



**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL FIRST DIVISION

CTA CASE NO. 10617

**AVALOQ PHILIPPINES
OPERATING HEADQUARTERS,**
Petitioner,

- versus -

NOTICE OF DECISION

**COMMISSIONER OF INTERNAL
REVENUE,**
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. CLARISSA J. VIRTUDES-BABARAN
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

CABRERA & COMPANY
29th Floor, Philamlife Tower
8767 Paseo de Roxas,
1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **September 18, 2026**, a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **September 22, 2026.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

AVALOQ PHILIPPINES
OPERATING
HEADQUARTERS,

Petitioner,

CTA CASE NO. 10617

Members:

BACORRO-VILLENA, Chairperson, and
CUI-DAVID, II.

- versus -

COMMISSIONER OF
INTERNAL REVENUE,

Respondent.

Promulgated:

SEP 18 2026 3:20PM

X - - - - - X

DECISION

BACORRO-VILLENA, J.:

Before the Court is a Petition for Review¹ (or **judicial claim**) filed by petitioner Avaloq Philippines Operating Headquarters (**petitioner**) pursuant to Section 3(a),² Rule 8 in relation to Section 3(a)(1),³ Rule 4 of

¹ Filed on 21 October 2021, Division Docket, Volume I, pp. 10-467, with annexes.

² **SEC. 3. Who may appeal; period to file petition.** —

(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

³ **SEC. 3. Cases within the jurisdiction of the Court in Division.** — The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(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 the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]

the Revised Rules of the Court of Tax Appeals (RRCTA), seeking to appeal respondent Commissioner of Internal Revenue's (**respondent's/ CIR's**) total denial of its administrative claim for refund in the amount of **₱4,403,906.09**. The amount claimed represents unutilized input Value-Added Tax (VAT) on purchases of services attributable to zero-rated sales for the period from 01 January 2019 to 30 June 2019.

PARTIES TO THE CASE

Petitioner is a regional operating headquarters of Avaloq Group AG, a company organized and existing under the laws of Switzerland.⁴ It is registered with the Securities and Exchange Commission (SEC)⁵ and holds office at the 8th and 9th Floors, Robinsons Summit Center, Ayala Avenue, Makati City.⁶

Respondent, on the other hand, is the duly appointed CIR, with principal office at the Bureau of Internal Revenue (BIR) Litigation Division, Room 704, BIR Building, Diliman, Quezon City.⁷

FACTS OF THE CASE

For the first and second quarters (**Q1 and Q2**) of calendar year (CY) 2019, petitioner filed its Amended Quarterly VAT Returns⁸ and declared a total sales amount, all of which were zero-rated, of **₱184,742,956.99**.

On 11 May 2021, petitioner filed an Application for Tax Credits/Refunds (BIR Form No. 1914)⁹ (**administrative claim**), with the BIR's VAT Credit Audit Division (VCAD), seeking a refund of unutilized input VAT attributable to zero-rated sales for Q1 and Q2 of CY 2019 in the total amount of **₱4,403,906.09**.

⁴ Exhibit "P-1", Division Docket, Volume II, pp. 891-905.

⁵ Exhibit "P-2", id., p. 906.

⁶ Par. 1, THE PARTIES, Petition for Review, supra at note 1, p. 10.

⁷ Par. I(a), STIPULATION OF FACTS, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume II, pp. 547-554.

⁸ Exhibits "P-4" and "P-5", id., pp. 908-911.

⁹ Exhibit "P-34", id., p. 1263.

Respondent, on the other hand, issued a Tax Verification Notice (TVN) with TVN No. 201800143144¹⁰ on even date authorizing Revenue Officers (ROs) Marvin K. Villarama and Rochelle May P. Leonor, all from BIR's VCAD, to verify the documents submitted in support of petitioner's claim for VAT refund.

Subsequently, on 30 July 2021, respondent issued a VAT Refund Notice,¹¹ signed by Assistant Commissioner Maria Luisa I. Belen, denying petitioner's claim for refund on the ground of non-compliance with invoicing requirements, failure to substantiate, and lack of connection between remittances and zero-rated sales.

PROCEEDINGS BEFORE THE COURT

Dissatisfied with the BIR's decision, on 21 October 2021, petitioner filed the instant Petition for Review¹² before the Second Division to appeal respondent's denial of the administrative claim. The same was raffled to the Second Division and docketed as CTA Case No. 10617.

On 25 October 2021, the Second Division issued Summons¹³ ordering respondent to file an Answer within thirty (30) days from service of the same. The CIR received the said Summons on 17 November 2021.¹⁴ After the Second Division granted extension of time,¹⁵ the CIR filed an Answer¹⁶ on 31 January 2022. The CIR then transmitted the BIR Records on 15 March 2022.¹⁷

On the same day, in compliance with the Second Division's directive,¹⁸ respondent filed his or her Pre-Trial Brief,¹⁹ while petitioner failed to file the same.²⁰ As such, during the scheduled Pre-Trial Conference on 27 April 2022,²¹ the Second Division dismissed the case 

¹⁰ Exhibit "R-1", BIR Records, p. 128.

¹¹ Exhibit "R-4", id., pp. 298-299.

¹² Supra at note 1.

¹³ Division Docket, Volume I, p. 468.

¹⁴ Id.

¹⁵ See Order dated 03 January 2022, id., p. 474.

¹⁶ Id., pp. 475-482.

¹⁷ See Compliance dated 15 March 2022, id., pp. 492-494.

¹⁸ See Notice of Pre-Trial Conference dated 03 March 2022, id., pp. 485-486.

¹⁹ Id., pp. 487-490.

²⁰ See Order dated 27 April 2022, id., p. 507.

²¹ See Minutes of Hearing dated 27 April 2022, id., p. 506.

for petitioner's failure to file its pre-trial brief, as well as for failure of petitioner's counsel to appear at the pre-trial.²²

On 10 May 2022, petitioner filed a "Motion for Reconsideration with Motion for Leave of Court to Admit Attached Pre-Trial Brief"²³ (MR), averring that it received the Notice of Pre-Trial Conference on 10 March 2022 and endorsed the same to Mr. Pacifico Toledo, Jr. (Toledo), one of the liaison officers of the law firm Cabrera & Company, on 14 March 2022. The same, however, was allegedly not properly endorsed to the lawyers in charge and may have been lost, and that upon MR's submission, the copy of the Notice of Pre-Trial Conference has not yet been found. Respondent failed to file a comment on the MR.²⁴ Thereafter, the Second Division, *per* Resolution dated 05 August 2022,²⁵ in the interest of substantial justice and to afford the parties the opportunity to fully ventilate their cases, granted petitioner's MR.

During the new setting for the Pre-Trial Conference on 06 October 2022, the Second Division noted the parties' submission of their respective pre-trial briefs and granted them a 30-day period to submit their Joint Stipulation of Facts and Issues (JSFI) and "Motion to Commission an Independent Certified Public Accountant (ICPA)".²⁶ On 26 October 2022, the parties submitted their JSFI,²⁷ which the Second Division approved on 22 November 2022.²⁸ The Second Division then issued the Pre-Trial Order dated 04 January 2023,²⁹ setting trial dates for the presentation of the parties' witnesses.

Previously, on 04 November 2022, petitioner submitted its "Compliance (RE: Submission of the Petitioner's Motion for Commissioning of [ICPA] and the Judicial Affidavit of ICPA Mr. Christian Gene A. Rasos [Rasos])"³⁰ (Motion to Commission ICPA Rasos). Then, on 29 May 2023, the case was transferred to the First Division.³¹

²² See Order dated 27 April 2022, *supra* at note 20.

²³ Division Docket, Volume I, pp. 508-532.

²⁴ See Records Verification dated 16 June 2022, *id.*, p. 535.

²⁵ *Id.*, Volume II, pp. 537-541.

²⁶ See Order dated 06 October 2022, *id.*, pp. 545-546.

²⁷ *Id.*, pp. 547-554.

²⁸ See Resolution dated 22 November 2022, *id.*, p. 572.

²⁹ *Id.*, pp. 574-579.

³⁰ *Id.*, pp. 555-570, with annexes.

³¹ Resolution dated 29 May 2023, *id.*, p. 732.

During the hearing conducted on 14 November 2023, the First Division found that Mr. Rasos' Certificate of Accreditation as Tax Practitioner expired and gave him five (5) days before 01 February 2024 to submit the same. This, notwithstanding, and there being no objection from the adverse party with regard to the appointment of Mr. Rasos, the First Division granted the Motion to Commission ICPA Rasos and gave him forty-five (45) days to submit his ICPA Report.³²

On the same hearing date, petitioner presented its accountant as the first witness. In her Judicial Affidavit dated 15 October 2021³³ and Supplemental Judicial Affidavit dated 10 March 2023,³⁴ Mary Lalaine V. Munar (**Munar**) testified: (1) on petitioner's filing of VAT returns for CY 2019; (2) of petitioner's services that were rendered to its nonresident foreign affiliates and thus, subject to zero-rated VAT; (3) of the said services being rendered in the Philippines, as evidenced by extracted logs in petitioner's ProTime monitoring software; and (4) that petitioner incurred unutilized input VAT amounting to ₱4,403,906.09 (which became the subject of its administrative claim that respondent later on denied).³⁵

On cross-examination, Munar confirmed that it is not her, but petitioner's SAP Team who extracts and generates the logs of the services rendered from ProTime.³⁶ Upon re-direct examination, Munar clarified that in her Supplemental Judicial Affidavit, she submitted petitioner's Annual Income Tax Return (AITR).³⁷ No re-cross examination followed.³⁸

On 15 December 2023, Mr. Rasos filed a "Request for Replacement as Court-Commissioned [ICPA] for CTA Case No. 10617",³⁹ stating that due to scheduling restrictions, he cannot obtain an updated Certificate of Accreditation as Tax Practitioner. In light of this, on 22 December 2023, petitioner filed a "Manifestation with an Urgent Motion to

³² See Order dated 14 November 2023, *id.*, pp. 743-745.

³³ Exhibit "P-40", *id.*, Volume I, pp. 119-134, *sans* annexes.

³⁴ Exhibit "P-41", *id.*, Volume II, pp. 603-609, *sans* annexes.

³⁵ *Id.*

³⁶ TSN dated 14 November 2023, pp. 23-24.

³⁷ *Id.*, p. 25.

³⁸ *Id.*

³⁹ Division Docket, Volume II, pp. 747-748.

Commission a New [ICPA]”,⁴⁰ requesting one (1) month to look for a new ICPA, which the First Division granted on 10 January 2024.⁴¹

On 15 February 2024, petitioner filed a “Compliance with Motion to Extend the Deadline for the Submission of the Judicial Affidavit of Mr. Enrico T. Pizarro [**Pizarro**] (RE: Submission of the Petitioner’s Motion for Commissioning of [ICPA] and the Judicial Affidavit of [ICPA Pizarro])”⁴² (**Motion to Commission ICPA Pizarro**), manifesting that petitioner found a new ICPA, Mr. Pizarro. Then, on 20 February 2024, petitioner filed a “Motion with Leave of Court to Admit the Attached Judicial Affidavit of Mr. [Pizarro]”⁴³ (**Motion to Admit Judicial Affidavit of ICPA Pizarro**). Thereafter, the First Division, on 05 March 2024, granted both Motions.⁴⁴ During the hearing conducted on 14 March 2024, the First Division commissioned Mr. Pizarro as the new ICPA and granted him until 15 April 2024 to submit his ICPA Report,⁴⁵ which the latter complied with.⁴⁶

During the hearing conducted on 02 July 2024, petitioner presented ICPA Pizarro,⁴⁷ who testified by way of his Judicial Affidavit dated 23 May 2024⁴⁸ regarding the following: (1) the documents he examined in preparation of the ICPA Report; (2) factual circumstances on the filing of the administrative and judicial claims for refund; (3) that petitioner’s sales were subject to zero-rated VAT, as the same were rendered to nonresident foreign affiliates, evidenced by the latter’s corporate documents and agreements entered into with them; and (4) that petitioner was able to substantiate, through documentary evidence that complied with invoicing requirements, only ₱2,743,887.96 out of the amount of refund claim of ₱4,403,906.09, which ICPA Pizarro recommends for partial refund.

After completing the presentation of evidence, petitioner, on 15 July 2024, filed its “Compliance with Submission (Re: Directive made open court last 2 July 2024)”, with attached “Formal Offer of Evidence”⁴⁹.

⁴⁰ Id., pp. 749-753.

⁴¹ See Notice of Resolution dated 10 January 2024, id., pp. 754-755.

⁴² Id., pp. 757-764.

⁴³ Id., pp. 765-790.

⁴⁴ See Notice of Resolution dated 05 March 2024, id., p. 786.

⁴⁵ See Order dated 14 March 2024, id., pp. 788-790.

⁴⁶ See ICPA Report, id., pp. 798-830.

⁴⁷ See Order dated 02 July 2024, id., Volume III, pp. 1392-1393.

⁴⁸ Exhibit “P-77”, id., Volume II, pp. 840-863.

⁴⁹ Id., pp. 867-1390, with annexes.

(FOE), consisting of Exhibits “P-1” to “P-77”, inclusive of sub-markings. Respondent failed to file his or her comment thereto.⁵⁰ Thereafter, in its Resolution dated 09 October 2024,⁵¹ the First Division admitted all of petitioner’s exhibits, *except* the following:

Exhibit Reference	Reason for Denial
“P-14-1”, “P-15-1”, “P-16-1”, “P-17-1”, “P-18-1”, “P-19-1”, “P-20-1”, “P-21-1”, “P-31”	Failure to locate marked documents
“P-52”, “P-53”, “P-54”, “P-55”, “P-56”, “P-57”, “P-58”, “P-59”	Failure of the submitted documents (which do not include apostille pages) to correspond with the formal offer (as apostilled documents)
“P-72-1” to “P-72-44”, “P-73-1” to “P-73-22”, “P-74-1” to “P-74-6”, “P-75-1” to “P-75-134”, “P-76-1” to “P-76-5”	Failure of the ICPA to specifically identify these exhibits in the ICPA Report

On 10 October 2024, respondent presented its witness, RO Lovely G. Mallari (Mallari),⁵² who testified by way of her Judicial Affidavit dated 15 March 2022⁵³ to prove the following: (1) issuance of TVN;⁵⁴ (2) petitioner’s documents submitted in support of the judicial claim as shown in the Revised Checklist of Mandatory Requirements on Claims for VAT Credit/Refund;⁵⁵ and (3) issuance of the Memorandum recommending the denial of petitioner’s administrative claim⁵⁶ and the VAT Refund Notice.⁵⁷

On cross-examination, RO Mallari confirmed that: (1) the entire docket of the case was transmitted to and reviewed by BIR Legal;⁵⁸ (2) she checked all the soft copies of petitioner’s documents in support of the refund, including offsetting arrangements;⁵⁹ and (3) she found 

⁵⁰ See Records Verification dated 02 August 2024, id., Volume III, p. 1396.
⁵¹ Id., pp. 1403-1404.
⁵² See Order dated 10 October 2024, id., pp. 1405-1406.
⁵³ Exhibit “R-6”, id., Volume I, pp. 501-505.
⁵⁴ Supra at note 10.
⁵⁵ Exhibit “R-2”, BIR Records, p. 127.
⁵⁶ Exhibit “R-3”, id., pp. 283-285.
⁵⁷ Supra at note 11.
⁵⁸ TSN dated 10 October 2024, pp. 9-10.
⁵⁹ Id., pp. 10-11.

that there were no soft copies of the billing statements as part of the mandatory requirements.⁶⁰ No re-direct examination was conducted.⁶¹ Meanwhile, in response to the First Division’s questions, RO Mallari stated that she only checks the soft copies of the supporting documents because the original documents remain with the VCAD.⁶²

On 15 October 2024, respondent filed its “[FOE]”⁶³ consisting of Exhibits “R-1” to “R-5”. Thereafter, petitioner filed a “Comment (On the Respondent’s [FOE])”.⁶⁴ In its Resolution dated 28 January 2025,⁶⁵ the First Division admitted all of respondent’s exhibits and gave the parties 30 days from notice to file their respective memoranda. Having failed to do so,⁶⁶ the First Division submitted the case for decision.⁶⁷

This notwithstanding, on 09 May 2025, petitioner filed a “Motion with Leave of Court to Admit Attached Memorandum (Re: Notice dated 8 April 2025”⁶⁸ (**Motion to Admit Memorandum**), alleging that similar to the incident regarding petitioner’s Pre-Trial Brief, Mr. Toledo did not endorse a copy of the Resolution dated 28 January 2025,⁶⁹ resulting in petitioner’s failure to file the same. After respondent failed to file a comment thereto,⁷⁰ the First Division granted petitioner’s Motion to Admit Memorandum and submitted the case **anew** for decision.⁷¹

ISSUE

As the parties so stipulated, the sole issue for this Court’s resolution is —

WHETHER PETITIONER AVALOQ PHILIPPINES OPERATING HEADQUARTERS IS ENTITLED TO THE REFUND OF ₱4,403,906.09 REPRESENTING UNUTILIZED INPUT VALUE-ADDED TAX (VAT) ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR THE FIRST AND SECOND QUARTERS OF CALENDAR YEAR 2019.

⁶⁰ Id., p. 13.
⁶¹ Id.
⁶² Id., p. 15.
⁶³ Division Docket, Volume III, pp. 1408-1411.
⁶⁴ Id., pp. 1415-1418.
⁶⁵ Id., pp. 1423-1424.
⁶⁶ See Records Verification dated 13 March 2025, id., p. 1425.
⁶⁷ See Notice of Resolution dated 08 April 2025, id., p. 1426.
⁶⁸ Id., pp. 1430-1436.
⁶⁹ Supra at note 65.
⁷⁰ See Records Verification dated 21 July 2025, Division Docket, Volume III, p. 1491.
⁷¹ See Resolution dated 21 November 2025, id., pp. 1496-1499.

ARGUMENTS

In the instant Petition for Review and Memorandum, petitioner argues that it is entitled to VAT refund because: (1) the administrative and judicial claims were filed within the reglementary periods; (2) petitioner is a VAT-registered entity engaged in zero-rated sales transactions; (3) said sales have been paid for in acceptable foreign currency *via* intercompany offsetting arrangements and the proceeds have been accounted for in accordance with Bangko Sentral ng Pilipinas (BSP) rules; and (4) input taxes duly paid for are not transitional and have not been offset against output VAT.

Conversely, in his or her Answer, respondent counters that the verification of the documents submitted at the administrative level reveals petitioner's failure to substantiate its claim for VAT refund.

RULING OF THE COURT

Before going into the merits of the case, We shall first determine whether this Court has jurisdiction over the case.

PETITIONER TIMELY FILED THE
REFUND CLAIMS, AND THUS, THIS
COURT ACQUIRED JURISDICTION
OVER THE INSTANT CASE

Petitioner anchors its claim on Sections 110(B)⁷² and 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 10963 or Tax Reform for Acceleration and Inclusion (TRAIN), which are quoted hereunder:

...
SEC. 110. Tax Credits. —

...

(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:

⁷²

As amended by Republic Act No. 9361, "AN ACT AMENDING SECTION 110(B) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES".

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.

...

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 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.

...

(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.⁷³

...

Pursuant thereto, the administrative claim for refund of unutilized input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales are made.

Petitioner’s present claim covers Q1 and Q2 of CY 2019. Counting two (2) years from the respective close of the said quarters, the last day for the filing of the administrative claim for the said two (2) quarters, *vis-à-vis* the petitioner’s actual date of filing of the administrative claim, pursuant to Section 112(A) of the NIRC of 1997, as amended, are shown below:

Quarter (CY 2019)	Close of taxable quarter	Last day for filing an administrative claim	Date of filing of claim for refund
1 st Quarter	31 March 2019	31 March 2021	11 May 2021 ⁷⁴
2 nd Quarter	30 June 2019	30 June 2021	

As can be gleaned from the foregoing table, petitioner had until 31 March 2021 and 30 June 2021 within which to file the administrative claims for refund for Q1 and Q2 of CY 2019, respectively. Considering that petitioner filed its administrative claim on 11 May 2021, it would appear that only the administrative claim for **Q2 is seasonably filed**, whereas the administrative claim for Q1 is time-barred.

Notably, however, on 18 March 2021, the BIR issued Revenue Memorandum Circular (RMC) No. 39-2021,⁷⁵ which extended the period to file administrative claims falling due on 31 March 2021 to **12 April 2021**:

...

For the information and guidance of all internal revenue officers, employees and others concerned and following the temporary closure of VCAD until March 28, 2021, in compliance with the existing health protocols for the mitigation of the COVID-19 pandemic, **the filing of VAT Refund, where the two (2)-year period within which to file the claim falls on March 31, 2021, shall be extended until April 12, 2021.**



74

Supra at note 9.

75

EXTENSION OF THE DEADLINE FOR THE FILING OF APPLICATIONS AND SUSPENSION OF THE NINETY (90)-DAY PROCESSING OF VALUE-ADDED TAX (VAT) REFUND CLAIMS PURSUANT TO SECTION 112 OF THE TAX CODE OF 1997, AS AMENDED BY THE R.A. NO. 10963 (TRAIN LAW) WITH THE VAT CREDIT AUDIT DIVISION (VCAD).

Moreover, the **90-day period of processing of all VAT refund claims pending with VCAD during the temporary closure is also suspended** pursuant to Section 5(3) of Revenue Regulations No. 27-2020.⁷⁶

...

Thereafter, on 05 April 2021, the BIR issued RMC No. 45-2021,⁷⁷ which further extended the period to file administrative claims falling due on 12 April 2021 (*per* RMC No. 39-2021) to 30 days from the lifting of the Enhanced Community Quarantine, which ran until 11 April 2021.⁷⁸ Accordingly, petitioner had 30 days therefrom, or **until 11 May 2021**, to file its administrative claim for refund. Considering that petitioner filed its administrative claim on the same date, it shall be considered as **timely filed, even for Q1 2019**.

As to the timeliness of the judicial claim, petitioner received the VAT Refund Notice totally denying its administrative claim on 14 September 2021.⁷⁹ Thus, petitioner had 30 days therefrom or until 14 October 2021, within which to file a judicial claim before this Court.

However, during this time, the Supreme Court suspended the time for filing and service of pleadings and motions,⁸⁰ and lifted the same only on 20 October 2021.⁸¹ Pursuant to Supreme Court Administrative Circular No. 72-2021,⁸² the period for filing and service shall resume seven (7) calendar days from the lifting of the suspension, or by **27 October 2021**. Accordingly, the instant **Petition for Review was timely filed on 21 October 2021 and thus, this Court properly acquired jurisdiction over the case**.

Notably, in *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*⁸³ (**Deutsche**), the Supreme Court laid down 

⁷⁶ Emphasis supplied.

⁷⁷ Extension of the Deadline for the Filing of Position Papers, Replies, Protests, Documents and Other Similar Letters and Correspondences in Relation to Ongoing BIR Audit Investigations, and Filing of VAT Refund with VAT Credit Audit Division (VCAD).

⁷⁸ *Per* IATF-EID Resolution No. 108-A, 04 April 2021. By 12 April 2021, the National Capital Region, among others, was already placed under *Modified* Enhanced Community Quarantine. (See IATF-EID Resolution No. 109-A, 10 April 2021, and IATF-EID Resolution No. 113-A, 29 April 2021.)

⁷⁹ See *Petition for Review*, *supra* at note 1; *Petitioner's Memorandum*, *supra* at note 68; and *Judicial Affidavit of Mary Lalaine V. Munar*, *supra* at note 33.

⁸⁰ See Supreme Court Administrative Circular No. 75-2021.

⁸¹ See Supreme Court Administrative Circular No. 83-2021.

⁸² RE: COURT OPERATIONS BEGINNING 16 SEPTEMBER 2021.

⁸³ G.R. No. 234445, 15 July 2020; Citations omitted and emphasis supplied.

the requisites for the entitlement to tax refund or credit of excess input VAT attributable to zero-rated sales, to wit:

...
Under Section 4.112-1(a) of Revenue Regulations No. (RR) 16-05, otherwise known as the Consolidated VAT Regulations of 2005, in relation to Section 112 of the Tax Code, a claimant's entitlement to a tax refund or credit of excess input VAT attributable to zero-rated sales hinges upon the following requisites: "(1) **the taxpayer must be VAT-registered; (2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.**"

...

Thus, the above disquisition regarding the timeliness of filing of the administrative and judicial claims sufficiently shows that **petitioner satisfied the third (3rd) requisite for entitlement to VAT refund, i.e., that the claim must be filed within two (2) years after the close of the taxable quarter when such sales were made.**

As to the first (1st) requisite, i.e., that the taxpayer must be VAT-registered, it is undeniable that petitioner is, as supported by its BIR Certificate of Registration No. OCN 9RC0000461791,⁸⁴ which bears its Taxpayer's Identification Number (TIN) 008-637-771-000. Thus, **petitioner met the 1st requisite.**

As to the **second (2nd) and fourth (4th) requisites**, a careful and thorough evaluation of the parties' respective evidence and the applicable laws, rules, and regulations reveal that **petitioner failed to comply with both requisites.**

SECOND (2ND) REQUISITE:

PETITIONER MUST BE ENGAGED IN
SALES WHICH ARE ZERO-RATED OR
EFFECTIVELY ZERO-RATED



Petitioner's claim for VAT refund relates to zero-rated sales of services to its nonresident foreign affiliates. In relation thereto, Section 108(B)(2) of the NIRC of 1997, as amended, provides that:

...

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:

...

(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)[.]⁸⁵

...

Based on the foregoing, for a sale or supply of services to qualify as zero-rated, the following *essential elements* must be present:

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 are performed;⁸⁶
2. The services fall under any of the categories under Section 108(B)(2),⁸⁷ or simply, the services rendered should be other than "processing, manufacturing or repacking goods";⁸⁸

⁸⁵ Emphasis supplied and italics in the original text.

⁸⁶ *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue*, G.R. No. 201326, 08 February 2017; *Accenture, Inc. v. Commissioner of Internal Revenue*, G.R. No. 190102, 11 July 2012; *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, 22 January 2007.

⁸⁷ See *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, 29 June 2005.

⁸⁸ *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra at note 86.

3. The service must be performed in the Philippines by a VAT-registered person;⁸⁹ and
4. The consideration for the services was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.⁹⁰

RECIPIENTS OF SERVICES MUST
BE NONRESIDENT FOREIGN
CORPORATIONS (NRFCs)

In *Deutsche*,⁹¹ the Supreme Court ruled that to be considered as an NRFC doing business outside the Philippines, *both* the SEC-issued "Certification of Non-Registration of Company" *and* the proof of incorporation or registration in a foreign country (i.e., "Authenticated Articles of Association and/or Certificates of Registration/Good Standing/Incorporation"), must be presented, to wit:

...

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 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.

Such proof must be especially required from ROHQs such as DKS. That the law expressly authorizes ROHQs to render services to local and foreign affiliates alike only stresses the ROHQ's burden to distinguish among their clients' nationalities and actual places of business operations and establish that they are seeking refund or credit of input VAT only to the extent of their sales of services to foreign clients doing business outside 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.



⁸⁹ Id.; *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, supra at note 87.

⁹⁰ Id.

⁹¹ Supra at note 83; Citations omitted, emphasis supplied and italics in the original text.

x ----- x

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 their 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.**

Proof of the above-mentioned second component sets the present case apart from *Accenture, Inc. v. Commissioner of Internal Revenue* and *Sitel Philippines Corp. v. Commissioner of Internal Revenue*. In these cases, the claimants similarly presented SEC Certifications and client service agreements. However, the Court consistently ruled that documents of this nature only establish the *first* component (*i.e.*, that the affiliate is foreign). The absence of any other competent evidence (*e.g.*, articles of association/certificates of incorporation) proving the *second* component (*i.e.*, that the affiliate is not doing business here in the Philippines) shall be fatal to a claim for credit or refund of excess input VAT attributable to zero-rated sales.

...

In the case at bar, petitioner adequately proved the NRFC status of the following clients for whom services were rendered for Q1 and Q2 of CY 2019:

Company Name	SEC Certification of Non-Registration of Company	Proof of Foreign Incorporation/Registration
Avaloq Australia Pty Ltd	"P-14-1" ⁹² / "P-52-1" ⁹³	"P-14" ⁹⁴

⁹² Exhibit "R-5", BIR Records, p. 189. Although Exhibits "P-14-1", "P-15-1", "P-16-1", "P-17-1", "P-18-1", "P-19-1", "P-20-1", "P-21-1" were denied admission for failure to locate the marked documents *per* Resolution dated 09 October 2024 (Division Docket, Volume III, pp. 1403-1404), the same are actually found in the BIR Records.

⁹³ Exhibit "P-44-1", USB.

⁹⁴ Division Docket, Volume II, pp. 938-985.

Company Name	SEC Certification of Non-Registration of Company	Proof of Foreign Incorporation/Registration
Avaloq Asia Pacific Pte. Ltd.	"P-15-1" ⁹⁵ / "P-53-1" ⁹⁶	"P-15" ⁹⁷
Avaloq Licence AG	"P-16-1" ⁹⁸ / "P-54-1" ⁹⁹	"P-16" ¹⁰⁰
Avaloq Sourcing Asia Pacific (Singapore) Pte. Ltd.	"P-17-1" ¹⁰¹ / "P-55-1" ¹⁰²	"P-17" ¹⁰³
Avaloq Sourcing (Switzerland & Liechtenstein) SA	"P-18-1" ¹⁰⁴ / "P-56-1" ¹⁰⁵	"P-18" ¹⁰⁶
Avaloq Sourcing (Europe) AG	"P-19-1" ¹⁰⁷ / "P-57-1" ¹⁰⁸	"P-19" ¹⁰⁹
Avaloq UK Limited	"P-20-1" ¹¹⁰ / "P-58-1" ¹¹¹	"P-20" ¹¹²
Avaloq Evolution AG	"P-21-1" ¹¹³ / "P-59-1" ¹¹⁴	"P-21" ¹¹⁵

SERVICES RENDERED SHOULD BE
OTHER THAN PROCESSING,
MANUFACTURING, OR REPACKING
GOODS

In the instant case, petitioner presented the “General Framework Services Agreement”,¹¹⁶ which governs the provision of services between affiliates under the Avaloq Group. Included under the definition of “services” therein are the following: 

95

Exhibit “R-5”, BIR Records, p. 187.

96

Exhibit “P-44-1”, USB.

97

Division Docket, Volume II, pp. 986-1022.

98

Exhibit “R-5”, BIR Records, p. 191.

99

Exhibit “P-44-1”, USB.

100

Division Docket, Volume II, pp. 1023-1052.

101

Exhibit “R-5”, BIR Records, p. 190.

102

Exhibit “P-44-1”, USB.

103

Division Docket, Volume II, pp. 1053-1090.

104

Exhibit “R-5”, BIR Records, p. 193.

105

Exhibit “P-44-1”, USB.

106

Division Docket, Volume II, pp. 1091-1109.

107

Exhibit “R-5”, BIR Records, p. 192.

108

Exhibit “P-44-1”, USB.

109

Division Docket, Volume II, pp. 1110-1119.

110

Exhibit “R-5”, BIR Records, p. 194.

111

Exhibit “P-44-1”, USB.

112

Division Docket, Volume II, pp. 1120-1151.

113

Exhibit “R-5”, BIR Records, p. 188.

114

Exhibit “P-44-1”, USB.

115

Division Docket, Volume II, pp. 1152-1181.

116

Exhibit “P-22”, id., pp. 1182-1203.

- Preparation of analyses;
- Making of status quo analyses;
- Consulting;
- Preparation of concepts;
- Documentation;
- Promotion of products and services;
- Sub-project management;
- Training and support in training services;
- Support in implementation services;
- Support in parametrization services;
- Support in maintenance services;
- Support with and coordination of Global Processing Network projects;
- Coordination;
- Audits; and
- Support in acceptance.

Meanwhile, Exhibit 1 attached to the “Contract Software Research & Development [R&D] Agreement”¹¹⁷ executed between petitioner and Avaloq Licence AG provides that petitioner shall render R&D services consisting of the following:

- Software Development;
- Software Architecture and Concepts;
- Testing;
- Business Analysis;
- Functionality Deployment;
- Product customization and parametrization;
- Integration of third party software; and
- Cooperation with third parties in specific research projects.

Clearly, the foregoing services rendered by petitioner to its nonresident foreign affiliates are *other than* processing, manufacturing, or repacking goods.

SERVICES WERE PERFORMED BY A
VALUE-ADDED TAX (VAT)-REGISTERED
PERSON IN THE PHILIPPINES

¹¹⁷ Exhibit “P-23”, id., pp. 1205-1239.

As already discussed under the 1st requisite for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended, petitioner is a VAT-registered person.

With regard to performance of services *in the Philippines*, it is worth noting that both the General Framework Services Agreement¹¹⁸ and the Contract Software [R&D] Agreement¹¹⁹ lack any indication that the services are to be performed within the Philippines. The ICPA also made a similar finding in his Judicial Affidavit.¹²⁰

This notwithstanding, petitioner's witness Munar stated in her Supplemental Judicial Affidavit¹²¹ that petitioner, as a software company, provides services such as software maintenance, support, and bug-fixing *through* phone calls, emails, online meetings, and other electronic means. This is evidenced by ProTime logs for the period of January to June 2019.¹²² Said extracted logs include the location of the service, the nonresident affiliate to whom the service was rendered, the month when the service was rendered, and the corresponding time charges. As the records bear, the Pro-Time logs clearly indicate that petitioner rendered the services *within* the Philippines.

PETITIONER FAILED TO PROVE THAT
THE CONSIDERATION WAS PAID FOR
IN ACCEPTABLE FOREIGN CURRENCY
VIA OFFSETTING ARRANGEMENTS

According to petitioner, its revenues for Q1 and Q2 2019 were all derived from services rendered to its nonresident foreign affiliates, which were paid *via* an intercompany offsetting agreement.

The BIR has recognized offsetting arrangements as an alternative to actual inward remittance of foreign currency proceeds in export sales. In RMC No. 42-2003,¹²³ the submission of proof of inward remittances of foreign currency payments for export sales is relaxed when there are 

¹¹⁸ Supra at note 116.

¹¹⁹ Supra at note 117.

¹²⁰ Supra at note 48.

¹²¹ Supra at note 34.

¹²² Exhibits "P-36" and "P-37", Division Docket, Volume II, pp. 1270-1332.

¹²³ Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters.

offsetting arrangements, as these do not entail inward remittances. In its place, the RMC enumerates acceptable pieces of documentary evidence to fulfill the legal and jurisprudential requirement of "payment in acceptable foreign currency in accordance with BSP rules." Specifically, the taxpayer-claimant must present the following:

- a. Import documents which created liability accounts in favor of the foreign parent or affiliated company;
- b. Other contracts with the foreign or affiliated company that brought about the liabilities which were offset against receivables from export sales;
- c. Evidence of proceeds of loans, in case the claimant has received loans or advances from the foreign company;
- d. *Documents or correspondence regarding offsetting arrangements*,¹²⁴
- e. Confirmation of the offsetting arrangements by the heads of the business organizations involved;
- f. Documents to prove actual export of goods;
- g. Documents to prove that the sales are zero-rated sales.

In the case at bar, based on the testimony of witness Munar,¹²⁵ the offsetting arrangement occurs as follows:

31. Q: Ms. Munar, do you know how Petitioner bills its foreign affiliates for the services rendered?

A: Yes. The 'General Framework Services Agreement' that shows the guidelines for the provision of services between the affiliates of Avaloq Group AG, and the 'Short Term Credit Facility Agreement' would explain how Avaloq PH bills its foreign affiliates.

The invoices billed by Petitioner are collected/offset against the loan payable to Avaloq Group AG. Based on the General Framework Services Agreement, the

¹²⁴ Italics supplied.

¹²⁵ Supra at note 33.

offsetting process of the receivables and payables of the Petitioner are as follows:

- a. Avaloq PH maintains a 'centralized' current account, in which the funding of Avaloq Group AG is being remitted pursuant to a Short-Term Credit Facility Agreement;
- b. For the collection of intercompany invoices billed by Avaloq PH to its affiliates, these are collected/offset through this account.

To illustrate, whenever we obtain a 'loan' from our head office – Avaloq Group AG, which is basically the funding we receive monthly, the funding/cash remitted is credited to Avaloq Group AG current account. The amount receivable from the invoices billed for the services rendered to the affiliates of Avaloq PH will be debited or offset against this same account.

...

34. Q: Ms. Munar, how did Petitioner collect/offset the intercompany services billed against the loan payable to Avaloq Group AG pursuant to the Short-Term Credit Facility?

A: Under the Short-Term Credit Facility, **Petitioner is entitled to request for [a] loan in the form of advance and/or overdraft from Avaloq Group AG.** The loan amount, which varies depending on the financial necessity of the Petitioner to support its operations, are remitted by Avaloq Group AG in foreign currency denominated. The remitted amount forms part of the loan payable of Petitioner which are then offset against the intercompany invoices billed to the foreign affiliates of Avaloq PH.¹²⁶

Essentially, as petitioner alleged, it receives foreign currency funding from its parent company, Avaloq Group AG, which is recorded and treated in petitioner's books as a loan payable to Avaloq Group AG. Thereafter, petitioner's receivables *from nonresident foreign affiliates* are then supposedly offset against the should-be loan payments *to Avaloq Group AG*, thereby sufficing the requirement for a valid offsetting arrangement.

We are unconvinced.

Indeed, the General Framework Services Agreement¹²⁷ did provide that the contracting parties, which include Avaloq Group AG and Avaloq affiliates, may agree on alternative methods for payment of service fees, “including by way of centralized clearing/netting system or group current accounts.” To prove this offsetting agreement, petitioner presented its “Short-Term Credit Facility Agreement”,¹²⁸ Section 12 of which provides for offsetting as follows:

...
12. Set-Off Balances

Both parties authorize each other to set-off any credit balance in any currency to which it is entitled on any account in satisfaction of any sum due and payable under this Agreement but unpaid. For this purpose, both parties are authorized to purchase with the monies standing to the credit of any such account such other currencies as may be necessary to effect such application.

...

While the Short-Term Credit Facility Agreement did validate petitioner’s claim of having foreign currency loans with Avaloq Group AG as creditor, and expressly allowed the offsetting between them, **nothing in the documents indicates that petitioner’s loans payable to Avaloq Group AG may be offset against petitioner’s receivables from sales of services rendered to nonresident foreign affiliates.** This is the critical flaw in petitioner’s purported offsetting agreement.

First, the Short-Term Credit Facility Agreement is an undertaking between Avaloq Group AG, as the creditor, and each affiliate, as borrower.

Under the principle of relativity of contracts, “[c]ontracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of



¹²⁷ Supra at note 116.

¹²⁸ Exhibit “P-24”, Division Docket, Volume II, pp. 1240-1256.

law. . . . [I]t is a general principle of law that a contract can only bind the parties who had entered into it or their successors or heirs who have assumed their personality or juridical possession[.]”¹²⁹

Consequently, the Short-Term Credit Facility Agreement, particularly its provision regarding offsetting, only contemplates set-offs in loan transactions between the lender-parent company, Avaloq Group AG, and its borrower-affiliates, in this case, petitioner; but not in transactions between one Avaloq affiliate and another.

Second, Avaloq Group AG is a distinct legal entity from its affiliates. Accordingly, while the right to offset has been proven to exist between petitioner and Avaloq Group AG, on the basis of the Short-Term Credit Facility Agreement, the same right has not been similarly established between petitioner and its nonresident foreign affiliates. An offsetting arrangement between petitioner and Avaloq Group AG cannot be presumed to subsume transactions between one affiliate and another without any indication in the Short-Term Credit Facility Agreement to that effect.

Considering that the subject of the instant claim for refund is petitioner’s zero-rated sales of services to its nonresident foreign affiliates, that is, other foreign affiliates under the Avaloq Group, and not Avaloq Group AG itself, the offsetting arrangements that petitioner must prove before this Court should pertain to said nonresident foreign affiliates, and not to Avaloq Group AG. As the records bear, however, **petitioner failed to submit, much less prove, that *separate* offsetting arrangements exist between it and other affiliates under the Avaloq Group.**

To reiterate, RMC No. 42-2003 provides that, in the case of offsetting arrangements, documents or correspondence regarding the same must be presented in lieu of proof of actual inward remittance of foreign currency proceeds in export sales in order to fulfill the requirement that payments be made in acceptable foreign currency and accounted for in accordance with BSP rules. It goes without saying that such offsetting arrangements must pertain to the taxpayer-claimant, *i.e.*, petitioner in this case, and the recipients of the services rendered, *i.e.*, 

¹²⁹

Heirs of Corazon Villeza, et al. v. Elizabeth S. Aliangan, et al., G.R. Nos. 244667-69 (Formerly UDK 16373-75), 02 December 2020.

other foreign affiliates under the Avaloq Group. Without such proof, petitioner cannot be said to have met the requirements for VAT zero-rating of its sales of services to said nonresident foreign affiliates.

Even assuming that the Short-Term Credit Facility Agreement adduced by petitioner is sufficient to prove that a valid offsetting arrangement existed between petitioner and its nonresident foreign affiliates, petitioner must still establish the actual details of the offsetting transaction that occurred.

In line with this, petitioner submitted an "Avaloq Group AG Current Account (Short-term Credit Facility) Offsetting Schedule 2019"¹³⁰ (**Offsetting Schedule**), the pertinent details of which are excerpted below:

OR Exhibit No.	Date	Particulars	Debit (US\$)	Credit (US\$)	Balance
					Debit+/Credit-
	31.12.2018	Saldo-Vortrag	1,381,605.42		1,381,605.42
"P-60-7"	01.01.2019	PAYM 2430000126 ASEU	80,901.35		1,462,506.77
"P-60-2"	01.01.2019	PAYM 2430000121	66,079.30		1,528,586.07
"P-60-1"	01.01.2019	PAYM 2430000119 ASAP	75,427.17		1,604,013.24
"P-60-3"	01.01.2019	PAYM 2430000122 ASSL	98,942.06		1,702,955.30
"P-60-4"	01.01.2019	PAYM 2430000123 EVO	84.94		1,703,040.24
"P-60-5"	01.01.2019	PAYM 2430000124 AU	20,269.71		1,723,309.95
"P-60-6"	01.01.2019	PAYM 2430000125 ASAP	19,304.38		1,742,614.33
"P-60-8"	01.01.2019	PAYM 2430000128 EVO	159.77		1,742,774.10
	01.01.2019	PAYM 2430000129 LICENCE	978,348.00		2,721,122.10
	09.01.2019	GROUP ACCOUNT FUND TRANSFER		400,000.00	2,321,122.10
	24.01.2019	GROUP ACCOUNT FUND TRANSFER		400,000.00	1,921,122.10
	01.02.2019	PAYM 2430000131	7,456.26		1,928,578.36
	01.02.2019	PAYM 2430000130		390,801.05	1,537,777.31
	22.02.2019	GROUP ACCOUNT FUND TRANSFER		500,000.00	1,037,777.31
	08.03.2019	GROUP ACCOUNT FUND TRANSFER		300,000.00	737,777.31
	15.03.2019	GROUP ACCOUNT FUND TRANSFER		500,000.00	237,777.31

OR Exhibit No.	Date	Particulars	Debit (US\$)	Credit (US\$)	Balance
					Debit+ / Credit-
	31.03.2019	PAYM 2430000132 EXPAT	7,412.64		245,189.95
	31.03.2019	Interest Q1	14,732.77		259,922.72
	31.03.2019	WHT on Interest Q1			259,922.72
	15.04.2019	Transfer Group/ Philippines		500,000.00	- 240,077.28
"P-60-11"	26.04.2019	PAYM IC Invoices 2430000133	1,954,144.49		1,714,067.21
"P-60-18"	28.04.2019	PAYM IC Invoices 2430000137	2,926.92		1,716,994.13
"P-60-12"	28.04.2019	PAYM IC Invoices 2430000135	521.68		1,717,515.81
"P-60-16"	28.04.2019	PAYM IC Invoices 2430000138	10,807.69		1,728,323.50
"P-60-17"	28.04.2019	PAYM IC Invoices 2430000143	86,742.40		1,815,065.90
"P-60-13"	28.04.2019	PAYM IC Invoices 2430000136	16,107.88		1,831,173.78
"P-60-15"	30.04.2019	PAYM IC Invoices 2430000141	102,344.72		1,933,518.50
"P-60-10"	26.04.2019	PAYM IC Invoices 2430000134	1,623.06		1,935,141.56
"P-60-14"	28.04.2019	PAYM IC Invoices 2430000140	774.36		1,935,915.92
	10.05.2019	Transfer Group/ Philippines		600,000.00	1,335,915.92
	12.05.2019	Transfer Group/ Philippines		500,000.00	835,915.92
	27.06.2019	PAYM IC Invoices 2430000144	5,679.08		841,595.00
	27.06.2019	PAYM IC Invoices 2430000145	16,918.66		858,513.66
	30.06.2019	Interest Q2	9,569.26		868,082.92
	30.06.2019	WHT on Interest Q2			868,082.92

A closer examination of the foregoing reveals that it only shows additions and deductions to the "Avaloq Group AG Current Account", proving that there were transfers of funds between Avaloq Group AG and its affiliates. However, it cannot be ascertained whether such loan transactions were treated as payments *specifically* for petitioner's services rendered to nonresident foreign affiliates within the covered period of the present refund claim. Without such explicit indication, it cannot be pinpointed nor presumed which loan proceeds were directly 

offset to which receivables. Clearly, therefore, the Offsetting Schedule failed to prove the actual details of the offsetting arrangement between petitioner's receivables from its nonresident foreign affiliates and the loan proceeds received from Avaloq Group AG.

Therefore, insofar as the 2nd requisite is concerned, while petitioner was able to prove that: (1) the recipients of its services are NRFCs; (2) the services rendered were not processing, manufacturing, or repacking of goods; and (3) the services were performed by petitioner in the Philippines, it nevertheless failed to establish that the consideration for the services was paid for in acceptable foreign currency *via* offsetting arrangements between petitioner and the other affiliates under the Avaloq Group. As such, **petitioner failed to meet the 2nd requisite for entitlement to VAT zero-rating.**

Even assuming that petitioner was able to adequately prove its offsetting agreement with nonresident foreign affiliates, the instant judicial claim must still be dismissed for failure to comply with invoicing and substantiation requirements under the 4th requisite.

4th REQUISITE:

INPUT VALUE-ADDED TAX (VAT)
CLAIMED WAS DUE OR PAID, EXCEPT
TRANSITIONAL INPUT TAX, TO THE
EXTENT THAT IT HAS NOT BEEN
APPLIED TO OUTPUT TAX

In order to prove the 4th requisite, it must be established that the input VAT claimed:

1. does not constitute transitional input tax;
2. has not been applied to output tax; and
3. was actually due and has been paid.

INPUT VALUE-ADDED TAX (VAT)
CLAIMED DOES NOT CONSTITUTE
TRANSITIONAL INPUT TAX



Section 111(A) of the NIRC of 1997, as amended, describes transitional input tax as follows:

...

SEC. 111. *Transitional/Presumptive Input Tax Credits.* —

(A) *Transitional Input Tax Credits.* – A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory according to rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to two percent (2%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax.

...

Transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisition of their beginning inventory of goods, materials and supplies. During the period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer.¹³¹

In the case at bar, considering that petitioner is not a newly VAT-registered person, as it was registered way back in 2013, the **claimed input taxes do not appear to be transitional input taxes** as understood under Section 111(A) of the NIRC of 1997, as amended.

INPUT VALUE-ADDED TAX (VAT)
CLAIMED HAS NOT BEEN APPLIED TO
OUTPUT VALUE-ADDED TAX (VAT)

In *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*¹³² (**Chevron**), the Supreme Court made a definitive declaration that a VAT-registered taxpayer has two (2) options with respect to its input VAT attributable to zero-rated sales, it may: (1) charge the same against output VAT from VATable sales, and claim for refund or issuance of a tax credit certificate (TCC) any

¹³¹ *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, et al.*, G.R. Nos. 158885 & 170680, 02 April 2009.

¹³² G.R. No. 215159, 05 July 2022; Citation omitted, emphasis in the original text and supplied.

unutilized or "excess" input VAT; or (2) claim the same for refund or issuance of a TCC in its entirety, viz:

...

[T]he input tax attributable to zero-rated sales may, at the option of the VAT-registered taxpayer, be: (1) charged against output tax from regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety. It must be stressed that the remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative. Furthermore, the option is vested with the taxpayer-claimant. It goes without saying that the CTA, and even the Court, may not, on its own, deduct the input tax attributable to zero-rated sales from the output tax derived from the regular twelve percent (12%) VAT-able sales first and use the resultant amount as the basis in computing the allowable amount for refund. The courts cannot condition the refund of input taxes allocable to zero-rated sales on the existence of "excess" creditable input taxes, which includes the input taxes carried over from the previous periods, from the output taxes. These procedures find no basis in law and jurisprudence.

...

Importantly, the Supreme Court's ruling in *Chevron* clarifies that if the taxpayer-claimant is requesting a refund of unutilized or unused input VAT from zero-rated sales (as opposed to the "excess" creditable input VAT from the output VAT), this amount is **inherently immediately refundable, given that there is no related output VAT** to offset it against, viz:

...

[T]o call the refundable input tax in Section 110(B), in relation to Section 112(A), "excess" input tax is a misnomer since **what is being applied for a refund or tax credit is the unutilized or unused input VAT from zero-rated sales**. As a matter of fact, there is no "excess" input tax attributable to zero-rated sales as there is no related output tax from which the input tax may be charged against. For context, in zero-rated transactions, the tax rate is set at zero percent. Consequently, the seller charges zero output tax. However, the seller may have incurred input taxes from its purchases of goods and/or services related to its sales. The input taxes previously charged by suppliers remain unutilized or unused until charged against the output tax from the non-zero-rated sale transactions in the same quarter that the input taxes were incurred or applied for a



refund or the issuance of tax credit certificate within two (2) years from the close of the taxable quarter when the related sales were made.¹³³

...

This precisely applies to the case at bar. As shown in the Amended Quarterly VAT Returns¹³⁴ for Q1 and Q2 2019, petitioner did not declare any other type of sale except zero-rated sale of services to nonresident foreign affiliates. As there is no output VAT to begin with, any input VAT paid by petitioner is inherently immediately refundable.

PETITIONER FAILED TO ADEQUATELY
SUBSTANTIATE ITS PURPORTED INPUT
VALUE-ADDED TAX (VAT) PAYMENTS

In its Amended Quarterly VAT Returns¹³⁵ for Q1 and Q2 2019, petitioner reported a total input VAT of ₱4,403,906.09, derived from amortized input VAT on purchases of capital goods exceeding ₱1 million, purchase of capital goods not exceeding ₱1 million, domestic purchase of goods other than capital goods, and domestic purchase of services. The entire amount is the subject of the present claim for refund, as detailed below:

Item	CY 2019	1 st Quarter	2 nd Quarter	Total
Amortization of Capital Goods Exceeding ₱1 million:				
20B	Input tax <i>deferred</i> on capital goods exceeding ₱1 million from previous period	3,119,819.15	2,796,899.32	5,916,718.47
21D	Input tax on purchase of capital goods exceeding ₱1 million	373,772.70	-	373,772.70
	<i>Total</i>	3,493,591.85	2,796,899.32	6,290,491.17
23A	<i>Less:</i> Input tax on purchases of capital goods exceeding ₱1 million deferred for the succeeding period	2,796,899.32	2,108,093.80	4,904,993.12
<i>Amortized Input Tax on Capital Goods Exceeding ₱1 million</i>		696,692.53	688,805.52	1,385,498.05

¹³³ Supra at note 131; Citations omitted, emphasis in the original text and supplied.

¹³⁴ Supra at note 8.

¹³⁵ Id.

Item	CY 2019	1 st Quarter	2 nd Quarter	Total
Current Input Taxes:				
21B	Purchase of capital goods not exceeding ₱1 million	4,500.00	59,033.42	63,533.42
21F	Domestic purchase of goods other than capital goods	36,956.29	14,974.27	51,930.56
21J	Domestic purchase of services	1,520,613.96	1,382,330.10	2,902,944.06
<i>Total Current Input Tax</i>		1,562,070.25	1,456,337.79	3,018,408.04
Total Allowable Input VAT		2,258,762.78	2,145,143.31	4,403,906.09
15B	Less: Output VAT	-	-	-
Amount of refund claim		2,258,762.78	2,145,143.31	4,403,906.09

To establish entitlement to refund for input taxes due or paid, petitioner must not only present the supporting documents prescribed under Section 4.110-8 of Revenue Regulations (RR) No. 16-2005, but also satisfy the substantiation and invoicing requirements under the NIRC of 1997, as amended, and other implementing rules and regulations,¹³⁶ particularly Sections 113(A) and (B), 237, and 238 of the NIRC of 1997, as amended, as implemented by Section 4.113-1(A) and (B) of RR No. 16-2005, as amended.

Verily, in *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue*,¹³⁷ the Supreme Court elucidated that:

...
Case law dictates that in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements therefor. Section 110(A)(1) of the NIRC provides that creditable input taxes must be evidenced by a VAT invoice or official receipt, which must, in turn, comply with Sections 237 and 238 of the same law, as well as Section 4.108.1 of RR 7-95. The foregoing provisions require, *inter alia*, that an invoice must reflect, as required by law: (a) the BIR Permit to Print; (b) the TIN-V of the purchaser; and (c) the word "zero-rated" imprinted thereon. In this relation, failure to comply with the said invoicing requirements provides sufficient ground to deny a claim for tax refund or tax credit.

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Team Energy Corporation (Formerly: Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) v. Commissioner of Internal Revenue, G.R. Nos. 197663 & 197770, 14 March 2018.

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G.R. No. 171307, 28 August 2013; Citations omitted, emphasis and italics in the original text.

In this case, records show that all of the export sales invoices presented by petitioner not only lack the word "zero-rated" but also failed to reflect its BIR Permit to Print as well as its TIN-V. Thus, it cannot be gainsaid that it failed to comply with the above-stated invoicing requirements, thereby rendering improper its claim for tax refund. Clearly, compliance with all the VAT invoicing requirements is required to be able to file a claim for input taxes attributable to zero-rated sales. As held in *Microsoft Philippines, Inc. v. CIR*:

The invoicing requirements for a VAT-registered taxpayer as provided in the NIRC and revenue regulations are clear. **A VAT-registered taxpayer is required to comply with all the VAT invoicing requirements to be able to file for a claim for input taxes on domestic purchase for goods or services attributable to zero-rated sales.** A "VAT invoice" is an invoice that meets the requirements of Section 4.108-1 of RR 7-95. Contrary to Microsoft's claim, RR-7-95 expressly states that "[A]ll purchases covered by invoice other than a VAT invoice shall not give rise to any input tax. Microsoft's invoice, lacking the word "zero-rated," is not a "VAT invoice," and thus cannot give rise to any input tax.

...

Compliance with invoicing requirements is mandatory due to the word "shall" and not "may". Hence, non-compliance with any thereof would disallow any claim for tax credit or VAT refund.¹³⁸ Strict compliance with substantiation and invoicing requirements is necessary considering VAT's nature and 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.¹³⁹

Based on the records of the case and the ICPA's findings,¹⁴⁰ not all of petitioner's claimed input VAT were supported by invoices, ORs, and other supporting documents. Moreover, several of the submitted documents did not meet the invoicing and substantiation requirements

¹³⁸ *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, 25 March 2015.

¹³⁹ *Team Energy Corporation v. Commissioner of Internal Revenue*, supra at note 136.

¹⁴⁰ See ICPA Report, supra at note 46.

under the law and rules. In particular, several documents were found: (1) containing countersigned corrections, but without a sworn certification of the person making the correction; (2) lacking in the nature of service, TIN, VATable amount, and VAT amount; (3) containing an incomplete or incorrect address, and incorrect business style; and (4) with dates not within the covered period of the instant VAT refund claim. As such, only the following amounts were supported by sales invoices:

Description	Amount reported per VAT Return	Amount supported by sales invoices	Exhibit Reference
Input tax on purchase of capital goods exceeding ₱1 million – Q1 2019	373,772.70	373,772.70	"P-74-1", "P-74-2", "P-74-3" ¹⁴¹
Purchase of capital goods not exceeding ₱1 million:			
• Q1 2019	4,500.00	4,500.00	"P-72-44" ¹⁴²
• Q2 2019	59,033.42	10,037.14	"P-72-4", "P-72-27" ¹⁴³
Domestic purchase of goods other than capital goods:			
• Q1 2019	36,956.29	30,264.65	"P-72-1", "P-72-2", "P-72-3", "P-72-11", "P-72-12", "P-72-16", "P-72-17", "P-72-25" ¹⁴⁴
• Q2 2019	14,974.27	10,195.70	"P-72-8", "P-72-9", "P-72-10", "P-72-18", "P-72-19" ¹⁴⁵
Domestic purchase of services:			
• Q1 2019	1,520,613.96	1,311,971.22	"P-72-5", "P-72-6", "P-72-13", "P-72-14", "P-72-15", "P-72-21", "P-72-22", "P-72-23", "P-72-24", "P-72-26", "P-72-28", "P-72-32", "P-72-33", "P-72-34", "P-72-35", "P-72-36", "P-72-39", "P-72-40", "P-72-43", "P-73-3", "P-73-6", "P-73-7", "P-73-8", "P-73-9", "P-73-10", "P-73-11", "P-73-12" ¹⁴⁶
• Q2 2019	1,382,103.21	1,191,228.09	"P-72-7", "P-72-20", "P-72-29",

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Sales Invoices, see Exhibit "P-44-1", USB.
Id.
Id.
Id.
Id.
Id.

Description	Amount reported per VAT Return	Amount supported by sales invoices	Exhibit Reference
			"P-72-30", "P-72-31", "P-72-37", "P-72-38", "P-72-41", "P-72-42", "P-73-1", "P-73-4", "P-73-5", "P-73-13", "P-73-14", "P-73-15", "P-73-16", "P-73-17", "P-73-18", "P-73-19", "P-73-20", "P-73-21" ¹⁴⁷

However, the First Division, in its Resolution dated 09 October 2024,¹⁴⁸ **denied the admission of Exhibits "P-72-1" to "P-72-44", "P-73-1" to "P-73-22", "P-74-1" to "P-74-6", "P-75-1" to "P-75-134", and "P-76-1" to "P-76-5" for failure of the ICPA to specifically identify these exhibits in the ICPA Report, and thus, cannot be considered by this Court in arriving at a decision. Accordingly, petitioner failed to discharge the burden of proof to establish that the claimed input VAT has been paid, in accordance with the 4th requisite for VAT zero-rating.**

Therefore, insofar as the 4th requisite is concerned, while petitioner was able to demonstrate that the input VAT claimed: (1) does not constitute transitional input VAT; and (2) were not offset against output VAT, it nevertheless fell short in substantiating its claimed that the input VAT has been paid. As such, **petitioner also failed to satisfy the 4th requisite for entitlement to VAT zero-rating.**

In summary, petitioner was only able to meet the 1st and 3rd requisites (i.e., VAT registration and timely filing of administrative and judicial claims), but failed to comply with the 2nd requisite, i.e., to establish that its export sales for Q1 and Q2 2019 were paid for in acceptable foreign currency through an offsetting arrangement, and 4th requisite, i.e., to properly substantiate input VAT payments for the relevant period. Accordingly, the present Petition for Review must necessarily fail. 

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Id.

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Supra at note 51.

In *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*,¹⁴⁹ the Supreme Court explained that the burden of proof in refund cases is on the taxpayer-claimant, and that such cases are construed strictly against the taxpayer, to wit:

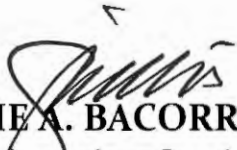
...

On a final note, the Court reiterates its consistent ruling that **actions for tax refund or credit, as in the instant case, 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. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.** Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed. Thus, in view of petitioner's failure to prove, to the satisfaction of the Court, its entitlement to the grant of tax refund or issuance of tax credit of input VAT in the amount of P123,459,647.70 it inadvertently failed to include in its VAT Return, the Court deems it necessary to deny the same.

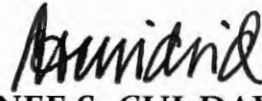
...

WHEREFORE, premises considered, the instant Petition for Review filed by petitioner Avaloq Philippines Operating Headquarters on 21 October 2021 is hereby **DENIED**.

SO ORDERED.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

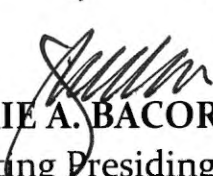

LANEE S. CUI-DAVID
Associate Justice

¹⁴⁹

G.R. No. 222428, 19 February 2018; Citations omitted and emphasis supplied.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.


JEAN MARIE A. BACORRO-VILLENA
Acting Presiding Justice