REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

"K" LINE MARITIME ACADEMY PHILIPPINES, INC., *Petitioner,*	**CTA EB NO. 3080** (CTA CASE NO. 10270)
	Present:
- versus -	**RINGPIS-LIBAN,** *P.J.,* **BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** and **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 20 2026

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DECISION

ANGELES, J.:

Before the Court of Tax Appeals (CTA) *En Banc* (CTA *En Banc*) is a *Petition for Review [For the Petitioner]*[1] personally filed by "K" Line Maritime Academy Philippines, Inc. (Petitioner) on February 6, 2025 and electronically filed on February 7, 2025. The present appeal prays that the June 27, 2024 Decision[2] (Assailed Decision) and December 18, 2024 Resolution[3] (Assailed Resolution) of the Court of Tax Appeals Second Division (CTA Division) in CTA Case No. 10270 entitled, *"K" Line Maritime Academy Philippines, Inc. v. Commissioner of Internal Revenue* be reversed and set aside.

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[1] EB Docket, pp. 1 to 61.

[2] EB Docket, pp. 69 to 79, Penned by Associate Justice Corazon G. Ferrer-Flores, concurred by Associate Justice Maria Rowena Modesto San-Pedro, and Associate Justice Ma. Belen M. Ringpis-Liban was on leave.

[3] EB Docket, pp. 81 to 85.

In sum, the CTA Division dismissed the case for lack of jurisdiction. It ruled that while petitioner timely filed its administrative claim for refund before the Bureau of Internal Revenue (BIR), it found that the judicial claim for refund was belatedly filed before the CTA for failure of petitioner to timely file the judicial claim for refund within thirty (30) days from the lapse of the ninety (90)-day period for the BIR to decide or from the receipt of the latter's decision.

THE PARTIES

Petitioner is a duly organized and existing domestic corporation engaged in the business of providing formal and non-formal maritime training programs, seminars, workshops and practical hands-on training. It has its principal place of business at 2nd floor, "K" Line Building, Coral Way Drive, Central Business Park 1, Bay City, Pasay City 1308.[4]

On the other hand, respondent, is the duly appointed Commissioner of the BIR (CIR), vested with authority to issue or grant tax refund of input Value-Added Tax (VAT) arising from purchases and attributable to zero-rated sales. He holds office at the 5th Floor, BIR National Office Bldg., Agham Road, Diliman, Quezon City, where he may be served with summons and other legal processes.[5]

THE FACTS

Below are the facts as narrated by the CTA Division in the Assailed Decision:[6]

> **ANTECEDENTS (ADMINISTRATIVE LEVEL)**
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> On November 11, 2019, petitioner filed with the VAT Credit Audit Division (VCAD) of the BIR its application for tax refund of its input VAT in 2018 in the total amount of P6,369,533.40.
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> On the following day, or on November 12, 2019, petitioner submitted the documents supporting its claim for refund.
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> Thereafter, on February 14, 2020, petitioner received the *VAT Refund Notice* from VCAD, stating that the application for tax refund

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[4] Par. 3.1, The Parties, *Petition for Review [For the Petitioner]*, EB Docket, p. 3.
[5] Par. 3.2, The Parties, *Petition for Review [For the Petitioner]*, EB Docket, p. 3.
[6] *Decision*, Division Docket, pp. 1847 to 1849.

has been partially denied to the extent of P5,568,836.92, for the following reasons:

Reasons for Denial	Amount	Details of Denial
Purchases not compliant with the invoicing requirements pursuant to Sec. 113 of the NIRC, as amended	348,651.00	Annex "B"
Big-ticket purchases with no proof of payment as required under item 4.4.3 of Annex A-1 of RMC No. 47-2019	818,345.72	Annex "B"
Out-of-period	91,974.37	Annex "B"
Overclaimed input VAT	5,630.37	Annexes "B" and "C"
Output VAT applied for the TY 2018	2,431,124.34	Annex "C"
Output VAT assessed on unsupported sales to various individuals	3,648.00	Annex "C"
Output VAT assessed on VATable sales	36,340.31	Annex "D"
Input tax attributable to export sales with insufficient documentations pursuant to RMC No. 47-2019	1,833,122.81	Annex "E"
TOTAL	**₱5,568,836.92**	

PROCEEDINGS BEFORE THIS COURT

The present *Petition of Review* was filed on March 13, 2020.

Respondent posted a *Motion for Extension of Time to File Answer* on July 23, 2020, which the Court granted in the Resolution dated September 2, 2020. Thereafter, on August 20, 2020, respondent posted a *Second Motion for Extension of Time to File Answer*, which the Court granted in the Resolution dated September 15, 2020, with a warning that no further extensions shall be granted.

Thereafter, respondent posted his *Answer* on September 10, 2020, and transmitted the *BIR Records* for this case on November 17, 2020.

The Pre-Trial Conference was set and held on March 2, 2021. Prior thereto, *Respondent's Pre-Trial Brief* was filed on February 23, 2021, while the *Pre-Trial Brief (For Petitioner "K" Line Maritime Academy Philippines, Inc.)* was submitted on February 24, 2021.

On March 22, 2021, the parties submitted via e-mail their *Joint Stipulation of Facts and Issues*. The Court then issued the Pre-Trial Order dated June 7, 2021, thereby deeming the termination of the Pre-Trial.

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

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Roan N. Almazan, petitioner's Finance-OIC; (2) Ms. Joy G. Tesorero, petitioner's Taxation Officer; and (3) Mr. Joseph Cedric V. Calica, the Court-commissioned independent certified public accountant (ICPA).

The *Report* of the ICPA was submitted on June 21, 2021.

Petitioner filed its *Formal Offer of Exhibits* on April 27, 2022. Respondent failed to file his comment thereon. In the Resolution dated September 19, 2022, the Court admitted petitioner's exhibits, *except* for Exhibits "P-34-A-734", "P-34-A-783" to "P-34-A-792", "P-38-A-116", "P-38-A-117", "P-38-A-376", "P-38-A-893", and "P-38-B-148", which were denied admission for not being found in the records of the case.

For his part, respondent offered the testimony of Revenue Officer Marjorie C. Dioso.

On January 30, 2023, respondent filed his *Formal Offer of Evidence*, to which petitioner filed its *Comment (To Respondent's Formal Offer of Evidence dated January 27, 2023)* on February 8, 2023. In the Resolution dated April 11, 2023, the Court admitted all of respondent's offered evidence.

The *Memorandum (For Petitioner "K" Line Maritime Academy Philippines, Inc.)* was filed on May 17, 2023, while respondent's *Memorandum* was submitted on May 29, 2023.

This case was considered submitted for decision on June 27, 2023.

Thereafter, on June 27, 2024, the Assailed Decision was rendered. The dispositive portion[7] of which provides, to wit:

Assailed Decision (June 27, 2024)

WHEREFORE, the instant Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

On June 1, 2024, herein petitioner received the Notice of Decision and a copy of the Assailed Decision.[8] Subsequently, the latter filed a *Motion for Reconsideration [on the Decision promulgated on June 27, 2024]*[9] (MR) on July 16, 2024, with respondent's *Comment*

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[7] Division Docket, p. 1855.
[8] Division Docket, p. 1845 to 1856.
[9] Division Docket, pp. 1857 to 932.

and Opposition (to Petitioner's Motion for Reconsideration [Re: Decision promulgated on June 27, 2024])[10] filed on August 21, 2024. Such MR was then denied in the Assailed Resolution, the dispositive portion[11] of which is reproduced as follows:

> Assailed Resolution (December 18, 2024)
>
> **WHEREFORE,** in view of the foregoing, petitioner's *Motion for Reconsideration [on the Decision promulgated on June 27, 2024]* is **DENIED** for lack of merit.
>
> **SO ORDERED.**

On January 22, 2025, petitioner received a copy of the Assailed Resolution.[12]

THE PROCEEDINGS BEFORE THE CTA *EN BANC*

On February 6, 2025, the present *Petition for Review [For the Petitioner]*[13] was filed with its electronic transmittal filed on the next day, February 7, 2025. Following thereto, the CTA *En Banc* directed herein respondent to file its comment within ten (10) days from notice.[14] On March 24, 2025, respondent filed his *Comment and Opposition (to Petitioner's Petition for Review dated 06 February 2025)*[15] which the Court noted in a Notice dated April 15, 2025.[16] In such Notice, the case was likewise submitted for decision.

THE ISSUE[17]

At the core of the present appeal is the issue on **whether or not the CTA Division erred in dismissing the Petition for Review for lack of jurisdiction.**

THE ARGUMENTS

Petitioner's arguments

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[10] Division Docket, pp. 1901 to 1911.
[11] Division Docket, p. 1919.
[12] Notice of Resolution, Division Docket, p. 1914.
[13] EB Docket, pp. 1 to 61.
[14] *Notice*, EB Docket, p. 91.
[15] EB Docket, pp. 92 to 105.
[16] EB Docket, *unpaginated.*
[17] Statement of the Issue, *Petition for Review [For the Petitioner]*, EB Docket, p. 7.

Petitioner relies on the following grounds in support of the present appeal and contends that the CTA Division committed a reversible error: (a) when it dismissed the Petition for Review on the basis of the *Silicon Philippines, Inc. (Formerly Intel Manufacturing, Inc.) vs. Commissioner of Internal Revenue* which was promulgated under the provisions of the old Tax Code; (b) when it applied the general law, Republic Act (R.A.) No. 1125 as amended by R.A.1125 *(sic)*, over the special law, Sec. 112 (C) of the Tax Code, as amended by the Tax Reform for Acceleration and Inclusion (TRAIN) Law; and (c) when it interpreted the phrase "communicated in writing within the 90-day period" under Revenue Memorandum Circular (RMC) No. 17-2018 to mean that the full or partial denial of VAT refund must also be received by the taxpayer within the ninety (90)-day period.[18]

Furthermore, petitioner maintains the following arguments in summary:[19]

1) The relevant provisions of the TRAIN Law should determine the timeliness of the petitioner's judicial claim;

2) The amendment of Sec. 112(C) under the TRAIN Law contemplates a singular action from the BIR to decide administrative claims within the ninety (90)-day period. This carries with it the taxpayer's singular remedy of appeal within thirty (30) days from receipt of the BIR's decision;

3) The *Silicon* case does not apply in this instant case because (1) the BIR issued a decision; and (2) the decision was rendered after the TRAIN Law took effect;

4) RMC No. 17-2018 should be understood in light of the provision of Sec. 112 (C) of Tax Code, as amended by the TRAIN Law. Otherwise, such interpretation must be voided for being *ultra vires* to the law it seeks to implement;

5) In the interpretation of the law, the intent of the framers as may be inferred in the legislative history must prevail;

6) Sec. 112 (C) of the Tax Code as amended by TRAIN Law must prevail over R.A. No. 1125 as amended by R.A. No. 9282;

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[18] Grounds Relied upon for Review, *Petition for Review [For the Petitioner]*, EB Docket, p. 7.
[19] Arguments, *Petition for Review [For the Petitioner]*, EB Docket, pp. 7 to 58.

7) The Honorable CTA is a specialized court of law and justice. In which case, it has the power to liberally construe its own rules; and

8) The Honorable CTA, in a number of cases, acquired jurisdiction over the petitions filed before the same counting the thirty (30)-day period within which to file judicial appeal from receipt of the CIR's full or partial denial of the VAT refund claim.

Thus, in consideration of the foregoing grounds and arguments, petitioner prays that the CTA *En Banc* vacate the Assailed Decision and Resolution, and a new decision be entered to the effect that the appeal before the CTA Division was filed within the prescriptive period and that the Court has jurisdiction over the same.

Respondent's arguments

On the other hand, respondent, by way of *Comment and Opposition (to Petitioner's Petition for Review dated 06 February 2025),*[20] maintains that the Court has no jurisdiction over the instant case and that the CTA Division correctly dismissed the case before it.

Respondent maintains that when petitioner filed its administrative claim for refund on November 11, 2019, the BIR had ninety (90) days to act on such claim until February 9, 2020. In case the latter failed to act within such period, petitioner had thirty (30) days from the lapse of the period, or until March 10, 2020, within which to file its judicial claim before the CTA Division. He claims that since there was no adverse decision received by petitioner on the last day to decide on its administrative claim for refund on February 9, 2020, petitioner should have filed its judicial claim within thirty (30) days following thereto or on March 10, 2020. Considering that petitioner merely filed its Petition for Review[21] before the CTA Division on March 13, 2020, the latter already lost its jurisdiction over the case.

Lastly, respondent explains that it is well-established by jurisprudence that refunds are in the nature of exemptions and therefore must be strictly construed against the claimant. Hence, as a matter of legislative grace, it is necessary to strictly adhere to the statutory period for filing refund claims.

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[20] EB Docket, pp. 92 to 105.
[21] Division Docket, pp. 6 to 19.

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TIMELINESS OF THE PRESENT APPEAL

The present Petition for Review was filed on time

As provided in Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA),[22] a party adversely affected by a ruling, decision, or resolution of the CTA Division may elevate the matter, on appeal, to the CTA *En Banc* within fifteen (15) days from receipt thereof, to wit:

> **RULE 8**
> **PROCEDURE IN CIVIL CASES**
>
> SEC. 3. *Who may appeal; period to file petition.* —
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> xxx xxx xxx
>
> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. *(Rules of Court, Rule 42, sec. 1a) (Emphasis supplied)*

Moreover, prior to the filing of an appeal before the CTA *En Banc,* the filing of a motion for reconsideration or new trial before the CTA Division is crucial – as failure to do so may be a ground for dismissal.[23]

As previously stated, subsequent to petitioner's receipt of the Notice of Decision and a copy of the Assailed Decision, it filed a *Motion for Reconsideration [on the Decision promulgated on June 27, 2024]*[24]

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[22] Rules of the Court of Tax Appeals - approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals - approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA); and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).

[23] *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 201530 & 201680-81, April 19, 2017.

[24] Division Docket, pp. 1857 to 932.

(MR) which was denied in the Assailed Resolution. Petitioner then received a copy of the Assailed Resolution on January 22, 2025.[25] Within fifteen (15) days therefrom, the present *Petition for Review [For the Petitioner]*[26] was filed on February 6, 2025.

In compliance with the fifteen (15)-day reglementary period to file an appeal before the CTA *En Banc* as required by the RRCTA, the present *Petition* was timely filed.

THE RULING OF THE COURT

The *Petition for Review [For the Petitioner]* is meritorious.

As to the timeliness of the judicial claim for refund before the Court in Division

The CTA Division erred in dismissing the Petition for Review before it for lack of jurisdiction

The judicial claim for refund before it was filed on time

To recall, the CTA Division dismissed the case for lack of jurisdiction. Although it ruled that petitioner timely filed its administrative claim for refund before the BIR, it found that the judicial claim for refund was belatedly filed before the CTA for failure of petitioner to timely file the judicial claim for refund within thirty (30) days from the lapse of the ninety (90)-day period for the BIR to decide or from the receipt of the latter's decision.

The CTA Division, at length, previously ruled as follows:

> ***Petitioner's judicial claim was belatedly filed.***
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> As regards the *second* requisite, Section 112 of the NIRC of 1997, as amended, necessitates that the judicial claim must have been

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[25] Notice of Resolution, Division Docket, p. 1914.
[26] EB Docket, pp. 1 to 61.

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> filed within thirty (30) days from receipt of respondent's decision or after the expiration of the 90-day period.
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> In *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, the Supreme Court held that a judicial claim shall be filed within a period of thirty (30) days after the receipt of respondent's decision or ruling or after the expiration of the 120-day [now 90-day] period, whichever is sooner. Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by the law, any claim filed in a period less than or beyond the 120+30 [now 90+30] days provided by the NIRC is outside the jurisdiction of the CTA.
>
> Applying the foregoing in the present case, from the filing of petitioner's administrative claim on November 11, 2019, respondent had ninety (90) days or until February 9, 2020, to act on the said claim. In case of inaction within the said 90-day period, petitioner had thirty (30) days from such expiration to file its judicial claim, or until March 10, 2020.
>
> As earlier mentioned, the letter partially denying petitioner's claim for refund dated January 8, 2020 was only received by petitioner on February 14, 2020, which was beyond the ninety (90)-day period given the respondent to decide such claim.
>
> Considering that no decision was communicated to the taxpayer within the ninety (90)-day period, there is no decision appealable to this Court to speak of. Any decision belatedly received by petitioner is not binding upon it. Petitioner, then, should have construed the non-receipt of the decision within the ninety (90)-day period as inaction on the part of respondent and reckoned the thirty (30)-day period to file its judicial claim from February 9, 2020, and not from the receipt of the letter on February 14, 2020.
>
> Unfortunately, the filing of the Petition for Review on March 13, 2020 was beyond the thirty (30)-day mandatory and jurisdictional period. The Court, therefore, lacks jurisdiction to hear and decide petitioner's case.

The Court *En Banc* differs from the pronouncement of the Court in Division. We explain our reasons below.

Judicial remedies for the refund or credit of input taxes under the TRAIN Law

At the outset, it is worthy to emphasize that Section 112(C) of the Tax Code, **prior** to the effectivity of the TRAIN Law, read, as follows:

SECTION 112. *Refunds or Tax Credits of Input Tax.* —

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within **one hundred twenty (120) days** from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within **thirty (30) days** from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals. *(Emphasis and underscoring supplied)*

The TRAIN Law then later took effect on January 01, 2018, the above-cited provision was **amended**, to wit:

SEC. 112. *Refunds or Tax Credits of Input Tax.* —

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. *(Emphasis and underscoring supplied)*

As may be gleaned from the foregoing, among the revisions brought about by the TRAIN Law to the Tax Code, is the **removal of the taxpayer's remedy of appeal from the CIR's failure to act on the refund claim within the prescribed period.**

Considering such deletion of the taxpayer's appeal from the CIR's inaction, it appears that the CTA may take cognizance of an appeal only when it is filed within thirty (30) days from the taxpayer's receipt of the **decision** of the CIR denying the refund claim. This necessarily assumes that the CIR or his duly authorized representative acted on the refund claim through a written decision.

However, under Section 7(a)(2) of RA 1125, as amended (CTA Law), in relation to Section 11 thereof, the CTA may also take cognizance of an appeal from the inaction of the CIR in a refund claim, provided that such appeal is filed within thirty (30) days from the expiration of the period fixed by law for the CIR's action (*i.e.*, ninety (90) days).

Thus, while it is true that Section 112(C) of the Tax Code, as amended by the TRAIN Law, provides only a single scenario when an appeal in an administrative refund claim may be brought to the CTA (appeal from the CIR's decision), Sections 7(a)(2) and 11 of the CTA Law, which remain unchanged, provide another scenario when such appeal may be made (appeal from the CIR's inaction). Applying the TRAIN Law and CTA Law together, **the taxpayer may avail of an appeal to the CTA <u>either</u> from the <u>decision</u> of the CIR or his <u>inaction.</u>**

The question now is whether the taxpayer may still appeal the decision of the CIR to the CTA within thirty (30) days from receipt thereof, even if such decision was issued after the CIR failed to act within the ninety (90)-day period; or is the taxpayer constrained to appeal the CIR's inaction within thirty (30) days from the lapse of the ninety (90)-day period, despite the subsequent issuance of a decision of the CIR, pursuant to the "whichever is sooner" rule.

In order to give full effect to the above-cited provisions of the TRAIN Law and the CTA Law, and to allow both laws to stand in harmony, We must recognize the **taxpayer's option to appeal <u>either</u> the decision of the CIR or his inaction**, <u>regardless of whichever is sooner</u>.

"Whichever is sooner" rule does not apply in light of the TRAIN Law amendments

The Court is not unaware that in *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*,[27] among other cases, the Supreme Court ruled that the judicial claim for refund shall be filed within thirty (30) days after the receipt of the CIR's decision or after the expiration of the one hundred twenty (120)-day period, whichever is sooner.

A careful examination of this case, however, shows that **the "whichever is sooner" rule was based on and has been used in relation to Section 112 of the Tax Code prior to the effectivity of the TRAIN Law.** Understandably, under the old provision, the filing of an appeal with the CTA could be reckoned from either the decision of the CIR or his inaction. But due to instances where both the decision and inaction of the CIR were appealable to the CTA, issues on timeliness of the judicial appeal and on which remedy was more proper to take, arose. Hence, the aforementioned ruling was drawn relating the mandatory and jurisdictional nature of the one hundred twenty plus thirty (120+30)-day period, to the "whichever is sooner" rule.

With the deletion of the appeal from the inaction of the CIR under the TRAIN Law, the appeal from the decision of the CIR remained as the one clear and unmistakable remedy of the taxpayer under the Tax Code.

Furthermore, **the availability of an appeal from the CIR's inaction under the CTA Law cannot be interpreted in such a way as to fully deny the taxpayer of its right to appeal the CIR's decision under the TRAIN Law. There is no legal basis for such interpretation.** Although appeal from the CIR's decision denying the claim, and appeal from his inaction, are mutually exclusive remedies, such that resort to one bars the application of the other, this does not mean that the lapse of the ninety plus thirty (90+30)-day period under the CTA Law bars the taxpayer from appealing the decision of the CIR issued thereafter, where no appeal was filed during the ninety plus thirty (90+30)-day period.

It cannot be concluded that the availability of an appeal from the CIR's inaction under the CTA Law, was intended to limit the taxpayer's recourse to the Court under other relevant laws. Hence, the appeal within thirty (30) days from the CIR's inaction under the CTA Law, **should be treated as a permissive remedy, not a restrictive one.**

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[27] G.R. No. 182737, March 02, 2016.

In the present case, it bears emphasis that petitioner elected to pursue its judicial remedy by invoking Section 112(C) of the Tax Code, as amended by the TRAIN Law, by filing a *Petition for Review* assailing the CIR's decision on its refund claim, which was received on **February 14, 2020**. Guided by the foregoing discussion, petitioner had thirty (30) days from receipt of said decision or until **March 15, 2020**—to elevate the matter to this Court. As the *Petition* was filed before the Court in Division on **March 13, 2020**, it was well within the prescribed period.

Clearly, the fact that petitioner did not appeal the inaction of the CIR within thirty (30) days from the lapse of the ninety (90)-day period on February 9, 2020, or until March 10, 2020, did not bar its right to appeal the CIR's decision subsequently received on February 14, 2020.

Thus, finding merit in the contentions of herein petitioner, the Court *a quo* erred in ruling that the appeal before it was belatedly filed.

As to the merits of such judicial claim for refund

Considering that trial on the merits has already previously ensued, the Court *En Banc*, having the power to determine questions of fact and law, deems it proper to rule on the merits of the present refund claim.

We proceed.

Previously, the issues[28] for the resolution of the Court in Division were as follows:

1. **Whether petitioner is entitled for additional refund in the amount of ₱4,374,186.54 pertaining to the alleged excess input VAT covering the period January 1 to December 31, 2018**; and

2. **Whether the BIR is correct in denying the claimed input tax in the amount of ₱5,568,836.92 thru the VAT Refund Notice dated January 08, 2020.**

[28] Issues, *Pre-Trial Order*, Division Docket, p. 666.

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

Section 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, (Tax Code) as amended by the TRAIN Law, provides, in part, as follows:

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

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Based on the foregoing, the Supreme Court, in *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*,[29] summarized Section 112(A) into the five (5) requisites which must concur before a claim for refund or tax credit for unutilized input VAT may be allowed, to wit:

> (1) the taxpayer is engaged in sales which are zero-rated (like export sales) or effectively zero-rated;
> (2) the taxpayer is VAT-registered;
> (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made;
> (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax; and
> (5) in case of zero-rated sales under Section 106 (A) (2) (a) (1) and (2), Section 106 (B), and Section 108 (B) (1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with BSP rules and regulations. It is added that, "where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly or entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of the sales.

Later, in *San Roque Power Corp. v. Commissioner of Internal Revenue*,[30] the High Court further organized, segregated, and enumerated the same into nine (9) requisites, to wit:

> 1. the taxpayer is VAT-registered;
> 2. the taxpayer is engaged in zero-rated or effectively zero-rated sales;
> 3. the input taxes are due or paid;
> 4. the input taxes are not transitional input taxes;
> 5. the input taxes have not been applied against output taxes during and in the succeeding quarters;
> 6. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
> 7. for zero-rated sales under Sections 106 (A) (2) (1) and (2); 106 (B); and 108 (B) (1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas;
> 8. 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

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[29] G.R. No. 166732, April 27, 2007.
[30] G.R. No. 180345, November 25, 2009.

v

input taxes shall be proportionately allocated on the basis of sales volume; and

9. the claim is filed within two years after the close of the taxable quarter when such sales were made.

Moreover, these nine (9) requisites may further be classified into certain categories as follows:

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

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;[31]

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 (ORs) 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;[32]

As to the taxpayer's registration with the BIR:

3. the taxpayer is a VAT-registered person;[33]

As to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[34]

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

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

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

[34] *Ibid.*

5. for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B);[35] 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;[36]

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

6. the input taxes are not transitional input taxes;[37]

7. the input taxes are due or paid;[38]

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

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[35] Section 106(B) cited in Section 112(A) of RA No. 8424 was later amended by RA No. 9337 to pertain to Section 106(A)(2)(b). Accordingly, Section 112(A), as amended by RA No. 9337, reads 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 or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales." (*Emphasis supplied*)

However, in view of the amendments introduced by RA No. 10963, Section 106(A)(2)(b) is now deleted.

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

[37] *Ibid.*

[38] *Ibid.*

allocated on the basis of sales volume;[39] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[40]

In view of the foregoing and on the basis of the totality of petitioner's evidence, the instant judicial claim for refund is **partially granted**.

We explain.

The administrative and judicial claims for refund were filed on time

As regards the *first* requisite, We affirm the previous pronouncement of the Court in Division that the administrative claim for refund was timely filed.

Section 112 (A) is clear – claims for tax refund or tax credit of input tax in relation to zero-rated sales must be filed within two (2) years after the close of the taxable quarter when such sales were made. To illustrate, the relevant timeline of events readily determines the timeliness of the administrative claim, as follows:

CY 2018	CLOSE OF TAXABLE QUARTER	TWO (2)-YEAR PERIOD FROM CLOSE OF TAXABLE QUARTER	FILING OF ADMINISTRATIVE CLAIM FOR REFUND
1st Qtr[41]	March 31, 2018	March 31, 2020	November 11, 2019
2nd Qtr[42]	June 30, 2018	June 30, 2020	
3rd Qtr[43]	September 30, 2018	September 30, 2020	
4th Qtr[44]	December 31, 2018	December 31, 2020	

39 *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue, supra.*
40 *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, supra*; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue, supra.*
41 Exhibit "P-7", Division Docket, pp. 1333 to 1334.
42 Exhibit "P-7-A", Division Docket, pp. 1335 to 1336.
43 Exhibit "P-7-B", Division Docket, pp. 1337 to 1338.
44 Exhibit "P-7-C", Division Docket, pp. 1339 to 1340.

In view of the foregoing, it is apparent that petitioner's filing of its administrative claim for refund through BIR Form No. 1914 – Application for Tax Credits/Refunds[45] on November 11, 2019, as evidenced by the stamped received of the BIR thereof, was duly and timely made.

Moreover, at the core of the present appeal before Us is the timeliness of the judicial claim for refund and the jurisdiction of the CTA Division to try and hear the same. As previously and extensively discussed, petitioner elected to pursue its judicial remedy by invoking Section 112(C) of the Tax Code, as amended by the TRAIN Law, by assailing the CIR's decision on its administrative claim for refund from its receipt on February 14, 2020. Counting thirty (30) days therefrom or until **March 15, 2020,** petitioner timely filed the same on **March 13, 2020.**

Petitioner is a VAT-registered entity

Anent the *third* requisite, petitioner sufficiently established that it is a VAT-registered taxpayer, with Taxpayer Identification Number (TIN) 002-561-417-00000, evidenced by its BIR Form 2303 Certificate of Registration.[46] Moreover, this clearly shows that as early as 1993, petitioner filed for VAT registration.

Petitioner is engaged in zero-rated sales as defined in Section 108(B)(2)[47]

As to the *fourth* requisite, it is required that the taxpayer is engaged in zero-rated or effectively zero-rated sales.

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[45] Exhibit "P-8", Division Docket, p. 1343.
[46] Exhibit "P-5", Division Docket, p. 1329.
[47] Sec. 108. Value-added Tax on Sale of Services and Use or Lease of Properties.

xxx xxx xxx

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

xxx xxx xxx

(2) Services other than those mentioned in the preceding paragraph, rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

u

To recall, petitioner is a domestic corporation engaged in the business of providing maritime training programs, seminars, workshops and practical hands-on training.[48] It contends that these services were rendered to non-resident foreign clients, and therefore covered by Section 108(B)(2) of the Tax Code, as amended, which provides that services performed in the Philippines in favor of a person doing business outside the Philippines, is subject to zero percent (0%) VAT, *viz.*:

> 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);
> >
> > (2) **Services other than those mentioned in the preceding paragraph, rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas**; *(Emphases added)*

In sum, to be qualified under the foregoing provision, petitioner must satisfy the following, in order for its services be subject to the VAT rate of zero percent (0%), to wit:

1. The **services** rendered should be **other than "processing, manufacturing or repacking goods"**;

2. The service must be **performed in the Philippines** by a VAT-registered person; and

3. The **recipient is a foreign corporation**, and the said corporation is **doing business outside the Philippines**, or is a

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[48] Par. 2, Admitted Facts, *Pre-Trial Order*, Division Docket, p. 665.

> non-resident person not engaged in business who is outside the Philippines when the services are performed;
>
> 4. The payment for such services should be in **acceptable foreign currency** accounted for in accordance with BSP rules.

As regards the first requirement, petitioner submitted the various training agreements[49] with its clients which indicates the services to be provided, *i.e.,* service of the training requirements of the client in relation to seafarers recruited for it by its Manning Agents. Hence, the same clearly falls within the scope of *"services other than processing, manufacturing or repacking goods,"* and petitioner satisfactorily complied with such a requirement.

Company Name	**Training Agreement Covered**
1. "K" Line Ship Management (Chemical) Pte. Ltd.	Exhibits "P-10" to "P-10-A-1"
2. "K" Line Ship Management Co., Ltd.	Exhibits "P-10-B" to "P-10-B-1"
3. "K" Line Energy Ship Management Co., Ltd.	Exhibits "P-10-C" to "P-10-C-1"
4. "K" Line Ship Management (Singapore) Pte Ltd.	Exhibits "P-10-D" to "P-10-D-3"
5. Taiyo Nippon Kisen Co., Ltd.	Exhibits "P-10-E" to "P-10-E-1"
6. "K" Line RoRo Bulk Ship Management Co., Ltd.	Exhibits "P-10-F" to "P-10-F-1"
7. "K" Line LNG Shipping (UK) Limited	Exhibits "P-10-G" to "P-10-G-3"

Anent the second requirement that the services must be performed in the Philippines by a VAT-registered person, the Court finds that while the foregoing training agreements[50] entered into by petitioner and its foreign clients have no provision as to where the services are to be performed by petitioner, petitioner's Taxation Officer, Ms. Joy G. Tesorero, in her Judicial Affidavit, testified that petitioner only conducts training in the Philippines.[51] This remained uncontested by respondent. Thus, the Court finds the same sufficient to establish that the services were actually performed by petitioner in the Philippines.

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[49] Exhibits "P-10" to "P-10-G-3", Division Docket, pp. 1345 to 1384.
[50] Exhibits "P-10" to "P-10-G-3", Division Docket, pp. 1345 to 1384.
[51] Exhibit "P-49", Division Docket, p. 1103.

As to the third requirement, in order to be considered as a non-resident foreign corporation (NRFC) 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 Securities and Exchange Commission (SEC), **and** proof of incorporation/registration in a foreign country. 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 herein; while the latter proves that the said recipient of the service is indeed foreign. In *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*,[52] 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 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.**
>
> xxx xxx xxx
>
> 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.
>
> xxx xxx xxx
>
> 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 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." *(Emphases and underscoring added)*

In the present case, petitioner established that its clients for the subject periods of claim are NRFC doing business outside the Philippines, as evidenced by the following documents:

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[52] G.R. No. 234445, July 15, 2020.

Company Name	Country	SEC Certification of Non-Registration	Proof of incorporation/ registration in a foreign country
1. "K" Line Ship Management (Chemical) Pte. Ltd.	SINGAPORE	"P-13"[53]	"P-11-E",[54] "P-11-E-1",[55] "P-11-E-2"[56]
2. "K" Line Ship Management Co., Ltd.	JAPAN	"P-13-A"[57]	"P-11",[58] "P-11-A",[59] "P-11-A-1"[60]
3. "K" Line Energy Ship Management Co., Ltd.	JAPAN	"P-13-B"[61]	
4. "K" Line Ship Management (Singapore) Pte Ltd.	SINGAPORE	"P-13-C"[62]	"P-11-C",[63] "P-11-C-1",[64] "P-11-C-2"[65]
5. Taiyo Nippon Kisen Co., Ltd.	JAPAN	"P-13-D"[66]	"P-11-B",[67], "P-11-B-1",[68] "P-11-B-2",[69] "P-12",[70] "P-12-A",[71] "P-12-A-1"[72]
6. "K" Line RoRo Bulk Ship Management Co., Ltd.	JAPAN	"P-13-E"[73]	
7. "K" Line LNG Shipping (UK) Limited	LONDON	"P-13-F"[74]	"P-11-D",[75] "P-11-D-1"[76]

Moreover, the fourth requirement provides that for zero-rated sales under Section 108(B)(2), the acceptable foreign currency exchange proceeds must have been duly accounted for in accordance with BSP rules and regulations. The Court finds that petitioner established this requirement. Accordingly, the same shall be extensively discussed with the *fifth* requisite hereinafter:

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[53] Division Docket, p. 1435.
[54] Division Docket, pp. 1414 to 1415.
[55] Division Docket, p. 1416.
[56] Division Docket, p. 1417.
[57] Division Docket, p. 1436.
[58] Division Docket, p. 1385 to 1387.
[59] Division Docket, p. 1388.
[60] Division Docket, p. 1389.
[61] Division Docket, p. 1437.
[62] Division Docket, p. 1438.
[63] Division Docket, pp. 1408 to 1409.
[64] Division Docket, p. 1410.
[65] Division Docket, p. 1411.
[66] Division Docket, p. 1439.
[67] Division Docket, p. 1390.
[68] Division Docket, pp. 1405 to 1406.
[69] Division Docket, p. 1407.
[70] Division Docket, pp. 1418 to 1431.
[71] Division Docket, pp. 1432 to 1433.
[72] Division Docket, pp. 1405 to 1406.
[72] Division Docket, p. 1434.
[73] Division Docket, p. 1440.
[74] Division Docket, p. 1441.
[75] Division Docket, p. 1412.
[76] Division Docket, p. 1413.

To recall, petitioner filed its Quarterly VAT Returns (BIR Form No. 2550Q) for the taxable year 2018 *declaring* its total sales in the aggregate amount of **₱127,319,449.82**, broken down as follows:[77]

2018	VATable Sales	VAT Exempt Sales	Zero-rated Sales	Total
1st Quarter	₱ 1,163,547.62	₱ -	₱ 23,495,729.33	₱ 24,659,276.95
2nd Quarter	526,179.28	-	35,128,477.65	35,654,656.93
3rd Quarter	6,865,422.95	15,800.00	28,155,850.01	35,037,072.96
4th Quarter*	11,704,219.04	14,600.00	20,249,623.94	31,968,442.98
TOTAL	**₱20,259,368.89**	**₱30,400.00**	**₱107,029,680.93**	**₱127,319,449.82**

* *Amended on July 16, 2019*

To determine petitioner's entitlement of the present judicial claim for refund, the zero-rated sales of services in the amount of ₱107,029,680.93 must be supported by VAT zero-rated Official Receipts (ORs) in accordance with the pertinent invoicing requirements under Section 113(A) and (B) of the Tax Code, as amended, to wit:

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

[77] Exhibits "P-7" to "P-7-D", Division Docket, pp. 1333 to 1342.

(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 are further implemented by Section 4.113-1(A) and (B) of Revenue Regulations (RR) No. 16-2005, as amended:

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

Additionally, Section 237, in relation to Section 238 of the Tax Code, prescribes that the sales invoices and ORs must be duly registered with the BIR to wit:

SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* —

(A) *Issuance.* – All persons subject to an internal revenue tax shall, at the point of each sale or transfer of merchandise or for services rendered valued at One hundred pesos (P100) or more, issue duly registered receipts or sale or commercial invoices, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: xxx

xxx xxx xxx

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

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

In support of such zero-rated sales amounting to **₱107,029,680.93**, petitioner submitted pertinent debit notes and corresponding ORs.[78] However, upon examination and verification by this Court, such **declared zero-rated sales should be reduced** in view of the following:

Zero-rated Sales[79] - *Disallowed for being supported by OR dated outside the period of claim*

OR Date	OR No.	Customer	Amount Billed	OR Amount
January 3, 2019	5951	K Line LNG Shipping UK Limited	$ 19,655.00	₱ 1,041,308.79
		TOTAL	**$19,655.00**	**₱1,041,308.79**

Hence, for the taxable year 2018, although petitioner declared VATable sales of ₱20,259,368.89, exempt sales of ₱30,400.00, and zero-rated sales of ₱107,029,680.93, We find that only the extent of **₱105,988,372.14** are properly substantiated for its zero-rated sales, and should thus be adjusted as follows:

2018	Declared VATable	Declared VAT Exempt	Valid Zero-rated	Disallowed Zero-rated	Total
1st Qtr	₱ 1,163,547.62	₱ -	₱ 23,495,729.33	₱ -	₱ 24,659,276.95
2nd Qtr	526,179.28	-	35,128,477.65	-	35,654,656.93
3rd Qtr	6,865,422.95	15,800.00	28,155,850.01	-	35,037,072.96
4th Qtr	11,704,219.04	14,600.00	19,208,315.15	1,041,308.79[80]	31,968,442.98
TOTAL	₱20,259,368.89	₱30,400.00	**₱105,988,372.14**	₱1,041,308.79	₱127,319,449.82

Services rendered by petitioner were paid for in acceptable foreign currency and duly accounted for in accordance with BSP rules

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[78] Exhibit "P-35-B" to "P-35-B-73".
[79] Exhibit "P-35-B-73".
[80] *Disallowed for being supported by OR dated outside the period of claim.*

Again, on the matter of the *fifth* requisite that the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the BSP rules and regulations, considering that petitioner operated a maritime training centre providing formal and non-formal maritime training programs, seminars, workshops and practical hands-on training to seafarers for deployment for the benefit of its non-resident foreign clients, it submitted a *Certification*[81] of inward remittances issued by BDO Unibank, Inc. in relation to its receipt of various remittances from January 15, 2018 to December 14, 2018, among which includes its non-resident foreign clients previously mentioned, as follows:

REMITTER	DATE CREDITED	GROSS PROCEEDS	NET PROCEEDS
"K" Line Ship Management (Chemical) Pte Ltd.	January 22, 2018	USD 26,107.00	USD 26,102.00
	July 30, 2018	USD 13,635.00	USD 13,630.00
	November 22, 2018	USD 5,047.00	USD 5,042.00
"K" Line Ship Management Co., Ltd. whose name was later changed to "K" Line Energy Ship Management Co.	January 22, 2018	USD 139,237.00	USD 139,232.00
	July 20, 2018	USD 81,813.00	USD 81,808.00
	November 16, 2018	USD 32,098.00	USD 32,093.00
	November 21, 2018	USD 4,322.27	USD 4,317.27
"K" Line Ship Management (Singapore) Pte Ltd.	February 15, 2018	USD 96,593.21	USD 96,588.21
	February 15, 2018	USD 8,702.00	USD 8,697.00
	August 16, 2018	USD 54,542.00	USD54,537.00
	November 16, 2018	USD 21,026.00	USD 21,021.00
Taiyo Nippon Kisen Co., Ltd. whose name was changed to "K" Line RoRo Bulk Ship Management Co., Ltd.	February 1, 2018	USD 861,528.00	USD 861,523.00
	March 16, 2018	USD 1,932.94	USD 1,927.94
	December 3, 2018	USD 2,293.84	USD 2,288.84
	June 1, 2018	USD 3,378.77	USD 3,373.77
	August 2, 2018	USD 445,424.00	USD 445,419.00
	September 3, 2018	USD 755.43	USD 750.43

[81] Exhibit "P-14", Docket (CTA Case No. 10270) – Vol. 3, pp. 1442 to 1443.

REMITTER	DATE CREDITED	GROSS PROCEEDS	NET PROCEEDS
	November 12, 2018	USD 163,962.00	USD 163,957.00
"K" Line LNG Shipping (UK) Limited	October 12, 2018	USD 51,701.00	USD 51,701.00

Additionally, a *Reconciliation of Export Sales and Foreign Currency Remittances*[82] for the same period, reflecting the same amounts, was likewise submitted by petitioner and admitted by the Court. However, upon scrutiny by the Court-commissioned ICPA of such inward remittances with petitioner's ORs, it was revealed that the following **zero-rated sales in the amount of ₱465,861.58 do not have the corresponding inward remittances**, *viz.*:

Exhibit	OR No.	Customer	Amount Billed	OR Amount
1st Quarter				
"P-35-B-8"	5750	K Line Ship Management Singapore PTE Ltd.	$ 8,702.00	₱ 452,013.20
2nd Quarter				
"P-35-B-35"	5814	Haque and Sons Ltd.	260.00	13,848.38
		TOTAL	**$ 8,962.00**	**₱465,861.58**

Thus, petitioner's valid zero-rated sales shall be further reduced from ₱105,988,372.14 to **₱105,522,510.56**, broken down as follows:

2018	Declared VATable	Declared VAT Exempt	Valid Zero-rated	Disallowed Zero-rated	Total
1st Qtr	₱ 1,163,547.62	₱ -	₱ 23,043,716.13	₱452,013.20[83]	₱24,659,276.95
2nd Qtr	526,179.28	-	35,114,629.27	13,848.38[84]	35,654,656.93
3rd Qtr	6,865,422.95	15,800.00	28,155,850.01	-	35,037,072.96
4th Qtr	11,704,219.04	14,600.00	19,208,315.15	1,041,308.79[85]	31,968,442.98
TOTAL	₱20,259,368.89	₱30,400.00	**₱105,522,510.56**	₱1,507,170.37	₱127,319,449.82

Therefore, only the total of **₱105,522,510.56 are valid zero-rated sales**, taking into account the disallowances found by the Court, as summarized below:

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[82] Exhibit "P-15", Division Docket, p. 1444.
[83] *Disallowed for not having the corresponding inward remittances.*
[84] *Disallowed for not having the corresponding inward remittances.*
[85] *Disallowed for being supported by OR dated outside the period of claim.*

Particulars	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	TOTAL
Declared Zero-rated sales	₱ 23,495,729.33	₱ 35,128,477.65	₱28,155,850.01	₱20,249,623.94	₱107,029,680.93
Less: Disallowances due to OR dated outside the period of claim	-	-	-	1,041,308.79	1,041,308.79
Disallowances due to lacking inward remittances	452,013.20	13,848.38	-	-	465,861.58
Total Disallowances	452,013.20	13,848.38	-	1,041,308.79	1,507,170.37
TOTAL VALID ZERO-RATED SALES	**₱23,043,716.13**	**₱35,114,629.27**	**₱28,155,850.01**	**₱19,208,315.15**	**₱105,522,510.56**

Accordingly, on the basis of the foregoing amounts, the same will be later utilized in determining the allocation of petitioner's valid input taxes, for the taxable year 2018.

The input VAT claimed are not in the nature of transitional input taxes

As to the *sixth* requisite, Section 112(A) requires that the input taxes claimed are not transitional in nature. The key provision which discusses transitional input taxes may be found in Section 111 of the Tax Code, *viz.*:

> **SEC. 111.** ***Transitional/Presumptive Input Tax Credits.*** –
>
> ***(A) Transitional Input Tax Credits.*** - A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory according to rules and regulations prescribed by the Secretary of finance, upon recommendation of the Commissioner, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to two percent (2%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax.

To explain, from the tenor of the law and the terminology utilized, transitional input VAT is applicable to taxpayers who shift from being a non-VAT registered to VAT-registered. Considering that prior to registration, these taxpayers may have purchases which generated input VAT – yet, due to such non-registration, they cannot recognize the same. During the period of transition from non-VAT to

VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer.[86]

In the present case, and as previously discussed, petitioner is a VAT-registered taxpayer. Given that such registration was elected as early as 1993, it cannot be concluded that the input taxes presently claimed are transitional in nature. Additionally, as may be gathered from the Quarterly VAT Returns of the petitioner for the year 2018, the latter *declared* that it generated input VAT in the total amount of **₱6,369,533.39**, which is broken down as follows:

Current transactions:	**1st Quarter**[87]	**2nd Quarter**[88]	**3rd Quarter**[89]	**4th Quarter**[90]	**Total**
Purchase of Capital Goods not exceeding P1Million	₱ 6,428.57	₱ 2,625.00	₱ 14,464.29	₱ -	₱ 23,517.86
Domestic Purchases Of goods other than capital goods	14,916.37	55,404.81	97,381.06	279,671.35	447,373.59
Domestic Purchases Of services	1,151,498.37	1,267,049.06	1,648,425.08	1,831,669.43	5,898,641.94
Total Available input tax	**₱1,172,843.31**	**₱1,325,078.87**	**₱1,760,270.43**	**₱2,111,340.78**	**₱6,369,533.39**

The above input taxes do *not* appear to be transitional input taxes, as understood under Section 111(A) of the Tax Code, as amended Hence, in view of the foregoing, petitioner satisfactorily established the requisite that the input taxes claimed are not transitional in nature.

The input taxes are due or paid

Anent the *seventh* requisite, it is essential that the input taxes claimed for refund are properly supported to prove that the same are actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, which provides that:

SEC. 110. *Tax Credits.* —

(A) *Creditable input Tax.* —

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[86] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 158885 and 170680, April 2, 2008.
[87] Exhibit "P-7", Division Docket, pp. 1333 to 1334.
[88] Exhibit "P-7-A", Division Docket, pp. 1335 to 1336.
[89] Exhibit "P-7-B", Division Docket, pp. 1337 to 1338.
[90] Exhibit "P-7-D", Division Docket, pp. 1341 to 1342.

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods:

(1) For sale; or

(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or

(iii) For use as supplies in the course of business; or

(iv) For use as materials supplied in the sale of service; or

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

(b) Purchase of services on which a value-added tax has actually been paid.

(2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (₱1,000,000): Provided, however, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, further,* That the amortization of the input VAT shall only be allowed until December 31, 2021 after which taxpayers with unutilized input VAT on capital goods purchased or imported shall be allowed to apply the same as scheduled until fully utilized: *Provided*, finally, That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

The above provisions are implemented by Sections 4.110-1 to 4.110-3 of RR No. 16-2005, as amended to wit:

SECTION 4.110-1. *Credits For Input Tax.* — 'Input tax' means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the Tax Code.

It includes input taxes which can be directly attributed to transactions subject to the VAT plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.

Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Secs. 113 and 237 of the Tax Code shall be creditable against the output tax:

(a) Purchase or importation of goods

(1) For sale; or

(2) For conversion into or intended to form part of a finished product for sale, including packaging materials; or

(3) For use as supplies in the course of business; or

(4) For use as raw materials supplied in the sale of services; or

(5) For use in trade or business for which deduction for depreciation or amortization is allowed under the Tax Code,

(b) Purchase of real properties for which a VAT has actually been paid;

(c) Purchase of services in which a VAT has actually been paid;

(d) Transactions 'deemed sale' under Sec. 106 (B) of the Tax Code;

(e) Transitional input tax allowed under Sec. 4.111 (a) of these Regulations;

(f) Presumptive input tax allowed under Sec. 4.111 (b) of these Regulations;

(g) Transitional input tax credits allowed under the transitory and other provisions of these Regulations.

SECTION 4.110-2. *Persons Who Can Avail of the Input Tax Credit.* — The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:

(a) To the importer upon payment of VAT prior to the release of goods from customs custody;

(b) To the purchaser of the domestic goods or properties upon consummation of the sale; or

(c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee.

SEC. 4.110-3. Claims for Input Tax on Depreciable Goods. — Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million pesos (P1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:

(a) If the estimated useful life of a capital good is five (5) years or more — The input tax shall be spread evenly over a period of sixty (60) months and the claim for input tax credit will commence in the calendar month when the capital good is acquired. The total input taxes on purchases or importations of this type of capital goods shall be divided by 60 and the quotient will be the amount to be claimed monthly.

(b) If the estimated useful life of a capital good is less than five (5) years — The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of the capital good. The claim for input tax credit shall commence in the calendar month that the capital goods were acquired.

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed One million pesos (P1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition.

xxx xxx xxx

The aggregate acquisition cost of depreciable assets in any calendar month refers to the total price, excluding the VAT, agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired on installment for an acquisition cost of more than P1,000,000.00, excluding the VAT, will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed P1,000,000.00.

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If the depreciable capital good is sold/transferred within a period of five (5) years or prior to the exhaustion of the amortizable input tax thereon, the entire unamortized input tax on the capital

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goods sold/transferred can be claimed as input tax credit during the month/quarter when the sale or transfer was made.

Moreover, Section 4.110-8 of RR No. 16-2005 provides for the substantiation requirements of input tax credits, as follows:

SECTION 4.110-8. *Substantiation of Input Tax Credits.* —

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

(1) For the importation of goods — import entry or other equivalent document showing actual payment of VAT on the imported goods.

(2) For the domestic purchase of goods and properties — invoice showing the information required under Secs. 113 and 237 of the Tax Code.

(3) For the purchase of real property — public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.

(4) For the purchase of services — official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code.

(b) Transitional input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.

(c) Input tax on 'deemed sale' transactions shall be substantiated with the invoice required under Sec. 4.113-2 of these Regulations.

(d) Input tax from payments made to non-residents (such as for services, rentals and royalties) shall be supported by a copy of the Monthly Remittance Return of Value Added Tax Withheld (BIR Form 1600) filed by the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor.

(e) Advance VAT on sugar shall be supported by the Payment Order showing payment of the advance VAT.

Thus, petitioner must not only present the supporting documents prescribed under Section 4.110-8 of RR No. 16-2005, but

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more importantly, these documents must comply with the invoicing requirements of Sections 113(A) and (B), 237, and 238 of the Tax Code, as amended, as implemented by Section 4.113-1(A) and (B) of RR No. 16-2005.

Accordingly, petitioner submitted VAT invoices and ORs to support its input taxes from domestic purchases of goods and services for the four quarters of taxable year 2018, which were duly examined and verified by the ICPA. However, the latter found that input taxes in the amount of **₱780,831.94**[91] **should be disallowed** for failure to comply with the substantiation and invoicing requirements set forth in the Tax Code, as amended, and corresponding regulations:

Particulars	Exhibit	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	TOTAL
Local purchases of goods other than capital goods and services						
Company name not properly indicated in the supporting documents	"P-37-A"	₱11,638.89	₱18,186.31	₱176,162.11	₱39,588.86	₱245,576.17
No valid supporting documents	"P-37-B"	4,844.48	5,469.85	47,278.41	5,474.65	63,067.39
Incorrect or incomplete address indicated in the supporting documents	"P-37-C"	7,288.40	28,794.24	36,620.23	42,140.19	114,843.06
Not in the period covered by the claim	"P-37-D"	-	336.00	-	28,860.12	29,196.12
VAT amount not separately shown in the supporting documents	"P-37-E"	4,950.35	23,647.17	7,245.02	6,253.10	42,095.64
No TIN of the petitioner	"P-37-F"	14,779.77	-	-	-	14,779.77
No Authority to Print (ATP)	"P-37-G"	-	385.71	-	-	385.71
Document indicate "NOT VALID FOR CLAIMING OF INPUT TAX"	"P-37-H"	-	-	-	10,017.86	10,017.86
With discrepancy in the amount filed	"P-37-I"	-	-	93.60	3.36	96.96
No sales invoices/official receipts submitted by the petitioner	"P-37-J"	151.09	864.00	85.71	225493.88	226,594.68
Purchases of capital goods not exceeding P1million						
Company name not properly indicated in the supporting documents	"P-37-A"	6,428.57	-	22,178.58	5,571.43	34,178.58
TOTAL		**₱50,081.55**	**₱77,683.28**	**₱289,663.66**	**₱363,403.45**	**₱780,831.94**

[91] Exhibit "P-47", Division Docket, pp. 696 to 697.

Upon further examination by the Court, a total of **₱7,364.24 should likewise be disallowed**, for the following reasons:

Particulars	Exhibit	OR No.	OR Date	Input Tax
1. Supported by collection/acknowledgement receipt				
1st Quarter				
PIXELTONE MULTIMEDIA COMPANY	"P-34-A-8"	CR0034	March 23, 2018	₱ 407.14
SMART COMMUNICATIONS INC	"P-34-A-86"	CRSRMCHR289994	February 15, 2018	418.97
SMART COMMUNICATIONS INC	"P-34-A-88"	CRSRMCHR289995	February 15, 2018	185.52
SMART COMMUNICATIONS INC	"P-34-A-90"	CRSRMCHR289996	February 15, 2018	168.67
SMART COMMUNICATIONS INC	"P-34-A-92"	CRSRMCHR289997	February 15, 2018	340.50
SMART COMMUNICATIONS INC	"P-34-A-96"	CRSRMCHR290001	February 15, 2018	202.10
				₱ 1,722.90
2nd Quarter				
PLDT, INC.	"P-34-A-609"	PKQOR912838	September 8, 2018	973.60
Subtotal				*₱ 2,696.50*
2. Nature of service not indicated				
2nd Quarter				
BLACK TIE ENTERTAINMENT MANAGEMENT	"P-34-A-721"	OR 1190	October 26, 2018	₱ 1,178.57
Subtotal				*₱ 1,178.57*
1. ***No TIN of petitioner***				
1st Quarter				
SMART COMMUNICATIONS INC	"P-34-A-84"	CRSRMCHR289993	February 15, 2018	₱ 223.46
2nd Quarter				
PIONEER INSURANCE AND SURETY CORPORATION	"P-34-A-244"	ORHO-751438	April 27, 2018	2,151.43
4th Quarter				
SMART COMMUNICATIONS INC	"P-34-A-905"	SRMCHR000342288	December 28, 2018	220.73
Subtotal				*₱ 2,595.62*
4. With discrepancy in input tax amount claimed				
2nd Quarter		**Claimed**	**Per OR**	**Difference**
RAYOMAR METRO SERVICES INC	"P-34-A-327"	₱ 2,175.60	₱ 1,282.05	₱ 893.55
Subtotal				*₱ 893.55*
TOTAL				**₱7,364.24**

Hence, of the total *declared* input taxes of ₱6,369,533.39 for the taxable year 2018, **only the amount of ₱5,581,337.21 appear to be valid input taxes**, taking into account the disallowances found by the Court, as summarized below:

Particulars	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	TOTAL
Total Available input tax	₱ 1,172,843.31	₱ 1,325,078.87	₱ 1,760,270.43	₱ 2,111,340.78	₱ 6,369,533.39
Less: Disallowances found by the ICPA	₱ 50,081.55	₱ 77,683.28	₱ 289,663.66	₱ 363,403.45	₱ 780,831.94
Disallowances found by the Court	1,946.36	5,197.15	-	220.73	7,364.24
Total Disallowances	₱ 52,027.91	₱ 82,880.43	₱ 289,663.66	₱ 363,624.18	₱ 788,196.18
TOTAL	**₱1,120,815.40**	**₱1,242,198.44**	**₱1,470,606.77**	**₱1,747,716.60**	**₱5,581,337.21**

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Petitioner is engaged in mixed transactions; input taxes claimed must be allocated to its zero-rated sales

As regards the *eighth* requisite, pursuant to Section 112 (A), it is required that the input taxes claimed are *attributable* to zero-rated sales or effectively zero-rated sales. However, in the event that input taxes may not be directly attributable to its zero-rated sales, as when 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.

To recall, petitioner's sales for the taxable year 2018, including the properly adjusted valid zero-rated sales as previously discussed, consist of the following:

2018	**Declared VATable**	**Declared VAT Exempt**	**Valid Zero-rated**	**Disallowed Zero-rated**	**Total**
1st Qtr	₱ 1,163,547.62	₱ -	₱ 23,043,716.13	₱452,013.20[92]	₱24,659,276.95
2nd Qtr	526,179.28	-	35,114,629.27	13,848.38[93]	35,654,656.93
3rd Qtr	6,865,422.95	15,800.00	28,155,850.01	-	35,037,072.96
4th Qtr	11,704,219.04	14,600.00	19,208,315.15	1,041,308.79[94]	31,968,442.98
TOTAL	₱20,259,368.89	₱30,400.00	**₱105,522,510.56**	₱1,507,170.37	₱127,319,449.82

In the same year, petitioner's valid input taxes amounted to ₱5,581,337.21, as follows:

2018	**Valid Input Tax**
1st Quarter	₱1,120,815.40
2nd Quarter	₱1,242,198.44
3rd Quarter	₱1,470,606.77
4th Quarter	₱1,747,716.60
TOTAL	**₱5,581,337.21**

Considering that the valid input taxes cannot be directly attributed to any of the sales transactions, in compliance with the

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[92] *Disallowed for not having the corresponding inward remittances.*
[93] *Disallowed for not having the corresponding inward remittances.*
[94] *Disallowed for being supported by OR dated outside the period of claim.*

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eighth requisite, it shall then be proportionately allocated on the basis of sales volume.

Thus, it is essential to first determine the sales ratio of the VATable, VAT-Exempt, and Substantiated VAT Zero-rated sales by respectively dividing the foregoing against the total sales. This will yield to the definite corresponding percentage of each VAT category relative to the total sales. Hence:

CY 2018	VATable Sales	VAT Exempt Sales	VALID Zero-rated Sales	DISALLOWED Zero-rated Sales	Total Sales
1ST	1,163,547.62	-	23,043,716.13	452,013.20	24,659,276.95
	4.72%		**93.45%**	1.83%	100%
2ND	526,179.28	-	35,114,629.27	13,848.38	35,654,656.93
	1.48%		**98.49%**	0.04%	100%
3RD	6,865,422.95	15,800.00	28,155,850.01	-	35,037,072.96
	19.59%	0.05%	**80.36%**		100%
4TH	11,704,219.04	14,600.00	19,208,315.15	1,041,308.79	31,968,442.98
	36.61%	0.05%	**60.09%**	3.26%	100%
TOTAL	20,259,368.89	30,400	**105,522,510.56**	1,507,170.37	127,319,449.82

Consequently, the same resulting percentages shall be utilized to, as provided for under Section 112, proportionately allocate the valid input taxes, as follows:

CY 2018	Valid Input VAT for allocation (₱5,581,337.21)	Declared VATable Sales	Declared VAT Exempt Sales	Disallowed Zero-rated sales	Valid Zero-rated sales
1st Qtr	**₱1,120,815.40**			452,013.20	
Sales		1,163,547.62	-		23,043,716.13
Proportion to total sales		4.72%		1.83%	93.45%
ALLOCABLE INPUT VAT		52,885.66		20,544.94	**1,047,384.80**
2nd Qtr	**₱1,242,198.44**				
Sales		526,179.28	-	13,848.38	35,114,629.27
Proportion to total sales		1.48%		0.04%	98.49%
ALLOCABLE INPUT VAT		18,331.94		482.47	**1,223,384.02**
3rd Qtr	**₱1,470,606.77**				
Sales		6,865,422.95	15,800.00	-	28,155,850.01
Proportion to total sales		19.59%	0.05%		80.36%
ALLOCABLE INPUT VAT		288,161.56	663.17		**1,181,782.04**

CY 2018	Valid Input VAT for allocation (₱5,581,337.21)	Declared VATable Sales	Declared VAT Exempt Sales	Disallowed Zero-rated sales	Valid Zero-rated sales
4th Qtr	**₱1,747,716.60**				
Sales		11,704,219.04	14,600.00	1,041,308.79	19,208,315.15
Proportion to total sales		36.61%	0.05%	3.26%	60.09%
ALLOCABLE INPUT VAT		639,870.32	798.18	56,928.41	**1,050,119.68**
TOTAL INPUT VAT ALLOCABLE TO ZERO-RATED SALES					**₱4,502,670.54**

Moreover, to determine petitioner's entitlement to the refund claim prayed for, only the valid input VAT *allocable* to its valid zero-rated sales may be claimed. Thus, on the basis of the foregoing, for the taxable year 2018, it is apparent that petitioner's valid input taxes allocable to its zero-rated sales only amounted to **₱4,502,670.54**:

2018	Input VAT allocable to valid zero-rated sales
1st Quarter	₱ **1,047,384.80**
2nd Quarter	**1,223,384.02**
3rd Quarter	**1,181,782.04**
4th Quarter	**1,050,119.68**
TOTAL	**₱ 4,502,670.54**

Hence, for the *eighth* requisite, only the allocated amount of **₱4,502,670.54** may qualify for a refund claim by petitioner.

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

Lastly, as regards the *ninth* requisite, per its Quarterly VAT Returns for the taxable year 2018, petitioner incurred output tax in the aggregate amount of ₱2,431,124.27.[95] Petitioner states that after applying the valid input taxes allocated for VATable sales, the remaining output tax still due should not be deducted from the current input tax or the input tax attributable to zero-rated sales claimed. The

[95] Exhibits "P-7" to "P-7-D", Division Docket, pp. 1333 to 1342.

subject output tax still due may be credited against its input tax carried over from previous period amounting to ₱6,966,648.18.[96]

With regard to the claimed valid input taxes allocable to petitioner's zero-rated sales, the same was included in the amount of ₱6,369,533.40 as "VAT Refund/TCC Claimed" as a deduction from the input tax for the 4th quarter of 2018.[97] Thus, the claimed input taxes were not carried over to nor reinstated in the succeeding taxable periods as verified by the ICPA.[98] Thus, the *ninth* requisite has been complied with.

In *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) vs. Commissioner of Internal Revenue* (Chevron),[99] the Supreme Court ruled:

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

Based on the above jurisprudential pronouncements, input tax attributable to zero-rated sales may, at the option of the VAT-

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[96] Paragraphs 33 and 34, *Petition for Review*, Division Docket, p. 14, and Paragraphs 67 and 68, *Memorandum for Petitioner*, Division Docket, pp. 1811 to 1812.
[97] Line 23D, Exhibit "P-7-D", Division Docket, p. 1342.
[98] Exhibit "P-47", Division Docket, pp. 697 to 698.
[99] G.R. No. 215159, July 5, 2022.

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registered taxpayer, be: (1) charged against output tax from regular twelve percent (12%) VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety.

In the present case, petitioner clearly opted to claim its input taxes attributable to zero-rated sales for the taxable year 2018 *in its entirety*. Therefore, the Court may not, on its own, deduct the output tax from the claimed input taxes attributable to zero-rated sales.

Moreover, to recall, in its administrative claim, petitioner claimed for the refund of its input tax in the amount of ₱6,369,533.40. On February 14, 2020, petitioner received the *VAT Refund Notice* issued by the BIR, partially denying such claim to the extent of ₱5,568,836.92, for the following reasons:[100]

Reasons for Denial	Amount
Purchases not compliant with the invoicing requirements pursuant to Sec. 113 of the National Internal Revenue Code (NIRC), as amended	₱ 348,651.00
Big-ticket purchases with no proof of payment as required under item 4.4.3 of Annex A-1 of Revenue Memorandum Circular (RMC) No. 47-2019	818,345.72
Out-of-period	91,974.37
Overclaimed input VAT	5,630.37
Output VAT applied for the Taxable Year 2018	2,431,124.34
Output VAT assessed on unsupported sales to various individuals	3,648.00
Output VAT assessed on VATable sales	36,340.31
Input tax attributable to export sales with insufficient documentations pursuant to RMC NO. 47-2019	1,833,122.81
TOTAL	**₱ 5,538,836.92**

As may be gleaned from the foregoing, according to the BIR, the final amount allowable for VAT Refund only amounted to ₱800,696.48.

Upon careful examination, majority of these items were already previously passed upon in relation to the requisites provided by law and relevant jurisprudence. On another note, however, the Court finds that the BIR erred in denying the following items, amounting to ₱2,471,112.65, to wit:

Output VAT applied for the Taxable Year 2018	₱2,431,124.34
Output VAT assessed on unsupported sales to various individuals	3,648.00
Output VAT assessed on VATable sales	36,340.31
TOTAL	₱2,471,112.65

[100] Par. 5, Stipulation of Facts, JSFI, Division Docket, p. 611.

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Considering that petitioner opted to claim its input taxes attributable to zero-rated sales for the taxable year 2018 for refund in its entirety, the BIR cannot proceed to find and deduct petitioner's output tax liability from such input taxes claimed. More importantly, in a claim for refund, the BIR is duty bound to merely rule on the taxpayer-claimant's entitlement thereto, and not to come up with an assessment of the latter's other tax liabilities such as the output VAT due. As likewise held in *Chevron, it is not for the CTA and the Court to determine and rule in a judicial claim for refund under Section 112 (A) of the Tax Code that the taxpayer had insufficient or unsubstantiated input taxes to cover its output tax liability. This is for the BIR to determine in an administrative proceeding for assessment of deficiency taxes.*

Finally, to reiterate, the valid input VAT allocable to petitioner's valid zero-rated sales amounted to **₱4,502,670.54.** Considering that respondent has previously partially granted petitioner's administrative claim to the extent of ₱800,696.48 in the *VAT Refund Notice* dated January 8, 2020,[101] and the correctness of which remain undisputed, the same shall be deducted therefrom. Hence, only the amount of **₱3,701,974.06** shall be granted as additional refund, thus:

Refundable input taxes per computation by the Court	₱ 4,502,670.54
Less: Claimed input tax already granted by respondent	800,696.48
Additional input taxes for refund	**₱ 3,701,974.06**

WHEREFORE, premises considered, the present *Petition for Review [For the Petitioner]* is **GRANTED.**

The Assailed Decision dated June 27, 2024 and the Assailed Resolution dated December 18, 2024, rendered by the Second Division in CTA Case No. 10270 are hereby **REVERSED** and **SET ASIDE**.

Accordingly, respondent is **ORDERED** to refund in favor of petitioner the amount of **₱3,701,974.06**, representing the difference between the valid input VAT allocable to petitioner's valid zero-rated sales in taxable year 2018 (₱4,502,670.54) and the amount already previously granted by herein respondent (₱800,696.48).

SO ORDERED.

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[101] Exhibit "P-22", Division Docket, p. 1516.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

(With Separate Concurring Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes - Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

(With due respect, please see D.O.)
CORAZON G. FERRER-FLORES
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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

"K" LINE MARITIME ACADEMY PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 3080
(CTA Case No. 10270)

Present:

RINGPIS-LIBAN, *P.J.*,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
JUL 20 2026

x - x

SEPARATE CONCURRING OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* of my esteemed colleague, Associate Justice Henry S. Angeles, in granting petitioner "K" Line Maritime Academy Philippines, Inc.'s (**petitioner**'s) Petition for Review[1] filed on 06 February 2025 and thereby reversing and setting aside the Decision and Resolution dated 27 June 2024[2] (**assailed Decision**) and 18 December 2024[3] (**assailed Resolution**), respectively, both issued by this Court's Second Division.

I, respectfully, essay my reasons below.

At the onset, I must emphasize that the prevailing doctrine of "deemed denial" still holds and has not been abrogated, consistent with the view espoused in the *ponencia*.

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1 *Rollo*, pp. 1-63.
2 Id., pp. 69-79.
3 Id., pp. 81-85.

Sections 7 and 11 of the Republic Act (**RA**) No. 9282[4] provide that when the Commissioner of Internal Revenue (**CIR**) or his or her authorized representative fails to act within the **specific period prescribed by the National Internal Revenue Code (NIRC) of 1997, as amended, such inaction is deemed a denial of the taxpayer's claim, that is already appealable before the Court of Tax Appeals (CTA)**:

> ...
>
> SEC. 7. *Jurisdiction.* - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> ...
>
> 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 case the inaction shall be deemed a denial**[.]
>
> ...
>
> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* - Any party adversely affected by a decision, ruling or **inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA **within thirty (30) days** after the receipt of such decision or ruling or **after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.**
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days** from the receipt of the decision or ruling or **in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon**. A Division of the CTA shall hear the appeal: *Provided, however*, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction, appeal shall be made by filing a petition for review under a procedure analogous to that provided for under rule

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4 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, 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.

> 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc*.[5]
>
> ...

Section 86[6] of RA 10963[7] or Tax Reform for Acceleration and Inclusion (**TRAIN**), which contains the lengthy enumeration of laws expressly repealed by the said law, did *not* mention RA 9282. Thus, considering that TRAIN did not repeal the pertinent provisions of RA 9282, it cannot be said that the "deemed denial" rule, insofar as claims for refund of unutilized input taxes attributable to zero-rated sales, has already been abrogated. Truth is, the "deemed denial" rule still finds relevance even after the passage of TRAIN and it could not be disregarded simply because a similar provision dealing with the same subject matter has been deleted.

Consistently, it has been held that "whenever the legislature enacts a law, it has in mind the previous statutes relating to the same subject matter, and **in the absence of any express repeal or amendment, the new statute is deemed enacted in accordance with the legislative policy embodied in those prior statutes**."[8]

Applying herein the foregoing, in enacting TRAIN, the legislature is presumed to have in mind the pertinent provisions of RA 9282 with respect to when the taxpayer may treat respondent CIR's (**respondent**'s) inaction as denial. Thus, in the absence of its express repeal, TRAIN is deemed enacted in accordance with the legislative policy embodied in such prior laws (including RA 9282).

The next pivotal query is whether the doctrine of "deemed denial" could find application in the instant case.

I, respectfully, submit that it does *not*.

Section 112 of the NIRC of 1997, as amended by TRAIN, states that:

> ...
> **Sec. 112.** *Refunds or Tax Credits of Input Tax* -
> ...

[5] Emphasis supplied and italics in the original text.

[6] **Sec. 86.** *Repealing Clause.*

[7] 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 NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

[8] *Hon. Arturo C. Corona, et al. v. Court of Appeals, et al.*, G.R. No. 97356, 30 September 1992.

> (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.**[9]
>
> ...

In the landmark case of *Commissioner of Internal Revenue v. San Roque Power Corporation,*[10] the Supreme Court, in interpreting Section 112(D) [now Section 112(C)], held that the taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty (30) days after the CIR denies the claim within the 120-day [now ninety (90)-day] waiting period, or (2) file the judicial claim within 30 days from the expiration of the 120-day (now 90-day) period if the CIR does not act within that period.

In *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue,*[11] the Supreme Court clarified that the 120-day (now 90-day) period was intended to serve as a waiting period to give time for the CIR or his or her authorized representative to **act** on the administrative claim for a refund or tax credit. In the same case, it was clarified that the **inaction or when the CIR or his or her authorized representative failed to act within the waiting period, the same shall be considered as a decision itself** that would trigger the running of the 30-day period to appeal.

Here, petitioner filed its administrative claim for refund on 11 November 2019 and submitted the documents in support thereof on 12 November 2019. Under Section 112(C) of the NIRC of 1997, as amended, the CIR or his or her authorized representative had 90 days from the date of submission of the official receipts or invoices and other documents in support of the application filed, or until 10 February 2020, to act upon the said claim. Petitioner received the Bureau of Internal Revenue's (**BIR**'s) Value-Added Tax

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9 Emphasis supplied, italics in the original text and supplied.
10 G.R. Nos. 187485, 196113 & 197156, 12 February 2013.
11 G.R. No. 168950, 14 January 2015.

(**VAT**) Refund Notice dated 08 January 2020 only on 14 February 2020, partially granting its administrative claim. On this basis, this Court's Second Division held that the BIR issued the VAT Refund Notice beyond the 90-day period, and that petitioner's judicial claim, filed more than 30 days thereafter, was fatally late.

With due respect, the foregoing conclusion cannot, in my view, withstand scrutiny. While I concur in the result reached in the *ponencia* (reversing the assailed Decision and Resolution), I respectfully submit an alternative rationale in support of such reversal.

The controlling datum here is the date of the CIR's "action", ***not*** **the date of petitioner's receipt.** Revenue Memorandum Circular (**RMC**) No. 17-2018,[12] outlines that for claims not more than ₱50 million, such as the present case, the 90-day period ends upon the Assistant CIR-Assessment Service's (**ACIR-AS**') approval or disapproval of the claim.[13]

In the present case, the VAT Refund Notice, which contains a partial grant (and denial of the portion not granted) of petitioner's administrative claim for refund, was issued on 08 January 2020, ***i.e.,*** **within the 90-day period to act.** Thus, **there was no inaction and the doctrine of "deemed denial" does not apply. What exists is a categorical denial (of the portion not granted), received by petitioner on 14 February 2020.** As such, the reckoning of the 30-day period to appeal must commence, not from the expiration of the 90-day period, but from the date of actual receipt of the denial, *i.e.*, 14 February 2020.

Moreover, in the seminal case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[14] (**Aichi**), the Supreme Court construed

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

13 . . .

VCAD [VAT Credit Audit Division] Cases	**No. of Days from Receipt of Application**
	For claims not more than ₱50,000,000.00
Verification/processing	65
Review (TARD [Tax Audit Review Division])	20
Recommending/Final Approval	
ACIR-AS [Assistant CIR-Assessment Service]	5
Total No. of Days	**90**

4. The concerned revenue officers/officials shall <u>**act**</u> on the recommended claims in accordance with the **abovementioned time frame**, including VAT claims on importations. (Emphasis and underscoring supplied).

14 G.R. No. 184823, 06 October 2010; Emphasis and underscoring supplied.

Section 112(D) [now Section 112(C)] of the NIRC of 1997, as amended, as follows:

> ...
> The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) **when a decision is <u>issued</u> by the CIR before the lapse of the 120-day period**; and (2) **when no decision is made after the 120-day period**. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.
>
> ...

From the foregoing, it is evident that as early as 2010, the Supreme Court has already construed the phrase "to act" to mean "to issue a decision". Additionally, such a construction is evident in the minutes of the Bicameral Conference Committee Hearings for the disagreeing provisions to the precursor bills to TRAIN, *i.e.*, House Bill No. 5636 and Senate Bill No. 1592, to wit:[15]

> ...
> CHAIRPERSON CUA: My anxiety comes from a force action upon an action 'no. *Kung hindi ka gumalaw* then there's a . . . there's an ultimate result. So may I . . . I have to my left the author of the attrition law. I think that is something . . . I mean *kung walang* action that should be . . . that should be attached somehow to an attrition consequence so that *umaksyon 'yung* BIR within 90 days or *ano*, we can draft some matrix there. May we . . . may we hear from the DOF if they have any proposals here?
>
> CHAIRPERSON ANGARA: Yeah. DOF any . . . any ideas here.
>
> MR. CHUA: The . . . **<u>the objective is to come up with a decision</u>**.
>
> CHAIRPERSON ANGARA: Yes.
> ...
>
> SEN. RECTO: Mr. Chairman, the version has the solution.
>
> CHAIRPERSON ANGARA: Yeah. Yes. What is that, Your Honor?
>
> SEN. RECTO: It says here . . .
>
> CHAIRPERSON ANGARA: Yeah.

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15 Bicameral Conference Committee Meeting on the Disagreeing Provisions of House Bill No. 5636 and Senate Bill No. 1592 Re: [TRAIN]. 17th Congress. 2nd Session. 05 December 2017. pp. XXXI-1 to XXXI-3; Emphasis and underscoring supplied.

SEN. RECTO: . . . a result in the approval of the claim for refund without prejudice to its subsequent audit to be conducted by the BIR.

...

CHAIRPERSON CUA. But even if the number is small, it is considering that the system is broken today. Now, we are trying to reform it to have a system that become more efficient. I understand the objective of the Senate panel and I agree that we have to protect the taxpayers right to collect his money *baka naman masyadong* disadvantageous to the government. I think we want to do is police those officials <u>**to make sure they release it on time, within the prescribed 90-day period**</u>. So, perhaps the penalty for the BIR officials can be upon those metrics, for your consideration, Your Honor.

CHAIRPERSON ANGARA: Are you proposing penalty for BIR officials who fail to decide? Something like that? What does the BIR say to that?

MS. TERESITA M. ANGELES (Director II, Officer-in-Charge, Assistant Commissioner for Large Taxpayers Service, Bureau of Internal Revenue). As far as the present situation, we have the 120 days for the VAT refund. If not acted upon, the revenue officer may be subjected to administrative cases.

CHAIRPERSON ANGARA: Is that in the law?

MS. ANGELES: No, Sir.

CHAIRPERSON ANGARA: That is not in the law?

MS. ANGELES: It is in the revenue . . .

CHAIRPERSON CUA: *Ilan ang naano diyan* . . .

...

The foregoing reflects the unmistakable intent of Congress to impose upon the CIR, or his or her duly authorized representative, the affirmative duty to act upon the claims of taxpayers, not as a matter of administrative convenience, but as a measure of substantive right accorded for the benefit of taxpayers. To dismiss petitioner's claim solely on the ground that the VAT Refund Notice was received beyond the 90-day period (hence, the earlier lapse of the "90+30" window for judicial recourse), notwithstanding a decision having been rendered within the statutory 90-day period but belatedly transmitted, would be to frustrate, if not defy, the clear legislative mandate and the very safeguards the law was designed to bestow. Verily, to countenance such inaction is to denude the law of its spirit and efficacy.

In the present case, since a decision (*i.e.*, VAT Refund Notice) was issued on 08 January 2020 (well within the 90-day period for respondent to act), the first scenario contemplated in *Aichi* applies. Consequently, the doctrine of "deemed denial" finds no application and the 30-day period for judicial recourse must be reckoned from petitioner's actual receipt of respondent's decision on 14 February 2020 and not from the expiration of the 90-day period on 10 February 2020.

Accordingly, as correctly ruled in the *ponencia*, petitioner *timely* filed its original Petition for Review before this Court's Second Division on 13 March 2020, well within the 30-day reglementary period reckoned from 14 February 2020 and ending on 15 March 2020.

To rule otherwise would unjustly burden the CIR or his or her authorized representative by imputing to him or her the consequences of a delay in the transmittal or receipt of the decision—an event clearly beyond his or her control.[16] Such a construction likewise places an undue strain upon taxpayers who, under threat of losing the right to judicial recourse, would be forced to prematurely resort to litigation—even in cases where the administrative process, if allowed to run its course, might have afforded full and adequate relief. It undermines the doctrine of primary administrative jurisdiction, which commands due deference to the specialized competence and procedural prerogatives of administrative agencies,[17] such as the BIR. It erodes respect for the mechanisms of administrative redress and incentivizes unnecessary judicial intervention. Worse still, it risks compounding the perennial problem of docket congestion, thereby impeding the prompt administration of justice.

The following disquisition likewise finds support in the subsequent amendments to the NIRC of 1997 brought by RA 11976[18] (which took effect on 22 January 2024[19]) or the Ease of Paying Taxes (**EOPT**) and RA 12066[20] (which was signed on 08 November 2024[21]) or the Corporate Recovery and Tax Incentives for Enterprises to Maximize Opportunities for Reinvigorating the Economy (**CREATE MORE**), as follows:

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16 Since such inaction exposes the concerned official, agent, or employee of the BIR to penalties and/or fines under Section 269 of the NIRC of 1997, as amended.

17 See *Nestle Philippines, Inc., et al. v. Uniwide Sales, Inc., et al.*, G.R. No. 174674 (Resolution), 20 October 2010.

18 AN ACT INTRODUCING ADMINISTRATIVE TAX REFORMS, AMENDING SECTIONS 21, 22, 51, 56, 57, 58, 76, 77, 81, 90, 91, 103, 106, 108, 109, 110, 112, 113, 114, 115, 116, 117, 118, 119, 120, 128, 200, 204, 229, 235, 236, 237, 238, 241, 243, 245, 248, AND 169; AND REPEALING SECTION 34(K) OF THE NATIONAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

19 Revenue Memorandum Circular (RMC) No. 3-2024, 10 January 2024.

20 AN ACT AMENDING SECTIONS 27, 28, 32, 34, 57, 106, 108, 109, 112, 135, 237, 237-A, 269, 292, 293, 294, 295, 296, 297, 300, 301, 308, 309, 310, AND 311, AND ADDING NEW SECTIONS 135-A, 295-A, 296-A, AND 297-A OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

21 Available at <https://www.officialgazette.gov.ph/2024/11/08/republic-act-no-12066/> (last accessed on 30 June 2026).

EOPT	CREATE MORE
... **Sec. 112.** *Refunds or Tax Credits of Input Tax.* – ... (C) *Period within which the 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 invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof:** *Provided,* That for this purpose, the VAT refund claims shall be classified into law, medium, and high risk claims with the risk classification based on amount of VAT refund claim, tax compliance history, frequency of filing VAT refund claims, among others: *Provided, further,* That medium and high risk claims shall be subject to audit or other verification processes in accordance with the Bureau of Internal Revenue's national audit program for the relevant year: *Provided,* finally, **That should the Commissioner find that the grant of refund is not proper, the Commissioner must <u>state in writing</u> the legal and factual basis for the denial <u>within</u> the ninety (90)-day period.**[22]	... **Sec. 112.** *Refunds or Tax Credits of Input Tax* - ... (C) *Period within which the Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund for creditable input taxes within **ninety (90) days from the date of submission of certified true copies of invoices and other documents specifically limited to those prescribed in the revenue issuances and in support of the application filed in accordance with Subsections (A) and (B) hereof:** *Provided,* That for this purpose, the VAT refund claims shall be classified into low-, medium-, and high-risk claims, with the risk classification to be based on the amount of VAT refund claim, tax compliance history, frequency of filing VAT refund claims, among others: *Provided, further,* That medium- and high-risk claims shall be subject to audit or other verification processes in accordance with the BIR's national audit program for the relevant year. **Should the Commissioner find that the grant of refund is not proper, the Commissioner must, <u>within</u> the ninety (90)-day period, <u>*communicate* in writing</u> to the taxpayer, the legal and factual basis for the denial,** including the deficiencies of the VAT refund claim.[23]

As can be gleaned from the table above, TRAIN and EOPT require respondent to **state** in writing the legal and factual basis for the denial. However, neither law expressly mandates that respondent communicate this written denial to the taxpayer within the 90-day statutory period for action. The emphasis lies on the sufficiency and form of the denial, not on the timing of its communication to the taxpayer.

In contrast, CREATE MORE imposes a more exacting standard—not only must the denial be in writing and state its legal and factual basis, *but* it must also be **communicated** to the taxpayer within the 90-day statutory period for action. Under the settled rule of statutory construction, legislative amendments are presumed to be deliberate and meaningful, not mere

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[22] Italics in the original text, emphasis and underscoring supplied.
[23] Emphasis and underscoring supplied, italics in the original text and supplied.

semantic exercises.[24] There must have been a clear intent behind these revisions, and the logical inference is that the notice of the denial to the taxpayer ***now*** forms part of the 90-day period to act.

Nonetheless, this legislative innovation does not apply to the present case. When petitioner received the BIR's VAT Refund Notice, CREATE MORE had not yet taken effect. Moreover, CREATE MORE may not be given retroactive application since it would impair petitioner's vested right to question the CIR's decision.

In fine, petitioner's claim complied with the "90+30" rule and was timely filed before this Court's Second Division. Accordingly, the *ponencia* correctly granted petitioner's Petition for Review, reversed and set aside the assailed Decision and Resolution, and resolved the case on its merits.

With the foregoing, I vote to: (**i**) **GRANT** the Petition for Review filed by petitioner "K" Line Maritime Academy Philippines, Inc. on 06 February 2025; (**ii**) **REVERSE** and **SET ASIDE** the assailed Decision and Resolution dated 27 June 2024 and 18 December 2024, respectively; and (**iii**) **ORDER** respondent Commissioner of Internal Revenue to refund in favor of petitioner the amount of **₱3,701,974.06** representing the difference between the valid input VAT allocable to petitioner's valid zero-rated sales for taxable year 2018 and the amount already previously granted by respondent.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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24 See *Tan Kim Kee v. The Court of Tax Appeals, et al.*, G.R. No. L-18080, 22 April 1963.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

"K" LINE MARITIME ACADEMY PHILIPPINES, INC., Petitioner,	**CTA EB NO. 3080** (CTA Case No. 10270)
- versus -	Members: **RINGPIS-LIBAN,** *P.J.,* **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** **FERRER-FLORES,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 20 2026

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DISSENTING OPINION

***FERRER-FLORES, J.*:**

With due respect to my esteemed colleague, Honorable Associate Justice Henry S. Angeles, I am constrained to withhold my assent on the *ponencia.*

In the *ponencia*, it was held that petitioner's administrative and judicial claims for refund were timely filed, thus, the Court in Division acquired jurisdiction. Finding merit in petitioner's refund claim, the *ponencia* reversed the Decision dated June 27, 2024, and Resolution dated December 18, 2024 in CTA Case No. 10270, and, ordered the refund of ₱3,701,974.06 in favor of petitioner.

It is my respectful view, however, that the Court Second Division did not err in dismissing the *Petition for Review* for lack of jurisdiction as the judicial claim for refund was belatedly filed.

Section 7 (a) (2) of Republic Act No, 1125, otherwise known as *An Act Creating the Court of Tax Appeals*, as amended, provides:

> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx xxx
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue code provides for a specific period for action, in which case the inaction shall be deemed a denial[.]

Based on the foregoing, where the NIRC of 1997, as amended, provides for a specific period, the inaction shall be deemed a denial; hence, appealable to this Court.

Relatedly, Section 3 (a) (1) and (2), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that the Court has jurisdiction over the decisions or inaction of the Commissioner of Internal Revenue (CIR) involving refund of internal revenue taxes, among others.

Further, Section 112 (c) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that the CIR **shall** grant or deny a claim for refund within 90 days from the submission of official receipts or invoices supporting the application. In relation to this, if the claim is denied within the 90-day period, the taxpayer may appeal to this Court within 30 days from receipt thereof.

In *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*,[1] the Supreme Court held that a judicial claim for refund shall be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the 120-day [now 90-day] period, whichever is sooner. Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by the law, any claim filed in a period less than or beyond the 120+30 [now 90+30] days provided by the NIRC of 1997, as amended, is outside the jurisdiction of the CTA.

It is, therefore, my most humble opinion that the judicial claim for refund must be filed within 30 days from receipt of respondent's decision (within the 90-day period) <u>or</u> after the expiration of the 90-day period under Section 112 (c) of the NIRC of 1997, as amended, **whichever is earlier.**

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[1] G.R. No. 182737, March 2, 2016.

Here, petitioner filed its administrative claim for refund for its input VAT in 2018 on **November 11, 2019**. Counting 90 days therefrom, respondent had until **February 9, 2020** within which to decide its claim for refund.

The letter partially denying petitioner's claim for refund dated January 8, 2020 was only received by petitioner on February 14, 2020, which was beyond the 90-day period given to respondent to decide on such claim. Considering that no decision was communicated within the 90-day period, there was no decision appealable to the Court to speak of. Petitioner, then, should have construed the non-receipt within the 90-day period as inaction on the part of respondent and reckoned the 30-day period to file its judicial claim from February 9, 2020, not from the receipt of the letter on February 14, 2020. Therefore, petitioner had only until March 10, 2020 within which to file its judicial claim. Accordingly, the filing of the *Petition for Review* before the Court in Division on March 13, 2020 was belatedly filed.

In view of the foregoing, I vote to **DENY** the **Petition for Review** for lack of merit.

CORAZON G. FERRER-FLORES
Associate Justice