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.
[76] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[77] G.R. No. 159490, February 18, 2008.

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest 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's Division.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

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.

ROMAN G. DEL ROSARIO
Presiding Justice