REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10620

FOUNDEVER PHILIPPINES CORPORATION (formerly SITEL PHILIPPINES CORPORATION),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

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

ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. MARVEEN B. DE LA PAZ
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

BANIQUED AND BELLO
Suite 803, 8th Floor, Jollibee Centre
San Miguel Avenue, Ortigas Center
1605 Pasig City

GREETINGS:

You are hereby notified by these presents that on **December 11, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **December 13, 2024.**

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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

FOUNDEVER PHILIPPINES CORPORATION (formerly SITEL PHILIPPINES CORPORATION),	**CTA Case No. 10620**
Petitioner,	*Members*:
- versus -	**DEL ROSARIO**, *P.J., Chairperson,* **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** DEC 11 2024 3:30 pm

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review[1] filed on October 22, 2021 by petitioner Foundever Philippines Corporation (formerly Sitel Philippines Corporation) against respondent Commissioner of Internal Revenue (CIR), praying that judgment be rendered ordering respondent to refund the amount of ₱55,390,420.62, allegedly representing unutilized input Value-Added Tax (VAT) arising from petitioner's domestic purchases of goods (other than capital goods) and services and purchases of capital goods attributable to its zero-rated transactions for the first (1st) to fourth (4th) quarters of taxable year (TY) 2019.

THE PARTIES

Petitioner Foundever Philippines Corporation (formerly Sitel Philippines Corporation) is a corporation organized and existing under the laws of the Philippines with principal place of business at Ground

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[1] CTA Docket Vol. I, pp. 7-37.

Floor, One Julia Vargas Building, Ortigas Home Depot Complex, One Julia Vargas Avenue, Barangay Ugong, Pasig City.[2]

Respondent, on the other hand, is the duly appointed CIR who is tasked to assess and collect all national internal revenue taxes, fees and charges, and enforce all forfeitures, penalties and fines connected therewith. He holds office at the Bureau of Internal Revenue (BIR) National Office Bldg., Agham Road (now Senator Miriam P. Defensor-Santiago Avenue), Diliman, Quezon City where he may be served with summonses, legal processes, orders and resolutions of the Court at Rm. 703, BIR-NOB, BIR Rd., Diliman, Quezon City.[3]

THE FACTS

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) under SEC Registration No. A200017295, whose primary purpose is stated as follows:[4]

> "To provide outsourced call centre services from the Philippines to domestic and offshore businesses including but not limited to tactical telemarketing campaigns and programs and customer relationship management services. These programs and services include but are not limited to customer care and enquiry lines; help desk services; lead generation and qualification; customer profiling; sales support; direct marketing support; product support; market research, and customer satisfaction surveys; mail/fax/e-mail order processing; provision of integrated computer aided dispatch, mapping and vehicle/field force management systems; crisis support line/product recall; reservations and bookings for loyalty programs; and investor relations services."[5]

Petitioner is registered with the BIR as a VAT taxpayer with Tax Identification Number (TIN) 208-780-708-000.[6]

It is also registered with the Philippine Economic Zone Authority (PEZA) as an Information Technology (IT) Enterprise with various sites located at the Baguio City Economic Zone, Wynsum Corporate Plaza, One Julia Vargas Building, Eastwood City Cyberpark, Robinsons

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[2] Par. 1, I. Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), CTA Docket Vol. II, p. 768.
[3] Par. 2, I. Stipulation of Facts, JSFI, CTA Docket Vol. II, pp. 768.
[4] Exhibits "P-1", "P-1.1", "P-1.2", and "P-1.3", CTA Docket Vol. III, pp. 1058-1089, 1090-1107, 1108-1118, and 1119-1130.
[5] Exhibits "P-1", "P-1.1", "P-1.2", and "P-1.3", CTA Docket Vol. II, pp. 1062, 1092, 1111, and 1121.
[6] Exhibit "P-2", CTA Docket Vol. III, p. 1131.

Cyberpark, Eton Cyberpod Corinthian, Robinsons Luisita, and SM Baguio Cyberzone Building.[7]

Petitioner's Puerto Princesa, Palawan Site (Palawan Site) and Ortigas Technopoint, Pasig Site (One Julia Vargas [OJV] Technopoint Site) are non-PEZA sites but registered as "Facility" with the BIR.[8]

Petitioner filed with the BIR, through the Electronic Filing and Payment System, the following Monthly VAT Declarations and Quarterly VAT Returns for TY 2019:

Period Covered	Return	Date Filed
January 2019	Original	February 19, 2019[9]
	Amended	February 27, 2019[10]
February 2019	Original	March 20, 2019[11]
1st Quarter (Q1) 2019	Amended	June 27, 2019[12]
April 2019	Original	May 21, 2019[13]
May 2019	Original	June 19, 2019[14]
2nd Quarter (Q2) 2019	Amended	April 24, 2020[15]
July 2019	Original	August 20, 2019[16]
August 2019	Original	September 20, 2019[17]
3rd Quarter (Q3) 2019	Original	October 25, 2019[18]
October 2019	Original	November 21, 2019[19]
November 2019	Original	December 20, 2019[20]
4th Quarter (Q4) 2019	Original	January 27, 2020[21]

On May 11, 2021,[22] petitioner filed an administrative claim for refund of its unutilized input VAT attributable to zero-rated sales for the

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[7] Exhibits "P-30" and "P-30.1", CTA Docket Vol. III, pp. 1646 and 1647.
[8] Exhibits "P-29" and "P-29.1", CTA Docket Vol. III, p. 1644 and 1645.
[9] Exhibit "P-5", CTA Docket Vol. III, pp. 1145-1146.
[10] Exhibit "P-5.1", CTA Docket Vol. III, pp. 1147-1148.
[11] Exhibit "P-5.2", CTA Docket Vol. III, pp. 1149-1150.
[12] Exhibit "P-6", CTA Docket Vol. III, pp. 1163-1164.
[13] Exhibit "P-5.3", CTA Docket Vol. III, pp. 1151-1152.
[14] Exhibit "P-5.4", CTA Docket Vol. III, pp. 1153-1154.
[15] Exhibit "P-6.1", CTA Docket Vol. III, pp. 1165-1166.
[16] Exhibit "P-5.5", CTA Docket Vol. III, pp. 1155-1156.
[17] Exhibit "P-5.6", CTA Docket Vol. III, pp. 1157-1158.
[18] Exhibit "P-6.2", CTA Docket Vol. III, pp. 1167-1168.
[19] Exhibit "P-5.7", CTA Docket Vol. III, pp. 1159-1160.
[20] Exhibit "P-5.8", CTA Docket Vol. III, pp. 1161-1162.
[21] Exhibit "P-6.3", CTA Docket Vol. III, pp. 1169-1170.
[22] Exhibit "P-27.1", CTA Docket Vol. III, p. 1639.

1st to 4th quarters of TY 2019 in the aggregate amount of ₱55,390,420.62.[23]

On August 20, 2021,[24] petitioner received a Letter dated July 29, 2021 from Mr. Arnel SD. Guballa, Deputy Commissioner of the Operations Group of the BIR, denying its administrative claim for refund.[25]

In view of the denial of its administrative claim, petitioner filed the present Petition for Review before the Court on October 22, 2021.[26]

On February 7, 2022, within the extended period,[27] respondent filed his Answer,[28] and interposed the following special and affirmative defenses: (i) petitioner is not entitled to the claimed input VAT refund as sufficiently supported by the audit report; (ii) petitioner's zero-rated sales were allegedly earned from its Palawan and OJV Technopoint Sites which are only registered as a "Facility"; (iii) the declared sales transaction for these sites could not be considered as zero-rated as contemplated under Section 112 (A) of the National Internal Revenue Code (NIRC) of 1997, as amended, but should instead be classified as sales of the Head Office and thus, VAT exempt, as it is registered in the PEZA Zone and availing of the 5% Gross Income Tax; and, (iv) in cases of tax refunds, it is axiomatic that the claimant must prove not only entitlement to the claim but also compliance with all the documentary requirements.

The Pre-Trial Brief for Petitioner[29] was filed on April 22, 2022 while respondent's Pre-Trial Brief[30] was filed on April 25, 2022. The Pre-Trial Conference was held on April 28, 2022.[31]

On May 13, 2022, the parties filed their Joint Stipulation of Facts and Issues[32] which was approved by the Court in the Resolution dated May 25, 2022 thereby terminating the Pre-Trial.[33]

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[23] Exhibits "P-27" and "P-28", CTA Docket Vol. III, pp. 1639-1642 and 1643.
[24] Exhibit "R-2", BIR Records, pp. 447-448.
[25] Exhibit "P-31", CTA Docket Vol. III, pp. 1649-1650.
[26] CTA Docket Vol. I, p. 12.
[27] Resolution dated March 4, 2022, CTA Docket Vol. II, p. 723.
[28] CTA Docket Vol. II, pp. 670-676.
[29] CTA Docket Vol. II, pp. 732-747.
[30] CTA Docket Vol. II, pp. 749-752.
[31] Minutes of Hearing dated April 28, 2022, CTA Docket Vol. II, pp. 754-756; and Order dated April 28, 2022, CTA Docket Vol. II, pp. 757-759.
[32] CTA Docket Vol. II, pp. 768-780.
[33] CTA Docket Vol. II, p. 783.

Upon motion[34] of petitioner, the Court commissioned Ms. Honorata L. Paguio, engagement partner of the accounting firm Ramon F. Garcia & Company, as Independent Certified Public Accountant (ICPA), on September 13, 2022.[35]

On July 1, 2022, the Court issued the Pre-Trial Order.[36]

During trial, petitioner presented both testimonial and documentary evidence. It presented the following witnesses: Mr. Ronald P. Portula,[37] petitioner's Tax and Compliance Manager; and, Ms. Honorata L. Paguio,[38] the Court-commissioned ICPA.

On November 22, 2022, petitioner filed its Formal Offer of Evidence.[39] Petitioner's exhibits were admitted in evidence in the Resolution dated February 10, 2023,[40] except: Exhibits "P-16", "P-16.1", "P-16.2", "P-19", "P-19.1", "P-19.2", "P-19.3", "P-19.4", and "P-19.5" for failure to have them compared with their originals; Exhibits "P-48" to "P-48.1" for not being found in the USB filed before the Court; and, Exhibits "P-52.1.45", "P-52.2.24", "P-52.2.25", "P-52.2.37", "P-52.2.38", "P-52.2.127", "P-52.2.140", "P-52.3.7", "P-52.3.14", and "P-52.3.16" for there were no such actual markings in the series of documents stored in the USB filed before the Court.

Petitioner filed a Motion for Reconsideration (of Resolution dated February 10, 2023) on March 3, 2023, moving for the admission of its denied exhibits.[41] In the Resolution dated May 23, 2023,[42] the Court partially granted petitioner's motion thereby admitting Exhibits "P-48" to "P-48.1", "P-52.1.45", "P-52.2.24", "P-52.2.25", "P-52.2.37", "P-52.2.38", "P-52.2.127", "P-52.2.140", "P-52.3.7", "P-52.3.14", and "P-52.3.16", but still denied admission of "P-16", "P-16.1", "P-16.2", "P-19", "P-19.1", "P-19.2", "P-19.3", "P-19.4", and "P-19.5".

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[34] CTA Docket Vol. II, pp. 784-788.
[35] Minutes of Hearing dated September 13, 2022, CTA Docket Vol. II, pp. 890-893.
[36] CTA Docket Vol. II, pp. 835-856.
[37] Exhibit "P-33", Judicial Affidavit of Ronald P. Portula, CTA Docket Vol. I, pp. 42-76; Exhibit "P-33.2", Supplemental Judicial Affidavit of Ronald P. Portula, CTA Docket Vol. II, pp. 863-866; and Minutes of Hearing dated September 13, 2022, CTA Docket Vol. II, pp. 890-893.
[38] Exhibit "P-35", Judicial Affidavit of Honorata L. Paguio, CTA Docket Vol. II, pp. 945-949; Supplemental Judicial Affidavit of Honorata L. Paguio, CTA Docket Vol. II, pp. 965-968; and Minutes of Hearing dated November 3, 2022, CTA Docket Vol. II, pp. 976-979.
[39] CTA Docket Vol. III, pp. 985-1045.
[40] CTA Docket Vol. III, pp. 1663-1669.
[41] CTA Docket Vol. III, pp. 1686-1694.
[42] CTA Docket Vol. III, pp. 1722-1728.

Respondent likewise presented both testimonial and documentary evidence. He presented his lone witness, Revenue Officer Bryan Patrick A. Lafrades.[43] On June 7, 2023, respondent filed his Formal Offer of Evidence.[44] In the Resolution[45] dated October 26, 2023, the Court admitted all of respondent's formally offered evidence.

Meanwhile, on July 14, 2023, petitioner filed a Manifestation that it changed its corporate name from Sitel Philippines Corporation to Foundever Philippines Corporation.[46] This was noted by the Court in the Resolution dated August 8, 2023,[47] and the caption of the case was accordingly amended.

The Memorandum for Petitioner[48] was filed on December 6, 2023. On the same date, respondent filed his Manifestation[49] that he will adopt the arguments stated in the Answer in place of a memorandum. Thereafter, the case was submitted for decision on January 5, 2024.[50]

ISSUES

The parties stipulated the following issue for the Court's resolution:

> Whether or not petitioner is entitled to a refund of its unutilized input VAT arising from domestic purchases of goods (other than capital goods) and services, and purchases of capital goods, attributable to zero-rated sales for the 1st to 4th quarters of taxable year 2019 in the amount of ₱55,390,420.62.[51]

PARTIES' ARGUMENTS

Petitioner argues that: (i) it timely filed its administrative and judicial claim for refund; (ii) it sufficiently complied with the requisites

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[43] Exhibit "R-4", Judicial Affidavit of Revenue Officer Bryan Patrick A. Lafrades, CTA Docket Vol. II, pp. 681-684; Minutes of Hearing dated February 21, 2023, CTA Docket Vol. III, p. 1670; and Order dated February 21, 2023, CTA Docket Vol. III, pp. 1671-1672.
[44] CTA Docket Vol. III, pp. 1729-1732.
[45] CTA Docket Vol. III, pp. 1755-1756.
[46] CTA Docket Vol. III, pp. 1744-1746.
[47] CTA Docket Vol. III, pp. 1751-1752.
[48] CTA Docket Vol. III, pp. 1757-1790.
[49] CTA Docket Vol. III, pp. 1792-1794.
[50] CTA Docket Vol. III, p. 1796.
[51] II. Stipulation of Issue, JSFI, CTA Docket Vol. II, p. 769.

to be entitled to the refund of its unutilized input VAT attributable to its zero-rated sales for the 1st to 4th quarters of TY 2019; and, (iii) respondent incorrectly denied its administrative claim for refund.[52]

On the other hand, respondent counter-argues that: (i) petitioner is not entitled to the claimed input VAT refund as sufficiently supported by the audit report; (ii) petitioner's zero-rated sales were allegedly earned from its Palawan and OJV Technopoint Sites which are registered only as a "Facility"; (iii) the declared sales transaction for the Palawan and OJV Technopoint Sites could not be considered as zero-rated as contemplated under Section 112(A) of the NIRC of 1997, as amended, but should instead be classified as sales of the Head Office and thus, VAT exempt, as it is registered in the PEZA Zone and availing of the 5% Gross Income Tax; and, (iv) the burden of proof is upon petitioner to establish its rights to the claimed refund and failure to adduce sufficient proof is fatal to its claim.[53]

THE COURT'S RULING

The Court has jurisdiction over the case; the Petition for Review was timely filed

Section 112 of the NIRC of 1997, as amended, provides for the legal basis to claim for refund of input VAT, including the taxpayer's remedy to appeal to the CTA the adverse decision or the inaction of the CIR thereon, *viz.*:

> "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

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[52] Memorandum for Petitioner, CTA Docket Vol. III, pp. 1757-1790.
[53] Answer, CTA Docket Vol. II, pp. 670-676.

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

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

Petitioner's claim for refund covers the four quarters of TY 2019 which closed on March 31, 2019, June 30, 2019, September 30, 2019 and December 31, 2019, respectively. Thus, under ordinary circumstances, petitioner had two years from the said dates or until March 31, 2021, June 30, 2021, September 30, 2021 and December 31, 2021, respectively, within which to file its administrative claim for refund for the quarters concerned.

However, with the temporary closure of the VAT Credit Audit Division (VCAD) until March 28, 2021 due to the COVID-19 pandemic, Revenue Memorandum Circular (RMC) No. 39-2021[54] extended the filing of VAT Refund claim until April 12, 2021, where the two-year period within which to file the claim falls on March 31, 2021. The period

[54] Subject: 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), March 18, 2021.

to file was further extended by RMC No. 45-2021[55] which extended the deadline of the filing of VAT Refund with the VCAD which falls due on April 12, 2021 per RMC No. 39-2021 to 30 days from the lifting of the Enhanced Community Quarantine (ECQ) in the National Capital Region (NCR) Plus. The ECQ status of the NCR Plus was changed to Modified ECQ (MECQ) beginning April 12, 2021 until April 30, 2021.[56] Since the 30-day period is reckoned from April 12, 2021, the filing of the administrative claim for VAT refund for the 1st quarter of TY 2019 was extended until May 12, 2021. Thus, the filing of the administrative claim for refund for the four quarters of TY 2019 with the BIR, on May 11, 2021,[57] fell within the respective two-year prescriptive period. As shown below, petitioner timely filed its administrative claim for the four quarters of TY 2019:

Taxable Quarter (TY 2016)	Quarter End	Last day of filing Administrative Claim for Refund	Date of Filing of Administrative Claim for Refund
1st Quarter	March 31, 2019	May 12, 2021[58]	May 11, 2021
2nd Quarter	June 30, 2019	June 30, 2021	
3rd Quarter	September 30, 2019	September 30, 2021	
4th Quarter	December 31, 2019	December 31, 2021	

Section 112(C) of the NIRC of 1997, as amended, speaks of two important periods:

> (1) the 90-day period, which serves as a waiting period to give time for the CIR to act on the administrative claim for refund; and,
>
> (2) the 30-day period, which refers to the period for filing a judicial claim with the CTA.

Complementing Section 112(C) of the NIRC of 1997, as amended, is Section 7(a)(1) and (2) of Republic Act (RA) No. 1125,[59] as amended by RA No. 9282,[60] which vests exclusive appellate

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[55] Subject: 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), April 5, 2021.
[56] Inter-Agency Task Force for the Management of Emerging Infectious Diseases (IATF) Resolution No. 109-A, April 10, 2021.
[57] Exhibits "P-27" and "P-28", CTA Docket Vol. III, pp. 1639-1641 and p. 1643.
[58] Extended by RMC Nos 39-2021 and 45-2021 dated March 18, 2021 and April 5, 2021, respectively.
[59] An Act Creating the Court of Tax Appeals.
[60] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership,

jurisdiction to the CTA to review by appeal the decision or inaction of the CIR in cases involving refunds of internal revenue taxes, *viz.*:

> "Sec. 7. Jurisdiction. – The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>
> 2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which cases the inaction shall be deemed a denial[.]" (*Boldfacing supplied*)

The above-cited provision categorically states that a party adversely affected by a decision or inaction of the CIR may file an appeal before the CTA within 30 days after receipt of such decision or after the expiration of the period fixed by law for action.

Stated otherwise, the taxpayer may file the appeal within 30 days after the CIR denies the administrative claim within the 90-day (previously 120-day) waiting period, **or** it may file the appeal within 30 days from the expiration of the 90-day (previously 120-day) period if there is inaction on the part of the CIR.[61]

Petitioner timely filed its administrative claim for refund on May 11, 2021.[62] Counting 90 days therefrom, respondent had until August 9, 2021 within which to act on the claim. However, pursuant to Section 5(2) of RR No. 27-2020,[63] the BIR suspended the 90-day period to process VAT refund claims during the ECQ or MECQ in the midst of

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Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.
[61] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015 *citing Commissioner of Internal Revenue vs. San Roque Power Corporation,* G.R. No. 187485, February 12, 2013.
[62] Exhibits "P-27" and "P-28", CTA Docket Vol. III, pp. 1639-1641 and p. 1643.
[63] SUBJECT: Regulations suspending the Filing and Ninety (90) – Day Processing of Value-Added Tax (VAT) Refund Claims Anchored Under Section 112 of the Tax Code of 1997, as Amended, in Relation to Section 4(tt) of Republic Act (R.A.) No. 11494, Otherwise Known as the "Bayanihan to Recover as One Act".

the COVID-19 pandemic. It was to resume 30 days after the lifting of the ECQ or MECQ. The NCR was continuously placed under ECQ and MECQ from August 6, 2021 until September 15, 2021.[64] Hence, the processing of VAT refund claims was suspended from August 6, 2021 to September 15, 2021.

Records show that the respondent denied the claim in a letter dated July 29, 2021, which was received by petitioner's representative on August 20, 2021.[65] Thus, petitioner had until September 19, 2021 to file its judicial claim with the CTA.

The Supreme Court, however, issued Administrative Circular (AC) No. 56-2021[66] on July 30, 2021 physically closing all courts in the NCR from August 2 to 20, 2021, and suspending the time to file pleadings and motion during said period, which shall resume seven calendar days from the first day of the physical reopening of the courts. The closure of courts was subsequently extended[67] until the Supreme Court's issuance of AC No. 83-2021[68] on October 18, 2021 opening all the collegiate appellate courts in the NCR on October 20, 2021 and lifting the suspension of time to file pleadings and motions, and providing that the filing thereof shall resume on October 27, 2021.

Clearly, the present Petition for Review was timely filed on October 22, 2021.[69] The Court has acquired jurisdiction to take cognizance of the present case.

Requisites for VAT Refund Claim

Petitioner anchors its claim for refund on the aforequoted Section 112(A), in relation to Section 112(C), of the NIRC of 1997, as amended by RA No. 10963.[70]

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[64] IATF Resolution No. 130-A, July 29, 2021; IATF Resolution No. 134, August 19, 2021; IATF Resolution No. 135-A, August 26, 2021; and, IATF Resolution No. 137, September 7, 2021.
[65] Exhibit "R-2", BIR Records, pp. 447-448.
[66] RE: COURT OPERATIONS ON 2-20 AUGUST 2021.
[67] Office of the Court Administrator (OCA) Circular No. 114-2021, August 20, 2021; OCA Circular No. 117-2021, August 28, 2021; OCA Circular No. 119-2021, September 7, 2021; Supreme Court Administrative Circular (SC AC) No. 72-2021, September 15, 2021; and, SC AC No. 75-2021, October 1, 2021.
[68] RE: COURT OPERATIONS BEGINNING OCTOBER 20, 2021 UNTIL OCTOBER 29, 2021.
[69] CTA Docket Vol. I, pp. 7-37.
[70] Tax Reform for Acceleration and Inclusion (TRAIN) Law.

The Court shall now proceed to discuss the merits of petitioner's refund claim.

Based on Section 112 of the NIRC of 1997, as amended, in order to be entitled to refund or tax credit of input tax due or paid attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:[71]

1. The administrative claim was filed within two years after the close of the taxable quarter when such sales were made [and the subsequent judicial claim was filed on time];[72]

2. The taxpayer-claimant must be VAT-registered;

3. There must be zero-rated or effectively zero-rated sales;

4. Input taxes were incurred or paid;

5. Such input taxes are attributable to zero-rated or effectively zero-rated sales, or if not directly or entirely attributable, the same are allocated proportionately on the basis of volume of sales;

6. The input taxes are not transitional input taxes; and,

7. The input taxes were not applied against any output VAT liability during and in the succeeding quarters.

First Requisite: The administrative and judicial claims for refund were filed on time

To reiterate, the first requisite, pertains to the administrative claim being filed within two years after the close of the taxable quarter when such sales were made and the subsequent timely filing of the judicial claim.

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[71] *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009.

[72] *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016, declares that the judicial claim must be filed within a period of 30 days after the receipt of the CIR's decision or ruling or after the expiration of the 120-day period, whichever is sooner.

As previously discussed, both the administrative and judicial claims were timely filed by petitioner, in accordance with Section 112 of the NIRC, as amended, Section 7(a) of RA No. 1125, as amended, and the applicable jurisprudence on the matter.

Second Requisite: Petitioner's Palawan and OJV Technopoint Sites are not VAT-registered

The second requisite pertains to the taxpayer being a VAT-registered person.

Petitioner contends that it is a VAT-registered entity as shown by its Certificate of Registration OCN8RC0000065770.[73] It submits that its Palawan and OJV Technopoint Sites were correctly registered as "facility" as defined under Revenue Regulations (RR) No. 7-2012.[74]

According to petitioner, its registered sites, including the Palawan and OJV Technopoint Sites, are similar to a "place of production" of a manufacturing business where services are performed. However, non-production related services such as monitoring, billing, invoicing, receipting, marketing, and collection are conducted by its Main Office.[75] Petitioner emphasizes that these facilities do not operate independently from its Main Office considering that the services being performed by its contact center agents are monitored and recorded in the Main Office, which issues billing statements and issues official reports therefor.[76]

In other words, petitioner claims that the Palawan and OJV Technopoint Sites were intended to be places where its contact center agents would be located and would perform contact center services, but no billing statements or official receipts would be issued therefrom. Thus, petitioner deemed it proper to register these as "facilities" rather than "branches".[77]

Furthermore, petitioner submits that even assuming that the registration of the Palawan and OJV Technopoint Sites as "facilities" was erroneous, that does not mean that no input VAT may be attributed

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[73] Par. 39, Memorandum, CTA Docket Vol. III, p. 1772.
[74] Par. 50.1, Petition for Review, CTA Docket Vol. I, p.24.
[75] Par. 50.2, Petition for Review, CTA Docket Vol. I, p. 25.
[76] Par. 50.4, Petition for Review, CTA Docket Vol. I, p. 25.
[77] Par. 50.6, Petition for Review, CTA Docket Vol. I, p. 25.

thereto, particularly if the input VAT is attributable to the services rendered therein.[78]

The Court is not convinced.

A "VAT-registered person" is a person who is registered as a VAT taxpayer under Section 236 of the NIRC of 1997, as amended.[79]

Section 236 of the NIRC of 1997, as amended, governs the registration requirements of every person subject to internal revenue tax, including VAT. The relevant parts of the provision read as follows:

> "SEC. 236. Registration Requirements. –
>
> (A) *Requirements.* – Every person subject to any internal revenue tax shall register once with the appropriate Revenue District Officer:
>
> (1) Within ten (10) days from date of employment, or
>
> (2) **On or before the commencement of business**, or
>
> (3) Before payment of any tax due, or
>
> (4) Upon filing of a return, statement or declaration as required in this Code.
>
> The registration shall contain the taxpayer's name, style, place of residence, business, and such other information as may be required by the Commissioner in the form prescribed therefor. *Provided*, that the Commissioner shall simplify the requirements of self-employed individuals and/ or professionals.
>
> **A person maintaining a head office, branch or facility shall register with the Revenue District Officer having jurisdiction over the head office, branch or facility. For purposes of this Section, the term 'facility' may include but not limited to sales outlets, places of production, warehouses or storage places.**

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[78] Par. 50.6, Petition for Review, CTA Docket Vol. I, pp. 25-26.

[79] Revenue Regulations No. 16-2005 dated September 1, 2005.

SECTION 4.105-1. ***Persons Liable.*** – Any person who, in the course of his trade or business, sells, barters, exchanges or leases goods or properties, or renders services, and any person who imports goods, shall be liable to VAT imposed in Secs. 106 to 108 of the Tax Code.

xxx xxx xxx

"VAT-registered person" refers to any person who is registered as a VAT taxpayer under Sec. 236 of the Tax Code. His status as a VAT-registered person shall continue until the cancellation of such registration.

> (B) *Annual Registration Fee.* - **An annual registration fee in the amount of Five hundred pesos (P500) for every separate or distinct establishment or place of business, including facility types where sales transactions occur, shall be paid upon registration and every year thereafter on or before the last day of January**: xxx" *(Emphasis supplied)*

Based on the aforequoted provisions, every person subject to any internal revenue tax is mandated to register with the BIR within a certain period of time. If such person maintains a head office, a branch, or facility, such registration shall be made with the BIR office having jurisdiction over said branch or facility. Moreover, said person or entity is required to pay an annual registration fee in the amount of ₱500.00 for every separate or distinct establishment or place of business, which specifically includes "facility types where sales transactions occur". Thus, based on Section 236 of the NIRC of 1997, as amended, a facility must be registered with the BIR, and in case sales transactions occur therein, the annual registration fee of ₱500.00 must be paid.

To implement Section 236 of the NIRC of 1997, as amended, Section 9.236-1(a) of RR No. 16-2005,[80] as amended, provides as follows:

> "**SEC. 9.236-1**. ***Registration of VAT Taxpayers***. --
>
> ***(a) In general.*** **— Any person who, in the course of trade or business, sells, barters, exchanges goods or properties, or engages in the sale of services subject to VAT imposed in Secs. 106 and 108 of the Tax Code shall register with the appropriate RDO** using the appropriate BIR forms and pay an annual registration fee in the amount of Five Hundred Pesos (P500) using BIR Form No. 0605 for every separate or distinct establishment or place of business (save a warehouse without sale transactions) before the start of such business and every year thereafter on or before the 31st day of January.
>
> ***'Separate or distinct establishment'*** **shall mean any branch or facility where sale transactions occur.**
>
> ***'Branch'*** **means a fixed establishment in a locality which conducts sales operation of the business as an extension of the principal office.**
>
> *'Principal place of business'* refers to the place where the head or main office is located as appearing in the corporation's Articles of Incorporation. In the case of an individual, the principal

[80] SUBJECT: Consolidated Value-Added Tax Regulations of 2005.

place of business shall be the place where the head or main office is located and where the books of accounts are kept.

'Warehouse' means the place or premises where the inventory of goods for sale are kept and from which such goods are withdrawn for delivery to customers, dealers, or persons acting in behalf of the business.

Any person who maintains a head or main office and branches in different places shall register with the RDO which has jurisdiction over the place wherein the main or head office or branch is located. However, the registration fee shall be paid to any accredited bank in the Revenue District where the head office or branch is registered provided that in areas where there are no accredited banks, the same shall be paid to the RDO, collection agent, or duly authorized treasurer of the municipality where each place of business or branch is situated.

Each VAT-registered person shall be assigned only one TIN. The branch shall use the 9-digit TIN of the Head Office plus a 3-digit Branch Code.

***'VAT-registered person'* refers to any person registered in accordance with this section.**

'VAT-registrable person' refers to any person who is required to register under the provisions of this section but failed to register." (*Boldfacing supplied*)

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

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

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

Relatedly, RR No. 7-2012,[81] provides the consolidated regulations on registration of business, including VAT registration, to wit:

> "**SECTION 3. DEFINITION OF TERMS.** For purposes of these Regulations, the following words and/or phrases shall be defined as follows:
>
> xxx xxx xxx
>
> 6. ***'Head Office (HO)'*** – refers to the declared specific or identifiable principal place/head office of business as stated in the Articles of Incorporation/Articles of Partnership/Articles of Cooperation/DTI Certificate of Registration, as the case may be, or, in the absence thereof, the place where the complete books of accounts are kept. It is the fixed place of business, whether rented or owned, and whether or not the products/services being sold are actually located or displayed thereat. For persons who conduct business in a nomadic or roving manner, such as peddlers, "tiangges", mobile stores operators, common carries/school bus operators without designated garages/terminals, etc., their place of residence shall be considered as the HO.
>
> 7. ***'Branch'*** - means a separate or distinct establishment or place of business where sales transactions are conducted independently from the HO. **For purposes of these Regulations, branch shall include the following**:
>
>   i. Sales outlet or establishment situated in another location/address other than at the HO;
>
>   ii. **<u>Facility with sales activity</u>**;
>
> xxx xxx xxx
>
> 8. ***'Facility'*** – may include but not limited to place of production, showroom, warehouse, storage place, garage, bus terminal, or real property for lease with no sales activity. **<u>A facility shall be registered as a branch whenever sales transactions/ activities are conducted thereat</u>**. Registration of the "Facility" with no sales activity is not subject to payment of Annual Registration Fee (ARF).

[81] SUBJECT: Amended Consolidated Revenue Regulations on Primary Registration, Updates, And Cancellation.

xxx xxx xxx

> **SECTION 6. PRESCRIBED PERIODS TO COMPLETE PRIMARY REGISTRATION –**
> Every person subject to any internal revenue tax to be filed/paid periodically shall complete its registration with the BIR as follows:
>
> 1. **On or before the commencement of business** - Self-employed individuals, estates and trusts, **corporations and their branches**, if any: –
>
> Commencement of business shall be reckoned as defined in Section 3(6) hereof. **A person shall be considered to have violated this provision when he/it proceeded to this stage after the lapse of thirty (30) calendar days from** the issuance of Mayor's Permit/PTR by the concerned LGU, or COR issued by the SEC or **the date of its first sales transaction prior to its registration.**" (*Boldfacing supplied*)

It is explicit in the provisions that the term "branch" includes a "facility with sales activity", and that "a facility shall be registered as a branch whenever sales transactions/activities are conducted thereat." Thus, a facility where sales transactions/activities occur is considered a branch, which is required to be registered separately with the BIR.

Furthermore, it is clear that the registration of a branch shall be made on or before the commencement of business, and such rule is considered to have been violated by the taxpayer when the latter proceeded to commence with business after the lapse of 30 days from, *inter alia*, the date of its first sales transaction prior to its registration.

In the present case, petitioner is indeed a VAT-registered entity as shown by its Certificate of Registration OCN8RC0000065770.[82]

The Court notes, however, that the zero-rated sales in this refund claim were generated from services rendered in its Palawan and OJV Technopoint Sites in the four quarters of TY 2019. In its Memorandum,[83] petitioner judicially admitted that the zero-rated services were generated by its contact center agents situated or located in sites or facilities not covered by PEZA registration (Palawan and OJV Technopoint Sites), *viz.*:

> "12. Petitioner's zero-rated sales **were generated from services rendered by contact center agents of petitioner** to non-

[82] Exhibit "P-2", CTA Docket Vol. III, p. 1131.
[83] CTA Docket Vol. III, p. 1760.

> resident foreign affiliates **situated or located in sites or facilities not covered by PEZA registration**, the consideration for which was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*." (*Boldfacing supplied*)

Since the zero-rated sales subject of the refund claim were generated in petitioner's Palawan and OJV Technopoint Sites, which are registered as facilities, petitioner should have registered these sites with the BIR as branches before the commencement or start of the business therein and paid the corresponding annual registration fee of ₱500.00, in accordance with the above provisions, especially Section 9.236-1(a) of RR No. 16-2005.

The records, however, are bereft of any proof that petitioner registered its Palawan and OJV Technopoint Sites as branches. Instead, a perusal of the records reveals that petitioner registered these sites as facilities as shown by the Certificates of Registration of Facility issued on August 9, 2017[84] and October 31, 2019,[85] respectively. **Both Certificates of Registration of Facility stated that "No Sales Transactions are conducted in this Facility, otherwise, it shall be registered as a branch office."** In addition, it is noteworthy that the TIN indicated in both Certificates does not bear an additional three (3) digits, which should represent the branch code. These are indicia that the Palawan and OJV Technopoint Sites were not registered with the BIR as a branch but simply as a **"facility", i.e., with no sales activity.**

In fine, the registration of petitioner's Palawan and OJV Technopoint Sites with the BIR is not one of "branch", as required to be registered under Section 236 of the NIRC of 1997, Section 9.236-1 (a) of RR No. 16-2005, and the pertinent provisions of RR No. 7-2012. As such, petitioner cannot be considered to have complied with the second requisite to successfully obtain a refund of input VAT.

Accordingly, the Court finds it unnecessary to discuss petitioner's compliance with the other requisites for a valid claim for refund of input VAT.

It bears stressing that tax refunds are in the nature of tax exemptions. As such they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or

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[84] Exhibit "P-29", CTA Docket Vol. III, p. 1644.
[85] Exhibit "P-29.1", CTA Docket Vol. III, p. 1645.

entity claiming the exemption.[86] The claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[87] Petitioner, unfortunately, failed to discharge this burden.

WHEREFORE, in view of the foregoing, the present Petition for Review, filed on October 22, 2021, is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

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.

ROMAN G. DEL ROSARIO
Presiding Justice

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[86] *Commissioner of Internal Revenue vs. Interpublic Group of Companies, Inc.*, G.R. No. 207039, August 14, 2019.
[87] *Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.