REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

SANKYU-ATS CONSORTIUM-B, *Petitioner,*	**CTA Case No. 10527**
	Members:
-versus-	**MANAHAN,** *Chairperson,* **REYES-FAJARDO,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 15 2025 10:00 a.m.

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DECISION

MANAHAN, *J.*:

This is a *Petition for Review*[1] filed by petitioner Sankyu-ATS Consortium-B (Sankyu-ATS) against respondent Commissioner of Internal Revenue (CIR) on May 21, 2021, praying that respondent's decision in his Letter dated April 14, 2021 (Notice of Denial),[2] which denied petitioner's administrative claim for refund, be annulled, reversed, and set aside, and that a new judgment be rendered ordering respondent to refund or issue a tax credit certificate (TCC) in the amount of Php2,517,861.68, representing its excess and unutilized input value-added tax (VAT) for the fourth (4th) quarter of taxable year (TY) 2018.[3]

THE PARTIES

Petitioner Sankyu-ATS is a consortium duly created by virtue of a Consortium Agreement between ATS Construction International, Inc. and Sankyu, Inc. on October 4, 2017. It is a VAT-registered taxpayer with Tax Identification Number (TIN)

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[1] Docket, CTA Case No. 10527, Vol. I, pp. 6-21.
[2] *Id.*, Vol. II, Exhibit "P-10", p. 1005.
[3] *Id.*, Vol. I, Prayer, Petition for Review, p. 20.

710-338-514-000, engaged in supplying services and construction materials.[4]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), vested by law to enforce and implement the provisions of the 1997 National Internal Revenue Code (NIRC), as amended, as well as related statutes and their implementing rules and regulations. He may be served with orders and processes of this Honorable Court through the BIR Litigation Division at Room 703, BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

THE FACTS

On November 23, 2020, petitioner filed an Application Letter dated November 19, 2020 for VAT refund on its alleged excess and unutilized input VAT for the 4th quarter of TY 2018.[6]

On April 23, 2021, petitioner received a letter dated April 14, 2021 from BIR Revenue District Office (RDO) No. 98, Cagayan De Oro, denying its application for VAT Refund for failure to comply with the complete documentary requirements and failure to file within the prescribed period.[7]

Thus, on May 21, 2021, petitioner filed the instant petition.

On July 1, 2021, this Court directed petitioner to submit a compliant verification and certification against forum shopping, the certified copy of its Consortium Agreement, and the certified copy of petitioner's Board Resolution authorizing Mr. Miguelito E. Acobera to file the instant petition.[8]

On November 15, 2021, petitioner submitted its *Amended Petition for Review*[9] together with its annexes.[10] The Court noted and admitted said compliance.[11]

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[4] Docket, Vol. I, Joint Stipulation of Facts and Issues (JSFI), p. 604.
[5] *Id.*, Vol. I, JSFI, p. 604.
[6] *Id.*, Vol. II, Exhibit "P-5", pp. 982-995.
[7] *Supra*, Note 2.
[8] Docket, Vol. I, Resolution dated July 1, 2021, pp. 56-57.
[9] *Id.*, Vol. I, Annex B, Compliance (To Resolution dated 01 July 2021), pp. 68-95.
[10] *Id.*, Vol. I, Compliance (To Resolution dated 01 July 2021), pp. 58-63.
[11] *Id.*, Vol. I, Resolution dated February 7, 2022, pp. 165-166.

On April 25, 2022, respondent submitted his Answer[12] after the Court granted[13] his Motion for Extension of Time to File *Answer*[14] with the following special and affirmative defenses, to wit:

1. The Court has no jurisdiction over the instant petition;

2. Petitioner has no cause of action;

3. It is incumbent upon petitioner to prove that it is entitled to the refund sought because a claim for refund is not *ipso facto* granted upon filing of the claim; and

4. Tax refunds are strictly construed against the taxpayer and in favor of the government.

On May 6, 2022, the Court scheduled the Pre-trial Conference of the instant case on July 7, 2022 and directed the parties to submit their respective pre-trial briefs.[15] Petitioner filed its *Pre-Trial Brief*[16] on July 4, 2022 while respondent submitted his *Pre-Trial Brief*[17] on July 6, 2022.

On July 22, 2022, petitioner filed a *Motion for Commissioning of Independent Certified Public Accountant* (ICPA).[18]

On July 28, 2022, the parties submitted their Joint Stipulation of Facts.[19] On September 7, 2022, the Court issued the *Pre-Trial Order*.[20] Then trial ensued.

Petitioner presented its witness, Ms. Yvonne Karla M. Telan, on September 27, 2022[21] and the ICPA on March 8, 2023.[22]

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[12] Docket, Vol. I, pp. 177-192.
[13] *Id.*, Vol. I, Resolution dated March 29, 2022, p. 176.
[14] *Id.*, Vol. I, pp. 170-173.
[15] *Id.*, Vol. I, Notice of Pre-trial Conference, pp. 505-507.
[16] *Id.*, Vol. I, pp. 514-521.
[17] *Id.*, Vol. I, pp. 543-546.
[18] *Id.*, Vol. I, 575-578.
[19] *Id.*, Vol. I, 604-610.
[20] *Id.*, Vol. I, 661-672.
[21] *Id.*, Vol. II, Minutes of the Hearing held on September 27, 2022.
[22] *Id.*, Vol. II, Minutes of the Hearing held on March 8, 2023, pp. 820-821.

On March 27, 2023, petitioner filed its *Formal Offer of Evidence*.[23] Although the Court admitted some of petitioner's exhibit, it denies the admission of petitioner's Exhibits "P-1", "P-2", "P-3", "P-4", "P-4-a", "P-4-b", "P-4-c", "P-5", "P-6", "P-7", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", and "P-17-a" for failure to submit the duly marked exhibits.[24]

Thus, petitioner filed a *Motion for Partial Reconsideration*[25] on such ruling on June 22, 2023 which the Court granted and admitted said exhibits on October 9, 2023.[26] Hence, petitioner rested its case.

On February 6, 2024, respondent presented his witness, Revenue Officer Christine Joy A. Jungoy.[27] On even date, the parties were directed to submit their respective memoranda.[28]

On February 12, 2024, respondent filed his *Formal Offer of Evidence*[29] which the Court admitted his Exhibits "R-1", "R-2", "R-3", and "R-4" under the Court's Resolution dated April 1, 2024.[30]

On May 6, 2024, petitioner submitted its *Memorandum*.[31] On May 7, 2024, respondent filed a *Manifestation*[32] which stated that he is adopting the arguments in his *Answer* as his Memorandum. Thus, the Court submitted the instant case for decision on May 15, 2024.

ISSUES

The issues to be resolved by the Court are the following:[33]

1. Whether petitioner is entitled to a tax refund or the issuance of the issuance of a TCC for the fourth (4th) quarter of TY 2018 in the amount of Php2,517,861.68 representing

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[23] Docket, Vol. II, pp. 824-831.
[24] *Id.*, Vol. II, Resolution dated June 1, 2023, pp. 950-952.
[25] *Id.*, Vol. II, pp. 961-969.
[26] *Id.*, Vol. II, Resolution October 9, 2023, pp. 1030-1031.
[27] *Id.*, Vol. II, Minutes of the Hearing held on February 6, 2024, p. 1043.
[28] *Id.*, Vol. II, Order dated February 6, 2024, pp. 1044-1045.
[29] *Id.*, Vol. II, pp. 1048-1051.
[30] *Id.*, Vol. II, pp. 1060-1061.
[31] *Id.*, Vol. II, Memorandum for Refund and/or Issuance of Tax Credit Certificate (for Petitioner), pp. 1064-1104.
[32] *Id.*, Vol. II, pp. 1106-1108.
[33] *Id.*, Vol. I, Minutes of the Hearing held on July 7, 2022, pp. 553-555.

excess and/or unutilized input VAT for the 4th quarter of TY 2018; and

2. Whether respondent's denial of petitioner's administrative claim for VAT refund filed together with the complete supporting documents is proper.

Petitioner's Arguments[34]

Petitioner argues that it successfully filed its administrative claim for refund within the prescriptive period and that the Notice of Denial dated April 14, 2021 was the denial contemplated by law from which an appeal to this Court may be made and that it timely filed its judicial claim for refund within the prescribed period.

Petitioner insists that it is entitled to a VAT refund and/or issuance of TCC in the amount of Php2,517,861.68 which was attributable to its zero-rated sales in the 4th quarter of TY 2018 considering that: (1) it is a VAT-registered taxpayer; (2) its sales amounting to Php63,200,000.00 for the 4th quarter of TY 2018 were VAT zero-rated sales; (3) it paid the input taxes attributable to its VAT zero-rated sales for the 4th quarter of TY 2018; (4) it had excess input VAT for the 4th quarter of TY 2018 that were not applied against any output VAT liability nor utilized for any subsequent quarter; and (5) it timely filed its administrative and judicial claim for refunds within the prescribed period.

Petitioner further insists that respondent's non-acceptance of its administrative claim for VAT refund together with the complete supporting documents was bereft of legal basis.

Respondent's Arguments[35]

Respondent argues that the Court has no jurisdiction over the instant petition and that petitioner has no cause of action.

Respondent insists that it is incumbent upon petitioner to prove that it is entitled to the refund sought because a claim for

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[34] *Supra*, Note 31.
[35] *Supra*, Note 14.

refund is not ipso facto granted upon filing of the claim and that tax refunds are strictly construed against the taxpayer and in favor of the government.

RULING OF THE COURT

Requisites for the grant of the refund or issuance of Tax Credit Certificate under the law.

Section 112(A) and (C) of the 1997 NIRC, as amended, by Republic Act (RA) No. 10963, provides, in part, as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund 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."

Based on the aforequoted provision of Section 112 of the 1997 NIRC, as amended, jurisprudence has laid down certain requisites which the taxpayer-applicant must comply with to successfully obtain a credit/refund of input VAT. Said requisites may be classified into the following categories:

<u>As to the timeliness of the filing of the administrative and judicial claims</u>:

1. the refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[36]

2. in case of full or partial denial of the refund claim rendered within a period of ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision;[37]

<u>With reference to the taxpayer's registration with the BIR</u>:

3. the taxpayer is a VAT-registered person;[38]

<u>In relation to the taxpayer's output VAT</u>:

4. the taxpayer is engaged in zero-rated or effectively

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

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

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

zero-rated sales;[39]

5. for zero-rated sales under Sections 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[40]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[41]

7. the input taxes are due or paid;[42]

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[43] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[44]

It must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[45]

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[39] *Ibid.*
[40] *Ibid.*
[41] *Ibid.*
[42] *Ibid.*
[43] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue, supra.*
[44] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, supra*; *San Roque Power Corporation vs. Commissioner of Internal Revenue, supra*; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue, supra.*
[45] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal*

Thus, it behooves petitioner to show compliance with each of the foregoing requisites. As a corollary, the absence of *any* of the said requisites is already a valid ground to deny the refund claim.

Petitioner's administrative claim for refund was timely filed.

The *first* requisite pertains to the filing of a claim for tax refund or tax credit of input VAT before the BIR, within two (2) years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the 4th quarter of TY 2018. Counting from the close of the said quarter, the following table indicates the pertinent last day for the filing of an administrative claim for the concerned quarter/period, to wit:

Period FY 2018	**Close of the taxable quarter**	**Last day to file Administrative Claim**
4th	December 31, 2018	December 30, 2020

Petitioner filed its administrative claims for refund on November 23, 2020. Thus, there is no dispute that petitioner timely filed such claim for refund for the said quarter.

The judicial claim was also filed on time.

As regards the *second* requisite, the same necessitates that the judicial claim must have been filed within thirty (30) days from receipt of respondent's decision or after the expiration of the ninety (90)-day period under Section 112(C) of the 1997 NIRC, as amended.

"In *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue,*[46] the Supreme Court summarized the rules regarding the prescriptive periods for the administrative and judicial claims for refund or

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Revenue, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

[46] G.R. No. 173241, March 25, 2015, citing *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*, G.R. No. 191498, January 15, 2014.

tax credit of input VAT. The pertinent rules for the judicial claim are quoted below:

> "**B. 120(now 90) + 30-Day Period**
>
> 1. The taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within 120-day (now 90-day) period, or (2) file the judicial claim within thirty days from the expiration of the 120-day (now 90-day) period if the Commissioner does not act within the 120-day (now 90-day) period.
>
> 2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.
>
> 3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. *(Aichi and San Roque).*
>
> 4. As an exemption to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03 was still in force. *(San Roque).*
>
> 5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. *(San Roque).*"

In *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*,[47] the Supreme Court stated:

> "A final note, the taxpayers are reminded that when the 120-day (now 90-day) period lapses and there is inaction on the part of the CIR, they must no longer wait for it to come up with a decision thereafter. The CIR's inaction is the decision itself. It is already a denial of the refund claim. Thus, the taxpayer must file an appeal within 30 days from the lapse of the 120-day (now 90-day) waiting period."

The Supreme Court has also stated that 'any claim filed in a period less than or beyond the 120+30 (now 90+30) days provided by the 1997 NIRC, as amended, is outside the jurisdiction of the Court of Tax Appeals.[48]

Thus, from the filing of petitioner's administrative claim on November 23, 2020, respondent had ninety (90) days or until

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[47] G.R. No. 168950, January 14, 2015, see also *Lapanday Foods Corporation vs. Commissioner of Internal Revenue*, G.R. No. 252821, September 2, 2020.

[48] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016.

February 21, 2021, to act on the said claim. In case of inaction within the said ninety (90)-day period, petitioner has thirty (30) days from such expiration to file its judicial claim, or until March 23, 2021.

However, under Revenue Regulations (RR) No. 27-2020 dated October 6, 2020, the processing of VAT refunds with calendar ending December 31, 2018 was extended until February 15, 2021.

Pursuant to Section 4 of the same regulation, the ninety (90)-day processing shall be suspended until December 19, 2020. Hence, the ninety (90)-day processing period should commence on December 20, 2020 until March 20, 2021.

Further, the Supreme Court issued Administrative Circular (AC) Nos. 14-2021, 15-2021, 21-2021, 22-2021, 29-2021, and 33-2021 which suspended the operation of the courts starting March 29, 2021.

It was only in AC No. 33-2021 which directed the courts to resume its operation starting May 17, 2021. In AC No. 29-2021, the filing and service of pleadings and motions shall resume after seven (7) calendar days from the physical reopening of the courts. Thus, the filing and service of pleadings and motions shall resume on May 24, 2021.

In the present case, the instant petition was filed on May 21, 2021. Hence, the filing of the instant petition as petitioner's judicial claim for refund on May 21, 2021 was on time.

Third requisite: Petitioner is a VAT-registered entity.

Petitioner has shown compliance with the *third* requisite as it is undisputed that petitioner is a VAT-registered taxpayer with TIN No. 710-338-514-000 engaged in supplying services and construction materials.[49]

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[49] Docket, Vol. I, Par. 1, Facts Admitted, JSFI, p. 604.

Fourth and Fifth requisites: Petitioner failed to establish that it is engaged in zero-rated sales or effectively zero-rated sales during the 4th quarter of TY 2018.

The *fourth* and *fifth* requisites mandates that the taxpayer be engaged in zero-rated or effectively zero-rated sales and for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2) of the 1997 NIRC, as amended, and that the acceptable foreign currency exchange proceeds thereof have been duly accounted for in accordance with BSP rules and regulations.

In its Amended Quarterly VAT Return for the 4th quarter of TY 2018, petitioner reported a total sales of Php63,200,000.00, which entirely pertained to zero-rated sales.[50]

Petitioner claims that the said zero-rated sales of Php63,200,000.00 for the 4th quarter of TY 2018 were sourced entirely from supplying services and construction materials to Philippine Sinter Corporation (PSC), a Philippine Economic Zone Authority (PEZA)-registered enterprise at the Phividec Industrial Estate – Economic Zone.

Pertinent to the determination of VAT zero-rating of the alleged sales of goods and services to a PEZA-registered entity are the provisions of Sections 106(A)(2)(a)(5) and (c) and 108(B)(3) of the 1997 NIRC, as amended, which respectively state:

> "SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* – xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* - The term '**export sales**' means:
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> xxx xxx xxx

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[50] Docket, Vol. II, Exhibit "P-4", Line 17, p. 978.

(5) **Those considered export sales under** Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and **other special laws**."

xxx xxx xxx

(c) **Sales to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects such sales to zero rate**." *(Emphasis supplied)*

"SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.*-

xxx xxx 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:

xxx xxx xxx

(3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects the supply of such services to zero percent (0%) rate**;" *(Emphasis supplied)*

Relative thereto, Sections 4.106-5 and 4.108-5 of RR No. 16-2005, as amended by RR No. 4-2007, also provide:

"SEC. 4.106-5. ***Zero-Rated Sales of Goods or Properties.*** – x x x

The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) Export sales. – *'Export Sales'* shall mean:

xxx xxx xxx

(5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.

'Considered export sales under Executive Order No. 226' shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; *Provided*, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; *Provided, further,* That *pursuant to EO 226 and other special laws*, even without actual exportation, the following shall be considered constructively exported: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones; (3) sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA 7227; (4) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (5) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not.

xxx xxx xxx

(c) **'Sales to Persons or Entities Deemed Tax-exempt under Special Law or International Agreement'**– Sales of goods or property to persons or entities who are tax-exempt under special laws or international agreements to which the Philippines is signatory, such as, Asian Development Bank (ADB), International Rice Research Institute (IRRI), etc., shall be effectively subject to VAT at zero-rate." *(Underlining supplied)*

"SEC. 4.108-5. Zero-Rated Sale of Services. –

xxx xxx xxx

(b) *Transactions Subject to Zero Percent (0%) VAT Rate.* – The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate:

xxx xxx xxx

(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;" *(Underlining supplied)*

The special law that specifically applies to this case is RA No. 7916, as amended by RA No. 8748, otherwise known as *"The Special Economic Zone Act of 1995"*. The relevant portions of said law read as follows:

> "SECTION 8. *ECOZONE to be Operated and Managed as Separate Customs Territory.* – **The ECOZONE shall be managed and operated by the PEZA as separate customs territory**.
>
> The PEZA is hereby vested with the authority to issue certificate of origin for products manufactured or processed in each ECOZONE in accordance with the prevailing rules of origin, and the pertinent regulations of the Department of Trade and Industry and/or the Department of Finance." *(Emphasis supplied)*
>
> "SECTION 24. *Exemption form National and Local Taxes.* – Except for real property taxes on land owned by developers, **no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE**. x x x" *(Emphasis supplied)*

Since the ecozone is viewed as a foreign territory by legal fiction, sales of goods and services made by a VAT-registered person in the Philippine customs territory to an entity registered and operating within the ecozone are considered exports to a foreign country subject to zero percent (0%) VAT. This was elucidated by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.,*[51] to wit:

> "This Court agrees, however, **that PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory**.
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> xxx An ECOZONE or a Special Economic Zone has been described as —
>
> xxx [S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may

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[51] G.R. No. 150154, August 9, 2005.

> contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.
>
> The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.
>
> Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.
>
> Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?
>
> **The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of** goods and **services from the Philippines to a foreign country must be free of VAT**; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT[52]." *(Emphasis supplied)*

Based on the foregoing, the following essential elements must be present in order for an export sale to qualify for VAT zero-rating under Sections 106(A)(2)(a)(5) and (c) and 108(B)(3) of the 1997 NIRC, as amended:

1. the sale was made by a VAT registered person; and

2. the sale of goods or service must be to an entity entitled to incentives under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987 (OIC), or other special laws.

As regards the *first* essential element, it is already settled that petitioner is a VAT-registered person.

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[52] Now at 12% VAT rate.

As for the *second* essential element any VAT-registered person claiming VAT zero-rated sale under OIC or other special laws must present, among others, the following documents:

1. The proof of the buyer's entitlement to tax incentives under OIC or other special laws; and

2. The Sales Invoice (SI) and Official Receipt (OR) as proof of sale of goods and service, respectively.

With regard to the first type of document, considering that petitioner's alleged sales to PSC fall under other special laws, particularly RA No. 7916, as earlier discussed, petitioner presented the PEZA Certification with Certificate No. 2018-0929,[53] showing that PSC is a PEZA-registered Ecozone Export Enterprise with Registration Certificate No. 11-04 dated January 31, 2011 and that the latter is entitled to VAT zero-rating for TY 2018.

Corollary to the second type of document, the said SIs (for sales of goods) and ORs (for sales of services) must comply with the pertinent invoicing requirements provided under Section 113(A) and (B) of the 1997 NIRC, as amended, to wit:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> (A) *Invoicing Requirements.* — A VAT-registered person shall issue:
>
> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
>
> (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that

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[53] Docket, Vol. II, Exhibit "P-2", p. 971.

such amount includes the value-added tax: *Provided,* That:

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

xxx xxx xxx

(c) If the sale is subject to zero percent (0%) value-added tax, the term '**zero-rated sale**' shall be written or printed prominently on the invoice or receipt;

xxx xxx xxx

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and xxx"

(4) In the case of sales in the amount of one thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client."

This is further implemented by Section 4.113-1(A) and (B) of RR No. 16-2005, as amended, which are all quoted hereunder:

"SEC. 4.113-1. *Invoicing Requirements. —*

(A) *A VAT-registered person shall issue: —*

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or official receipts. Said documents shall be considered as a 'VAT Invoice' or 'VAT official receipt'. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) *Information contained in VAT invoice or VAT official receipt.* — The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided,* That:

(a) The amount of tax shall be shown as a separate item in the invoice or receipt;

xxx xxx xxx

(c) If the sale is subject to zero percent (0%) VAT, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;

xxx xxx xxx

(3) In the case of sales in the amount of one thousand pesos (₱1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section."

In addition to the above requirements, the SIs and ORs must be duly registered with the BIR pursuant to Section 237, in relation to Section 238, both of the 1997 NIRC, as amended, *viz*:

"SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale and transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: xxx"

"SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

Based on the Schedule of Zero-Rated Sale of Services,[54] the ICPA accounted for several ORs corresponding to a total of Php61,000,000.00 sales to PSC, as presented below:

Official Receipt		Name of Customer/ Contractee	Amount Billed (in Php)
No.	Date		
0051	11/26/2018	Philippine Sinter Corporation	19,800,000.00
0254	12/19/2018	Philippine Sinter Corporation	11,640,000.00
0253	12/19/2018	Philippine Sinter Corporation	27,160,000.00
0255	12/19/2018	Philippine Sinter Corporation	2,400,000.00
		Total	**61,000,000.00**

Considering that only Php61,000,000.00 sales to PSC were accounted for by the ICPA, out of the Php63,200,000.00 zero-rated sales reported in petitioner's VAT return, the difference thereon, in the amount of Php2,200,000.00, shall be denied VAT zero-rating for being unaccounted/unsupported.

Meanwhile, the Php61,000,000.00 zero-rated sales to PSC as found by the ICPA were supported by scanned copies of ORs without exhibit markings, which can be found in the USB marked as Exhibit "P-21" under the "Billing Invoices and Official Receipts" folder.

While the said USB was offered to and admitted by this Court per the Resolution dated June 1, 2023,[55] the latter, in the same Resolution, noted that the ICPA exhibits were not formally offered and the scanned copies of various documents supporting the ICPA Report saved in the USB were not individually marked. The pertinent portion of the said Resolution reads as follows:[56]

[54] See Annex A.1.3 of the ICPA Report, USB (Exhibit "P-21") under "Deliverables" folder.
[55] Docket, Vol. II, p. 950.
[56] *Id.* at p. 951.

> "In addition, the Court **NOTES** that the Independent Certified Public Accountant (ICPA) Exhibits **'P-1-ICPA', 'P-2-ICPA', 'P-3-ICPA', 'P-4-ICPA', 'P-5-ICPA', 'P-6-A-ICPA' to 'P-6-I-ICPA', 'P-7-ICPA', 'P-8-ICPA', 'P-9-ICPA', 'P-9.1-A-ICPA' to 'P-9.1-BL-ICPA', 'P-10.1-A-ICPA' to 'P-10.1-GVL-ICPA', 'P-16-A-ICPA' to 'P-16-C-ICPA', 'Annex A-ICPA', 'Annex A.1.3-ICPA', 'Annex A.1.6-ICPA', 'Annex B-ICPA', 'Annex B.1-ICPA', 'Annex B.2-ICPA', 'Annex B.3-ICPA',** and **'Annex C.1-ICPA' to 'Annex C.13-ICPA'** were not formally offered, hence, were not considered in resolving the instant Formal Offer of Evidence (Petitioner). Also, the scanned copies of various documents supporting the ICPA Report saved in the USB marked as Exhibit 'P-21', were not individually marked (no exhibit number markings). Hence, even if offered, the same will have to be denied for failure to mark the same. Even the ICPA Annexes/Schedules do not bear any exhibit number reference of the documents listed therein."

Since the said scanned ORs, together with other ICPA supporting documents, were not formally offered to and admitted as evidence by this Court, nor were duly identified and marked as exhibits, the same cannot be considered as valid proof or support for petitioner's alleged zero-rated sales.

In this regard, and considering that no other documents were submitted to substantiate its alleged zero-rated sales to PSC, petitioner has fallen short in establishing that it is engaged in zero-rated or effectively zero-rated sales for TY 2018. Hence, the *fourth* requisite was not fulfilled.

Needless to state, it is only when the sales of a VAT-registered person are zero-rated or effectively zero-rated that such person may have the option of applying for the issuance of a TCC or refund of creditable input tax due or paid attributable to such sales.[57] Considering petitioner's failure to establish its zero-rated or effectively zero-rated sales for TY 2018, the instant *Petition for Review* must necessarily fail.

To reiterate, actions for tax refund, as in the present 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.[58] Hence, an applicant for a claim for tax refund or tax credit must

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[57] *Coca-Cola Bottlers Philippines, Inc. vs Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018.

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

not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements therefor.[59] Strict adherence to the conditions prescribed by law is required of the taxpayer.[60]

Further, it must be emphasized that in cases filed before this Court, which are *litigated de novo,* party-litigants must prove every minute aspect of their case.[61] The burden is on the taxpayer to show that it has strictly complied with the conditions for the grant of the tax refund or credit.[62]

WHEREFORE, premises considered, the instant *Petition for Review* is hereby **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice

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[59] *J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 171307, August 28, 2013.
[60] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue,* G.R. No. 205282, January 14, 2019.
[61] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, et seq.,* G.R. Nos. 201665 and 201668, August 30, 2017.
[62] *Commissioner of Internal Revenue vs. San Roque Power Corporation,* G.R. No. 187485, February 12, 2013.

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