REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

REGUS SERVICE CENTRE, PHILIPPINES B.V. - ROHQ, Petitioner,	**CTA CASE NO. 10124** Members:
- versus -	**CASTAÑEDA, JR.**, *Chairperson,* **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 09 2022 1:10 p.m.

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DECISION

CASTAÑEDA, JR., J.:

This is a *Petition for Review* filed on July 19, 2019 prays for the refund in the amount of ₱12,295,005.64, allegedly representing petitioner's unutilized input value added tax (VAT) attributable to its export sales for calendar year 2017.[1]

THE PARTIES

Petitioner Regus Service Centre, Philippines B.V. – ROHQ is a regional operating headquarter of Regus Service Centre, Philippines B.V., a corporation organized and existing under the laws of the Netherlands. It is licensed to transact business in the Philippines by the Securities and Exchange Commission (SEC), with Company Registration Number FS200918288. It holds office at 3rd Floor, "W" High Street Building, 28th Street corner 11th Avenue, Bonifacio Global City, Fort Bonifacio, Taguig City.[2]

[1] Summary of the Case, Pre-Trial Order dated December 2, 2019, Docket, p. 196.
[2] Par. 1, *Petition for Review* vis-à-vis Par.1, *Answer*, Docket, pp. 10 and 99, respectively; and Par. 1(a), Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 169.

Petitioner is primarily engaged in the provision of general administration and planning, business planning and coordination, sourcing/procurement of raw materials and components, corporate financial advisory services, marketing control and sales promotion, training and personnel management, logistic services, research and development services and product development, technical support and maintenance, data processing and communication and business development services to its affiliates.[3]

It is registered as a VAT taxpayer with the Bureau of Internal Revenue (BIR), Revenue District Office (RDO) No. 44 – Taguig of the, under Taxpayer's Identification Number (TIN) 287-343-976-000.[4]

Respondent Commissioner of Internal Revenue is vested by law with the power and authority to decide, approve and grant applications for refund or tax credit of excess internal revenue tax payments. He may be served with summons and other court processes at the BIR, National Office Building, Agham Road, Diliman, Quezon City.[5]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On April 5, 2019, petitioner filed with the BIR its *Application for Tax Credits/Refunds* (BIR Form No. 1914)[6] for the refunds or tax credits of input VAT in the amount of ₱12,295,005.64, for calendar year 2017, pursuant to Section 112(A) of the 1997 Tax Code, as amended by the TRAIN law.

On June 21, 2019, petitioner received the letter dated May 30, 2019 from Ms. Ma. Luisa I. Belen, the OIC - Assistant Commissioner (ACIR), Assessment Service of the BIR,[7] denying its application for VAT refund for calendar year 2017 in the amount of ₱12,295,005.64. *jc*

[3] Par. 3, *Petition for Review* vis-à-vis Par. 1, *Answer*, Docket, pp. 11 and 99, respectively; Refer also to Exhibit "P-2-1", Docket, p. 318.
[4] Par. 4, *Petition for Review* vis-à-vis Par. 1, *Answer*, Docket, pp. 11 and 99, respectively; Refer also to Exhibit "P-3", Docket, p. 326.
[5] Par. 2, *Petition for Review* vis-à-vis Par. 1, *Answer*, Docket, pp. 11 and 99, respectively.
[6] Exhibit "P-9", Docket, p. 340.
[7] Exhibit "P-14", Docket, pp. 345 to 346.

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the present *Petition for Review* on July 19, 2019.[8]

On September 17, 2019, respondent posted his *Answer*,[9] interposing the following special and affirmative defenses, to wit: (1) petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected; (2) taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable; (3) it is incumbent upon petitioner to show that it has complied with the provision of Section 204(C) in relation to Section 229 of the 1997 Tax Code, as amended; (4) petitioner's claim for refund in the amount of ₱12,295,005.64, as alleged excess and unutilized input VAT paid on purchases of goods and services attributable to its zero-rated sales for the first to fourth quarters of calendar year 2017 was not fully substantiated by proper documents; (5) in a claim for tax refund or tax credit, taxpayer must prove not only entitlement to the grant of the claim under substantive law, it must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit; and (6) claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation and as such, they are looked upon with disfavor.

Respondent transmitted the *BIR Records* for the present case on September 19, 2019.[10]

The Pre-trial Conference was set and held on October 24, 2019.[11] *Respondent's Pre-Trial Brief* was filed on October 17, 2019,[12] while *Respondent's Pre-Trial Brief* and *Pre-trial Brief (of Petitioner Regus Service Centre, Philippines B.V. – ROHQ)* was submitted on October 21, 2019.[13]

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[8] Docket, pp. 10 to 21.
[9] Docket, pp. 99 to 101.
[10] Respondent's *Compliance*, Docket, p. 97.
[11] *Notice of Pre-Trial Conference* dated September 27, 2019, Docket, pp. 103 to 104; Minutes of the hearing held on, and Order dated, October 24, 2019, Docket, pp. 165 to 166.
[12] Docket, pp. 105 to 107.
[13] Docket, pp. 154 to 163.

On November 6, 2019, the parties filed their *Joint Stipulation of Facts and Issues* (JSFI).[14] In the Pre-Trial Order dated December 2, 2019,[15] the Court approved and adopted the said JSFI, and deemed the termination of the pre-trial.

Trial then ensued.

During trial, petitioner presented documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Atty. Juan R. Bernardino, Jr.[16] petitioner's Senior Finance Manager; (2) Ms. Edelweiss Y. Chua,[17] an Associate of the Tax Department of Isla Lipana & Co.; and (3) Krista V. Bambao,[18] the Court-commissioned Independent Certified Public Accountant (ICPA).[19]

The ICPA submitted her *Report* on January 14, 2020.[20]

Petitioner filed its *Formal Offer of Evidence* on March 16, 2020.[21] Respondent failed to file his comment thereon.[22] In the Resolution dated February 2, 2021,[23] the Court admitted petitioner's exhibits, *except* for: (1) Exhibit "P-3-1", for failure of the same to correspond to the document being offered; and (2) Exhibit "P-8-1", for not having been duly marked, and for failure of any of petitioner's witnesses to identify the same.

Petitioner filed its *Motion for Reconsideration with Motion to Set Commissioner's Hearing (Re: Resolution on the Formal Offer of Evidence dated 2 February 2021)* on February 18, 2021,[24] praying, *inter alia*, for the admission of Exhibit "P-3-1". During the hearing

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[14] Docket, pp. 169 to 174.
[15] Docket, pp. 196 to 200.
[16] Exhibit "P-16", Docket, pp. 111 to 122; Minutes of the hearing held on, and Order dated, December 4, 2019, Docket, pp. 220 to 221.
[17] Exhibit "P-18", Docket, pp. 226 to 236; Minutes of the hearing held on, and Order dated, January 22, 2020, Docket, pp. 291 to 292; Minutes of the hearing held on, and Order dated, March 9, 2020, Docket, pp. 299 to 300.
[18] Exhibit "P-19", Docket, pp. 261 to 290; Minutes of the hearing held on, and Order dated, January 22, 2020, Docket, pp. 291 to 292; Minutes of the hearing held on, and Order dated, March 9, 2020, Docket, pp. 299 to 300.
[19] *Oath of Commission* dated December 4, 2019, Docket, p. 219; Minutes of the hearing held on, and Order dated, December 4, 2019, Docket, pp. 220 to 221.
[20] Docket, pp. 222; Exhibits "P-20-1" to "P-20-3", Docket, pp. 348 to 382.
[21] Docket, pp. 301 to 314.
[22] Records Verification dated June 30, 2020 issued by the Judicial Records Division of this Court, Docket, p. 432.
[23] Docket, pp. 474 to 475.
[24] Docket, pp. 478 to 482.

held on February 22, 2021,[25] the said *Motion for Reconsideration* was, in effect, partially granted, when the Court admitted the said Exhibit "P-3-1". In the same hearing, respondent's counsel manifested that he will no longer present any evidence in this case.

The *Memorandum for Respondent* and petitioner's *Memorandum* were posted on March 23, 2021,[26] and March 24, 2021,[27] respectively.

This case was considered submitted for decision on June 1, 2021.[28]

THE ISSUE STIPULATED BY THE PARTIES

The parties submitted the following issues for the Court's resolution, to wit:

"1. Whether Respondent erred in denying Pesos: **Twelve Million Two Hundred Ninety-Five Thousand & 64/100 (₱12,295,005.64)** worth of input value-added tax ('VAT') credits attributable to Petitioner's zero-rated sales for the first to fourth quarters of calendar year 2017 ('CY 2017').

2. Whether Petitioner is entitled to its claim for refund representing its excess and/or unutilized input VAT attributable to its zero-rated sale of services for the first to fourth quarters of CY 2017 in the amount of Pesos: **Twelve Million Two Hundred Ninety-Five Thousand & 64/100 (₱12,295,005.64)**."[29]

Petitioner's arguments:

Petitioner argues that its claim for refund of its accumulated (excess) input VAT finds legal support in Section 108(B)(2), in relation to Sections 110(B) and 112(A) of the Tax Code, as amended by TRAIN; that it is a VAT-registered entity as required under Section 112(A) of the Tax Code, as amended; that the administrative and

[25] Minutes of the hearing held on, and Order dated, February 22, 2021, Docket, pp. 489 to 491.
[26] Docket, pp. 530 to 535.
[27] Docket, pp. 492 to 526.
[28] Resolution dated June 1, 2021, Docket, p. 538.
[29] Par. II, Stipulation of Issues, JSFI, Docket, p. 170.

judicial claim for refund was filed within the prescriptive provided under the pertinent provisions of the Tax Code and its implementing rules and regulations; that petitioner is engaged in zero-rated or effectively zero-rated transactions as required under the Tax Code, as amended, and its pertinent regulations, and the sales were paid for in acceptable foreign currency exchange and the proceeds have been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP); that the input taxes due from the purchases of goods and services directly attributable to zero-rated sales of petitioner were duly supported by VAT invoices or official receipts; that the claimed input VAT payments were not applied against any output tax in the succeeding periods; that the denial based on the unpaid interest and penalties for late filing of the withholding taxes as reflected in the *Delinquency Verification Certificate* finds no merit pursuant to Revenue Memorandum Circular No. 47-2019; and that the erroneously paid VAT should be refunded to the petitioner following the principle of *solutio indebiti*.

Respondent's counter-arguments:

Respondent claims that petitioner failed to demonstrate that the subject tax was erroneously or illegally collected; that taxes paid and collected are presumed to be made in accordance with the laws and hence, not refundable; that it is incumbent upon the petitioner to show that it has complied with the provision of Section 204(C) in relation to Section 229 of the 1997 Tax Code, as amended; that petitioner's claim for refund or issuance of tax credit certificate in the amount of ₱12,295,005.64, as alleged excess and unutilized input VAT paid on purchases of goods and services attributable to its zero-rated sales for the period January to December 2017, was not fully substantiated by proper documents; that any claim for credit or refund shall only be given due course upon settlement by the claimant of any outstanding tax liabilities as enunciated under Item 3 of Revenue Audit Memorandum Order No. 2-93; and that tax refunds are in the nature of tax exemptions and as such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption.

THE COURT'S RULING

The present *Petition for Review* lacks merit. *je*

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

Section 112 of the NIRC of 1997, as amended by Republic Act (RA) No. 10963 [30] [otherwise known as the Tax Reform for Acceleration and Inclusion Act (TRAIN)], provides 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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> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.

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

> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however*, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code."

Pursuant to the above provision, certain requisites must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT. Said requisites are classified into certain categories, to wit:

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

1. the claim is filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made;[31]
2. that in case of full or partial denial of the refund claim rendered within a period of ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision.

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

3. the taxpayer is a VAT-registered person;[32]

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

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[33]
5. for 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 have been duly

[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] *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.

[33] *Id.*

accounted for in accordance with BSP rules and regulations;[34]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[35]
7. the input taxes are due or paid;[36]
8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[37] and
9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[38]

Relative thereto, it must be emphasized that in cases filed before this Court, which are litigated de novo, party-litigants must prove every minute aspect of their case.[39] Thus, it behooves petitioner to show compliance with each of the foregoing requisites. As a corollary, the absence of *any* of the said requisites is already a valid ground to deny the refund claim.

Petitioner timely filed its claim in the administrative and judicial levels for the periods covering the 2nd, 3rd and 4th quarters of 2017.

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[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.
[38] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.
[39] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue,* G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank,* G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.,* G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.,* G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.

The *first* requisite pertains to the filing of a claim for tax refund or tax credit of input VAT before the BIR, within two (2) years from the close of the taxable quarter when the supposed zero-rated or effectively zero-rated sales were made. Thus, petitioner's last day for filing of its administrative claim for the four (4) quarters of calendar year 2017 respectively fell on the following dates, to wit:

Calendar year 2017	**Close of taxable quarter**	**Last day to file an administrative claim**
1st Quarter	March 31, 2017	**March 31, 2019**
2nd Quarter	June 30, 2017	**June 30, 2019**
3rd Quarter	September 30, 2017	**September 30, 2019**
4th Quarter	December 31, 2017	**December 31, 2019**

Records show that petitioner filed its administrative claim for refund of input VAT for the said periods on April 5, 2019.[40] Clearly, from the foregoing table, it can already be discerned that petitioner's administrative claim covering the 1st quarter of 2017 was belatedly filed, and only that pertaining to the 2nd, 3rd and 4th quarters of the same year were seasonably filed within the two-year prescriptive period. Hence, petitioner complied with the above-stated *first* requisite, but only insofar as the 2nd, 3rd and 4th quarters of calendar year 2017 are concerned.

The *second* requisite is to the effect that in case of full or partial denial of the refund claim rendered within a period of ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision.

Notably, respondent is deemed to have acted on petitioner's administrative claim within the said ninety (90)-day period from April 5, 2019 (which period should have ended on July 4, 2019), when OIC-ACIR Ma. Luisa I. Belen issued the letter dated May 30, 2019,[41] denying petitioner's application for VAT refund. Considering that petitioner received the said letter on June 21, 2019,[42] the filing of the present *Petition for Review* on July 19, 2019,[43] was timely made and petitioner complied with the above-stated *second* requisite, likewise

[40] Exhibit "P-9", Docket, p. 340.
[41] Exhibit "P-14", Docket, pp. 345 to 346.
[42] *Id.*
[43] Docket, pp. 10 to 21.

insofar as the 2nd, 3rd and 4th quarters of calendar year 2017 are concerned.

Petitioner's is a VAT-registered person.

As for its compliance with the *third* requisite, petitioner has fulfilled the same by establishing that it is registered as a VAT taxpayer with the BIR, RDO No. 44 – Taguig, under TIN 287-343-976-000.[44]

However, petitioner failed to establish that it was engaged in zero-rated sales or effectively zero-rated sales during the subject quarters.

The *fourth* requisite requires that the taxpayer is engaged in zero-rated or effectively zero-rated sales.

In its Quarterly VAT Returns for the 2nd, 3rd and 4th quarters of calendar year 2017, petitioner reported zero-rated sales/receipts of ₱660,938,977.51, broken down as follows:

Calendar year 2017	Zero-Rated Sales/Receipts
2nd Quarter[45]	227,359,631.86
3rd Quarter[46]	225,442,347.28
4th Quarter[47]	208,136,998.37
Total	**₱660,938,977.51**

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

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[44] Exhibit "P-3", Docket, p. 326; Refer also to Par. 4, *Petition for Review* vis-à-vis Par. 1, *Answer*, Docket, pp. 11 and 99, respectively.
[45] Exhibit "P-5", Docket, pp. 329 to 330.
[46] Exhibit "P-6", Docket, pp. 331 to 332.
[47] Exhibit "P-7", Docket, pp. 333 to 334.

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

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(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 of 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 (BSP)**;" *(Emphases added)*

Based on the foregoing provision, however, certain essential elements must be present for a sale or supply of services to be subject to the VAT rate of zero percent (0%) under Section 108(B)(2) of the NIRC of 1997, as amended, to wit:

1. The recipient of the services is a foreign corporation, and the said corporation is doing business *outside* the Philippines, or is a nonresident person not engaged in business who is *outside* the Philippines when the services were performed;[48]

2. The services fall under any of the categories under Section 108(B)(2),[49] or simply, the services rendered should be other than "*processing, manufacturing or repacking goods*";[50] ℘

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[48] *Sitel Philippines Corporation (Formerly Clientlogic Phils. Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017; *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007; *Accenture, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012.

[49] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

[50] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007.

3. The services must be performed in the Philippines[51] by a VAT-registered person; and

4. The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[52]

Anent the *first* essential element, in order to be considered as a non-resident foreign corporation doing business *outside* the Philippines, each entity must be supported, at the very least, by **both** a *Certification of Non-Registration of Corporation/Partnership* issued by the Philippine SEC, **and** proof of incorporation/registration in a foreign country (*e.g.*, Articles/Certificate of Incorporation/Registration and/or Tax Residence Certificate). The former establishes that the recipient of the service has no registered business in the Philippines, and that it is not engaged in trade or business within the Philippines; while the latter proves that the said recipient of the service is indeed foreign. The said documents have been consistently required by this Court, for purposes of the said *first* essential element. In fact, in *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*,[53] 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[54] 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.**
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> **<u>Such proof must be especially required from ROHQs</u>** such as DKS. **That the law expressly authorizes ROHQs to render services to local and foreign affiliates alike only stresses the ROHQ's burden to distinguish among their clients' nationalities and actual places of business** ge

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[51] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

[52] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), supra.*

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

[54] That is, "Nonresident foreign corporation".

operations and establish that they are seeking refund or credit of input VAT only to the extent of their sales of services to foreign clients doing business outside the Philippines.

To recall, the CTA found that the SEC Certification of Non-Registration of Company and Authenticated Articles of Association and/or Certificates of Registration/Good Standing/Incorporation sufficiently established the NRFC status of 11 of DKS's affiliates clients.

The Court upholds these findings.

The Court accords the CTA's factual findings with utmost respect, if not finality, because the Court recognizes that it has necessarily developed an expertise on tax matters. Significantly, both the CTA Division and CTA *En Banc* gave credence to the aforementioned documents as sufficient proof of NRFC status. The Court shall not disturb its findings without any showing of grave abuse of discretion considering that the members of the tax court are in the best position to analyze the documents presented by the parties.

In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court *a quo*'s findings. **To the Court's mind, the SEC Certifications of Non-Registration show that these affiliates are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines.**" *(Emphasis and underscoring added)*

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

1. Updated Articles of Association of Franchise International Luxembourg S.A.R.L. as at December 17, 2012;[55]
2. Authenticated Certificate of Residency of Franchise International S.A.R.L. issued by the Tax Authority of Luxembourg;[56]
3. Apostilled document as to the change of name of the private limited liability company (société à responsabilité

[55] Exhibit "P-38", BIR Records, pp. 50 to 58.
[56] Exhibit "P-39", BIR Records, pp. 59 to 60.

limitée or S.A.R.L.) from Franchise International (Luxembourg) to Franchise International;[57] and

4. Certificate of Non-registration as a corporation or partnership issued by the Philippines SEC to Franchise International SARL.[58]

With regard to the *second* essential element, petitioner presented the Services Agreement[59] entered into by its Head Office and Franchise International S.A.R.L. which commenced on January 1, 2015 and became valid and effective for an indefinite period of time. Pursuant to the said Agreement, petitioner's Head Office undertakes to perform or provide the following services to Franchise International S.A.R.L., to wit:[60]

1. Billing Support;
2. Debt Management and Collections;
3. Accounts Receivable and Cash Applications Support;
4. Accounts Payable Support;
5. Treasury Support;
6. General Ledger/Accounting Support;
7. Reporting and Business Analytical Support;
8. Information Technology Services;
9. Marketing and Public Relations Services;
10. Finance and Legal Services;
11. Human Resources and Training Services;
12. Sales Support Services;
13. New Centre Opening Team;
14. Various Ad Hoc general support services;
15. Provision of performance reports against agreed KPI's in standardized form and frequency;
16. Consultancy on relevant process methodology and on process change management/continuous process improvement; and,
17. IT Helpdesk support offered to associated companies worldwide.

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

[57] Exhibit "P-43".
[58] Exhibit "P-40", BIR Records, p. 61.
[59] Exhibit "P-41".
[60] Exhibit "P-41", Schedule I, pp. 8 to 10.

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

On the *fourth* essential element, *i.e.*, that the payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules, petitioner presented the Certification issued by The Hongkong and Shanghai Banking Corporation Limited (HSBC)[61] purportedly showing the remittances of its foreign client, as well as the corresponding official receipts[62] supporting its zero-rated sales. However, due to petitioner's non-compliance with the *third* essential element, as above shown, it is futile to scrutinize, one by one, the details of the above-stated inward remittances and official receipts.

Verily, at this juncture, petitioner has already fallen short in establishing that its sales or supply of services qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended. Needless to state, it is only when the sales of a VAT-registered person are zero-rated or effectively zero-rated that such person may have the option of applying for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales.[63] Considering petitioner's failure to establish its zero-rated or effectively zero-rated sales for the subject periods, the present *Petition for Review* must necessarily fail.

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

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[61] Exhibit "P-42".
[62] Exhibits "P-25" to "P-36".
[63] Refer to *Coca-Cola Bottlers Philippines, Inc. vs Commissioner of Internal Revenue*, G.R. No. 222428, July 19, 2018.

It must be emphasized that actions for tax refund or credit, as in the present case, are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[64] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[65] Hence, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[66] Unfortunately for petitioner, it has failed to prove such entitlement.

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

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

With Dissenting Opinion
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

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[64] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc.,* G.R. No. 127105, June 25, 1999.

[65] *Kepco Philippines Corporation v. Commissioner of Internal Revenue,* G.R. No. 179961, January 31, 2011 citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue,* G.R. No. 159490, February 18, 2008.

[66] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 183531, March 25, 2015 citing *J.R.A. Philippines, Inc. v. CIR,* G.R. No. 171307, August 28, 2013.

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

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

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10124

Members:

CASTAÑEDA, JR., *Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated: FEB 09 2022
1:10 p.m.

x - x

DISSENTING OPINION

BACORRO-VILLENA, J.:

With all due respect to our distinguished Chairman and colleague, Hon. Associate Justice Juanito C. Castañeda, Jr., I beg to differ with the finding in the *ponencia* that petitioner failed to clearly establish its compliance with one of the requisites, particularly, that the services rendered were performed in the Philippines.

As discussed therein, the Services Agreement[1] between petitioner's Head Office and Franchise International S.A.R.L. (**Franchise International**) does not indicate the services were to be performed by petitioner in the Philippines.

To my mind, however, the mere fact that the subject Services Agreement failed to indicate the place where the services are to be performed does not mean that the same were not performed in the Philippines.

[1] Exhibit "P-41", Division Docket, pp. 459-468.

On the contrary, there is an unrebutted testimony in petitioner's favor which categorically stated that its services for Franchise International were performed in the Philippines, to wit:

> ...
>
> 23: Q: What is the reason why these were subjected/classified as zero-rated transactions by Petitioner?
>
> A: As discussed in Part III (3) on page 6 of the Independent CPA Report, we verified the SLS (**Exhibit P-23**), GL Account No. 31510 (Sales) (**Exhibit P-24**), and the VAT-Registered O.R.s issued by Petitioner to substantiate[d] the fees collected for the covered period (**Exhibits P-25 to P-36**) would show that the transactions were considered as sales subject to VAT at zero percent (0%) <u>because these pertain to fees collected for services rendered in the Philippines for Franchise International S.A.R.L.</u>, an entity incorporated under the laws of Luxembourg and is not registered as a corporation nor partnership in the Philippines as evidenced by the following[.][2]
>
> ...

To this testimony of petitioner's witness, respondent neither conducted any cross examination[3] nor presented controverting evidence to prove otherwise. In fact, respondent chose not to present any evidence at all.[4]

It must be further noted that respondent did not raise any issue on petitioner's supposed non-compliance with this requisite in his Answer[5] or even in his Memorandum.[6]

Furthermore, Section (2)3, Book III, Executive Order No. 226[7], as amended by Republic Act (**RA**) No. 8756[8] describes the nature of a regional operating headquarters (**ROHQ**) as "foreign business entity which is **allowed to derive income in the Philippines** by performing qualifying services to its affiliates, subsidiaries or branches in the Philippines, in the Asia-Pacific Region and in other foreign markets".

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2 Exhibit "P-19", Judicial Affidavit of Krista V. Bambao, id., p. 277; Emphasis in the original text and underscoring supplied.

3 Order dated 09 March 2020, id., p. 300.

4 Order dated 22 February 2021, id., pp. 490-491.

5 Id., pp. 99-101.

6 Id., pp. 530-536.

7 The Omnibus Investments Code of 1987.

8 AN ACT PROVIDING FOR THE TERMS, CONDITIONS AND LICENSING REQUIREMENTS OF REGIONAL OR AREA HEADQUARTERS, REGIONAL OPERATING HEADQUARTERS, AND REGIONAL WAREHOUSES OF MULTINATIONAL COMPANIES, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF EXECUTIVE ORDER NO. 226, OTHERWISE KNOWN AS THE OMNIBUS INVESTMENTS CODE OF 1987.

Relatedly, under Section 3(q) and (ff), Rule 131 of the Rules on Evidence, disputable presumptions exist in petitioner's favor which should stand when no contrary evidence is presented. The pertinent provision reads:

> ...
>
> **Sec. 3.** *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
>
> ...
>
> (q) That the ordinary course of business has been followed;
>
> ...
>
> (ff) That the law has been obeyed[.]
>
> ...

Considering the unrebutted testimony of its witness, respondent's failure to raise an issue or present controverting evidence on the questioned requisite and the satisfactory presumption in petitioner's favor, taken altogether, it is my view that the same are sufficient to hold that petitioner rendered its services in the Philippines.

Lastly, I am not unaware that cases before this Court are litigated *de novo*. As such, the claimant of a tax refund should prove every minute aspect of its case.[9] However, the same remains to be civil in nature[10] and only a preponderance of evidence is needed to grant the same.[11]

In sum, I vote to determine the refundable amount due to petitioner.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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9 See *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*, G.R. No. 231581, 10 April 2019.

10 See *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*, G.R. No. 141973, 28 June 2005.

11 See *Southern Philippines Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 179632, 19 October 2011.