REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

REGUS SERVICE CENTRE, PHILIPPINES B.V. - ROHQ,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9962

Members:
RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:
JUN 29 2023
4:29 p.m.

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DECISION

RINGPIS-LIBAN, J.

STATEMENT OF THE CASE

The *Petition for Review* prays that after due notice and hearing, judgment be rendered ordering respondent to refund in favor of petitioner the amount of ₱7,834,310.94, representing its unutilized input value-added tax (VAT) attributable to its export sales for the 2nd to 4th quarters of calendar year (CY) 2016, or the period from April 1, 2016 to December 31, 2016.[1]

THE PARTIES

Petitioner is a regional operating headquarters (ROHQ) of Regus Service Centre, Philippines, B.V., a corporation organized and existing under the laws of the Netherlands.[2] As a registered ROHQ, petitioner is duly licensed to transact and/or enter into business transactions in the Philippines by the Securities and Exchange Commission (SEC).[3]

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[1] Statement of the Case, Pre-Trial Order dated November 15, 2019, Docket, p. 268.
[2] Par. 1.a, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 211.
[3] Par. 1.b, Stipulation of Facts, JSFI, Docket, p. 211.

Respondent Commissioner of Internal Revenue is vested by law with the power and authority to decide, approve and grant applications for refund or tax credit of excess internal revenue tax payments. [4]

THE FACTS OF THE CASE

On June 29, 2018, petitioner filed its *Application for Tax Credits / Refunds* (BIR Form No. 1914),[5] applying for a VAT refund amounting to ₱7,834,310.94, for the period from April 1, 2016 to December 31, 2016.

Subsequently, on September 25, 2018, petitioner received the letter dated September 6, 2018, issued by the BIR, through Ms. Erlinda A. Simple, Assistant Commissioner for its Assessment Service,[6] denying petitioner's administrative claim.

The present *Petition for Review* was filed on October 25, 2018.[7]

On March 1, 2019, respondent transmitted the *BIR Records* for this case.[8]

Respondent filed his *Answer (With Special and Affirmative Defenses)* on March 4, 2019,[9] interposing the following special and affirmative defenses, to wit:

> "***SPECIAL AND AFFIRMATIVE DEFENSES***
>
> 6. The Petition for Review asserting the claim **states no cause of action**. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable.
>
> 7. Petitioner's claim for refund or issuance of tax credit certificate in the amount of Seven Million Eight Hundred Thirty-four Thousand Three Hundred Ten & 94/100 (P7,834,310.94) representing alleged excess and unutilized input VAT for taxable quarters of Second, Third, and Fourth of 2016 were not compliant of the invoicing and accounting requirements for VAT registered persons and are not fully substantiated by proper documents, such as sales invoices and official receipts, pursuant to Section 113 and

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[4] Par. 2, *Petition for Review*, vis-à-vis par. 2, *Answer (With Special and Affirmative Defenses)*, Docket, pp. 10 to 11, and 81, respectively.
[5] Exhibit "P-7", Docket, p. 355.
[6] Exhibit "P-10", Docket, pp. 361 to 376.
[7] Docket, pp. 10 to 21.
[8] Undated *Transmittal of BIR Records*, Docket, pp. 78 to 80.
[9] Docket, pp. 81 to 84.

237 of the 1997 Tax Code, as amended by the Tax Reform for Acceleration and Inclusion (TRAIN) Law (R.A No. 10963).

8. Petitioner Corporation must show that it has complied with the provisions of Sections 108(B)(2), 110(B), 112(A) & (C) of the 1997 Tax Code, as amended by the TRAIN Law. Failure to prove the same is fatal to its claim for refund.

9. The Supreme Court recognizes, as it always has, that the burden of proof to establish entitlement to refund is on the claimant taxpayer. Being in the nature of a claim for exemption, refund is construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power. This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the National Internal Revenue Code (NIRC) in order to successfully pursue one's claim."

The Pre-Trial Conference was initially scheduled on June 25, 2019,[10] but was reset to, and held on, October 1, 2019.[11] Prior thereto, the *Pre-Trial Brief (of Petitioner Regus Service Centre, Philippines B.V. – ROHQ)* was filed on September 26, 2019,[12] while respondent's *Pre-Trial Brief* was submitted on September 24, 2019.[13]

On October 30, 2019, the parties filed their *Joint Stipulation of Facts and Issues*,[14] which the Court admitted and approved in its Resolution dated November 7, 2019,[15] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order was then issued on November 15, 2019.[16]

Trial then ensued, and the parties presented their respective documentary and testimonial evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Atty. Juan R. Bernardino. Jr.,[17] petitioner's Senior Finance Manager; and (2) Ms. Krista V. Bambao,[18] the Court-commissioned independent certified public accountant (ICPA).[19]

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[10] *Notice of Pre-Trial Conference* dated March 8, 2019, Docket, pp. 87 to 88.
[11] Order dated June 10, 2019, Docket, p. 92; Minutes of the hearing held on, and Order dated, October 1, 2019, Docket, pp. 206, and 208 to 209, respectively.
[12] Docket, pp. 142 to 150.
[13] Docket, pp. 93 to 97.
[14] Docket, pp. 211 to 216.
[15] Docket, p. 258.
[16] Docket, pp. 268 to 273.
[17] Exhibits "P-12", Docket, pp. 153 to 163; Minutes of the hearing held on, and Order dated, December 4, 2019, Docket, pp. 302 to 303.
[18] Exhibits "P-13", Docket, pp. 277 to 300; Minutes of the hearing held on, and Order dated, February 4, 2020, Docket, pp. 307 to 309.
[19] *Oath of Commission* dated October 1, 2019, Docket, p. 207; Minutes of the hearing held on, and Order dated, October 1, 2019, Docket, pp. 206, and 208 to 209, respectively.

The *Report* of the ICPA was submitted on October 31, 2019.[20]

Petitioner filed its *Formal Offer of Evidence with Motion with Leave of Court* on July 6, 2020,[21] praying, *inter alia*, for the Court to grant petitioner's request to take judicial notice of the existence and due execution of the *Authenticated Certificate of Tax Residency* of Franchise International S.A.R.L. marked by the ICPA as Exhibit "P-27", and *Certification* issued by HSBC Limited to Regus Service Centre, Philippines B.V. Services marked by the ICPA as Exhibit "P-34" found in the BIR Records pending before the Second Division of this Court for CTA Case No. 10124, and the latter's First Division for CTA Case No. 9907, respectively. Respondent posted his *Comment/Objection (To Petitioner's Formal Offer of Evidence with Motion with Leave of Court)* on August 19, 2020.[22]

In the Resolution dated November 11, 2020,[23] the Court denied petitioner's *Motion with Leave of Court*, and admitted petitioner's offered exhibits, *except* for the following:

1) Exhibit "P-14-2", for failure to submit duly marked exhibit;

2) Exhibits "P-27", and "P-34", for failure to present the originals for comparison; and

3) Exhibit "P-33", for failure of the exhibit formally offered and identified to correspond with the document actually marked.

Petitioner then posted a *Motion for Reconsideration With Motion For Leave of Court For The Admission of Evidence (RE: Resolution on the Formal Offer of Evidence with Motion with Leave of Court Dated 11 November 2020)* on January 4, 2021,[24] and filed a *Manifestation With Motion For Leave Of Court For The Admission Of Evidence (RE: Motion For Reconsideration with Motion for Leave of Court For the Admission of Evidence)* on January 14, 2021.[25]

On February 22, 2021, respondent posted his *Comment (To Petitioner's Motion for Reconsideration with Motion for Leave of Court for the Admission of Evidence).*[26]

On March 4, 20201, the Judicial Records Division of this Court issued a Records Verification Report stating that respondent failed to file his Comment

[20] Exhibit "P-14", Docket, pp. 217 to 228.
[21] Docket, pp. 325 to 335.
[22] Docket, pp. 431 to 435.
[23] Docket, pp. 438 to 441.
[24] Docket, pp. 442 to 448.
[25] Docket, pp. 457 to 460.
[26] Docket, pp. 481 to 483.

on petitioner's *Manifestation With Motion For Leave Of Court For The Admission Of Evidence.*[27]

In the Resolution dated June 7, 2021,[28] the Court granted and noted petitioner's *Motion for Leave of Court for the Admission of Evidence* and *Manifestation*, respectively.

On July 19, 2021, petitioner filed a *Motion with Submission (Re: 11 June 2021 Resolution of the Honorable Court).*[29]

In the Resolution dated December 4, 2021,[30] the Court, *inter alia*: (1) granted and noted petitioner's *Motion with Submission*; (2) granted petitioner's *Motion for Reconsideration with Motion for Leave of Court for the Admission of Evidence (RE: Resolution on the Formal Offer of Evidence with Motion with Leave of Court Dated 11 November 2020)*; and (3) admitted Exhibits "P-14-2", "P-27", "P-33" and "P-34".

For his part, respondent offered the testimony of Revenue Officer Ma. Cleofe T. Tasarra.[31]

On March 8, 2022, respondent filed his *Formal Offer of Evidence.*[32] Petitioner failed to file its comment thereto.[33] In the Resolution dated May 12, 2022,[34] the Court admitted all of respondent's offered evidence.

The *Memorandum (For the Respondent)* was posted on June 22, 2022,[35] while petitioner's *Memorandum* was filed on June 24, 2022.[36]

This case was deemed submitted for decision on July 12, 2022.[37]

THE ISSUE STIPULATED BY THE PARTIES

The parties stipulated the following issue for this Court's resolution, to wit:

[27] Docket, p. 487.
[28] Docket, pp. 489 to 492.
[29] Docket, pp. 496 to 498.
[30] Docket, pp. 518 to 521.
[31] Exhibit "R-3", Docket, pp. 102 to 107; Minutes of the hearing held on, and Order dated, March 1, 2022, Docket, pp. 522 to 524.
[32] Docket, pp. 525 to 528.
[33] Records Verification Report dated April 19, 2022 issued by this Court's Judicial Records Division, Docket, p. 533.
[34] Docket, pp. 535 to 536.
[35] Docket, pp. 560 to 571.
[36] Docket, pp. 537 to 559.
[37] Resolution dated July 12, 2022, Docket, p. 575.

> "Whether Petitioner is entitled to its claim for refund representing its excess and/or unutilized input VAT attributable to its zero-rated sale of services for the Q2 to Q4 of CY 2016 (or the period 1 April 2016 to 31 December 2016) in the amount of Pesos: **Seven Million Eight Hundred Thirty-Four Thousand Three Hundred Ten Pesos & 94/100 (₱7,834,310.94)**"[38]

Petitioner's arguments:

Petitioner argues that its claim for refund of its accumulated (excess) input VAT finds legal support in Section 108(B)(2) in relation to Sections 110(B) and 112(A) of the National Internal Revenue Code (NIRC), as amended by Tax Reform for Acceleration and Inclusion (TRAIN); that it is a VAT-registered entity as required under Section 112(A) of the NIRC, as amended; that the administrative and judicial claims for refund were filed within the prescriptive period provided under the pertinent provisions of the NIRC and its implementing rules and regulations; that petitioner is engaged in zero-rated or effectively zero-rated transactions as required under the NIRC, as amended, and its pertinent regulations, and the sales were paid for in acceptable foreign currency exchange and the proceeds have been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP); that the input taxes due from the purchases of goods and services directly attributable to zero-rated sales of petitioner were duly supported by VAT invoices or official receipts; that the claimed input VAT payments were not applied against any output tax in the succeeding periods; and that the erroneously paid VAT should be refunded to petitioner following the principle of *"solutio indebiti"*.

Respondent's counter-arguments:

Respondent contends that petitioner is not entitled to a claim for refund as it failed to establish that it was engaged in zero-rated sales of effectively zero-rated sales during the 2nd to 4th quarters of CY 2016; that petitioner failed to comply with the invoicing and accounting requirements under Section 113(A) and (B) of the NIRC of 1997, as amended; and 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 COURT'S RULING

For lack of merit, the present *Petition for Review* must be denied.

[38] Stipulation of Issue, JSFI, Docket, p. 212.

Requisites under the law for the refund or issuance of tax credit certificate of input VAT.

Section 112 of the NIRC of 1997, as last amended by RA No. 10963[39] or TRAIN, 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.
>
> 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.

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[39] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> 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 foregoing provision, 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 certain categories as follows:

<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;**[40]
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;**

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

3. **the taxpayer is a VAT-registered person;**[41]

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

4. **the taxpayer is engaged in zero-rated or effectively zero-rated sales;**[42]
5. **for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;**[43]

<u>As regards the taxpayer's input VAT being refunded</u>:

6. **the input taxes are not transitional input taxes;**[44]
7. **the input taxes are due or paid;**[45]

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[40] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 155732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc.*, G.R. No. 182364, August 3, 2010.
[41] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.
[42] *Ibid.*
[43] *Ibid.*
[44] *Ibid.*
[45] *Ibid.*

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;[46] and**
9. **the input taxes have not been applied against output taxes during and in the succeeding quarters.**[47]

In addition, in claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the NIRC and other implementing rules and regulations.[48] Thus, petitioner's compliance with all the VAT invoicing requirements is required to be able to file a claim for input taxes attributable to zero-rated sales.[49] The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[50] Moreover, it must be pointed out that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[51]

Furthermore, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[52] Thus, it behooves petitioner to show compliance with each of the foregoing requisites and invoicing requirements. As a corollary, the absence of *any* of the said requisites is already a valid ground to deny the refund claim.

Petitioner's administrative and judicial claims were 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.

[46] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.
[47] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.
[48] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.
[49] *JRA Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.
[50] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.
[51] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[52] *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 Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

As previously, stated, the present claim covers the 2nd to 4th quarters of CY 2016. Counting two (2) years from the respective close of the said quarters, the following table indicates the last day for filing of the administrative claim, to wit:

2016	Period	Close of the Taxable Quarter	Last Day to File Administrative Claim
2nd quarter	April 1, 2016 to June 30, 2016	June 30, 2016	June 30, 2018
3rd quarter	July 1, 2016 to September 30, 2016	September 30, 2016	September 30, 2018
4th quarter	October 1, 2016 to December 31, 2016	December 31, 2016	December 31, 2018

Thus, the filing of petitioner's *Application for Tax Credits/Refunds* in the amount of ₱7,834,310.94,[53] covering the said three (3) quarters, was timely filed on June 29, 2018.

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 90-day period under Section 112(C) of the NIRC of 1997, as amended.

Such being the case, from the filing of petitioner's administrative claim on June 29, 2018, respondent had ninety (90) days or until September 27, 2018, to act on the said claim. In case of inaction within the said 90-day period, petitioner has thirty (30) days from such expiration to file its judicial claim, or until October 27, 2018.

Petitioner received the BIR's denial letter dated September 6, 2018 on September 25, 2018, which is within the 90-day period provided.[54] Subsequently, petitioner filed its judicial claim, via the present *Petition for Review*,[55] on October 25, 2018, which is within the thirty (30)-day period.

Correspondingly, the Court finds that petitioner complied with the above-stated *first* and *second* requisites.

Petitioner is a VAT-registered person/entity.

Anent the ***third*** **requisite**, it is also undisputed that petitioner is a VAT-registered person/entity, with TIN 287-343-976-000.[56] Thus, there is no question that petitioner showed compliance with the said requisite.

[53] Exhibit "P-7", Docket, p. 355.
[54] Exhibit "P-10", Docket, p. 361.
[55] Docket, pp. 10 to 19.
[56] Exhibit "P-3-1", Docket, p. 348.

Petitioner failed to establish that it was engaged in zero-rated sales or effectively zero-rated sales during the 2nd to 4th Quarters of CY 2016

The ***fourth*** and ***fifth*** **requisites** require that the taxpayer is engaged in zero-rated or effectively zero-rated sales and for zero-rated sales under 108(B)(2) of the NIRC of 1997, as amended by RA No. 9337, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the BSP rules and regulations.

In its Quarterly VAT Returns (BIR Form No. 2550-Q) for the 2nd to 4th quarters of CY 2016, petitioner reported total zero-rated sales of ₱850,517,073.61, broken down as follows:

Period	Zero-rated Sales
2nd quarter of CY 2016[57]	₱ 370,333,813.16
3rd quarter of CY 2016[58]	270,650,406.20
4th quarter of CY 2016[59]	209,532,854.25
Total	**₱ 850,517,073.61**

Petitioner claims that its sales of services to its non-resident foreign client are subject to zero percent (0%) VAT, pursuant to Section 108(B)(2) of the NIRC of 1997, as amended, which states:

> "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:
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
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> (2) **Services other than those mentioned in the preceding paragraph rendered to a person engaged in**

[57] Exhibit "P-4", Line 17, Docket, p. 349.
[58] Exhibit "P-5", Line 17, Docket, p. 351.
[59] Exhibit "P-6", Line 17, Docket, p. 353.

> **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)**;" *(Emphases added)*

Based on the foregoing provision, certain **essential elements** must be present for a sale or supply of services to be subject to the VAT rate of zero percent (0%), to wit:

1) **The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a non-resident person not engaged in business who is outside the Philippines when the services are performed;**[60]

2) **The services fall under any of the categories under Section 108(B)(2),**[61] **or simply, the services rendered should be other than "processing, manufacturing or repacking goods";**[62]

3) **The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules;**[63] **and**

4) **The service must be performed in the Philippines**[64] **by a VAT-registered person.**

Anent the ***first*** **essential element**, in order to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by **both** a *Certification of Non-Registration of Corporation/Partnership* issued by the Philippine SEC, **and** proof of incorporation/registration in a foreign country (*e.g.*, Articles/Certificate of Incorporation/Registration and/or Tax Residence Certificate). The former establishes that the recipient of the service has no registered business in the Philippines, and that it is not engaged in trade or business within the Philippines; while the latter proves that the said recipient of the service is indeed foreign. The said documents have been consistently required by this Court, for purposes of the said *first* essential element. In fact, in *Commissioner of Internal Revenue vs. Deutsche*

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[60] *Sitel Philippines Corporation (Formerly Clientlogic Phils. Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 201326, February 08, 2017; *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007; *Accenture, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 190102, July 11,2012.
[61] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.
[62] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao*, Inc., G.R. No. 153205, January 22, 2007.
[63] *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, supra.
[64] *Id.*

Knowledge Services Pte. Ltd.,[65] the Supreme Court affirmed the necessity of presenting the said documents in this wise:

> "**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[66] 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.
>
> 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 these affiliates are foreign corporations. On the other hand, the articles of**

[65] G.R. No. 234445, July 15, 2020.
[66] That is, "Nonresident foreign corporation".

> **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."** *(Emphasis and underscoring added)*

In the present case, petitioner satisfied the *first* essential element as it proved that its sole client for the subject period of claim, *Franchise International S.A.R.L*, is a non-resident foreign corporation doing business outside the Philippines, as evidenced by the following documents:

1. Updated Articles of Association of Franchise International (Luxembourg) as at December 17th, 2012;[67]
2. Authenticated Certificate of Residency of Franchise International S.A.R.L. issued by the Tax Authorities of Luxembourg;[68]
3. Apostilled document as to the change of name of the private limited liability company *(societe a responsabilite limitee* or S.A.R.L.) from Franchise International (Luxembourg) to Franchise International;[69] and
4. Certificate of Non-registration as a corporation or partnership issued by the Philippines SEC to Franchise International S.A.R.L.[70]

With regard to the ***second*** **essential element**, the *Service Agreement* entered into by petitioner's Head Office and Franchise International S.A.R.L.[71] which commenced on January 1, 2015 and became valid and effective for an indefinite period of time, provides in part the following intercompany services to be rendered to Franchise International S.A.R.L., to wit:

1. Billing Support;
2. Debt Management and Collections;
3. Accounts Receivable and Cash Application Support;
4. Accounts Payable Support;
5. Treasury Support;
6. General Ledger/Accounting Support;
7. Reporting and Business Analytical Support;
8. Information Technology Services;
9. Marketing and Public Relations Services;
10. Finance and Legal Services;

[67] Exhibit "P-26", Docket, pp. 384 to 401.
[68] Exhibit "P-27", Docket, pp. 475 to 476.
[69] Exhibit "P-35" (Exhibit "P-14-3" [USB]).
[70] Exhibit "P-28", Docket, p. 405.
[71] Exhibit "P-29", Docket, pp. 406 to 416.

11. Human Resources and Training Services;
12. Sales Support Services;
13. New Centre Opening Team;
14. Various Ad Hoc general support services;
15. Provision of performance reports against agreed KPI's in standardize form and frequency;
16. Consultancy on relevant process methodology and on process change management/continuous process improvement; and
17. IT Helpdesk support offered to associated companies worldwide.

Verily, these services fall within the scope of *"services other than processing, manufacturing or repacking goods"*, hence, petitioner satisfactorily complied with the *second* essential element.

As regards the ***third* essential element**, *i.e.,* the payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules, petitioner presented the *Certification* of inward remittances issued by Hongkong and Shanghai Banking Corporation (HSBC)[72] purportedly showing the remittances of its foreign client. To be sure, the certification of inward remittances attests to the fact of payment *"in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP"*.[73] Thus, with the submission of the said *Certification*, petitioner complied with the said *third* essential element.

However, as already intimated, equally important to consider is that the said foreign currency remittances referred to under Section 108(B)(2) must be duly supported by VAT zero-rated official receipts in accordance with Section 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, which provide that a VAT taxpayer, like herein petitioner, shall for every lease of goods or properties, and for every sale, barter or exchange of services, issue a VAT official receipt which must contain the information stated in the said provisions, 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.

[72] Exhibits "P-34", Docket, pp. 449 to 450.
[73] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.

(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 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;

(b) If the sale is exempt from value-added tax, the term **'VAT-exempt sale'** shall be written or printed prominently on the invoice or receipt;

(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;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided,* That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

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

(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."

These provisions of the NIRC of 1997 are further implemented by Section 4.113-1(A) and (B) of Revenue Regulations (RR) No. 16-05, as amended, to wit –

"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;
>
> (b) If the sale is exempt from VAT, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;
>
> (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;
>
> (d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to

issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) In the case of sales in the amount of one thousand peso (₱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 sales invoices and official receipts must be duly registered with the BIR as prescribed under Section 237, in relation to Section 238, of the Tax Code, to wit:

"SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or 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...

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."

In this case, aside from the *Certification* of inward remittances issued by HSBC, petitioner also submitted various official receipts (ORs) to support its reported zero-rated sales of ₱850,517,073.61 for the 2nd to 4th quarters of CY 2016. Upon verification, however, the Court finds that only the sales of ₱847,593,044.35 are duly remitted and correspondingly supported by ORs, detailed as follows:

Exhibit	OR Date	OR No.	Amount (in Peso)	US$ Equivalent
"P-32"	8 April 2016	1004	₱103,752,375.88	$2,262,974.20
"P-18"	6 May 2016	1005	82,497,681.06	1,763,072.79
"P-19"	8 June 2016	1006	184,083,756.67	3,948,891.11
"P-20"	11 July 2016	1007	86,722,318.19	1,848,625.84

"P-21"	8 August 2016	1008	93,318,858.93	2,048,460.00
"P-22"	6 September 2016	1009	87,685,193.87	1,886,274.25
"P-23"	7 October 2016	1010	83,000,966.63	1,718,016.26
"P-24"	7 November 2016	1011	66,251,750.69	1,370,236.60
"P-25"	7 December 2016	1012	60,280,142.43	1,211,685.72
		Total	**₱847,593,044.35**	**$18,058,236.77**

Considering that the certification of inward remittances attests to the fact of payment *"in acceptable foreign currency ...and accounted for in accordance with the rules and regulations of the BSP"*,[74] and that these remittances pertain to foreign client's payments for the services rendered by petitioner which are duly supported by official receipts, petitioner is considered to have complied with the above-stated *third* essential element, but only to the extent of ₱847,593,044.35.

With regard to the ***fourth*** **essential element**, however, petitioner failed to clearly establish its compliance therewith. It must be noted that the issue as to whether or not petitioner performed services in the Philippines is a question of fact; hence, it must be proven by specific evidence.

The same *Service Agreement* between petitioner's Head Office and Franchise International S.A.R.L. does not bear any indication that the subject services were to be performed by petitioner in the Philippines. Neither is there any other evidence which tend to prove such fact. Furthermore, upon a careful reading of the above-stated *Services Agreement*, it can be inferred that the same services may be performed by petitioner's Head Office or even Third-Party Provider, not only by petitioner itself. Accordingly, there being no showing that the subject services were performed in the Philippines and that the subject services were done exclusively by petitioner itself, it is clear that there is no showing of compliance with the said *fourth* essential element.

At this juncture, petitioner has already fallen short in establishing that its sales or supply of services qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended. 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 tax credit certificate or refund of creditable input tax due or paid attributable to such sales.[75] Considering petitioner's failure to establish its zero-rated or effectively zero-rated sales for the subject periods, the present *Petition for Review* must necessarily fail.

Consequently, it becomes unnecessary to look into petitioner's compliance with the other remaining requisites.

[74] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.
[75] Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 222428, July 19, 2018.

It must be emphasized that actions for tax refund or credit, as in the instant case, are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[76] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[77] Hence, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[78]

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

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

[76] Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc., G.R. No. 127105, June 25, 1999.
[77] Kepco Philippines Corporation vs. Commissioner of Internal Revenue, G.R. No. 179961, January 31, 2011 citing Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 159490, February 18, 2008.
[78] Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 183531, March 25, 2015 citing J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 171307, August 28, 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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it 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