REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

ORGANISATIONAL SUPPORT SERVICES, INC.,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10525

Present:

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

Promulgated:

FEB 14 2025
2:15 p.m.

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DECISION

FERRER-FLORES, J.:

At bar is a *Petition for Review* praying for the Court to render judgment ordering respondent to refund petitioner in the amount of **₱1,782,368.41**, representing the latter's excess and unutilized value-added tax (VAT) for the third and fourth quarters of calendar year (CY) 2018.[1]

THE PARTIES

Petitioner **Organisational Support Services, Inc.** is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at 8th Floor, Unit 9, One Park Drive, 11th Drive cor. 9th Avenue, Fort Bonifacio, Taguig City, and duly registered with the Bureau of Internal Revenue (BIR) under Taxpayer Identification Number (TIN) 010-018-321-000.[2]

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1 Statement of the Case, Pre-Trial Order dated December 20, 2022, Docket, p. 461.

2 Par. 1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 379; Exhibits "P-1", "P-2", and "P-3", Docket, pp. 507 to 551.

Respondent is the duly appointed **Commissioner of Internal Revenue** vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of the BIR, including *inter alia*, the duty to act upon and approve claims for refund or tax credit pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules, and regulations.[3]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On December 9, 2020, petitioner filed with the BIR its *Application for Tax Credits/Refund* (BIR Form No. 1914),[4] *Revised Checklist of Mandatory Requirements on Claims for VAT Refund*,[5] and letter dated December 4, 2020,[6] requesting for the refund of the alleged excess and unutilized VAT for the third and fourth quarters of CY 2018 of petitioner, attributable to its zero-rated sales of services to a nonresident foreign corporation (NRFC) not doing business in the Philippines, amounting to ₱1,782,368.41.

Thereafter, upon verbal request from the BIR, petitioner submitted via electronic mail (e-mail) additional documents on January 29, 2021.[7] Through the letter of even date issued by Revenue District Officer Ray Anthony O. Geli of Revenue District Office (RDO) No. 44, petitioner was notified that the entire docket of its case will be forwarded to the VAT Credit Audit Division (VCAD).[8] However, on February 3, 2021, petitioner also received an e-mail from Revenue Officer Joan Claudette A. Aguilas informing it of the referral of its case docket back to RDO No. 44 for the continued evaluation of its VAT refund application as well as the submission of the investigation report to the Assessment Division of Revenue Region 8B – South NCR for review and approval.[9]

On March 1, 2021, petitioner received the *VAT Refund/Credit Notice* (Notice) dated February 22, 2021 signed by Regional Director Glen A. Geraldino,[10] stating that the application for refund covering the period July 1, 2018 to December 31, 2018 in the amount of ₱1,782,368.41 has been disapproved. The said *Notice* reads, in part, as follows:

> Please be informed that upon careful review and evaluation of the aforementioned claim under **Tax Verification Notice No. 2018-00097471** dated December 11, 2020, your application has been **DISAPPROVED** by this Bureau in view of your failure to submit the Quarterly VAT Return

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[3] Par. 2, Admitted Facts, JSFI, Docket, p. 380.
[4] Exhibit "P-12", Docket, p. 636.
[5] Exhibit "P-12.2", Docket, p. 643.
[6] Exhibit "P-12.1", Docket, pp. 637 to 642.
[7] Exhibits "P-15" and "P-16", Docket, pp. 646 to 649.
[8] Exhibit "P-17", BIR Records, p. 399.
[9] Exhibit "P-18", Docket, pp. 651 to 654.
[10] Exhibit "P-13", Docket, pp. 644 to 645.

> showing the deduction of the amount of Input VAT sought to be refunded, filed on or before the date of application of the VAT refund pursuant to Item 2.4.2 of Annex "A-1" outlining the Revised Checklist of Mandatory Requirements on Claims for VAT Refund pursuant to Section 112(A) of the NIRC, as amended and Section II (5) of Revenue Memorandum Circular (RMC) No. 47-2019 in relation to Section 110 (C) of the NIRC, as amended.
>
> xxx. The amendment and submission of the required documents were made beyond the statutory two-year period and extended period provided in Revenue Regulations (RR) No. 27-2020. Accordingly, this Office can no longer process your application for tax refund.
>
> xxx xxx xxx

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the present *Petition for Review* on May 21, 2021.[11]

Respondent then filed a *Motion for Extension of Time to File Answer*,[12] which the Court granted thereby giving respondent additional period within which to file his *Answer*.[13] Respondent then filed his *Answer (With Special and Affirmative Defense)* on January 10, 2022.[14] Thereafter, respondent transmitted on February 23, 2022 the *BIR Records* for this case,[15] consisting of three folders, with 468 pages.

The Pre-Trial Conference was initially set on July 7, 2022.[16] However, the same was reset to,[17] and held on, September 27, 2022.[18] Prior thereto, respondent's *Pre-Trial Brief (With Attached Special Power of Attorney)*, and *Petitioner's Pre-Trial Brief* were both filed on July 4, 2022.[19]

On October 24, 2022, the parties filed their *Joint Stipulation of Facts and Issues*,[20] which was admitted and approved in the Resolution dated October 26, 2022,[21] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated December 20, 2022 was then issued.[22]

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[11] Docket, pp. 6 to 25.
[12] Docket, pp. 260 to 262.
[13] Resolution dated February 23, 2022, Docket, p. 286.
[14] Docket, pp. 265 to 274.
[15] *Transmittal of BIR Records* dated February 2, 2022, Docket, pp. 281 to 282.
[16] Notice of Pre-Trial Conference dated March 14, 2022, Docket, pp. 308 to 309 (loose leaf).
[17] Notice of Resetting dated June 29, 2022, Docket, p. 316.
[18] Minutes of the hearing held on, and Order dated, September 27, 2022, Docket, pp. 374 and 376 to 378, respectively.
[19] Docket, pp. 317 to 320, and 325 to 348, respectively.
[20] Docket, pp. 379 to 397.
[21] Docket, p. 399.
[22] Docket, pp. 461 to 471.

Trial ensued.

Petitioner offered the testimonies of the following: (1) Mr. Marvin L. Dela Cruz,[23] petitioner's General Manager; (2) Ms. Vina Marie S. Villarroya, petitioner's counsel;[24] and, (3) Mr. Cedric Francis S. Apurillo,[25] the Court-commissioned Independent Certified Public Accountant (ICPA).[26]

The ICPA *Report* was submitted on October 27, 2022.[27]

On March 13, 2023, petitioner filed a *Manifestation with Motion to Substitute Marked Exhibits with Originals and Petitioner's Formal Offer of Evidence*.[28] Respondent then filed his *Manifestation (To Petitioner's Manifestation with Motion to Substitute Marked Exhibits with Originals and Petitioner's Formal Offer of Evidence)* on March 23, 2023.[29] In the Resolution dated July 11, 2023,[30] the Court resolved to grant petitioner's *Motion to Substitute Marked Exhibits with Originals*, and, set the case for a commissioner's hearing on July 11, 2023.

In the Resolution dated August 4, 2023,[31] the Court admitted petitioner's offered exhibits, *except* Exhibit "P-30 inclusive of sub-markings", for not being found in the records.

For his part, respondent offered the testimony of Revenue Officer Joan Claudette A. Aguilas.[32]

On September 26, 2023, respondent filed his *Formal Offer of Evidence*,[33] to which petitioner filed its *Comment (On Respondent's Formal Offer of Evidence dated 26 September 2023)* on October 6, 2023.[34] In the Resolution dated November 28, 2023,[35] the Court admitted all of respondent's offered exhibits.

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[23] Exhibits "P-14", and "P-31", Docket, pp. 97 to 115, and 370 to 373, respectively; Minutes of the hearing held on, and Order, dated January 31, 2023, Docket, pp. 472, and 475 to 476, respectively.
[24] Exhibit "P-19", Docket, pp. 235 to 241; Minutes of the hearing held on, and Order, dated January 31, 2023, Docket, pp. 472, and 475 to 476, respectively.
[25] Exhibit "P-33", Docket, pp. 441 to 447; Minutes of the hearing dated February 21, 2023, Docket, pp. 477.
[26] *Oath of Commission* dated September 27, 2022, Docket, p. 375; Minutes of the hearing held on, and Order dated, September 27, 2022, Docket, pp. 374, and 376 to 378, respectively.
[27] Exhibit "P-32", Docket, pp. 401 to 436.
[28] Docket, pp. 484 to 504.
[29] *Id.*, at 657 to 658.
[30] *Id.*, at 670 to 671.
[31] *Id.*, at 672 to 674.
[32] Exhibit "R-6", Docket, pp. 289 to 297; Minutes of the hearing held on, and Order, dated September 21, 2023, Docket, pp. 681 to 683.
[33] Docket, pp. 684 to 686.
[34] *Id.*, at 687 to 690.
[35] *Id.*, at 694 to 695.

The *Memorandum (For the Respondent)* was filed on January 3, 2024,[36] while the *Memorandum* for petitioner was filed on January 12, 2024.[37]

The case was submitted for decision on January 18, 2024.[38]

THE STIPULATED ISSUE

The sole issue to be resolved by the Court, as stipulated by the parties, is whether petitioner is entitled to the refund of the amount of ₱1,782,368.41 representing its excess and unutilized input VAT on local purchase of goods and services attributable to zero-rated sales for the third and fourth quarters of 2018.[39]

Petitioner's arguments:

Petitioner argues that it is a registered VAT taxpayer; that it had zero-rated sales of services in the period of claim; that its input VAT in the amount of ₱1,782,368.41 for the period of claim is properly substantiated and attributable to its zero-rated sales; that its excess and unutilized input VAT for the period of claim remains unutilized and unapplied against output VAT; and that its claim for refund was filed within the two-year prescriptive period.

Respondent's counter-arguments:

Respondent contends that petitioner is not entitled to a claim for refund. He emphasizes that petitioner's sole recipient of its services is deemed to be doing business in the Philippines, and that petitioner failed to establish that it was engaged in zero-rated sales or effectively zero-rated sales during the third and fourth quarters of 2018.

THE COURT'S RULING

The present *Petition for Review* must be denied.

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[36] Docket, pp. 696 to 703.
[37] Docket, pp. 705 to 736.
[38] Minute Resolution dated January 18, 2024, Docket, p. 739.
[39] Issue for Resolution, JSFI, Docket, p. 380.

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

Section 112 of the NIRC of 1997, as amended by Republic Act (R.A.) No. 10963,[40] otherwise known as the Tax Reform for Acceleration and Inclusion (TRAIN), provides, in part, as follows:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> xxx xxx xxx
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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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> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however*, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.

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[40] 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, Effective January 1, 2018.

Based on the foregoing provision, jurisprudence has laid down certain requisites which the taxpayer-applicant must comply with to successfully obtain a credit/refund of input VAT. Said requisites are classified into certain categories, to wit:

> 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;[41]
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> 2. in case of full or partial denial of the refund claim rendered within a period of ninety (90) days from the date of submission of the official receipts (ORs) or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision;[42]
>
> With reference to the taxpayer's registration with the BIR:
>
> 3. the taxpayer is a VAT-registered person;[43]
>
> In relation to the taxpayer's output VAT:
>
> 4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[44]
>
> 5. for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B);[45] and 108(B)(1) and (2), the acceptable foreign

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41 *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.

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

43 *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.*

44 *Ibid.*

45 Section 106(B) cited in Section 112(A) of RA No. 8424 was later amended by RA No. 9337 to pertain to Section 106(A)(2)(b). Accordingly, Section 112(A), as amended by RA No. 9337, reads as follows:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against

currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[46]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[47]

7. the input taxes are due or paid;[48]

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;[49] and,

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[50]

In addition, in claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the NIRC of 1997, as amended, and other implementing rules and regulations.[51] Thus, petitioner's compliance with all the VAT invoicing requirements is required to be able to file a claim for input taxes attributable to zero-rated sales.[52] The invoicing and substantiation requirements should be followed because it is the only

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output tax: Provided, however, That in the case of zero-rated sales under **Section 106(A)(2)**(a)(1), (2) and **(b)** and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales. (*Emphasis added*)

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

46 *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.

47 *Ibid.*

48 *Ibid.*

49 *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue, supra.*

50 *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.*

51 *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.

52 *J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.

way to determine the veracity of the taxpayer's claims.[53] Moreover, it must be pointed out that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[54]

Strict compliance with substantiation and invoicing requirements is necessary considering VAT's nature and VAT system's tax credit method, where tax payments are based on output and input taxes and where the seller's output tax becomes the buyer's input tax that is available as tax credit or refund in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates computation of tax credits, and provides accurate audit trail or evidence for BIR monitoring purposes.[55]

Furthermore, 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.[56] Thus, it behooves petitioner to show compliance with each of the foregoing requisites and invoicing requirements. As a corollary, the absence of *any* of the said requisites is already a valid ground to deny the refund claim.

The Court shall discuss each requisite vis-à-vis petitioner's compliance thereto, *in seriatim*.

Petitioner's administrative and judicial claims were timely filed.

The *first* requisite pertains to the filing of the administrative claim for tax credit or refund of input VAT before the BIR. To be specific, Section 112(A) of the NIRC of 1997, as amended, states that within two years after the close of the taxable quarter when the zero-rated sales or effectively zero-rated sales were made.

In the present case, petitioner's claim covers the third to fourth quarters of CY 2018. Counting two years from the close of each of the said quarters, the pertinent dates relative to the filing of administrative claim are as follows:

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53 *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.

54 *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

55 *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, supra.

56 *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, et seq.*, 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.

2018	**Close of Taxable Quarter**	**Last day to file administrative claim for refund**	**Administrative claim**
3rd Quarter	September 30, 2018	September 30, 2020	**December 9, 2020**[57]
4th Quarter	December 31, 2018	December 31, 2020	

Based on the foregoing table, petitioner had only until September 30, 2020 within which to file its administrative claim for refund for the third quarter of CY 2018. However, pursuant to Section 4(tt) of R.A. No. 11494,[58] the Secretary of Finance issued Revenue Regulations (RR) No. 27-2020,[59] which effectively extended the deadline for filing VAT refund claims as follows:

Taxable Quarter	**Deadline**
Calendar quarter **ending September 30, 2018**	**December 31, 2020**
Fiscal quarter ending October 31, 2018	January 15, 2021
Fiscal quarter ending November 30, 2018	January 31, 2021
Calendar quarter ending December 31, 2018	**February 15, 2021**

Hence, the filing of petitioner's administrative claims were timely made on December 9, 2020.

Anent the *second* requisite, the same necessitates that the judicial claim must have been filed within 30 days from receipt of respondent's decision or after the expiration of the 90-day period from the date of submission of the ORs or invoices and other documents in support of the application for refund as provided under Section 112(C) of the NIRC of 1997, as amended.

Thus, from the filing of petitioner's administrative claim on December 9, 2020, respondent had 90 days, or until March 9, 2021, to decide on petitioner's claim for refund.

Respondent acted on petitioner's claim within the 90-day period prescribed by law when Regional Director Glen A. Geraldino issued the letter dated February 22, 2021, informing petitioner that its application has

57 Exhibits "P-12", "P-12.2", and "P-12.1", Docket, pp. 636, 643, and 637 to 642, respectively.

58 AN ACT PROVIDING FOR COVID-19 RESPONSE AND RECOVERY INTERVENTIONS AND PROVIDING MECHANISMS TO ACCELERATE THE RECOVERY AND BOLSTER THE RESILIENCY OF THE PHILIPPINE ECONOMY, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

59 SUBJECT: Regulations Suspending the Filing and Ninety (90) – Day Processing of Value-Added Tax (VAT) Refund Claims Anchored Under Section 112 of the Tax Code of 1997, as Amended, in Relation to Section 4(tt) of Republic Act (R.A.) No. 11494, Otherwise Known as the "Bayanihan to Recover as One Act".

been disapproved. This was received by petitioner on March 1, 2021.[60] Counting 30 days from the said date of receipt, petitioner had until March 31, 2021, within which to file its judicial claim for refund.

Incidentally, due to the surge of Covid-19 cases, the Supreme Court (SC) issued the following administrative circulars ordering the physical closure of courts and the suspension of the time for filing of petitions and appeals, complaints, motions, pleadings, and court submissions in the National Capital Judicial Region and nearby provinces, from **March 25, 2021 to May 14, 2021**, *viz.*:

Administrative Circular (AC) No.	Date Issued	Subject Matter/Content
Announcement[61]	March 25, 2021	Physical Closure of NCJR Courts, Nearby Provinces on March 25-26, 2021 "In view of the rising cases of COVID-19 in the National Capital Region and the nearby provinces of Bulacan, Cavite, Laguna and Rizal ('Nearby Provinces'), Chief Justice Diosdado M. Peralta orders the **physical closure** of all courts and court offices in the NCJR (Supreme Court, Court of Appeals, Court of Tax Appeals, Sandiganbayan, and trial courts) and in nearby provinces **beginning at 2 P.M. today, March 25, 2021, until tomorrow, March 26, 2021**."
Announcement[62]	March 27, 2021	Re: Physical closure of courts in the National Capital Judicial Region and nearby provinces from March 29 to 31, 2021 and throughout the Holy Week "In view of the alarming surge of COVID-19 cases and upon consultation with the members of the Court *En Banc*, as well as the heads of the concerned offices, the **physical closure** of all courts and court offices (Supreme Court, Court of Appeals, Court of Tax Appeals, Sandiganbayan, and trial courts) in the National Capital Judicial Region, and nearby provinces of Bulacan, Cavite, Laguna, and Rizal is hereby **EXTENDED** effective **March 29 (Monday) to March 31 (Wednesday), 2021 and throughout the Holy Week**."
AC No. 14-2021	March 28, 2021	Re: Extension of Filing Periods for Pleadings/Court Submissions for Courts in the National Capital Judicial Region and Nearby Provinces placed under Enhanced Community Quarantine from March 29 to April 4, 2021 "Considering that the National Capital Region and nearby provinces of Bulacan, Cavite, Laguna, and Rizal have been placed under Enhanced Community Quarantine beginning March 29 until April 4, 2021, the **filing periods** of

[60] Exhibit "P-13", Docket, pp. 644 to 645; Exhibit "R-5", BIR Records, pp 459 to 460.
[61] The Supreme Court of the Philippines Website, March 25, 2021, https://sc.judiciary.gov.ph/re-physical-closure-of-ncjr-courts-nearby-provinceson-march-25-26-2021/.
[62] The Supreme Court of the Philippines Website, March 27, 2021, https://sc.judiciary.gov.ph/re-physical-closure-of-courts-in-the-national-capital-judicial-region-and-nearby-provinces-from-march-29-to-31-2021-and-throughout-the-holy-week/.

Administrative Circular (AC) No.	Date Issued	Subject Matter/Content
		pleadings and other court submissions that fall due <u>during the period from **March 29 to March 31, 2021**</u> are hereby **EXTENDED** for three (3) calendar days, counted from April 5, 2021, xxx"
AC No. 15-2021	April 3, 2021	RE: EXTENSION OF THE PHYSICAL CLOSURE OF COURTS AND THE FILING PERIODS FOR PLEADINGS AND OTHER COURT SUBMISSIONS IN LIGHT OF THE FURTHER EXTENSION OF THE ENHANCED COMMUNITY QUARANTINE FROM APRIL 5 TO APRIL 11, 2021. "Likewise, the **filing periods** of pleadings and other court submissions that fell due or would fall due <u>during the period beginning from **March 29** to **April 11, 2021**</u> are hereby **EXTENDED** for seven (7) calendar days, counted from April 12, 2021. xxx"
AC No. 21-2021	April 10, 2021	RE: EXTENSION OF PHYSICAL CLOSURE OF COURT "Considering the unabated rise of COVID-19 cases, the requests of the judges and court personnel, and upon the concurrence of the members of the Court en banc, ALL the courts and judicial offices in the National Capital Judicial Region and the provinces of Bulacan, Cavite, Laguna, and Rizal (NCJR+) shall remain **physically closed until 18 April 2021**. They may be reached through their hotlines and email addresses as posted in the Supreme Court website. xxx xxx xxx The **time for filing and service of pleadings and motions** during this period is **SUSPENDED** and shall resume seven (7) calendar days counted from the first day of physical reopening of the relevant court."
AC No. 22-2021	April 14, 2021	RE: PHYSICAL CLOSURE OF COURTS IN ENHANCED COMMUNITY QUARATINE AND MODIFIED ENHANCED COMMUNITY QUARANTINE AREAS "Considering that the National Capital Region, and the provinces of Abra, Bulacan, Cavite, Laguna, Quirino and Rizal, and Santiago City are under Modified Enhanced Community Quarantine (MECQ) until 30 April 2021, the **physical closure** of courts in the said areas is likewise **extended to 30 April 2021**. xxx xxx xxx **The time for filing and service of pleadings and motions** during this period is **SUSPENDED** and shall resume seven (7) calendar days counted from the first day of physical reopening of the relevant court."

Administrative Circular (AC) No.	Date Issued	Subject Matter/Content
AC No. 29-2021	April 30, 2021	RE: WORK ARRANGEMENTS IN COURTS ON 3 – 14 MAY 2021 "Considering that the National Capital Region, the provinces of Abra, Bulacan, Cavite, Laguna, Quirino, and Rizal, and Santiago City, Isabela, continue to be under Modified Enhanced Community Quarantine (MECQ) until 14 May 2021, ALL first and second level courts, and appellate collegiate courts, and their judicial offices in the said areas shall continue to be **physically closed until 14 May 2021**. xxx xxx xxx **The time for filing and service of pleadings and motions** during this period in these areas is **SUSPENDED** and **shall resume after seven (7) calendar days counted from the first day of the physical reopening of the relevant court**."
AC No. 33-2021	May 14, 2021	RE: COURT OPERATIONS STARTING 17 MAY 2021 "Considering that the National Capital Region and nearby provinces of Bulacan, Cavite, Laguna, and Rizal, together with some provinces and cities, have been placed under General Community Quarantine (GCQ) starting 15 May until 31 May 2021, all first and second level courts, and appellate collegiate courts (except the Supreme Court), and the judicial offices in these areas under GCQ shall be **physically opened** with a skeleton force of at least thirty percent (30%) to at most fifty percent (50%), **beginning 17 May 2021 until further notice**."

In view of the foregoing SC issuances, the 30-day reglementary period to file appeal before this Court was suspended from March 25, 2021 until May 14, 2021, and resumed after seven (7) calendar days counted from May 17, 2021. Particularly, the counting of 30 days within which petitioner can file an appeal of its judicial claim for refund before this Court was reckoned from March 2, 2021 until May 24, 2021 pursuant to Supreme Court's AC No. 33-2021 in relation to AC No. 29-2021. Since the present judicial claim was filed on May 21, 2021,[63] the same was timely made.

Given the foregoing, petitioner complied with the above-stated *first* and *second* requisites.

[63] Docket, pp. 6 to 25.

Petitioner is a VAT-registered entity.

As regards the *third* requisite, it was stipulated by the parties and it was even established during trial that petitioner is a VAT-registered entity with TIN 010-018-321-00000.[64] The *third* requisite was, thus, also fulfilled.

Petitioner failed to establish that it is engaged in zero-rated sales pursuant to Section 108(B)(2) of the NIRC of 1997, as amended.

The *fourth* and *fifth* requisites, respectively, require that the taxpayer is engaged in zero-rated or effectively zero-rated sales; and that for zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b); and 108(B)(1) and (2) of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations.

Petitioner claims entitlement to the refund of its unutilized input VAT attributable to its zero-rated sales for the period of the claim pursuant to Section 108(B)(2) in relation to Sections 110(B) and 112(A) and (C) of the NIRC of 1997, as amended.[65]

Section 108(B) of the NIRC of 1997, as amended, reads, in part, as follows:

> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* —
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* — **The following services <u>performed in the Philippines</u> by VAT-registered persons shall be subject to zero percent (0%) rate:**
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> **(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted <u>outside the Philippines</u> or to a nonresident person not engaged in business who is <u>outside the Philippines</u> when the services are**

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[64] Par. 1, Admitted Facts, JSFI, Docket, p. 379; Exhibit "P-3", Docket, pp. 507 to 551.

[65] Par. 42, Discussion, *Memorandum*, Docket, p. 714.

> **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 and underscoring added)*

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

1. The services fall under any of the categories under Section 108(8)(2),[66] or simply, the services rendered should be other than *"processing, manufacturing or repacking goods"*;[67]

2. The service must be performed in the Philippines[68] by a VAT-registered person;

3. 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;[69] and,

4. The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[70]

For the *first* essential element, petitioner and Therapeutic Case Management Services Limited (TCMS) executed a *Service Agreement*[71] on July 1, 2018 wherein paragraph 1.1 thereof states that TCMS may from time-to-time request petitioner to conduct call and administration services on its behalf or for its international clients which requests may be through various forms of communications. Clearly, the said services fall within the scope of *"services other than processing, manufacturing or repacking of*

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

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

68 *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.

69 *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.*, supra; *Accenture, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 190102, July 11,2012.

70 *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.

71 Exhibit "P-5", Docket, pp. 555 to 558.

goods" as contemplated by the above-quoted provision. Thus, the *first* essential element was shown.

Regrettably, petitioner failed to comply with the *second* essential element since the cited *Service Agreement* is bereft of any stipulation that the services would be performed in the Philippines. The only indicia that the services were performed in the Philippines is the finding of ICPA Apurillo in the ICPA *Report*, to wit: [72]

> II. Findings and Observations
>
> xxx xxx xxx
>
> 3. I was able to verify, based on the Service Agreement (SA) between the Company and TCMS **[Exhibit P-5]**, in relation to the Company's nature of operations and place of business as reflected in its Articles of Incorporation **[Exhibit P-2]** and its BIR Certificate of Registration **[Exhibit P-3]**, that the covered zero-rated sales of services were rendered in the Philippines.

The Court cannot consider such statement by the ICPA as sufficient compliance with the *second* essential element. There is no showing that ICPA Apurillo has personal knowledge of such fact as he is not connected with petitioner, nor is he privy to the agreement. ICPA Apurillo merely examined petitioner's documents in coming up with the report, and as mentioned, the *Service Agreement* is silent as to the location of performance of the services.

At this juncture, it must be emphasized that the findings and conclusions of the ICPA are not conclusive upon the Court pursuant to Section 3, Rule 13 of the Revised Rules of the CTA, viz:[73]

> Sec. 3. *Findings of independent CPA* – xxx The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.

Notably, petitioner's other witnesses did not testify as to where the said services were performed. Considering the lack of indication on the location of the performance of service, petitioner failed to establish that the services provided to TCMS were performed in the Philippines.

Considering that petitioner failed to satisfy the *second* essential element in proving that petitioner is engaged in zero-rated or effectively

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72 Exhibit "P-32", Docket, p. 405.
73 Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals.

zero-rated sales, the Court no longer deems it necessary to discuss petitioner's compliance with the other requisites.

As a final note, it bears to emphasize that tax refunds or credits, just like tax exemptions, are strictly construed against taxpayers, the latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit.[74] Moreover, statutes in derogation of sovereignty such as those containing exemption from taxation should be strictly construed in favor of the state.[75] The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed,[76] a burden which petitioner here failed to discharge.

For having failed to sustain the burden placed upon petitioner to prove its entitlement to the refund of ₱1,782,368.41 allegedly representing unutilized input VAT attributable to its zero-rated sales for the 3rd and 4th quarters of CY 2018, the present claim must necessarily fail.

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

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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74 *Sitel Philippines vs. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017, citing *Commissioner of Internal Revenue vs. Migrant Pagbilao Corporation (now TeaM Energy Corporation)*, G.R. No. 180434, January 20, 2016.

75 *Philippine Long Distance Telephone Company vs. City of Davao, et al.*, G.R. No. 143867, March 25, 2003.

76 *National Power Corporation vs. Province of Isabela*, G.R. No. 165827, June 16, 2006, citing *Cyanamid Philippines, Inc. vs. Court of Appeals*, G.R. No. 108067, January 20, 2000.

MARIA ROWENA MODESTO-SAN PEDRO
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
Division 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