REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

NIIT TECHNOLOGIES PHILIPPINES, INC., *Petitioner*,	**CTA CASE NO. 10196**
	Members:
-*versus*-	**RINGPIS-LIBAN,** *Chairperson, and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 31 2023 11:30 a.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

The instant case involves a claim for refund of petitioner's alleged excess and unutilized input value-added tax ("VAT") arising from its zero-rated sales for the fiscal period from 1 April 2017 until 31 March 2018 in the total amount of One Million Nine Hundred Forty Two Thousand Five Hundred Seventy Four and 74/100 Pesos (Php1,942,574.74).[1]

The Parties

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office at 19/F Marco Polo, Ortigas, Manila, Sapphire Road, Marco Polo, Ortigas Center, Pasig City.[2]

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[1] See Statement of the Case and Statement of Facts and Issues, Pre-Trial Order, Records, Vol. 2, pp. 688-689.

[2] See Statement of Facts and Issues, Pre-Trial Order, *id.,* p. 689.

Meanwhile, respondent is the Commissioner of Internal Revenue ("CIR") with office address at the Bureau of Internal Revenue ("BIR") National Office Building, BIR Road, Diliman, Quezon City. He is authorized under the law to act on the claims for refunds, tax credit certificates ("TCC"), and other matters involving the enforcement of the ***National Internal Revenue Code, as amended ("NIRC")***.[3]

The Facts

Petitioner was primarily engaged in the business of providing information technology ("IT") management services for export. It is registered as a VAT taxpayer with the BIR's Revenue District Office No. 43 ("RDO 43") and was assigned Tax Identification Number 006-354-655-000.[4]

Petitioner filed the following VAT returns for the fiscal year starting from 1 April 2017 and ending on 31 March 2018 on the following dates:

VAT return	Date of filing
Amended first quarter[5]	26 June 2019
Amended second quarter[6]	26 June 2019
Amended third quarter[7]	26 June 2019
Amended fourth quarter[8]	26 June 2019

Based on petitioner's quarterly VAT returns for the fiscal period from 1 April 2017 to 31 March 2018, petitioner generated gross receipts aggregating to Thirty Five Million Eight Hundred Ten Thousand Eight Hundred Forty Six and 57/100 Pesos (Php35,810,846.57). Further, petitioner's services were rendered to its non-resident foreign affiliates and were billed and paid for in acceptable foreign currencies. As such, all its receipts were subjected to VAT at zero percent (0%) rate. Also, based on such VAT returns, petitioner accumulated an aggregate input VAT of One Million Nine Hundred Forty Two Thousand Five Hundred Seventy Five and 74/100 Pesos (Php1,942,574.75).[9]

[3] *Ibid.*
[4] *Ibid.*
[5] Exhibit "P-4", Records, Vol. 3, pp. 1080-1081.
[6] Exhibit "P-5", *id.*, pp. 1082-1083.
[7] Exhibit "P-6", *id.*, pp. 1084-1085.
[8] Exhibit "P-7", *id.*, pp. 1086-1087.
[9] See Statement of the Case and Statement of Facts and Issues, Pre-Trial Order, Records, Vol. 2, pp. 689-690.

On 28 June 2019, petitioner filed with the VAT Credit Audit Division ("VCAD") an Application for Tax Credits / Refunds (BIR Form No. 1914) amounting to One Million Nine Hundred Forty Two Thousand Five Hundred Seventy Five and 74/100 Pesos (Php1,942,574.75).[10]

On 19 September 2019, petitioner received a Letter, dated 4 September 2019, from respondent, denying its administrative claim for VAT refund.[11]

Petitioner then filed the instant Petition for Review ("Petition") on 21 October 2019, assailing the denial of its administrative claim for refund.[12]

On 24 February 2020, respondent filed his Answer to the Petition.[13] The BIR Records were subsequently elevated by respondent before this Court on 2 September 2020.[14]

Pre-trial ensued on 3 September 2020.[15] A Pre-Trial Order was issued by this Court on 22 December 2020 to govern the proceedings of the instant case.[16]

During trial, petitioner presented Ms. Rosanna C. Valverde as its witness.[17] On the other hand, respondent presented Revenue Officer ("RO") Jan Kevin S. Bautista as witness.[18]

All of petitioner's[19] and respondent's[20] Exhibits except Exhibit "P-58-4" for the petitioner were admitted by this Court.

On 22 August 2022, respondent filed his Memorandum.[21] Meanwhile, petitioner filed its Memorandum on 1 September 2022.[22] Thus, in an Order, dated 5 September 2022, the instant case was submitted for Decision.

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[10] Exhibits "P-14" and "P-15", Records, Vol. 3, pp. 1114-1119; See Statement of the Case and Statement of Facts and Issues, Pre-Trial Order, Records, Vol. 2, p. 689.
[11] Exhibit "P-16", Records, Vol. 1, pp. 55-57.
[12] *Id.*, pp. 6-49.
[13] *Id.*, pp. 75-87.
[14] *Id.*, pp. 247-250.
[15] *Id.*, pp. 251-255.
[16] Records, Vol. 2, pp. 687-695.
[17] See Judicial Affidavit of Rosanna C. Valverde, Exhibit "P-239", Records, Vol. 1, pp. 120-235; See Supplemental Judicial Affidavit of Rosanna C. Valverde, Records, Vols. 1-2, pp. 257-641; See Amended Supplemental Judicial Affidavit of Rosanna C. Valverde, Records, Vol. 2, pp. 701-1046; Hearing, dated 28 January 2021, *id.*, pp. 1049-1051.
[18] See Judicial Affidavit of RO Jan Kevin S. Bautista, Records Vol. 1, pp. 236-245; Hearing, dated 30 March 2022, Records, Vol. 3, pp. 1359-1361.
[19] Resolution, dated 17 June 2021, *id.*, pp. 1355-1357.
[20] Resolution, dated 7 July 2022, *id.*, pp. 1371-1372.
[21] *Id.*, pp. 1373-1387.
[22] *Id.*, pp. 1388-1404.

Hence, this Decision.

The Issue[23]

The issue submitted for this Court's resolution is:

> Whether petitioner is entitled to a tax refund amounting to One Million Nine Hundred Forty Two Thousand Five Hundred Seventy Four and 74/100 Pesos (Php1,942,574.74) representing its unutilized input VAT attributable to its zero-rated sales for the fiscal period starting 1 April 2017 to 31 March 2018.

Arguments of the Parties

Petitioner's Arguments[24]

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

Petitioner's 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 NIRC***;

Petitioner is a VAT-registered entity as required under ***Section 112 (A) of the NIRC***;

The administrative and judicial claims for refund were filed within the prescriptive period provided under the pertinent provisions of the ***NIRC*** and its implementing rules and regulations;

Petitioner is engaged in zero-rated or effectively zero-rated transactions, as required under the ***NIRC,*** 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");

Petitioner is engaged in the rendition of services other than processing, manufacturing or repacking of goods;

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[23] See Statement of Facts and Issues, Pre-Trial Order, Records, Vol. 2, p. 690.
[24] Records, Vol. 3, pp. 1390-1403.

The services were rendered to a person engaged in business outside the Philippines or a non-resident person not engaged in business who was outside the Philippines when the services were rendered;

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;

The claimed input VAT payments were not applied against any output tax in the succeeding periods; and

The erroneously paid VAT should be refunded to petitioner following the principle of "*Solutio Indebiti*".

Respondent's Arguments[25]

In refutation, respondent alleges that the instant Petition must be dismissed for failure of petitioner to substantiate its administrative claim for refund. Further, the claim for tax refund must be denied due to petitioner's failure to comply with the requirements pursuant to ***Section 112 (A) of the NIRC.***

The Ruling of the Court

The instant Petition for Review must be **DENIED** for lack of merit.

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

The provision that governs the present claim for refund of 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-**

[25] *Id.*, pp. 1375-1384.

> **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:

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

1. the refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[26]

2. the judicial claim is filed with this Court within thirty (30) days from receipt of an adverse decision (*i.e.*, partial or full denial of the administrative claim),[27] or upon the lapse of the period given to the

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

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

CIR to act on an administrative claim (*i.e.*, ninety (90) days from the filing of such claim) wherein the CIR failed to act on the same within such period (in which case, the claim for refund is deemed denied by the CIR), whichever comes first;[28]

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

3. the taxpayer is a VAT-registered person;[29]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[30]

5. for zero-rated sales under ***Section 106(A)(2)(1) and (2), 106(B), and 108(B)(1) and (2)***, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the Bangko Sentral ng Pilipinas ("BSP") rules and regulations;[31]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes; [32]

7. the input taxes are due or paid;[33]

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; [34] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[35]

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[28] Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue, G.R. No. 182737, 2 March 2016.

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

[30] *Ibid.*

[31] *Ibid.*

[32] *Ibid.*

[33] *Ibid.*

[34] Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 155732, 27 April 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, 25 November 2009.

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

At this juncture, it must be emphasized that cases filed before this Court are litigated *de novo*.[36] As such, parties are expected to litigate and prove every minute aspect of their case anew by presenting, formally offering, and submitting to the Court all evidence required for the successful prosecution of its claim.[37] Consequently, petitioner must competently establish its claim for refund or tax credit following the foregoing requisites.

Petitioner timely filed both its administrative claim and judicial claim.

Pursuant to ***Sections 112 (A) and (C) the NIRC***, the claim for refund of unutilized input VAT attributable to zero-rated or effectively zero-rated sales must be administratively filed with the BIR within two (2) years counted from the close of the taxable quarter when the relevant sales were made.

Applying the foregoing to the instant case, and since petitioner's claim for refund pertained to a fiscal period that started from 1 April 2017 and ended on 31 March 2018, petitioner had the following periods to file its administrative claim:

Taxable quarter	Close of the taxable quarter	Last day for filing administrative VAT refund claim
First quarter	30 June 2017	30 June 2019
Second quarter	30 September 2017	30 September 2019
Third quarter	31 December 2017	31 December 2019
Fourth quarter	31 March 2018	31 March 2020

As the administrative claim for refund covering all the taxable quarters provided above was filed on 28 June 2019,[38] the administrative claim is timely filed.

With respect to the judicial claim, ***Section 112 (C) of the NIRC*** provides for a 90-day period within which the CIR may decide on administrative claims. As the administrative claim was filed on 28 June 2019, respondent had until 26 September 2019 within which to dispose of petitioner's administrative claim for refund. On 19 September 2019, petitioner received a Letter, dated 4 September 2019, from respondent, denying its

[36] Commissioner of Internal Revenue v. Univation Motor Philippines, Inc., G.R. No. 231581, 10 April 2019.
[37] *Id.;* Philippine Airlines, Inc. v. Commissioner of Internal Revenue, G.R. No. 206079-80 and 206309, 17 January 2018.
[38] Exhibits "P-14" and "P-15", *Id.*, Vol. 3, pp. 1114-1119; See Statement of the Case and Statement of Facts and Issues, Pre-Trial Order, Records, Vol. 2, p. 689.

administrative claim for VAT refund.[39] Following ***Section 112 (C) of the NIRC*** once more, petitioner had 30 days from receipt of such denial, or until 19 October 2019, within which to appeal the denial of its VAT refund claim before this Court. However, since 19 October 2019 fell on a Saturday, the deadline to file the judicial claim is moved to the next working day, 21 October 2019. Accordingly, when petitioner filed the instant Petition on 21 October 2019,[40] the same was timely filed.

Thus, both administrative and judicial claims for refund were timely filed.

Petitioner is a VAT-registered entity.

As shown by its BIR Certificate of Registration No. OCN 3RC0000881620,[41] petitioner is VAT-registered before the BIR.

Petitioner failed to provide competent proof that it received foreign currency proceeds for the sale of its services to its foreign clients.

Petitioner's claim for VAT refund is hinged upon ***Section 108 (B) (2) of the NIRC.***[42] Petitioner insists that it rendered services (other than processing, manufacturing or repacking of goods) to non-resident foreign clients which are engaged in business outside the Philippines, and such sale of services were paid for in acceptable foreign currency duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

This Court shall first determine whether petitioner indeed received acceptable foreign currency for the alleged services rendered to non-resident foreign clients engaged in business outside the Philippines. The Court finds that petitioner failed to provide competent proof that it received foreign currency proceeds for the sale of its services to its foreign clients.

Revenue Memorandum Circular No. 47-2019 ("RMC 47-2019") provides the "Revised Guidelines and Mandatory Requirements for the Processing and Grant of Value-Added Tax (VAT) Refund Claims Within the 90-Day Period Pursuant to Section 112 of the Tax Code of 1997, as

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[39] Exhibit "P-16", *Id.*, Vol. 1, pp. 55-57.
[40] Records, Vol. 1, pp. 6-49.
[41] Exhibit "P-3", *Id.*, Vol. 3, pp. 1072-1073.
[42] See petitioner's Memorandum, *Id.*, pp. 1395-1400.

Amended."[43] Accordingly, this circular dictates the mandatory documents necessary to support a claim for VAT refund.

Section II.7 of RMC 47-2019 clearly requires particular forms of documents as proof of inward remittance/s of acceptable foreign currency, which were received in exchange for services rendered to a non-resident foreign client or customer engaged in business outside the Philippines, *viz.*:

> "7. Any of the following shall be acceptable as proof of inward remittance/s:
> a. Copies of bank credit memorandum duly certified by the issuing bank;
> b. Duly signed bank certification/s clearly showing the amount remitted, date of remittance, and the name of the remitter;
> c. Copies of bank statement/s clearly indicating the amount remitted, date of remittance, and the name of the remitter, duly certified by the issuing bank;
> d. Certified copy/ies of passbook, together with the proof that the same belongs to the taxpayer-claimant and any of the documents identified under 7(a) or 7(b); or
> e. Duly certified copies of cash remittances thru non-bank financial intermediaries performing quasi-banking functions and other non-bank financial intermediaries (such as but not limited to remittance centers) duly authorized by the Bangko Sentral ng Pilipinas (BSP), where the name/s of the remitter and recipient are duly indicated."

The enumerated documents are the only pieces of evidence allowed as proof of inward remittance/s; other forms of documents are not acceptable as proof of such.

In the case at bar, petitioner failed to present any of the listed documents in evidence as proof of inward remittance/s. As proof of inward remittances from its clients, petitioner merely presented alleged Bank Statements from Citibank.[44] However, these Bank Statements were not duly certified by the issuing bank as required under ***Section II.7.c of RMC 47-2019.*** As such, these Bank Statements do not qualify as competent proof of the remittance and receipt of the fees in applicable foreign currency paid for the services sold by petitioner to its non-resident foreign clients for the covered period.

Thus, there was no compliance with the fifth requisite for granting VAT refund claims as provided above.

Consequently, it becomes unnecessary for this Court to look into petitioner's compliance with the remaining requirements for the claim for unutilized input VAT refund to prosper.

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[43] 16 April 2019.
[44] Exhibits "P-54" to "P-65", *Id.*, Vol. 3, pp. 1153-1164.

At this juncture, it is worthy to emphasize that tax refunds or tax credits, just like tax exemptions, are strictly construed against the taxpayers; hence, a taxpayer claimant has the burden to prove compliance with the conditions for the grant of the tax refund or credit.[45]

WHEREFORE, in light of the foregoing considerations, the Petition for Review filed by petitioner **NIIT TECHNOLOGIES PHILIPPINES, INC.** is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

I CONCUR:

MA. BELEN M. RINGPIS-LIBAN
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

[45] Sitel Philippines Corp. v. Commissioner of Internal Revenue, G.R. No. 201326, 8 February 2017 *citing* Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (now TeaM Energy Corporation), G.R. No. 180434, 20 January 2016.

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