REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

MANULIFE DATA SERVICES, INC., *Petitioner,*	**CTA CASE NO. 10381** Members:
-versus-	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 11 2024 4:00 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

The instant Petition for Review ("Petition"), filed on October 22, 2020,[1] prays for the refund of the amount of Php102,180,142.62 allegedly representing petitioner's excess and unutilized creditable input value-added taxes ("VAT") paid for the four quarters of the calendar year ("CY") 2018.[2]

The Parties

Petitioner is duly licensed by the Securities and Exchange Commission ("SEC") to operate as a regional operating headquarters ("ROHQ") under SEC Certificate of Registration and License No. FS200603505, issued on March 3, 2006.[3] As an ROHQ, petitioner is allowed to render qualifying services to its affiliates and related parties in the Asia-Pacific region and in other foreign markets. It is registered with the Bureau of Internal Revenue,

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[1] *Rollo*, Vols. 1-3, pp. 6-1682.
[2] *See* Statement of the Case, Pre-Trial Order, *Rollo*, Vol. 4, p. 1829.
[3] Exhibit "P-1".

("BIR") as a VAT entity under Certificate of Registration OCN 8RC0000525020.[4]

Meanwhile, respondent is the duly appointed Commissioner of Internal Revenue ("CIR") empowered to perform the duties of the said office, including, among others, the power to decide, approve, and grant claims for refund or tax credit of erroneously paid or overpaid taxes, as provided by law, particularly the *National Internal Revenue Code, as amended* ("*NIRC*"). He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

The Facts

As provided above, petitioner is an ROHQ. It is registered as a VAT taxpayer with the BIR under Certificate of Registration OCN 8RC0000525020.[6]

During CY 2018, petitioner generated both VAT zero-rated sales and VATable sales as shown in its schedules of zero-rated sales[7] and VATable sales[8] and its quarterly VAT returns.[9]

On July 14, 2020, petitioner filed its administrative claim for VAT refund for CY 2018 before the BIR's VAT Credit Audit Division ("VCAD").[10] After initially receiving the application, the VCAD, through revenue officer ("RO") Jovelyn Borromeo, repudiated the receipt of the VAT refund application and required petitioner to retrieve its entire filing on the verbal notice that certain documents allegedly did not conform to *Revenue Memorandum Circular* ("*RMC*") *No. 47-2019*, to wit:

a. The deduction of the claim from the available input VAT was indicated in a monthly VAT declaration, not in a quarterly VAT return; and

b. The bank statements submitted as proof of the inward remittances were not certified by an officer of the issuing bank.[11]

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4 Exhibits "P-3", "P-4-ICPA", and "P-5-ICPA".
5 *See* Stipulation of Facts, Joint Stipulation of Facts, *Rollo*, Vol. 4, p. 1808.
6 Exhibits "P-3", "P-4-ICPA" and "P-5-ICPA".
7 Exhibits "P-22" to "P-25".
8 Exhibits "P-18" to "P-21".
9 Exhibits "P-5" to "P-8"; *see also* Memorandum, *Rollo*, Vol. 5, p. 2370.
10 *See* Stipulation of Facts, Joint Stipulation of Facts, *Rollo*, Vol. 4, p. 1808; Exhibit "P-11" to "P-13".
11 *See* Stipulation of Facts, Joint Stipulation of Facts, *Rollo*, Vol. 4, p. 1809.

On 30 July 2020, petitioner sent a Letter, dated July 29, 2020, to the CIR, questioning the actions of RO Borromeo and requesting that the CIR confirm the receipt of the administrative claim on 14 July 2020.[12]

On 23 September 2020, petitioner received a Letter, dated August 27, 2020,[13] which effectively affirmed RO Borromeo's actions. The CIR further noted that petitioner's VAT refund claim was deemed not filed for failure to comply with *RMC 47-2019.*

Petitioner considered the August 17, 2020 Letter as a denial of its administrative VAT refund claim. Thus, on October 22, 2020, petitioner filed the instant Petition.

Summons were issued to respondent,[14] who filed his Answer on November 26, 2020.[15]

On December 4, 2020, a Notice of Pre-Trial Conference was issued.[16] Respondent filed his Pre-Trial Brief on December 15, 2020,[17] while petitioner filed its Pre-Trial Brief on February 3, 2021.[18]

On December 18, 2020, respondent filed a Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court, alleging that this Court has no jurisdiction to entertain the present claim for VAT refund since no administrative claim was properly filed before respondent.[19] Petitioner then filed a Comment (Re: "Motion for Early Resolution …" dated 18 December 2020) on January 8, 2021 counter-arguing that it (a) properly filed an administrative claim for VAT refund before respondent; and (b) that the issue of whether or not the supporting documents submitted in support of a VAT refund claim is complete is an issue that decides whether a VAT refund application is granted, not whether such VAT refund claim is filed.[20] In a Resolution, dated January 27, 2021,[21] the Court denied respondent's Motion considering that there are still factual issues that needs to be tackled through full blown proceedings.

The Pre-Trial Conference ensued on February 10, 2021.[22]

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[12] *Id.;* Exhibits "P-16" and "P-16-1-ICPA" to "P-16-4-ICPA".
[13] *See* Stipulation of Facts, Joint Stipulation of Facts, *Rollo*, Vol. 4, p. 1809; Exhibits "P-17" and "P-11-1-ICPA" to "P-11-3-ICPA".
[14] Records, Vol. 4, pp. 1683-1684.
[15] *Id.*, pp. 1685-1691.
[16] *Id.*, pp. 1704-1705.
[17] *Id.*, pp. 1692-1696.
[18] *Id.*, pp. 1719-1742.
[19] *Id.*, pp. 1697-1703.
[20] *Id.*, pp. 1708-1712.
[21] *Id.*, pp. 1714-1718.
[22] *Id.*, pp. 1743-1745.

On March 9, 2021, petitioner filed a Motion (To Commission Independent CPA) and the Judicial Affidavit of its Independent Certified Public Accountant ("ICPA"), Mr. Michael L. Aguirre, showing his qualifications to act as an ICPA for the case at bar.[23] During the hearing, conducted on June 16, 2021, Mr. Aguirre was commissioned by this Court to act as the ICPA for the instant case and required him to submit an ICPA Report summarizing his findings.[24]

Meanwhile, during the hearing conducted on March 22, 2021, petitioner's witnesses, Inigo P. Garcia and Clarissa L. Magrarao, whose Judicial Affidavits were appended to the Petition, testified and were cross-examined by respondent's counsels and by this Court.[25]

On same date, the parties filed a Joint Stipulation of Facts and Issues.[26]

A Pre-Trial Order was then issued by this Court on May 24, 2021.[27]

Respondent submitted the Judicial Affidavit of its lone witness, RO Borromeo, on May 26, 2021.[28]

On September 7, 2021, Mr. Aguirre submitted his ICPA Report summarizing his findings for the instant judicial claim for VAT refund.[29] Petitioner then submitted the Judicial Affidavit of Mr. Aguirre in relation to said Report on October 6, 2021.[30] Petitioner then presented Mr. Aguirre through a video conference.[31]

Petitioner filed its Formal Offer of Evidence on November 17, 2021,[32] to which respondent interposed no objections.[33] This Court admitted all of petitioner's Exhibits.[34]

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23 *Id.*, pp. 1763-1790.
24 *Id.*, pp. 1883-1885.
25 *Id.*, pp. 1806-1807.
26 *Id.*, pp. 1808-1822.
27 *Id.*, pp. 1828-1841.
28 Exhibit "R-4", *id.*, pp. 1848-1865.
29 Exhibit "P-107", *id.*, pp. 1887-2028.
30 Exhibit "P-105", *id.*, pp. 2029-2061.
31 *Rollo*, Vol. 5, p. 2063.
32 *Id.*, pp. 2246-2264.
33 *Id.*, pp. 2265-2268.
34 *See* Resolutions, dated February 22, 2022, *id.*, pp. 2269-2273; dated May 23, 2022, *id.*, pp. 2300-2303; dated January 37, 2023, *id.*, pp. 2366-2372.

During the Hearing conducted on March 30, 2022, respondent presented his lone witness, RO Borromeo. He then made an oral offer of evidence which petitioner interposed no objection to. Thus, all of respondent's Exhibits were admitted in evidence.[35]

Petitioner filed its Memorandum on March 9, 2023,[36] while respondent filed his Memorandum on March 10, 2023.[37] Thus, in a Resolution, dated April 11, 2023, the instant case was submitted for Decision.[38]

Hence, this Decision.

The Issues[39]

> Whether or not the Court has jurisdiction to act on the present Petition due to the alleged failure by petitioner to file a valid administrative claim for refund; and
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> Whether or not petitioner is entitled to the claim for refund of its alleged excess and/or unutilized input VAT in the amount of Php102,180,142.62 for CY 2018.

Arguments of the Parties

Petitioner's Arguments[40]

Petitioner avers that it is entitled to a refund of excess and unutilized input VAT. Petitioner posits the following arguments:

(a) The Court has jurisdiction to act on the Petition considering that petitioner validly filed an administrative claim for refund before the BIR. Petitioner posits that respondent has the power to decide whether to grant or deny a VAT refund claim but not the power to determine whether an administrative claim has been validly filed and, thus, not the discretion to refuse or repudiate receipt of an administrative claim. Once an administrative claim has been lodged by a taxpayer, respondent has no other recourse but to determine the validity of such claims (*i.e.*, grant or deny the VAT

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[35] *Id.*, pp. 2284-2285.
[36] *Id.*, pp. 2369-2379.
[37] *Id.*, pp. 2380-2386.
[38] *Rollo.*
[39] *See* Manifestation, dated March 24, 2021; *see also* Manifestation, (Re: Proposed Statement of Issue), dated June 9, 2021.
[40] See Memorandum, *Rollo*, Vol. 5, pp. 2372-2377.

refund claim) based on the supporting evidence adduced. To give discretion on the part of respondent as to whether an application has been validly filed or not will result in having unbridled power to run the prescriptive period provided for filing VAT refund claims;

(b) Petitioner's claim for refund of its accumulated (excess) input VAT finds legal support in the *NIRC*.

(c) Petitioner is a VAT-registered entity;

(d) Petitioner is engaged in zero-rated transactions as required under *Section 108 (B) (2) of the NIRC*, and such sales were paid for in acceptable foreign currency exchange;

(e) Petitioner paid input taxes during CY 2018 from domestic purchases of goods and services;

(f) Petitioner's excess and unutilized input VAT is directly attributable to its zero-rated sales for CY 2018 and not applied against any output tax in the same or succeeding periods; and

(g) Petitioner has complied with the complete documentation in support of its claim for refund.

Respondent's Arguments[41]

In refutation, respondent alleges that the instant Petition must be dismissed for lack of jurisdiction. Petitioner failed to properly file an administrative claim for VAT refund before respondent. Without complying with such prerequisite, this Court cannot assume jurisdiction over a judicial claim involving the same VAT refund claim.

The Ruling of the Court

The instant Petition is **PARTIALLY GRANTED.**

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[41] *See* Memorandum, *id.*, pp. 2381-2383.

Requisites for claiming unutilized input VAT attributable to zero-rated sales.

The provision that governs the present claim for refund of excess and/or unutilized input VAT attributable to zero-rated sales is *Section 112 (A) and (C) of the NIRC*, which reads:

> "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.
>
> (B)...
>
> (C) Period within which Refund or Tax Credit of Input Taxes shall be Made. - In proper cases, *the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof*: Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
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> *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 ninety (90) days period shall be punishable under Section 269 of this Code."
> (Emphasis, Ours.)

Based on the foregoing provisions, jurisprudence has laid down the following requisites that must be complied with by the taxpayer-applicant to successfully obtain a tax refund/credit:

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

1. the refund claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[42]

2. the judicial claim is filed with this Court within 30 days from receipt of an adverse decision (*i.e.,* partial or full denial of the administrative claim)[43] or upon the lapse of the period given to the CIR to act on an administrative claim (*i.e.,* 90 days from the filing of such claim) when the CIR fails to act on the same within such period (in which case, the claim for refund is deemed denied by the CIR), whichever comes first;[44]

With reference to the taxpayer's registration with the BIR:

3. the taxpayer is a VAT-registered person;[45]

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

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[46]

5. for zero-rated sales under *Section 106(A)(2)(1) and (2), 106(B), and 108(B)(1) and (2) of the NIRC*, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[47]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes; [48]

7. the input taxes are due or paid;[49]

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42 *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 155732, April 27, 2007; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.

43 *Steag State Power, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

44 *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016.

45 *Supra* note 42.

46 *Id.*

47 *Id.*

48 *Id.*

49 *Id.*

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; [50] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[51]

At this juncture, it must be emphasized that cases filed before the Court of Tax Appeals ("CTA") are litigated *de novo*.[52] Parties are thus expected to litigate and prove every minute aspect of their case anew by presenting, formally offering, and submitting to the CTA all evidence required for the successful prosecution of its claim.[53] Consequently, petitioner must competently establish its claim for refund or tax credit following the foregoing requisites.

Petitioner's administrative and judicial claims for refund were timely filed.

Pursuant to *Sections 112 (A) and (C) of the NIRC*, the refund of unutilized input VAT attributable to zero-rated or effectively zero-rated sales must be administratively filed with the BIR within two years counted from the close of the taxable quarter when the relevant sales were made. Meanwhile, the judicial claim for refund must be filed in Court within 30 days from either: (1) receipt of respondent's decision but such decision must be rendered within the 90-day period to resolve; or (2) after the expiration of the 90-day period, in which case there is deemed denial of the claim.

Applying the foregoing, the table below summarizes the relevant dates pertaining to the filing of the administrative and judicial claims for refund:

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[50] G.R. No. 155732, April 27, 2007; G.R. No. 180345, November 25, 2009.

[51] *Supra* note 42.

[52] *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc.*, G.R. No. 231581, April 10, 2019.

[53] *Id.*; *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 206079-80 and 206309, January 17, 2018.

Period of claim	Close of the taxable quarter	Last day for filing of the administrative claim	Date of filing of the administrative claim	Last day of the CIR to act on the administrative claim (90 days)	Date of receipt of the CIR's denial of the administrative claim	Last day for filing of the judicial claim (30 days)	Date of filing of judicial claim
1st Quarter of CY 2018	March 31, 2018	March 31, 2018	July 14, 2020[54]	October 12, 2020	September 23, 2020[55]	October 23, 2020	October 22, 2020[56]
2nd Quarter of CY 2018	June 30, 2018	June 30, 2020	July 14, 2020[57]	October 12, 2020	September 23, 2020[58]	October 23, 2020	October 22, 2020[59]
3rd Quarter of CY 2018	September 30, 2018	September 30, 2018	July 14, 2020[60]	October 12, 2020	September 23, 2020[61]	October 23, 2020	October 22, 2020[62]
4th Quarter of CY 2018	December 31, 2018	December 31, 2020	July 14, 2020[63]	October 12, 2020	September 23, 2020[64]	October 23, 2020	October 22, 2020[65]

The present case covers all of the VATable quarters of CY 2018. Counting two years from close of the 1st quarter, 2nd quarter, 3rd quarter, and 4th quarter of CY 2018 on March 31, 2018, June 30, 2018, September 30, 2018, and December 31, 2018, respectively, petitioner had until March 31, 2020, June 30, 2020, September 30, 2020, and December 31, 2020 to file its administrative claim for VAT refund for the 1st quarter, 2nd quarter, 3rd quarter, and 4th quarter of CY 2018, respectively. However, pursuant to *Revenue Regulation No. 16-2020*, the due date for all administrative VAT refund claims for the calendar quarter ending on March 31, 2018 was extended until July 15, 2020 while the due date for all administrative VAT refund claims for the calendar quarter ending on June 30, 2018 was extended until August 31, 2020. Thus, the administrative claim filed on July 14, 2020 for all of the VATable quarters of CY 2018 was timely made.

Respondents raises that since petitioner allegedly did not submit all documents required under *RMC 47-2019*, it did not validly file an administrative claim for refund. And without a prior administrative claim for refund filed before the BIR, respondents argues that this Court has no jurisdiction entertain the present judicial claim.

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54 *Supra* note 10.
55 *Supra* note 13.
56 *Supra* note 2.
57 *Supra* note 10.
58 *Supra* note 13.
59 *Supra* note 2.
60 *Supra* note 10.
61 *Supra* note 13.
62 *Supra* note 2.
63 *Supra* note 10.
64 *Supra* note 13.
65 *Supra* note 2.

This argument is flawed.

In *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*,[66] the Supreme Court ruled that the BIR has no discretion to determine whether the supporting documents submitted by a taxpayer are complete or not and thus dictate the starting point of the period given to respondent to decide a VAT refund claim. Otherwise, the CIR will have uncontrolled power to delay the period to decide administrative claims and ultimately bar the filing of judicial claims, *viz.*:

> Indeed, the 120-day period granted to the CIR to decide the administrative claim under the Section 112 is primarily intended to benefit the taxpayer, to ensure that his claim is decided judiciously and expeditiously. After all, the sooner the taxpayer successfully processes his refund, the sooner can such resources be further reinvested to the business translating to greater efficiencies and productivities that would ultimately uplift the general welfare. To allow the CIR to determine the completeness of the documents submitted and, thus, dictate the running of the 120-day period, would undermine these objectives, as it would provide the CIR the unbridled power to indefinitely delay the administrative claim, which would ultimately prevent the filing of a judicial claim with the CTA.
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> A hypothetical situation illustrates the hazards of granting the CIR the authority to decide when complete documents have been submitted - A taxpayer files its administrative claim for VAT refund/credit with supporting documents. After 121 days, the CIR informs the taxpayer that it must submit additional documents. Considering that the CIR had determined that complete documents have not yet been submitted, the 120-day period to decide the administrative claim has not yet begun to run. In the meantime, more than 120 days have already passed since the application with the supporting documents was filed to the detriment of the taxpayer, who has no opportunity to file a judicial claim until the lapse of the 120+30 day period in Section 112(C). With no limitation to the period for the CIR to determine when complete documents have been submitted, the taxpayer may be left in a limbo and at the mercy of the CIR, with no adequate remedy available to hasten the processing of its administrative claim.

Moreover, in said case, the High Court ruled that "it is the taxpayer who has that right and the burden of providing any and all documents that would support his claim for tax credit or refund." It is thus the taxpayer who ultimately decides what documents ought to be presented before the BIR to substantiate its VAT refund claim.

The Letter, dated July 29, 2020,[67] sent by petitioner to the CIR which questioned the act of RO Borromeo of repudiating the receipt of its VAT refund claim and requested the CIR to issue a ruling in writing on its VAT refund claim, is a manifestation by petitioner that the VAT refund application

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[66] G.R. No. 207112, December 8, 2015.

[67] *See* Stipulation of Facts, Joint Stipulation of Facts, *Rollo*, Vol. 4, p. 1809; Exhibits "P-16" and "P-16-1-ICPA" to "P-16-4-ICPA".

it filed before the VCAD on July 14, 2020 already contains all of the supporting documents necessary to substantiate its VAT refund claim. Otherwise, petitioner would not have requested the CIR to immediately act on said VAT refund claim (*i.e.,* whether to grant or deny the same, as long as such decision is in writing and with explanation).

Since petitioner already manifested before the BIR that the entire docket composed of various documentary evidence submitted along with the VAT refund application on July 14, 2020 already constitutes the complete supporting documents, the BIR was duty-bound to decide the VAT refund claim within 90 days or until October 12, 2020. Failing to decide within such period would mean that petitioner's VAT refund claim is deemed denied in accordance with *Section 112 (C) of the NIRC.*

However, respondent, in the case at bar, was able to beat the 90-day deadline when he issued the Letter, dated August 17, 2020,[68] which was received by petitioner on 23 September 2020. In said Letter, he confirmed RO Borromeo's act of repudiating receipt of petitioner's VAT refund claim based on the latter's failure to comply with *RMC 47-2019.* Through this Letter, respondent adopted a position contrary to a grant of petitioner's VAT refund claims. Consequently, said Letter is effectively a denial of petitioner's VAT refund claims.

Accordingly, when petitioner received said denial Letter on September 23, 2020, it had 30 days or until October 23, 2020 to institute a judicial claim before this Court. Thus, when petitioner filed the instant Petition on 22 October 2020, the same was timely instituted. Therefore, this Court properly assumed jurisdiction over the instant VAT refund claim.

Given the foregoing, petitioner complied with the *first and second requirements* that the administrative and judicial claims should be timely filed.

Petitioner is a VAT-registered taxpayer.

It is undisputed that petitioner is duly registered with the BIR as a VAT taxpayer under Certificate of Registration No. OCN 8RC0000525020.[69] Hence, petitioner complied with the *third requisite* that the claimant must be a VAT-registered taxpayer.

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[68] *Supra* note 13.
[69] Exhibits "P-3", "P-4-ICPA", and "P-5-ICPA".

Petitioner has proven that it is engaged in zero-rated or effectively zero-rated sales.

Petitioner claims that it is engaged in zero-rated sales of services under *Section 108 (B) (2) of the NIRC*.

Zero-rated sales of services, other than processing, manufacturing, or repacking of goods, to non-resident persons or entities not engaged in business in the Philippines under *Section 108 (B) (2) of the NIRC* is delineated, as follows:

> (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":
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> . . . .
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> (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);"

In applying the above provision, *Section 4.108-5 (b)(2) of Revenue Regulations No. ("RR") 16-05, as amended*, provides that:

> (b) Transactions Subject to Zero Percent (0%) VAT Rate. — The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate:
>
> . . . .
>
> (2) Services other than processing, manufacturing or repacking rendered to a person engaged in business conducted outside the Philippines or to a non-resident 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 BSP;"

For a sale of service to qualify for VAT zero-rating under these provisions, it must be proven that: (a) the services rendered were other than processing, manufacturing or repacking of goods; (b) the services were rendered to Non-Resident Foreign Corporations ("NRFCs") doing business outside the Philippines; and (c) the services were paid for in acceptable foreign currency accounted for in accordance with BSP rules and regulations.[70]

Petitioner rendered services other than processing, manufacturing or repacking of goods to NRFCs doing business outside of the Philippines.

To verify whether petitioner is authorized to provide services other than processing, manufacturing, or repacking of goods, petitioner's License to Do Business in the Philippines as issued by the SEC was examined by this Court.[71] As duly found, petitioner is a Philippine branch of a multinational company, Manulife Data Services, Inc., which was organized and existing under of the laws of Barbados. It was also licensed to carry out its business as an ROHQ in the Philippines by the SEC on March 3, 2006 with SEC Registration No. FS200603505. Petitioner is primarily engaged in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistics services; research and development services and product development; technical support and maintenance; data processing communication; and business development.[72] Petitioner is thus only allowed to render services as provided which do not take the form of processing, manufacturing, or repacking of goods.

Moreover, to determine if petitioner indeed rendered services other than processing, manufacturing, or repacking of goods, and if such services were actually rendered to NRFCs, this Court perused the various Service Agreements[73] entered into between petitioner and its affiliates. Under the said Service Agreements, petitioner is simply required to perform qualifying services (*i.e.,* not processing, manufacturing, or repacking of goods) in favor of its affiliates. Petitioner is thus actually providing services other than processing, manufacturing, or repacking of goods to NRFCs.

In addition, petitioner presented the various foreign registration documents[74] and SEC negative certifications[75] of its various clients. Altogether, these documents prove that petitioner's clients are NRFCs who are not doing business in the Philippines.

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70 *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007.
71 Exhibit "P-1".
72 *Id.*
73 Exhibits "P-32" to "P-50".
74 Exhibits "P-72" to "P-97".
75 Exhibits "P-55" to "P-71".

Petitioner proved that it was paid in foreign currency for the services it rendered to its NRFC clients.

As duly shown in the ICPA Report[76] and through tracing made in the various proofs of inward remittances,[77] petitioner's zero-rated sales of services to its NRFC affiliates were paid for in acceptable foreign currency.

Thus, petitioner's sales of services to its NRFC affiliates qualify for VAT zero-rating, in compliance with the *fourth and fifth requisites*.

The zero-rated sales reflected in the VAT returns differs from those reflected in the Schedule of Sales.

While petitioner was able to prove that its sales of services to its NRFC affiliates qualify for zero-rating, the ICPA noted a difference between the amount of zero-rated sales reflected in the VAT returns[78] versus those reflected in the Schedule of Sales.[79] Per VAT returns, the zero-rated sales total Php4,410,396,294.30 while the zero-rated sales per Schedule of Sales total Php3,862,789,453.27. The Php547,606,841.03 could not be explained.[80] Thus, only Php3,862,789,453.27 shall be deemed as valid zero-rated sales for purposes of determining the refundable input VAT.

Petitioner proved that the input taxes it is claiming for refund are not transitional input taxes.

A perusal of the VAT Returns[81] presented by petitioner proves that the input VAT claimed for refund are not transitional input taxes. This complies with the *sixth requisite.*

[76] Exhibit "P-107".
[77] Exhibits "P-17-A-ICPA" to "P-17-12-D-ICPA".
[78] Exhibits "P-5" to "P-8".
[79] Exhibits "P-22" to "P-25".
[80] ICPA Report, Exhibit "P-107", p. 8.
[81] Exhibits "P-5" to "P-8".

Petitioner proved that the input taxes sought to be refunded were paid in relation to local purchases of goods and services attributable to its zero-rated sales.

As duly shown in the ICPA Report[82] and as verified by this Court, petitioner was able to establish that the input VAT it seeks to be refunded were paid for in relation to its local purchases of goods and services, which, in turn, were attributable to its zero-rated sales.

However, there were certain discrepancies noted by the ICPA and not fully explained by petitioner which should reduce the amount of input VAT sought to be refunded. Furthermore, as petitioner engaged in VATable sales[83] during the year, there is a need to apportion the input VAT attributable to VATable sales and those attributable to zero-rated sales, only the latter of which may be claimed for refund. As such, the amount of the claim to which petitioner is entitled only totals Php73,710,442.20 after taking into account the discrepancies noted by the ICPA and the difference between the amount of zero-rated sales reflected in the VAT returns and the Schedule of Sales, as follows:

[82] Exhibit "P-107".
[83] Exhibits "P-18" to "P-21".

Particulars	Amount		Reference
Output Tax		Php12,749,228.10	ANNEX E - ICPA
Less: Input Tax		111,119,062.11	
Total		(Php98,369,834.01)	
Less: Deferred Input VAT – prior quarters		150,014,049.14	
Add: Deferred Input VAT – next period		146,203,740.45	
Amount of Input VAT initially for Refund		(Php102,180,142.70)	
Add: Audit Exceptions			
c.2. Sales Invoice/Official Receipts with violation of invoicing requirement: i. Errors in Tax Identification Number ("TIN")	Php380,707.61		**ANNEX D.1 - ICPA**
ii. Not under the name of petitioner	994,952.22		**ANNEX D.2 – ICPA**
iii. Inconsistencies on registered address	601,304.79		**ANNEX D.3 – ICPA**
iv. Input VAT amount not specifically stated	5,252,625.20	Php7,229,589.82	**ANNEX D.4 - ICPA**
c.3. VAT amount per Source Document does not tally with Schedule		210,288.08	**ANNEX D.5 - ICPA**
c.4. Not valid source of Input VAT (i.e., Provisional Receipts/Collection Receipts)		633,216.82	**ANNEX D.6 – ICPA**
c.5. Out of Period		9,498,251.21	**ANNEX D.7 - ICPA**
c.6. Faded Documents		38,366.19	**ANNEX D.8 – ICPA**
c.7 Unsupported Purchases		410,456.28	**ANNEX D.9 – ICPA**
Total Exceptions		Php18,020,168.40	
Input VAT Available for Refund		(Php84,159,974.30)	
Multiply by: Rate of Valid Zero-Rated Sales			

Valid Zero-Rated Sales	Php3,862,789,453.27		**ANNEX A.2-ICPA**
Divided by: Total Zero-Rated Sales	Php4,410,396,294.30	87.58%	
Input VAT available for Refund		**(Php73,710,442.20)**	**ANNEX E - ICPA**

The above also shows, however, that there is compliance with *seventh to ninth requisites*.

All told, petitioner is partially entitled to the claim sought.

ACCORDINGLY, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Respondent is **ORDERED** to refund or issue a tax credit certificate in the amount of **Php73,710,442.20** to petitioner.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

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