REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

BW SHIPPING PHILIPPINES, INC., *Petitioner,*	**CTA CASE NO. 10317**
	Members:
- versus -	**MANAHAN**, *Chairperson,* **REYES-FAJARDO**, **ANGELES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 19 2024 2:46 p.m.

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DECISION

ANGELES, J.:

Before this Court is a *Petition for Review*, filed by petitioner BW Shipping Philippines, Inc., praying for the refund of Six Million One Hundred Forty Six Thousand Five Hundred Forty Three Pesos and 28/100 (PhP6,146,543.28), allegedly representing unutilized input Value-Added Tax (VAT) for taxable year 2018,[1] pursuant to Section 112(A), in relation to Sections 110(B) and 108(B)(2), of the 1997 National Internal Revenue Code (NIRC), as amended.[2]

FACTS

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal address at 5/F Goodland Building, 377 Sen. Gil. Puyat Ave., Makati City, as evidenced by Securities and Exchange Commission (SEC) Company Registration No. 145414. It is represented by its counsel, Weigand and Partners, with office address at the Penthouse B, GMA Lou-Bel Plaza, 7514 Bagtikan St. cor. Chino Roces Ave., San Antonio Village, Makati City, where it may be served notices and other processes of this Court.[3]

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[1] Statement of the Case, Pre-Trial Order (PTO), Docket, Vol. II, p. 693.
[2] Par. 4, Stipulation of Facts, PTO, Docket, Vol. II, p. 694.
[3] Par. 2, Stipulation of Facts, PTO, Docket, Vol. II, p. 694.

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Respondent Commissioner of Internal Revenue (CIR) is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office, including among others, the duty to act on and approve claims for refund as provided by law.[4] Respondent is represented by the legal officers of the Legal Division, Revenue Region No. 8A, with office address at 36th Floor, Export Bank Plaza Bldg., Sen. Gil Puyat Ave. cor. Chino Roces Ave., Makati City where he may be served with summons, notices and other court processes.[5]

Petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, with BIR Certificate of Registration No. 9RC0000426666 and with Tax Identification Number (TIN) 000-160-779-000.[6]

Petitioner renders manpower services to foreign shipping companies which includes, among others, the screening of competent and qualified Filipino seafarers for employment on board the vessels of the foreign shipping companies and other ancillary services.[7] It is likewise licensed to recruit, process, and deploy seafarers.[8] In consideration for such services, petitioner was paid manning fees in foreign currency which were subjected to 0% VAT by petitioner.[9]

For 2018, petitioner filed its quarterly VAT returns, as follows:

Period Covered	Date Filed
1st Quarter - original	April 23, 2018[10]
2nd quarter - original	July 25, 2018[11]
3rd quarter - original	October 17, 2018[12]
3rd quarter - amended	October 26, 2018[13]
4th quarter - original	January 17, 2019[14]
4th quarter - 1st amended	May 31, 2019[15]
4th quarter - 2nd amended	November 19, 2019[16]

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4 Par. 1, Stipulation of Facts, PTO, Docket, Vol. II, p. 694.
5 Par. 3, Stipulation of Facts, PTO, Docket, Vol. II, p. 694.
6 Par. 9, Petition for Review, Docket, Vol. I, p. 9, in relation to Exhibit "P-3", Docket, Vol. I, p. 264.
7 Par. 7, Petition for Review, Docket, Vol. I, p. 8, in relation to Exhibit "P-2", Docket, Vol. I, p. 253.
8 Par. 8, Petition for Review, Docket, Vol. I, p. 9, in relation to Exhibit "P-4", Docket, Vol. I, p. 265.
9 Par. 11, Petition for Review, Docket, Vol. I, pp. 9-10.
10 Exhibit "P-13", Docket, Vol. II, pp. 552-553.
11 Exhibit "P-16", Docket, Vol. II, pp. 558-559.
12 Exhibit "P-20", Docket, Vol. III, pp. 1207-1208.
13 Exhibit "P-21", Docket, Vol. II, pp. 568-569.
14 Exhibit "P-24", Docket, Vol. III, pp. 1213-1214.
15 Exhibit "P-25", Docket, Vol. III, pp. 1215-1216.
16 Exhibit "P-26", Docket Vol. II, pp. 578-579.

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On June 11, 2020, petitioner applied before the RDO No. 49-North Makati for the refund of its alleged unutilized input VAT in the total amount of PhP6,146,543.28 for taxable year 2018.[17]

On July 17, 2020, petitioner received a letter from respondent denying the administrative claim for refund.[18]

On August 17, 2020, petitioner filed the instant *Petition for Review*, through electronic mail. Physical copies of the petition were later submitted on August 20, 2020.

Summons was issued and was received by respondent on September 14, 2020.[19]

On October 20, 2020, the Court received respondent's *Motion for Extension of Time to File Answer*.[20] The Court granted the motion and extended the period until November 13, 2020.[21] On November 25, 2020, the Court received respondent's *Answer*,[22] posted on November 16, 2020.

The *Notice of Pre-Trial Conference* was issued on December 1, 2020, setting the pre-trial conference on April 8, 2021.[23]

On January 15, 2021, respondent was reminded to certify and elevate to the Court the BIR Record of the case.[24] After several extensions,[25] respondent eventually manifested that the BIR Records of this case cannot be located.[26]

Due to a surge in COVID-19 cases, the parties filed their *Joint Motion to Defer Pre-Trial*,[27] which was granted in the Resolution dated May 31, 2021, thereby resetting the pre-trial to August 17, 2021.[28] The pre-trial conference was further reset to April 5, 2022.[29]

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[17] Par. 21, Petition for Review, Docket, Vol. I, p. 15, in relation to Exhibits "P-27" and "P-28", Docket, Vol. III, pp. 1217-1221.
[18] Par. 24, Petition for Review, Docket, Vol. I, p. 16, in relation to Exhibit "P-48", Docket, Vol. III, pp. 1222-1224.
[19] Docket, Vol. I, pp. 112-113.
[20] Docket, Vol. I, pp. 114-117.
[21] Resolution dated October 28, 2020, Docket, Vol. I, p. 120.
[22] Docket, Vol. I, pp. 121-128.
[23] Docket, Vol. I, pp. 132-133.
[24] Docket, Vol. I, pp. 141-142.
[25] Resolutions dated February 11, 2021 and March 11, 2021, Docket, Vol. I, pp. 159, 174-175, respectively.
[26] Minutes of Hearing and Order dated September 7, 2022, Docket, Vol. II, pp. 847-849.
[27] Docket, Vol. I, pp. 181-185.
[28] Docket, Vol. I, p. 192.
[29] Notice of Resetting dated November 23, 2021, Docket, Vol. I, pp. 193-194.

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On March 28, 2022, respondent filed his *Pre-Trial Brief*,[30] while petitioner filed its *Pre-Trial Brief*[31] on March 30, 2022.

On April 5, 2022, pre-trial proceeded with the parties being granted thirty (30) days within which to submit their joint stipulation of facts and issues (JSFI).[32]

On April 29, 2022, the parties filed their *Joint Stipulation of Facts and Issues*,[33] which was admitted and approved in the Resolution dated May 11, 2022.[34] The Pre-Trial Order (PTO) was issued on June 9, 2022.[35]

On June 15, 2022, the hearing on the competence and independence of petitioner's proposed ICPA was held.[36] Consequently, Mr. Enrico T. Pizarro was appointed as ICPA.[37]

On August 1, 2022, petitioner filed its *Compliance (with Attached ICPA Report)*.[38]

Petitioner presented the testimonies of Christin Faith J. Palomar[39], Herminia Dela Peña[40], and the ICPA Enrico T. Pizarro[41].

Petitioner filed its *Formal Offer of Evidence*[42] on March 1, 2023, and *Supplemental Formal Offer of Evidence*[43] on July 3, 2023. Petitioner's exhibits were admitted in the Resolutions dated April 12, 2023[44] and September 22, 2023,[45] except for Exhibit "P-100.330" for being blurred and unreadable.

Respondent no longer presented evidence.[46]

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[30] Docket, Vol. I, pp. 224-228.
[31] Docket, Vol. I, pp. 195-223.
[32] Minutes of Hearing and Order, dated April 5, 2022, Docket, Vol. II, pp. 639-641.
[33] Docket, Vol. II, pp. 647-655.
[34] Docket, Vol. II, p, 688.
[35] Docket, Vol. II, pp. 693-700.
[36] Motion to Avail of the Provisions of Rule 13 of the Revised Rules of the Court of Tax Appeals filed on May 5, 2022, Docket, Vol. II, pp. 656-661.
[37] Minutes of Hearing and Order, dated June 15, 2022, Docket, Vol. 11, pp. 719-722.
[38] Docket, Vol. II, pp. 725-729, with the ICPA Report, Exhibit "P-76" at pp. 731-842.
[39] Judicial Affidavit of Christin Faith J. Palomar, Exhibit "P-74", Docket, Vol. I, pp. 235-251.
[40] Judicial Affidavit of Herminia Dela Pena, Exhibit "P-75", Docket, Vol. II, pp. 524-547.
[41] Judicial Affidavit of Enrico T. Pizarro, Exhibit "P-77", Docket, Vol. II, pp. 856-1008.
[42] Docket, Vol. II, pp. 1042-1144.
[43] Docket, Vol. III, pp. 1277-1283.
[44] Docket, Vol. III, pp. 1158-1174.
[45] Docket, Vol. III, pp. 1290-1292.
[46] Minutes of Hearing and Order, dated September 7, 2022, Docket, Vol. II, pp. 847-849

Respondent and petitioner filed their memoranda on May 30, 2023 and October 26, 2023, respectively. The instant case was submitted for decision on November 15, 2023.[47]

ISSUE

> Whether or not petitioner is entitled to a claim for refund in the total amount of PhP6,146,543.28 for alleged unutilized input taxes related to its zero-rated sales/receipts for taxable year 2018.[48]

Petitioner's arguments

Petitioner argues that it is entitled to claim the refund of PhP6,146,543.28 after it successfully showed compliance with all the requisites prescribed by law. It claimed that it is a registered VAT-taxpayer engaged in zero-rated sales. It further argues that the input taxes claimed are due or paid and have not been applied against output taxes during the quarter and in the succeeding quarters. It claimed that the administrative claim was filed within two (2) years after the close of the taxable quarter when the relevant sales were made. The judicial claim, meanwhile, was timely filed within thirty (30) days from the lapse of the 90-day period given to respondent to decide the administrative claim.

Respondent's counter-arguments

Respondent argues that petitioner's claim for refund and issuance of tax credit certificate (TCC) was still subject to administrative investigation or examination by the BIR. He also claims that there were factual and legal bases for the denial of petitioner's claim for input VAT refund, as shown by the denial letter stating that petitioner failed to submit certain documents, consequently failing to comply with the substantiation requirements for its claim for refund. Respondent further argues that petitioner wrongly filed its administrative claim with the Revenue District Office (RDO) No. 49-North Makati, instead of with the VAT Credit Audit Division (VCAD).

RULING OF THE COURT

The Petition for Review is unmeritorious.

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[47] Docket, Vol. III, p. 1325.
[48] Statement of Issue, PTO, Docket, Vol. II, p 694.

Petitioner failed to file its application for VAT refund with the correct office of the BIR and, thereby, failed to timely file its administrative claim for refund.

The following provisions of the NIRC of 1997, as amended, are the relevant provisions for the application for VAT credit or refund:

> SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* –
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> xxx
>
> (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:
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> xxx
>
> (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);
>
> xxx
>
> SEC. 110. *Tax Credits.* –
>
> xxx
>
> (B) *Excess Output or Input Tax.* – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however,* That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.
>
> xxx
>
> 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)**

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> **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 or 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
>
> (C) *Period within which Refund or Tax Credit 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 of the denial.
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> **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. (*emphasis supplied*)

In summary, the petitioner must prove compliance with the following in order to be entitled to refund of TCC:

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

1. The claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;

2. In case of full or partial denial of the refund claim, or the failure on the part of the CIR to act on the said claim within a period of 90 days, the judicial claim must be filed with the CTA, the judicial claim is filed within thirty (30) days from receipt of the decision or after the expiration of the said 90-day period;

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

3. The taxpayer is a VAT-registered person;

In relation to the taxpayer's output VAT:

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4. The taxpayer is engaged in zero-rated or effectively zero-rated sales;

5. For zero-rated sales under Sections 106(A)(2)(a)(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;

As regards the taxpayer's input VAT being refunded:

6. The input taxes are due or paid;

7. The input taxes are not transitional input taxes;

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 entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and

9. The input taxes have not been applied against output taxes during and in the succeeding quarters.

Among the first requirements to be proven is the timely filing by the claimant of the administrative claim. In relation to the administrative claim for VAT refund or credit, Section 4.112-1(c) of RR No. 13-2018[49] provides the office a claimant must file for refund or credit, to wit:

> Sec. 4.112-1. Claims for Refund/Credit of Input Tax. –
>
> ... ...
>
> (c) Where to file the claim for refund/credit
>
> Claims for refund shall be filed with the appropriate Bureau of Internal Revenue (BIR) Office (Large Taxpayers Service (LTS), Revenue District Office (RDO)) having jurisdiction over the principal place of business of the taxpayer. **Claims for input tax refund of <u>direct exporters</u> <u>shall be exclusively filed</u> with the <u>VAT Credit Audit Division (VCAD)</u>.** (Emphasis supplied)

As a general rule, applicants for VAT refund or credit shall file their administrative claim with the Large Taxpayers Service or the RDO that has jurisdiction over the principal place of business of the

[49] Regulations Implementing the Value-Added Tax Provisions under the Republic Act (RA) No. 10963, or the "Tax Reform for Acceleration and Inclusion (TRAIN)," Further Amending Revenue Regulations (RR) No. 16-2005 (Consolidated Value-Added Tax Regulations of 2005), as Amended, March 15, 2018.

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taxpayer. If the applicant is a direct exporter, the administrative claim "***shall be exclusively filed***" with the VCAD. The same provision was included in the succeeding Revenue Memorandum Circular (RMC) Nos. 17-2018[50], and 47-2019.[51] The use of the words "***shall***" and "***exclusively***" emphasize the mandatory character of the rule.

The phrase "direct exporter" is not defined under the NIRC of 1997, as amended, and BIR Revenue Memorandum Circulars. Absent any statutory definition, "direct exporter" must be given plain, ordinary, and literal meaning.[52] Understood in its plain meaning, a direct exporter refers to any person engaged in the trade of products or services abroad. As a manning agency that supplies Filipino seafarers to foreign shipping companies, petitioner is a direct exporter of services. Hence, petitioner should have filed its claim for input tax refund with the VCAD, the office which has jurisdiction over its claim. It, however, erroneously filed its application for VAT refund before RDO No. 49-North Makati.

Petitioner does not deny that it filed its application for VAT refund before RDO No. 49-North Makati. Such fact is evident in its letter to the BIR[53] and is confirmed in the testimony of Ms. Herminia Dela Peña, to wit:

> [Cross examination by Atty. Norwidad Solaiman of petitioner's witness Ms. Herminia Dela Peña][54]
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> ATTY. SOLAIMAN:
> Good morning, Ms. Witness. Ms. Witness, do you know how the petitioner files its tax returns?
>
> A: Yes, Attorney. **We file our VAT Refund to the Revenue District in our RDO Office.**
>
> ... ...
>
> Q: Do you personally [participate] in the filing of the tax returns of the petitioner?
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> A: Yes, Attorney.

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[50] Amending Revenue Memorandum Circular (RMC) No. 89-2017 and Certain Provisions of RMC No. 54-2014 Regarding the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) in Relation to Amendments Made in the National Internal Revenue Code of 1997, as Amended by Republic Act No. 10963, Known as the Tax Reform for Acceleration and Inclusion (TRAIN), February 27, 2018.

[51] Revised Guidelines and Mandatory Requirements for the Processing and Grant of Value-Added Tax (VAT) Refund Claims within the 90-day Period Pursuant to Section 112 of the Tax Code of 1997, as Amended, April 16, 2019.

[52] *China Banking Corporation v. Court of Appeals*, G.R. No. 146749, June 10, 2003.

[53] Par. 21, Petition for Review, Docket, Vol. I, p. 15, in relation to Exhibits "P-27" and "P-28", Docket, Vol. III, pp. 1217-1221.

[54] TSN, August 10, 2022, pp. 9-10.

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> Q: In relation to your Answer to Question No. 17, what was the extent of [your] participation in the filing of the Petition of the Administrative Claim for VAT Refund?
>
> A: May participation in the applying for the VAT Refund is I directly gather the documents, the returns[,] and all other supporting documents to be submitted as required by the Bureau. (Emphasis supplied)

Notably, petitioner did not address its error. It failed to explain why it filed its claim for refund before RDO No. 49-North Makati instead of the VCAD. The respondent, meanwhile, argued from the beginning of trial before this Court that petitioner failed to file its application for refund before the VCAD.[55] Despite having raised this issue in trial, petitioner failed to explain, much less justify, its error.

Petitioner cannot simply ignore this detail as it determines whether there was an administrative claim that was timely filed. The petitioner cannot disregard Section 4.112-1 of RR No. 13-2018 and simply treat it as recommendatory, given its nature as subordinate legislation. Tax revenue regulations are issuances signed by the Secretary of Finance, upon the recommendation of the Commissioner of Internal Revenue, that specify, prescribe, or define rules and regulations for the effective enforcement of the provisions of the NIRC of 1997, as amended, and other related statutes.[56] These issuances are mandated by the NIRC itself and are in the nature of subordinate legislation that are as compelling as the provisions of the tax law it implements.[57] These issuances are a binding set of rules in the claims for VAT refund. Absent any proof that the provisions of RR No. 13-2018 contravene the NIRC, its provisions are mandatory and binding for the claim of refund and upon petitioner.

Actions for tax refunds or credit, as in the instant case, are in the nature of a claim for tax exemption.[58] Thus, the pieces of evidence presented to entitle a taxpayer to an exemption must be duly proven. Statutes are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. The basis for applying the rule of strict construction to statutory provisions granting tax exemptions or deductions is to minimize differential treatment and foster impartiality, fairness, and equality of treatment among taxpayers.[59] Anyone claiming exemption from the common burden of taxes must justify his claim.[60] The burden is on the taxpayer-claimant to show that

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[55] Docket, Vol. I, pp. 123–125
[56] *CIR v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013.
[57] *Id.*
[58] *Philippine Geothermal, Inc. v. CIR*, G.R. No. 154028, July 29, 2005.
[59] *Maceda v. Hon. Catalino Macaraig, Jr.*, G.R. No. 88291, May 31, 1991.
[60] *Quezon City v. ABS-CBN Broadcasting Corporation*, G.R. No. 166408, October 6, 2008.

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it has strictly complied with the conditions for the grant of tax refund or credit.[61]

Petitioner's failure to file its application at the VCAD, the correct BIR office, results in a total failure to file an administrative claim. An application made at the wrong office is deemed not made nor filed. Petitioner's failure to file before the VCAD its application is fatal to its case since it is the correct office that has jurisdiction over its claim. Consequently, petitioner failed to prove that it timely filed its administrative claim within the two-year prescriptive period.

For having failed to prove that it timely filed its administrative claim, petitioner cannot claim for VAT refund. Accordingly, the Court finds its unnecessary to discuss petitioner's compliance with the rest of the requisites to be entitled to VAT refund or credit under Section 112 of the NIRC, as amended.

WHEREFORE, in view of the foregoing, the present *Petition for Review* filed by petitioner BW Shipping Philippines, Inc. on August 17, 2020 is hereby **DENIED** for lack of merit.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

[61] *Philippine Geothermal, Inc. v. CIR*, G.R. No. 154028, July 29, 2005.

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.

CATHERINE T. MANAHAN
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice