REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PROCTER & GAMBLE INTERNATIONAL OPERATIONS SA - ROHQ,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9897

Members:

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

Promulgated:
JAN 19 2022 3:0 p.m.

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DECISION

BACORRO-VILLENA, J.:

Before this Court is a Petition for Review[1] filed by Procter & Gamble International Operations SA - ROHQ (**petitioner/PGIOSA-ROHQ**) pursuant to Section 3(a)[2], Rule 8 in relation to Section 3(a)(1)[3],

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[1] Filed on 27 July 2018, Division Docket, Volume I, pp. 10-101, with annexes.

[2] **SEC. 3**. *Who may appeal; period to file petition.* — (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, ... may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

[3] **SEC. 3**. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It seeks the refund of its alleged excess and unutilized input value-added tax (**VAT**) on its domestic purchases of goods and services attributable to zero-rated sales for the 3rd and 4th quarters of the fiscal year (**FY**) 2016 in the aggregate amount of ₱41,071,160.17.

PARTIES OF THE CASE

Petitioner is the Philippine Regional Operating Headquarters (**ROHQ**) of a multinational company organized and existing under and by virtue of the laws of Switzerland. It is duly registered and licensed by the Securities and Exchange Commission (**SEC**) to transact business in the Philippines under SEC Registration No. FS201104304 dated 24 March 2011 with registered office address at 11th Floor, Net Park, 5th Avenue, Crescent Park West, Bonifacio Global City, Taguig.[4] It is also registered with the Bureau of Internal Revenue (**BIR**) as a VAT taxpayer with Taxpayer's Identification No. (**TIN**) 406-931-778-000, as evidenced by BIR Certificate of Registration No. OCN 8RC0001494228E dated 16 March 2018.[5]

As an ROHQ, petitioner's purposes are limited to providing corporate finance advisory services, training and personnel management, logistics services, technical support and maintenance, data processing and communication, and business development.[6]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**), vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of his office, including *inter alia*, the power to grant or deny a claim for refund of creditable input taxes pursuant to Section 112(C)[7] of the National Internal Revenue Code (**NIRC**) of

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(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]

4 Exhibit "P-1", Formal Offer of Evidence (FOE), Folder 1.

5 Exhibit "P-2", id.

6 Supra at note 4.

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

...

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — ...

1997, as amended, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.

FACTS OF THE CASE

Through the BIR's Electronic Filing and Payment System (**eFPS**), petitioner filed its Original and Amended Quarterly VAT Returns (BIR Form No. 2550-Q) for the 3rd and 4th quarters of FY 2016 on the following dates:

Return	Date filed
Original Quarterly VAT Return for the 3rd Quarter[8]	22 April 2016
1st Amended Quarterly VAT Return for the 3rd Quarter[9]	10 July 2017
2nd Amended Quarterly VAT Return for the 3rd Quarter[10]	23 February 2018
Original Quarterly VAT Return for the 4th Quarter[11]	21 July 2016
1st Amended Quarterly VAT Return for the 4th Quarter[12]	15 August 2016
2nd Amended Quarterly VAT Return for the 4th Quarter[13]	10 July 2017
3rd Amended Quarterly VAT Return for the 4th Quarter[14]	24 July 2017
4th Amended Quarterly VAT Return for the 4th Quarter[15]	23 February 2018

On 28 March 2018, petitioner filed with the BIR VAT Credit Audit Division (**VCAD**) its Letter-Claim for Refund dated 27 March 2018[16] and Application for Tax Credits/Refunds (BIR Form No. 1914)[17] for the 3rd and 4th quarters of FY 2016, in the aggregate amount of ₱41,071,160.17, along with the relevant supporting documents.

Under Section 112(C) of the NIRC of 1997, as amended, and further amended by Republic Act (**RA**) No. 10963[18] or the Tax Reform

8 Exhibit "P-8", FOE, Folder 3.
9 Exhibit "P-8.1", id.
10 Exhibit "P-8.2", id.
11 Exhibit "P-8.3", id.
12 Exhibit "P-8.4", id.
13 Exhibit "P-8.5", id.
14 Exhibit "P-8.6", id.
15 Exhibit "P-8.7", id.
16 Exhibit "P-9.1", id.
17 Exhibit "P-9", id.
18 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,

for Acceleration and Inclusion (**TRAIN Law**), petitioner alleges that respondent has ninety (90) days from the filing of the administrative claim for refund last 28 March 2018 or until 26 June 2018, within which to decide whether to grant the same.

On 16 May 2018, petitioner received Tax Verification Notice No. TVN201700022638 dated 28 March 2018[19], issued for the examination of petitioner's books of accounts and other accounting records for VAT for the 3rd and 4th quarters of FY 2016.

On 29 June 2018, petitioner received a VAT Refund Notice dated 19 June 2018[20] (**Denial Letter**) signed by Assistant Commissioner of Internal Revenue – Assessment Service, Erlinda A. Simple (**ACIR-AS Simple**), denying its administrative claim for refund.

On 27 July 2018 and within thirty (30) days from receipt of the Denial Letter, petitioner appealed the denial of its administrative claim *via* the instant Petition for Review before this Court.[21] The same was raffled to the First Division and docketed as CTA Case No. 9897. On 26 September 2018, the case was transferred to the Second Division.[22]

After being granted an extension of time to file his Answer[23], respondent filed it[24] on 27 September 2018, interposing the following special and affirmative defenses:

1. All taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;

194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

19 Exhibit "P-11", FOE, Folder 3.

20 Exhibit "P-12", id.

21 Supra at note 1.

22 Pursuant to CTA Administrative Circular No. 02-18 dated 18 September 2018 entitled "Reorganizing the Three (3) Divisions of the Court." Then Second Division was composed of Hon. Associate Justice Juanito C. Castañeda, as Chairperson, and Hon. Associate Justice Cielito N. Mindaro-Grulla (Ret.), as Member.

23 See Order dated 13 September 2018, Division Docket, p. 107.

24 Id., pp. 110-113.

2. Petitioner's claim for refund or issuance of a tax credit certificate (**TCC**), if any, in the aggregate amount of ₱41,071,160.17, allegedly representing its excess and unutilized input VAT attributable to zero-rated sales for the 3rd and 4th quarters of FY 2016, failed to comply with the substantiation requirements prescribed under Revenue Regulations (**RR**) No. 16-2005[25] in relation to Sections 113[26] and 237[27] of the NIRC of 1997, as amended, as well as the conditions or requirements prescribed under Section 112(A) and (C)[28] of the NIRC of 1997, as amended;

3. Petitioner has the burden of proof to establish its right to the claimed refund and its failure to adduce sufficient proof is fatal to its claim;

4. Petitioner failed to comply with the prescribed conditions or requirements to qualify its sales of goods and services made to its foreign clients or affiliates as zero-rated VAT under Sections 106(A)(2)(a)(1)[29] and Section 108(B)(2)[30] of the NIRC of 1997, as amended; and,

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25 Consolidated Value-Added Tax Regulations of 2005.

26 **SEC. 113**. *Invoicing and Accounting Requirements for VAT-Registered Persons.* —

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

28 **SEC. 112**. *Refunds or Tax Credits of Input Tax.* —
(A) *Zero-Rated or Effectively Zero-Rated Sales.* — ...
...
(C) *Period within which Refund of Input Taxes shall be Made.* — ...

29 **SEC. 106**. *Value-added Tax on Sale of Goods or Properties.* —
(A) *Rate and Base of Tax.* — ...
...
(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
(a) *Export Sales.* — The term 'export sales' means:
(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)[.]

30 **SEC. 108**. *Value-added Tax on Sale of Services and Use or Lease of Properties.* —
...
(B) *Transactions Subject to Zero Percent (0%) Rate.* — ...
...
(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)[.]

5. Claims for refund are construed strictly against petitioner since they partake the nature of exemption from taxation.

In the Resolution dated 18 October 2018[31], the Second Division granted respondent an additional period of ten (10) days from 07 October 2018 or until 17 October 2018, within which to certify and forward to the Court the entire BIR Records. In compliance therewith, respondent transmitted the pertinent BIR Records in one (1) folder, consisting of 362 pages.[32]

On 25 October 2018, the Court issued a Notice of Pre-Trial Conference[33] for a Pre-Trial Conference on 06 December 2018. Accordingly, respondent filed his Pre-Trial Brief[34] on 28 November 2018, while petitioner filed its Pre-Trial Brief[35] on 29 November 2018.

On 31 January 2019, the Pre-Trial Conference proceeded where the parties were granted fifteen (15) days within which to file their Joint Stipulation of Facts and Issues (**JSFI**).[36] On 15 February 2019, the parties submitted their JSFI.[37]

Previously or on 06 December 2018, petitioner filed a "Motion to Commission an Independent Certified Public Accountant" dated 05 December 2018.[38] In the Order dated 31 January 2019[39], the Second Division granted petitioner's motion, appointed Jay A. Ballesteros (**Ballesteros**) as the Independent Certified Public Accountant (**ICPA**) and directed him to submit his report within 30 days therefrom. In the same Order, the Court also set the Commissioner's Hearings on the 11th, 13th, 18th, 20th and 27th of February 2019 and the continuation of

31 Division Docket, p. 124.
32 See Minute Resolution dated 19 October 2018, id., p. 125.
33 Id., pp. 126-127.
34 Id., pp. 150-156.
35 Id., pp. 186-197.
36 See Order dated 31 January 2019, id., pp. 248-249.
In view of the courtesy call of the justices of the Court of Tax Appeals (**CTA**) to then Chief Justice Lucas P. Bersamin on 06 December 2018, the Pre-Trial Conference previously set on 06 December 2018 was cancelled and reset to 31 January 2019.
37 Id., pp. 259-268.
38 Id., pp. 230-232.
39 Supra at note 36.

petitioner's presentation of evidence, *i.e.*, the presentation of ICPA Ballesteros, on 25 March 2019.[40]

On 01 March 2019, ICPA Ballesteros submitted his ICPA Report dated 01 March 2019[41] with one (1) Compact Disc[42] (**CD**) containing scanned copies of the marked exhibits he identified.

On 06 March 2019, the Second Division issued a Pre-Trial Order[43] approving the parties' JSFI and terminating the pre-trial.

In the trial that ensued thereafter, petitioner presented its witnesses, namely: (1) Alvin D. Trambulo[44] (**Trambulo**), its Country Comptroller; and, (2) Ballesteros[45], the Court-commissioned ICPA.

On the witness stand, Trambulo identified his Sworn Statement dated 28 November 2018[46] where he declared essentially that: (**1**) as Country Comptroller, he is responsible for petitioner's financial and statutory reporting and regulatory compliance; (**2**) petitioner is an ROHQ of a multinational company organized and existing under and by virtue of the laws of Switzerland and its primary purposes are limited to providing corporate finance advisory services, training and personnel management, logistic services, technical support and maintenance, data processing and communication, and business development; (**3**) petitioner rendered services to entities engaged in business outside the Philippines during the period of claim; (**4**) petitioner's clients are entities located and doing business outside the Philippines as evidenced by (**i**) petitioner's Service Agreements with those entities, (**ii**) SEC Certifications confirming that such entities are not doing business in the Philippines, and (**iii**) copies of the business registration documents of said clients; (**5**) petitioner filed its administrative claim requesting for the refund of its excess and unutilized input VAT attributable to zero-rated sales for the 3rd and 4th

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40 Id.
41 Exhibit "P-21", pp. 1-17.
42 Exhibit "P-21-2", CD.
43 Division Docket, pp. 283-287.
44 See Sworn Statement of Mr. Alvin D. Trambulo dated 28 November 2018, Exhibit "P-23", id., pp. 201-229.
45 See Sworn Statement of Mr. Jay A. Ballesteros dated 18 March 2019, Exhibit "P-22", id., pp. 291-323.
46 Also deemed as his Judicial Affidavit; Exhibit "P-23", supra at note 44.

quarters of FY 2016 amounting to ₱41,071,160.17; (6) the said input VAT was not applied against any output VAT during the period of claim and it was not carried forward to the succeeding taxable periods; and, (7) based on the Denial Letter received by petitioner on 29 June 2018, the subject administrative claim was denied because the total disallowances and deductions *per* audit exceeded the amount of the claim.

During cross-examination, Trambulo was asked to describe in detail the actual performance or rendering of service to petitioner's affiliate entities allegedly engaged in business outside the Philippines. In response, he gave examples of petitioner's actual services to its affiliate entities such as the preparation of local financial statements, performance of different trainings related to corporate accounting services, and technical support related to system and data processing.[47] He also clarified that he reviewed the financial statements and the VAT returns used as basis of the subject refund claim.[48]

Next to assume the witness stand was ICPA Ballesteros who identified his (1) Sworn Statement dated 18 March 2019[49]; (2) ICPA Report dated 01 March 2019[50]; and, (3) the CD[51] containing the marked exhibits.

On cross-examination, ICPA Ballesteros confirmed that out of petitioner's refund claim in the total amount of ₱41,071,160.17, the amount of unutilized or unapplied input taxes available for refund or for issuance of a TCC is only ₱33,558,436.52.[52] He likewise stated that there were no income payments made to non-residents for the latter's services rendered in the Philippines subject to final withholding VAT.[53]

After being granted an extension of time[54] and having completed the presentation of its testimonial evidence, petitioner later filed its Formal Offer of Evidence (**FOE**) consisting of Exhibits "P-1" to "P-23",

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47 See Order dated 25 March 2019, Division Docket, p. 326; TSN dated 25 March 2019.
48 TSN dated 25 March 2019.
49 Also deemed as his Judicial Affidavit; Exhibit "P-22", supra at note 45.
50 Exhibit "P-21", supra at note 41.
51 Exhibit "P-21-2", supra at note 42.
52 Supra at note 48.
53 Id.
54 See Order dated 22 April 2019, Division Docket, p. 338.

inclusive of sub-markings.[55] On the other hand, respondent filed his Comment thereto.[56]

In the Resolution dated 10 September 2019[57], the Second Division admitted petitioner's exhibits *except* for: (1) Exhibit "P-21.2", including Exhibits "P-13", "P-13.1", "P-14", "P-15", "P-15.1", "P-16", "P-17", "P-17.1", "P-18", "P-19", "P-19.1", "P-19.2", "P-19.3", "P-19.4", "P-19.5", "P-19.6", "P-19.7", "P-19.8", "P-20", "P-20.1", "P-20.2", "P-20.3", "P-20.4", "P-20.5", "P-20.6", "P-20.7", "P-20.8", "P-20.9", "P-20.10", "P-20.11", "P-20.12", "P-20.13", "P-20.14" and "P-20.15"[58] contained therein, (**Corrupted Exhibits**) as the

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55 Filed on 29 April 2019; id., pp. 339-377
56 Filed on 03 May 2019; id., pp. 382-384.
57 Id., pp. 388-390.
58

Exhibit No.	Description
"P-21.2"	Compact disc (CD) containing the scanned copies of the marked exhibits identified by ICPA Ballesteros and attached to the ICPA Report.
"P-13"	Detailed schedule of zero-rated sales of services
"P-13.1"	Detailed schedule of local sales of services
"P-14"	Summary List of Sales
"P-15"	Original copies of VAT official receipts (ORs) with the term "zero-rated sales" imprinted therein supporting zero-rated sales of services
"P-15.1"	Original copies of VAT ORs where the amount of 12% VAT was shown as a separate item supporting local sales of services
"P-16"	Comparison of zero-rated VAT ORs against certificates of inward remittances
"P-17"	Detailed schedule of purchases of goods, services and capital goods
"P-17.1"	Detailed schedule of input VAT amortization deferred on capital goods
"P-18"	Summary Lists of Purchases
"P-19"	Original copies of VAT ORs supporting domestic purchases of services
"P-19.1"	Original copies of VAT ORs supporting domestic purchases of services, where amount of input tax claimed is greater than amount of input tax per VAT OR.
"P-19.2"	Original copies of VAT ORs supporting domestic purchases of services, but were classified as purchases of goods other than capital goods.
"P-19.3"	Original copies of VAT invoices supporting domestic purchases of goods other than capital goods.
"P-19.4"	Original copies of VAT invoices supporting domestic purchases of goods other than capital goods, but were classified as purchases of services.
"P-19.5"	Original copies of VAT invoices supporting amortization of input tax on purchases of capital goods exceeding ₱1,000,000.00.
"P-19.6"	Certified true copies of VAT invoices supporting amortization of input tax on purchases of capital goods exceeding ₱1,000,000.00.
"P-19.7"	Extra copies of VAT invoices supporting amortization of input tax on purchases of capital goods exceeding ₱1,000,000.00.
"P-19.8"	Duplicate originals of VAT invoices supporting amortization of input tax on purchases of capital goods exceeding ₱1,000,000.00.

files saved to the CD that petitioner submitted were either not supported or have been damaged; (2) Exhibit "P-4"[59], for not being found in the records; (3) Exhibit "P-6.42"[60], for failure of the document formally offered to correspond with the duly marked document; and,

"P-20"	Original copies of VAT ORs dated outside the period of claim, supporting domestic purchases of services.
"P-20.1"	Original copies of VAT ORs where alterations are not countersigned, supporting domestic purchases of services.
"P-20.2"	Original copies of VAT ORs with incorrect and/or insufficient information, supporting domestic purchases of services.
"P-20.3"	Original copies of documents other than original copies of VAT ORs (*e.g.*, statement of account, collection receipt, etc.) supporting domestic purchases of services.
"P-20.4"	Original copies of faded VAT ORs supporting domestic purchases of services.
"P-20.5"	Original copies of VAT ORs dated outside the period of claim, supporting domestic purchases of services, but were classified as purchases of goods other than capital goods.
"P-20.6"	Original copies of VAT ORs where alterations are not countersigned, supporting domestic purchases of services, but were classified as purchases of goods other than capital goods.
"P-20.7"	Original copies of VAT invoices dated outside the period of claim, supporting domestic purchases of goods other than capital goods.
"P-20.8"	Original copies of VAT invoices with incorrect and/or insufficient information, supporting purchases of goods other than capital goods.
"P-20.9"	Original copies of documents other than original copies of VAT invoices (*e.g.*, collection receipt, photocopy of sales invoice, etc.) supporting domestic purchases of goods other than capital goods.
"P-20.10"	Original copies of VAT invoices dated outside the period of claim, supporting domestic purchases of goods other than capital goods, but were classified as purchases of services.
"P-20.11"	Original copies of VAT invoices which are not valid for claiming input taxes, supporting domestic purchases of goods other than capital goods, but were classified as purchases of services.
"P-20.12"	Original copies of VAT invoices where alterations are not countersigned, supporting domestic purchases of goods other than capital goods, but were classified as purchases of services.
"P-20.13"	Original copies of VAT invoices with incorrect and/or insufficient information, supporting domestic purchases of goods other than capital goods, but were classified as purchases of services.
"P-20.14"	Original copies of VAT invoices under incorrect name and TIN supporting amortization of input tax on purchases of capital goods exceeding ₱1,000,000.00.
"P-20.15"	Original copies of documents which are not valid for claiming input taxes supporting amortization of input tax on purchases of capital goods exceeding ₱1,000,000.00.

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Exhibit No.	Description
"P-4"	Service Agreement between Petitioner and The Procter & Gamble Company.

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Exhibit No.	Description
"P-6.42"	Company Registration Document of Gillette Pakistan Limited.

(4) Exhibits "P-6.34" and "P-6.35"[61], for failure of petitioner to provide a translation of the documents written in an unofficial language. In the same Resolution, the Second Division set the initial presentation of evidence for respondent on 25 September 2019.

On 25 September 2019, the scheduled hearing was cancelled and reset to 30 October 2019 upon manifestation of respondent's counsel that his two (2) intended witnesses are not available.[62]

On 01 October 2019, petitioner filed a "Motion for Reconsideration"[63] (**MR on the FOE Resolution**), asking the Court to admit the previously denied exhibits (*i.e.*, Exhibits "P-21.2", including Exhibits "P-13", "P-13.1", "P-14", "P-15", "P-15.1", "P-16", "P-17", "P-17.1", "P-18", "P-19", "P-19.1", "P-19.2", "P-19.3", "P-19.4", "P-19.5", "P-19.6", "P-19.7", "P-19.8", "P-20", "P-20.1", "P-20.2", "P-20.3", "P-20.4", "P-20.5", "P-20.6", "P-20.7", "P-20.8", "P-20.9", "P-20.10", "P-20.11", "P-20.12", "P-20.13", "P-20.14", and "P-20.15" contained therein[64], and "P-6.42"[65]).

With regard to Exhibit "P-6.42", petitioner manifested that the discrepancy arose from the change in the name of the non-resident foreign client from "Interpak Shaving Products Ltd." to "Gilette Pakistan Limited". According to petitioner, "Interpak Shaving Products Ltd." and "Gilette Pakistan Limited" are one and the same entity as evidenced by Exhibit "P-7.41"[66], *i.e.*, the Affidavit of the authorized representative of "Gilette Pakistan Limited", whose signature also appears on Exhibit "P-6.42".

As for Exhibit "P-21.2" and the Corrupted Exhibits stored therein, petitioner explained that, upon the submission of the CD and the Corrupted Exhibits and the additional receiving copies thereof to the

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Exhibit No.	Description
"P-6.34"	Company Registration Document of Modern Industries Company – Dammam.
"P-6.35"	Company Registration Document of Modern Products Company.

62 See Order dated 25 September 2019, Division Docket, p. 394.
63 Id., pp. 397-405.
64 Supra at note 58.
65 Supra at note 60.
66 FOE, Folder 3.

Court on 01 March 2019, the Court's receiving officer checked whether the contents of the CD were readable and found no issues with the submission. Moreover, petitioner also examined its additional copies of the CD submitted to and stamped received by the Court and respondent on even date and found no issues in accessing the Corrupted Exhibits in said copies. As such, petitioner begged for the Court's indulgence and asked for leave to admit the attached CD and Universal Serial Bus (**USB**), which contains copies of the Corrupted Exhibits.

On 10 October 2019, the Court ordered respondent to comment on petitioner's MR on the FOE Resolution within ten (10) days from notice thereof.[67] In the same Order, the Court likewise cancelled the initial presentation of evidence for respondent previously set on 30 October 2019. In compliance therewith, respondent filed his "Comment (To Petitioner's Motion for Reconsideration)"[68] on 25 October 2019.

In the Resolution dated 21 February 2020[69], the Second Division partially granted petitioner's MR on the FOE Resolution and admitted Exhibit "P-21.2" and the Corrupted Exhibits stored therein *but* still denied the admission of Exhibit "P-6.42", for failure to support its allegation that the discrepancy in the description of the document offered and submitted arose from the change in the name of the non-resident foreign client "Interpak Shaving Products Ltd." to "Gilette Pakistan Limited". According to the Second Division, the case records reveal that Exhibit "P-7.41" or the Affidavit of the authorized representative of "Gilette Pakistan Limited" did not pertain to the change of name of the company nor did it mention that "Gilette Pakistan Limited" is formerly known as "Interpak Shaving Products Ltd."

After several resettings, the initial presentation of evidence for respondent pushed through on 20 July 2020.[70] Upon completion of the testimonies of respondent's witnesses, Revenue Officers (**ROs**) Jennifer

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67 See Resolution dated 10 October 2019, Division Docket, p. 396.
68 Id., pp. 407-409.
69 Id., pp. 412-415.
70 See Notice of Hearing dated 02 June 2020 and Order dated 15 June 2020, id., pp. 416 and 418, respectively.

J. Agmata (**Agmata**) and Dexter C. Bustillos (**Bustillos**), respondent was given fifteen (15) days within which to file his FOE and petitioner was also to file its comment thereto within the same period of time.[71]

On 22 July 2020, respondent filed his FOE[72] consisting of Exhibits "R-1" to "R-17", inclusive of sub-markings, with petitioner's Comment[73] subsequently filed on 25 August 2020.

In the Resolution dated 26 October 2020[74], the Second Division admitted all of respondent's exhibits and noted the discrepancies in the description in the FOE of Exhibits "R-1", "R-3", "R-4", "R-5", "R-6 and "R-7"[75] as against the document actually marked. In the same Resolution, the Court also granted the parties a period of 30 days within which to file their respective memoranda.

Thereafter, petitioner filed its Memorandum[76] on 27 November 2020. Respondent, on the other hand, filed his Memorandum[77] *via*

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71 See Order dated 20 July 2020, id., p. 425.
72 Id., pp. 426-430.
73 Id., pp. 432-435.
74 Id., pp. 437-438.
75

Exhibit No.	Description in the FOE	Document Actually Marked
"R-1"	Tax Verification No. TVN20170002638	Tax Verification No. TVN20170022638
"R-3"	Schedule of Disallowances – Findings on Invoicing Requirements	Schedule of Disallowance of Amortization of Input Tax on Locally Purchase[d] Capital Goods Exceeding ₱1 Million from Previous Quarter/Year
"R-4"	Schedule of Disallowances – Deficiency documents of "big ticket" purchases	Schedule of disallowance of "big ticket" purchases
"R-5"	Schedule of Disallowances – Invalid TIN per BIR ITS	List of Supplier[s] with invalid TIN per BIR ITS
"R-6"	Schedule of Disallowances – Invalid deferred input tax – Previous year	Schedule of Disallowance of Amortization of Input Tax on Capital Goods Exceeding ₱1 Million for the period of claim
"R-7"	Schedule of Disallowances – Invalid deferred input tax – period of claim	Schedule of Disallowance of Amortization of Input Tax on Locally Purchased Capital Goods Exceeding ₱1 Million from Previous Quarter/Year

76 Division Docket, pp. 441-472.
77 Id., pp. 473-482.

registered mail on even date. Accordingly, on 08 January 2021, the Second Division considered the case submitted for decision.[78]

ISSUE

As the parties so stipulated[79], the main issue for this Court's determination is —

> WHETHER PETITIONER PROCTER & GAMBLE INTERNATIONAL OPERATIONS SA - ROHQ IS ENTITLED TO ITS CLAIM FOR REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE (TCC) IN THE TOTAL AMOUNT OF ₱41,071,160.17, REPRESENTING ITS EXCESS AND UNUTILIZED INPUT VALUE-ADDED TAX (VAT) FOR THE THIRD (3^{RD}) AND FOURTH (4^{TH}) QUARTERS OF FISCAL YEAR (FY) 2016 ATTRIBUTABLE TO ITS ZERO-RATED SALES OF SERVICES TO NONRESIDENT PERSONS DOING BUSINESS OUTSIDE THE PHILIPPINES.

In support of its petition, petitioner submits that it is entitled to the refund in the amount of ₱41,071,160.17, representing its excess and unutilized input VAT attributable to its zero-rated sales of services, covering the 3^{rd} and 4^{th} quarters of FY 2016. According to it, it has complied with the requisites to claim a refund under the NIRC of 1997, as amended, and the applicable rules and regulations.

On the other hand, respondent avers that the instant petition must be dismissed on the basis of lack of jurisdiction as petitioner filed it prematurely. For respondent, he has yet to rule on petitioner's claim for refund since ACIR-AS Simple (who signed the Denial Letter in her capacity as the ACIR-AS) is not the CIR's alter-ego and thus could not sign on his behalf.

Respondent added that, assuming *arguendo* that the instant petition is not premature, petitioner still failed to prove that it is entitled to a VAT refund. He then invokes the tenet that a tax refund is in the nature of a tax exemption which must be strictly construed against the person or entity claiming the exemption. In this regard,

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78 See Resolution dated 08 January 2021, id., p. 488.

79 Stipulation of Issue, Joint Stipulation of Facts and Issues (JSFI), id., p. 260.

respondent maintains that petitioner failed to comply with the substantiation requirements under RR No. 16-2005 in relation to Sections 113 and 237 of the NIRC of 1997, as amended, as well as the conditions or requirements prescribed under Section 112(A)[80] of the NIRC of 1997, as amended.

Finally, respondent posits that the amount of petitioner's tax liability should be computed and deducted from any refundable amount. He points out that the Denial Letter issued to petitioner disclosed that it has an outstanding tax liability of ₱14,369,385.89, which pertains to the excess of deductions over the amount sought to be refunded. As such, petitioner failed to discharge the burden of proof to establish its right to the claimed refund.

RULING OF THE COURT

After an assiduous review of the records of the case, this Court finds partial merit in the present Petition for Review.

Petitioner anchors its claim for refund on Section 110(B), in relation to Section 112(A) and (C) of the NIRC of 1997, as amended, and further amended by the TRAIN Law. The relevant provisions read:

> ...
> **SEC. 110.** *Tax Credits.* —
> ...
>
> (B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: ***Provided, however*, that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.**
> ...

[80] Zero-Rated or Effectively Zero-Rated Sales.

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.

...

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

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.[81]

...

[81] Italics in the original text and emphasis supplied.

In *Luzon Hydro Corporation v. Commissioner of Internal Revenue*[82], the Supreme Court laid down the requisites for the refund of unutilized input VAT, to wit:

> ...
>
> A claim for refund or tax credit for unutilized input VAT may be allowed only if the following requisites concur, namely: (a) the taxpayer is VAT-registered; (b) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (c) the input taxes are due or paid; (d) the input taxes are not transitional input taxes; (e) the input taxes have not been applied against output taxes during and in the succeeding quarters; (f) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (g) 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 rules and regulations of the Bangko Sentral ng Pilipinas; (h) 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; and (i) the claim is filed within two years after the close of the taxable quarter when such sales were made.
>
> ...

We shall now proceed to the determination of petitioner's compliance with the aforementioned requisites. For an orderly discussion, We shall start with the first (1st) and ninth (9th) requisites, followed by the second (2nd) and seventh (7th) requisites, then the third (3rd), fourth (4th), fifth (5th) and eighth (8th) requisites, jointly.

<u>FIRST (1ST) REQUISITE:</u>
PETITIONER IS A VALUE-ADDED TAX (VAT)-REGISTERED ENTITY.

Petitioner complied with the 1st requisite considering that it is a VAT-registered entity with TIN 406-931-778-000, as evidenced by its BIR Certificate of Registration No. OCN 8RC0001494228E dated 16 March 2018.[83]

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[82] G.R. No. 188260, 13 November 2013; Citation omitted.

[83] Supra at note 5.

NINTH (9TH) REQUISITE:
PETITIONER'S ADMINISTRATIVE AND JUDICIAL CLAIMS WERE FILED WITHIN THE PRESCRIPTIVE PERIOD.

In accordance with Section 112(A) and (C)[84] of the NIRC of 1997, as amended by the TRAIN Law, the administrative claim for refund of unutilized input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The instant administrative claim covers the 3rd and 4th quarters of FY 2016 ended 30 June 2016. Thus, petitioner's last day for filing of its administrative claim and the actual filing of its administrative claim for the said periods fell on the following dates:

Period Covered	Last Day to File Administrative Claim	Actual Date of Filing of Administrative Claim
January to March 2016 (3rd Quarter)	31 March 2018	28 March 2018[85]
April to June 2016 (4th Quarter)	30 June 2018	

Clearly, petitioner's administrative claim was filed within the two-year prescriptive period.

As to the timeliness of petitioner's judicial claim, respondent had ninety (90) days or until 26 June 2018, to decide on petitioner's administrative claim. Considering that respondent issued a Denial Letter dated 19 June 2018[86] totally denying the same and which petitioner received on 29 June 2018, petitioner had 30 days therefrom or until 29 July 2018 within which to file a judicial claim before this Court. Thus, the instant Petition for Review was also timely filed on 27 July 2018.[87]

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[84] Supra at pp. 15-16.
[85] Exhibit "P-9", supra at note 17.
[86] Exhibit "P-12", supra at note 20.
[87] Supra at note 1.

In a last ditch effort of respondent to oust this Court of its jurisdiction over the instant case, respondent claims that petitioner's judicial claim for refund was prematurely filed because the Denial Letter signed by ACIR-AS Simple is not the denial appealable to this Court. Respondent contends that ACIR-AS Simple signed the Denial Letter in her capacity as ACIR-AS alone and not on his behalf as CIR. As such, according to respondent, he has yet to rule on petitioner's claim for refund when it filed its judicial claim before this Court.

We disagree.

Revenue Memorandum Circular (**RMC**) No. 17-18[88], dated 27 February 2018, provides that an ACIR-AS is authorized to approve a claim for VAT refund of not more than ₱50 million, *viz*:

> ...
> Claims for VAT refund by direct exporters
>
> 1. All claims by direct exporters shall be filed with and processed by the **VAT Credit Audit Division (VCAD),** including direct exporters under the jurisdiction of the LTS.
> 2. The Tax Audit Review Division (TARD) shall review the docket with report on claims processed by the VCAD prior to approval of the claims.
>
> 3. The following are the authorized approving revenue officials based on the amount of claims:
>
> | Amount of Claim | Approving Revenue Official |
> |---|---|
> | **Not more than P50,000,000.00** | **ACIR-Assessment Service (AS)** |
> | More than P50,000,000.00 up to P150,000,000.00 | DCIR-OG |
> | More than P150,000,000.00 | CIR |
>
> ...

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

Considering that the subject claim in the instant case only amounts to ₱41,071,160.17, ACIR-AS Simple is authorized to approve or deny the same under RMC No. 17-18 above. Consequently, ACIR-AS Simple's decision denying petitioner's administrative claim is appealable before this Court in accordance with Section 112(C) of the NIRC of 1997, as amended.

SECOND (2ND) AND SEVENTH (7TH) REQUISITES:
PETITIONER IS ENGAGED IN ZERO-RATED OR EFFECTIVELY ZERO-RATED SALES AND FOR WHICH THE ACCEPTABLE FOREIGN CURRENCY EXCHANGE PROCEEDS HAVE BEEN DULY ACCOUNTED FOR IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE BANGKO SENTRAL NG PILIPINAS (BSP).

The 2nd and 7th requisites, respectively, require that the taxpayer is engaged in zero-rated or effectively zero-rated sales and, for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b)[89], and 108(B)(1)

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[89] **Sec. 106.** *Value-Added Tax on Sale of Goods or Properties.* –
(A) *Rate and Base of Tax.* – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to twelve percent (12%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

...

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* - The term 'export sales' means:
(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
(2) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

...

(b) *Foreign Currency Denominated Sale.* — The phrase 'foreign currency denominated sale' means sale to a nonresident of goods, except those mentioned in Sections 149 and 150, assembled or manufactured in the Philippines for delivery to a resident in the Philippines, paid for in acceptable and (2)[90] of the NIRC of 1997, as amended[91], the acceptable foreign currency exchange proceeds must have been duly accounted for in accordance with the Bangko Sentral ng Pilipinas (**BSP**) rules and regulations.

As indicated in petitioner's final amended Quarterly VAT Returns for the 3rd and 4th Quarters of FY 2016, petitioner declared sales subject to 12% VAT and zero-rated sales in the amounts of ₱185,286,586.08 and ₱1,444,423,146.01, respectively, detailed as follows:

Exhibit No.	Period	Sales Subject to 12% VAT	Zero-Rated Sales
"P-8.2"[92]	January to March 2016 (3rd Quarter)	₱117,071,967.33	₱600,892,057.11
"P-8.7"[93]	April to June 2016 (4th Quarter)	68,214,618.75	843,531,088.90
	Total	**₱185,286,586.08**	**₱1,444,423,146.01**

Based on petitioner's Summary List of Sales (**SLS**)[94], petitioner's total zero-rated sales of ₱1,444,423,146.01 pertain to sales of services to foreign clients or affiliates.

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foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

90 **Sec. 108**. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* –

...

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

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);

(2) Services other than those mentioned in the preceding paragraph, rendered to a person engaged in business conducted outside the Philippines or to a 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 *Bangko Sentral ng Pilipinas* (BSP);

...

91 Prior to the changes brought about by Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion (TRAIN Law).

92 Supra at note 10.

93 Supra at note 15.

94 Exhibit "P-14", USB.

Petitioner claims that its sale of services to its affiliates that are non-resident foreign corporations (**NRFCs**) is a transaction subject to 0% VAT pursuant to Section 108(B)(2) of the NIRC of 1997, as amended, which states:

> ...
>
> **SEC. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —
>
> ...
>
> (B) *Transactions Subject to Zero Percent (0%) Rate* — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate.
>
> > (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
> >
> > (2) **Services other than those mentioned in the preceding paragraph**, rendered to a person engaged in business conducted outside the Philippines or to a **nonresident person not engaged in business who is outside the Philippines when the services are performed the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).**[95]
>
> ...

In *Accenture, Inc. v. Commissioner of Internal Revenue*[96], citing *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[97], the Supreme Court held that in order for the supply of services to be considered VAT zero-rated under the above-mentioned provision, the taxpayer-claimant must prove the following:

[95] Emphasis supplied.
[96] G.R. No. 190102, 11 July 2012.
[97] G.R. No. 153205, 22 January 2007.

1. Services other than processing, manufacturing or repacking of goods rendered by VAT registered persons in the Philippines;

2. The recipient of such services must be performing business outside the Philippines;

3. The transaction paid for in acceptable foreign currency duly accounted for in accordance with BSP rules and regulations; and,

4. The subject services were performed in the Philippines.

As to the ***1st requirement***, it is undisputed that petitioner is licensed as an ROHQ.[98] Petitioner's witness, Trambulo, also confirmed that it is the Philippine ROHQ of a multinational company organized and existing under and by virtue of the laws of Switzerland and its services are limited to providing corporate finance advisory services; training and personnel management; logistics services; technical support and maintenance; data processing and communication; and, business development to non-resident affiliates abroad.[99]

Clearly, the nature of services being rendered by petitioner falls within the scope of services other than "processing, manufacturing or repacking of goods" contemplated under the aforecited Section 108(B)(2) of the NIRC of 1997, as amended.

As regards the ***2nd requirement*** which requires that the recipient of such services must be performing business outside the Philippines, in *Commissioner of Internal Revenue v. Deutsche Knowledge Services, Pte. Ltd.*[100] (**Deutsche Knowledge Services**), the Supreme Court discussed the two (2) components that the claimant must establish to prove its clients' status as an NRFC, to wit:

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98 Paragraph 1, Stipulation of Facts, JSFI, Division Docket, p. 259.

99 Question and Answer (Q&A) Nos. 5 and 16, Judicial Affidavit of Mr. Alvin D. Trambulo, Exhibit "P-23", Division Docket, pp. 201-229).

100 G.R. No. 234445, 15 July 2020; Citations omitted, italics in the original text and emphasis supplied.

...

For purposes of zero-rating under Section 108(B)(2) of the Tax Code, the claimant must establish the two components of a client's NRFC status, *viz:* (1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. **To be sure, there must be sufficient proof of *both* of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines.**

...

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

The Court upholds these findings.

...

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

Proof of the above-mentioned second component sets the present case apart from *Accenture, Inc. v. Commissioner of Internal Revenue* and *Sitel Philippines Corp. v. Commissioner of Internal Revenue*. In these cases, the claimants similarly presented SEC Certifications and client service agreements. However, the Court consistently ruled that documents of this nature only establish the *first* component (*i.e.*, that the affiliate is foreign). The absence of any other competent evidence (*e.g.*, articles of association/ certificates of incorporation) proving the *second* component (*i.e.*, that the affiliate is not doing business here in the Philippines) shall be fatal to a claim for credit or refund of excess input VAT attributable to zero-rated sales.

...

As can be gleaned from the foregoing, there must be sufficient proof of both components, namely: (1) that its clients or affiliates are **foreign corporations** (which can be proven by the SEC Certifications of Non-Registration of Company); and, (2) that they are **not doing business in the Philippines** (the *prima facie* proof of which is the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines).

In this case, to prove that it rendered services to NRFCs doing business outside the Philippines, petitioner presented their SEC Certifications of Non-Registration of Corporation or Partnership, company registration documents, sworn statements from authorized representatives of the foreign clients, and service agreements, among others, to wit:

Registered Name of Client	SEC Certification of Non-Registration	Consularized Company Registration	Sworn Statement from Authorized Representatives	Service Agreement
COSMETIC SUPPLIERS PTY LTD	"P-5.41"	"P-6.5"	"P-7.5"	"P-4.8"
DETERGENT PRODUCTS SARL	"P-5.17"	"P-6.14"	"P-7.13"	"P-4.25"
GILLETTE DIVERSIFIED OPERATIONS PRIVATE LIMITED	"P-5.34"	"P-6.28"	"P-7.28"	"P-4.42"
GILLETTE INDIA LTD	"P-5.35"	"P-6.29"	"P-7.29"	"P-4.43"
GILLETTE PAKISTAN LTD	"P-5.44"	"P-6.42"	"P-7.41"	-
INDUSTRIES MAROCAINES MODERNES	"P-5.11"	"P-6.39"	"P-7.33"	"P-4.19"
MODERN INDUSTRIES COMPANY - DAMMAM	"P-5.14"	"P-6.34"	"P-7.37"	"P-4.22"
MODERN PRODUCTS COMPANY	"P-5.15"	"P-6.35"	"P-7.38"	"P-4.23"
P&G DISTRIBUTION MOROCCO	"P-5.2"	-	-	-
P&G DISTRIBUTION MOROCCO S.A.S.	-	"P-6.38"	"P-7.32"	"P-4.2"
P&G INNOVATION GODO KAISHA	"P-5.40"	"P-6.4"	"P-7.4"	"P-4.7"
P&G ISRAEL M.D.O. LTD	"P-5.33"	"P-6.33"	"P-7.36"	"P-4.41"
P&G K.K.	"P-5.30"	"P-6.25"	"P-7.25"	"P-4.38"
P&G PRESTIGE GODO KAISHA	"P-5.8"	"P-6.11"	"P-7.11"	"P-4.16"
PROCTER & GAMBLE AUSTRALIA PTY LTD	"P-5.3"	"P-6.7"	"P-7.7"	"P-4.11"
PROCTER & GAMBLE DISTRIBUTING (NEW ZEALAND) LTD	"P-5.13"	-	-	"P-4.21"
PROCTER & GAMBLE EGYPT DISTRIBUTION LTD.	"P-5.37"	-	-	"P-4.4"
PROCTER & GAMBLE EGYPT LTD.	"P-5.5"	-	-	"P-4.13"
PROCTER & GAMBLE EGYPT SUPPLIES LTD.	"P-5.38"	-	-	"P-4.5"
PROCTER & GAMBLE EUROPE SA	-	"P-6.21"	"P-7.21"	-
PROCTER & GAMBLE EUROPE SA SINGAPORE BRANCH	"P-5.26"	-	-	"P-4.34"

Registered Name of Client	SEC Certification of Non-Registration	Consularized Company Registration	Sworn Statement from Authorized Representatives	Service Agreement
PROCTER & GAMBLE GULF FZE	"P-5.29"	"P-6.24"	"P-7.24"	-
PROCTER & GAMBLE HONG KONG LIMITED	"P-5.6"	"P-6.9"	"P-7.9"	"P-4.14"
PROCTER & GAMBLE HYGIENE AND HEALTH CARE LIMITED	"P-5.7"	"P-6.10"	"P-7.10"	"P-4.15"
PROCTER & GAMBLE HOME PRODUCTS PRIVATE LIMITED	"P-5.23"	"P-6.19"	"P-7.18"	"P-4.31"
PROCTER & GAMBLE INDOCHINA LTD	"P-5.28"	"P-6.23"	"P-7.23"	"P-4.37"
PROCTER & GAMBLE INTERNATIONAL OPERATIONS SA	-	"P-6.27"	"P-7.27"	"P-4.44"
PROCTER & GAMBLE INTERNATIONAL OPERATIONS SA SINGAPORE BRANCH	"P-5.32"	-	-	"P-4.40"
PROCTER & GAMBLE INTERNATIONAL OPERATIONS S.A. (WITH REGISTERED OFFICE AT P.O. BOX 33060, JEBEL ALI, DUBAI, UAE)	"P-5.45"	"P-6.43"	"P-7.42"	-
PROCTER & GAMBLE JAPAN K.K.	"P-5.36"	"P-6.2"	"P-7.2"	"P-4.3"
PROCTER & GAMBLE KOREA	"P-5.22"	"P-6.18"	"P-7.17"	-
PROCTER & GAMBLE KOREA, INC.	-	-	-	"P-4.30"
PROCTER & GAMBLE KOREA S&D, CO.	"P-5.31"	"P-6.26"	"P-7.26"	"P-4.39"
PROCTER & GAMBLE LEVANT S.A.L.	"P-5.9"	-	-	"P-4.17"
PROCTER & GAMBLE (MALAYSIA) SDN BHD	"P-5.10"	"P-6.12"	"P-7.12"	"P-4.18"
PROCTER & GAMBLE MANUFACTURING SOUTH AFRICA PTY LTD	"P-5.39"	"P-6.3"	"P-7.3"	"P-4.6"
PROCTER & GAMBLE MANUFACTURING (THAILAND) LIMITED	"P-5.19"	"P-6.16"	"P-7.15"	"P-4.27"
PROCTER & GAMBLE MAROC	"P-5.12"	"P-6.40"	"P-7.34"	"P-4.20"
PROCTER & GAMBLE MIDDLE EAST FZE	"P-5.46"	"P-6.31"	"P-7.31"	"P-4.10"
PROCTER & GAMBLE PAKISTAN (PRIVATE) LIMITED	"P-5.47"	"P-6.41"	"P-7.40"	-
PROCTER & GAMBLE (SINGAPORE) PTE LTD	"P-5.16"	"P-6.13"	"P-7.35"	"P-4.24"
PROCTER & GAMBLE SOUTH AFRICA PTY LTD	"P-5.24"	"P-6.20"	"P-7.19"	"P-4.32"
PROCTER & GAMBLE SOUTH AFRICAN TRADING (PTY) LTD	"P-5.1"	"P-6.1"	"P-7.1"	"P-4.1"
PROCTER & GAMBLE TAIWAN LIMITED	"P-5.18"	"P-6.15"	"P-7.14"	"P-4.26"
PROCTER & GAMBLE TAIWAN SALES COMPANY LIMITED	"P-5.43"	"P-6.6"	"P-7.6"	-
PROCTER & GAMBLE TECHNICAL CENTRES LIMITED	"P-5.48"	"P-6.30"	"P-7.30"	"P-4.36"
PROCTER & GAMBLE TRADING (THAILAND) LTD	"P-5.20"	"P-6.17"	"P-7.16"	"P-4.28"
PROCTER & GAMBLE TUKETIM MALLARI SANAYI AS	"P-5.21"	"P-6.32"	"P-7.43"	"P-4.29"
PROCTER & GAMBLE VIETNAM LTD.	"P-5.27"	"P-6.22"	"P-7.22"	"P-4.35"
PT. PROCTER & GAMBLE HOME PRODUCTS INDONESIA	"P-5.25"	"P-6.36"	"P-7.20"	"P-4.33"
P.T. PROCTER & GAMBLE OPERATIONS INDONESIA	"P-5.42"	"P-6.37"	"P-7.39"	"P-4.9"
THE PROCTER & GAMBLE COMPANY	"P-5"	"P-6"	"P-7"	-

Registered Name of Client	SEC Certification of Non-Registration	Consularized Company Registration	Sworn Statement from Authorized Representatives	Service Agreement
WELLA INDIA HAIR COSMETICS PRIVATE LIMITED	"P-5.4"	"P-6.8"	"P-7.8"	"P-4.12"

As shown in the table above, **only** the SEC Certificates of Non-Registration of Company were submitted as evidence for the following entities:

a. P&G DISTRIBUTION MOROCCO;
b. PROCTER & GAMBLE EUROPE SA SINGAPORE BRANCH;
c. PROCTER & GAMBLE INTERNATIONAL OPERATIONS SA SINGAPORE BRANCH;
d. PROCTER & GAMBLE LEVANT S.A.L.;
e. PROCTER & GAMBLE DISTRIBUTING (NEW ZEALAND) LTD;
f. PROCTER & GAMBLE EGYPT DISTRIBUTION LTD.;
g. PROCTER & GAMBLE EGYPT LTD.;
h. PROCTER & GAMBLE EGYPT SUPPLIES LTD.; and,
i. GILLETTE PAKISTAN LTD.[101]

Also, **no** SEC Certificate of Non-Registration of Company was presented for the following foreign companies:

a. P&G DISTRIBUTION MOROCCO S.A.S.;
b. PROCTER & GAMBLE EUROPE SA;
c. PROCTER & GAMBLE INTERNATIONAL OPERATIONS SA; and,
d. PROCTER & GAMBLE KOREA, INC.

Consequently, the aforementioned clients cannot be considered as NRFCs following the ruling in *Deutsche Knowledge Services*. Hence, the related sales to these clients shall be disallowed.

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101 The foreign client's consularized company registration (*i.e.*, Exhibit "P-6.42") was denied admission by the Court for failure of the document formally offered to correspond with the duly marked document in its Resolutions dated 10 September 2019 and 21 February 2020.

In addition, the Court likewise observed that there are significant differences in the names reflected in the pertinent SEC Certifications of Non-Registration of Company, foreign registration documents and official receipts (**ORs**) issued to the following clients:

Name in the SEC Certification of Non-Registration of Company	**Name in the Consularized Foreign Registration Documents**	**Name in the ORs**[102]	**OR Nos.**	**Total Amount**
P&G **PRESTIGE** GODO KAISHA	P&G **MAX FACTOR** GODO KAISHA	P&G **MAX FACTOR** GODO KAISHA	3383 3428 3473 3510 3556 3608	₱24,310,057.56
PROCTER & GAMBLE TECHNICAL **CENTRES** LIMITED	PROCTER & GAMBLE TECHNICAL **CENTRES** LIMITED	PROCTER & GAMBLE TECHNICAL **CENTERS LTD**	3400 3436 3477 3523 3603	41,161,463.41
Total				**₱65,471,520.97**

Resultantly, the amount of ₱65,471,520.97 must also be disallowed and deducted from the total zero-rated sales.

With respect to the 3^{rd} ***requirement*** that payment for such services must be in acceptable foreign currency duly accounted for in accordance with the rules and regulations of the BSP, petitioner presented documents such as: (1) Certificates of Inward Remittances issued by Citibank, N.A.[103]; (2) ORs issued for zero-rated sales[104]; and, (3) Comparison of Zero-rated ORs against Certificates of Inward Remittances.[105]

102 Exhibit "P-15", CD.
103 Exhibits "P-3" to "P-3.2", FOE, Folder 1.
104 Supra at note 102.
105 Exhibit "P-16", CD.

As noted by ICPA Ballesteros, petitioner's receipts for the 3rd and 4th quarters of FY 2016 amounting to $30,688,489.05 were traceable to the Certificates of Inward Remittances.[106] However, ICPA Ballesteros also noted that the amount of zero-rated sales received in USD and supported by Certificates of Inward Remittances exceeds the amount of zero-rated sales *per* petitioner's issued VAT ORs. In this regard, petitioner presented the following reconciliation:[107]

	3rd Quarter FY 2016	**4th Quarter FY 2016**	**Total**
Amount of Zero-Rated Sales *per* VAT ORs	$12,658,121.18	$18,030,367.87	$30,688,489.05
Withholding tax, bank fees and foreign exchange and timing differences	(207,768.45)	(195,616.18)	(403,384.63)
Other transactions (*e.g.*, cross charges to/from affiliates)	167,550.23	325,487.68	493,037.91
Reconciliation of inter-affiliate billings	756,367.58	665.58	757,033.16
Amount of Zero-Rated Sales billed and received in USD and supported by Certificates of Inward Remittance	$13,374,270.54	$18,160,904.95	$31,535,175.49

Based on the foregoing reconciliation, for the 3rd and 4th quarters of FY 2016, petitioner received $1,250,071.07 in excess of the total amount of gross receipts supported with VAT ORs. Petitioner identified the same as "Cross charges to/from affiliates" and "Reconciliation of inter-affiliate billings". However, petitioner failed to provide any supporting document for each of those adjustments.

"Gross receipts" under Section 4.108-4 of RR No. 16-2005[108], as amended by RR No. 04-2007[109], is defined as follows:

...

SEC. 4.108-4. *Definition of Gross Receipts.* — 'Gross receipts' refers to the **total amount of money or its equivalent**

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106 ICPA Report dated 01 March 2019, supra at note 41, pp. 7-8.
107 Id.
108 Supra at note 25.
109 Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005.

> representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits applied as payments for services rendered and advance payments actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the VAT, **except those amounts earmarked for payment to unrelated third (3rd) party or received as reimbursement for advance payment on behalf of another which do not redound to the benefit of the payor**. A payment is a payment to a third (3rd) party if the same **is made to settle an obligation of another person**, e.g., customer or client, to the said third party, which obligation is evidenced by the sales invoice/official receipt issued by said third party to the obligor/debtor (e.g., customer or client of the payor of the obligation).
>
> An advance payment is an advance payment on behalf of another if the same is paid to a **third (3rd) party for a present or future obligation of said another party which obligation is evidenced by a sales invoice/official receipt issued by the obligee/creditor to the obligor/debtor (i.e., the aforementioned "another party") for the sale of goods or services by the former to the latter.**[110]
>
> ...

The above definition excludes from the purview of "gross receipts" any amount due to a payee different from the receiving party to settle an obligation of another person. However, in the instant case, petitioner was not able to show that the excess receipts were amounts earmarked for payment to unrelated third parties or reimbursements for advance payment of the third-party obligations of its foreign clients (through an invoice or OR issued by the third party creditors to petitioner's foreign clients). As it stands, the Court could not ascertain the nature of such receipts to warrant its exclusion from petitioner's "gross receipts" for VAT purposes. Consequently, petitioner has unreported zero-rated sales of ₱58,633,020.95.[111]

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110 Emphasis supplied.

111 Translated using the average of the monthly average BSP cross rates of Philippine Peso and US Dollar from January to June 2016 (₱47.5111:$1; ₱47.6361:$1; ₱46.724:$1; ₱46.2845:$1; ₱46.8023:$1; ₱46.4645:$1) of ₱46.90375:$1. Available at https://www.bsp.gov.ph/statistics/external/pesocross.xlsx (last accessed on 04 January 2022).

Computation	
Unsupported Adjustments to Gross Receipts	$1,250,071.07
Average BSP Cross Rate from January to June 2016	₱46.90375: $1
Unreported Zero-Rated Sales	**₱58,633,020.95**

As held by this Court in *Commissioner of Internal Revenue v. Northwind Power Dev't. Corporation*[112], unreported zero-rated sales must be disallowed pursuant to Section 114(A)[113] in relation to Section 108[114] of the NIRC of 1997, as amended, to wit:

> ...
>
> In the similarly assailed Resolution of June 26, 2013, which effectively affirmed the Decision of March 12, 2013, the Court in Division further explained, thus:
>
>> "As regards the first ground, We reiterate our findings/ruling in the Assailed Decision that only the amount of ₱34,352,340.07 was reflected as zero-rated receipts in petitioner's Quarterly VAT Return for the 2nd quarter of 2008.
>>
>> The difference of ₱22,456,725.94 was allegedly recognized in the 3rd and 4th quarters of 2008. Petitioner, however, failed to substantiate the said allegations even if the difference of ₱22,456,725.94 was indeed reported in the said quarters.
>>
>> Pursuant to Section 114(A) in relation to Section 108 of the NIRC of 1997, as amended, petitioner should have reported the zero-rated sales of ₱22,456,725.94 in its Quarterly VAT Returns for the period the payments were received, *i.e.*, on June 2008 which is covered by the 2nd quarter of 2008.
>>
>> Since the input VAT sought to be refunded in the amount of ₱51,936,956.05 is attributable to petitioner's gross receipts from sale of electricity to Ilocos Norte Electric Cooperative (INEC), **in the amount of ₱56,809,066.01, and, inasmuch as only the amount of ₱34,352,340.07 was declared in its 2nd Quarterly VAT Return**, it is but proper to apportion the substantiated input VAT over the volume of zero-rated sales per official receipts and

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112 CTA EB Case Nos. 1037 & 1042, 16 December 2014; Emphasis supplied.

113 **SEC. 114.** *Return and Payment of Value-added Tax.* —
(A) In General. — Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.
...

114 **SEC. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —
...

> **only the amount attributable to the zero-rated sales of ₱34,352,340.07 may be claimed for refund.**
>
> Thus, **there is no plausible reason why petitioner should be entitled to a refund of the substantiated input VAT without allocating its reported zero-rated sales to sales per official receipts because the substantiated input VAT covers the entire zero-rated sales, both reported and unreported sales for the quarter**. In disallowing a portion of petitioner's zero-rated sales, it essentially follows that a portion of the claim for refund of input VAT attributable to such zero-rated sales should also be disallowed by the Court. Otherwise, We will be disregarding the substantiation of petitioner's zero-rated sales thereby negating its effect on the amount of unutilized input VAT claimed for refund.
>
> In the instant case, since some of the zero-rated sales were not reported in the appropriate period when such sales were made, it is apt for the Court to apportion the input VAT because it is impossible to specifically pinpoint what input VAT is directly attributable to such reported zero-rated sales."[115]

...

Clearly, the unreported zero-rated sales or gross receipts of ₱58,633,020.95 must also be disallowed for purposes of determining the amount of substantiated input VAT to be refunded to petitioner.

Anent the *4th* ***requirement*** that the subject sales of services were performed in the Philippines, petitioner has sufficiently established the same. A perusal of the Service Agreements would show that these contain the following provisions which could be construed that the qualifying services are to be rendered and performed by petitioner in the Philippines:

...

1 **CONTRACTING PARTIES**

This agreement is concluded between:

---

115 Emphasis supplied.

On the one hand, **Procter & Gamble International Operations SA - ROHQ**, a branch of Procter & Gamble International Operations SA (incorporated in Geneva, Switzerland) registered under the laws of Philippines **with its office address at 20/F Petron Megaplaza Building., 358 Sen. Gil Puyat Ave., Makati, Manila, Philippines**, (hereinafter "THE SERVICE PROVIDER").

...

4 **SERVICES**

...

4.2.2 **THE SERVICE PROVIDER shall render the Services referred to in Article 4.1 from all or any of its operational locations**, provided however that **<u>nothing herein shall be construed to require</u>** THE SERVICE PROVIDER to establish or maintain an office or other place of business **other than its current and future places of business as deemed appropriate by THE SERVICE PROVIDER itself or be construed to require THE SERVICE PROVIDER to provide the services of its employees, agents, or subcontractors, to SERVICE RECIPIENT <u>outside of THE SERVICE PROVIDER's normal place of business</u> on other than on an occasional basis.**[116]

...

As can be deduced from the foregoing contractual provisions, the services may only be rendered by petitioner in its place of business, *i.e.*, Makati, Philippines.

However, the same cannot be said with respect to the services rendered for the following foreign clients or affiliates with no Service Agreements with petitioner:

a. GILLETTE PAKISTAN LTD;
b. PROCTER & GAMBLE GULF FZE;
c. PROCTER & GAMBLE INTERNATIONAL OPERATIONS S.A.;
d. PROCTER & GAMBLE KOREA;
e. PROCTER & GAMBLE PAKISTAN (PRIVATE) LIMITED;

---

116 Emphasis and underscoring supplied.

f. PROCTER & GAMBLE TAIWAN SALES COMPANY LIMITED; and,
g. THE PROCTER & GAMBLE COMPANY.

It bears noting that petitioner did not proffer additional evidence to prove that the services to the aforesaid foreign clients were rendered in the Philippines. Thus, sales of services to the aforesaid foreign clients must likewise be disallowed.

To summarize, petitioner's duly substantiated zero-rated sales for the 3rd and 4th quarters of FY 2016 amounted to ₱239,660,171.01, computed as follows:

Particulars		**3rd and 4th Quarters of FY 2016**
Zero-Rated Sales		₱1,444,423,146.01
Add: Unreported Zero-Rated Sales		58,633,020.95
Total Zero-Rated Sales		**₱1,503,056,166.96**
Less: *Disallowances*		
1) Zero-rated sales with **no** SEC Certificate of Non-Registration of Company[117]		
a. P&G DISTRIBUTION MOROCCO S.A.S.	₱2,175,218.43	
b. PROCTER & GAMBLE KOREA, INC.	1,298,837.12	3,474,055.55
2) Zero-rated sales supported **only** by SEC Certificates of Non-Registration of Company[118]		
a. PROCTER & GAMBLE EUROPE SA SINGAPORE BRANCH	₱948,102,528.19	
b. PROCTER & GAMBLE INTERNATIONAL OPERATIONS SA SINGAPORE BRANCH	102,367,195.31	
c. PROCTER & GAMBLE LEVANT S.A.L.	39,621.46	
d. PROCTER & GAMBLE DISTRIBUTING (NEW ZEALAND) LTD.	3,220,521.26	

117 No zero-rated sales to PROCTER & GAMBLE EUROPE SA and b. PROCTER & GAMBLE INTERNATIONAL OPERATIONS SA.

118 No zero-rated sales to P&G DISTRIBUTION MOROCCO.

Particulars		3rd and 4th Quarters of FY 2016
e. PROCTER & GAMBLE EGYPT DISTRIBUTION LTD.	145,537.70	
f. PROCTER & GAMBLE EGYPT LTD.	16,662,775.08	
g. PROCTER & GAMBLE EGYPT SUPPLIES LTD.	1,379,589.46	
h. GILLETTE PAKISTAN LTD.	705,888.39	1,072,623,656.85
3) Zero-Rated Sales with Discrepancy in the Names stated in the ORs		65,471,520.97
4) Unreported Zero-Rated Sales		58,633,020.95
5) Not supported with Service Agreements[119]		54,815,211.04
a. PROCTER & GAMBLE GULF FZE	₱197,622.53	
b. PROCTER & GAMBLE INTERNATIONAL OPERATIONS S.A. (WITH REGISTERED OFFICE AT P.O. BOX 33060, JEBEL ALI, DUBAI, UAE)	79,109.97	
c. PROCTER & GAMBLE PAKISTAN (PRIVATE) LIMITED	5,025,611.65	
d. PROCTER & GAMBLE TAIWAN SALES COMPANY LIMITED	2,818,588.00	
e. THE PROCTER & GAMBLE COMPANY	257,598.44	8,378,530.59
Total Disallowances		**₱1,263,395,995.95**
Total Valid and Substantiated Zero-Rated Sales		**₱239,660,171.01**

<u>THIRD (3RD), FOURTH (4TH), FIFTH (5TH), and EIGHTH (8TH) REQUISITES:</u> PETITIONER INCURRED EXCESS AND UNUTILIZED INPUT VALUE-ADDED TAX (VAT) ATTRIBUTABLE TO ITS ZERO-RATED SALES.

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[119] Zero-rated sales to GILLETTE PAKISTAN LTD of ₱705,888.39 is already disallowed under "2) Zero-rated sales supported only by SEC Certificates of Non-Registration of Company" and no zero-rated sales to PROCTER & GAMBLE KOREA.

The Court shall jointly determine whether petitioner complied with the following remaining requisites:

a. 3rd requisite: the input taxes are due or paid;

b. 4th requisite: the input taxes are not transitional input taxes;

c. 5th requisite: the input taxes have not been applied against output taxes during and in the succeeding quarters; and,

d. 8th requisite: 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.

In its amended 3rd and 4th Quarterly VAT Returns for FY 2016[120], petitioner declared excess and unutilized input VAT of ₱41,071,160.17 on its domestic purchases of capital goods exceeding and not exceeding ₱1 Million, purchases of goods other than capital goods and services as well as the amortization of capital goods for FY 2016, as shown below:

	3rd Quarter of FY 2016	**4th Quarter of FY 2016**	**Total**
Input Tax Deferred on Purchases of Capital Goods Exceeding ₱1 Million from Previous Quarter	₱6,591,378.60	₱8,472,577.17	₱6,591,378.60
Input Tax on Purchases of Capital Goods Exceeding ₱1 Million	3,281,642.22	914,576.84	4,196,219.06
Input Tax on Domestic Purchases of Goods Other Than Capital Goods	279,459.39	781,449.41	1,060,908.80

120 Exhibits "P-8.2" and "P-8.7", FOE, Folder 1.

	3rd Quarter of FY 2016	4th Quarter of FY 2016	Total
Input tax on Domestic Purchases of Services	35,169,676.72	24,475,204.93	59,644,881.65
Others	151,064.60	43,172.19	194,236.79
Total Input Tax	₱45,473,221.53	₱34,686,980.54	₱71,687,624.90
Less: Input Tax on Purchases of Capital Goods Exceeding ₱1 Million Deferred for Succeeding Period	8,472,577.17	8,382,074.40	8,382,074.40
Total Allowable Input VAT	**₱37,000,644.36**	**₱26,304,906.14**	**₱63,305,550.50**
Less: Output VAT	**14,048,636.08**	**8,185,754.25**	**22,234,390.33**
Total Input VAT Applied for Refund	**₱22,952,008.28**	**₱18,119,151.89**	**₱41,071,160.17**

As stated in the ICPA Report, petitioner's input VAT claim in the amount of ₱7,512,723.65 must be disallowed for not being properly substantiated by VAT zero-rated ORs as prescribed under Sections 110(A)[121] and 113(A) and (B)[122] of the NIRC of 1997, as amended, in

[121] **SEC. 110.** *Tax Credits.* —
(A) *Creditable input Tax.* —
(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
(a) Purchase or importation of goods:
(i) For sale; or
(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
(iii) For use as supplies in the course of business; or
(iv) For use as materials supplied in the sale of service; or
(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.
(b) Purchase of services on which a value-added tax has actually been paid.

(2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:
(a) To the purchaser upon consummation of sale and on importation of goods or properties; and
(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000): *Provided, however*, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, finally*, That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

(3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows:

(a) Total input tax which can be directly attributed to transactions subject to value-added tax; and

(b) A ratable portion of any input tax which cannot be directly attributed to either activity.

The term 'input tax' means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.

The term 'output tax' means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code.

[122] **SEC. 113.** *Invoicing and Accounting Requirements for VAT-Registered Persons.* -

(A) *Invoicing Requirements.* - A VAT-registered person shall issue:
(1) A VAT invoice for every sale, barter or exchange of goods or properties; and
(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* - The following information shall be indicated in the VAT invoice or VAT official receipt:
(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax. *Provided, That*:

(a) The amount of the tax shall be known as a separate item in the invoice or receipt;
(b) If the sale is exempt from value-added tax, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;
(c) If the sale is subject to zero percent (0%) value-added tax, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt.
(d) If the sale involved goods, properties or services some of which are subject to and some of which are VAT zero-rated or Vat exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be known on the invoice or receipt: *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and
(4) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.
...

relation to Sections 4.110-2[123], 4.110-3[124], 4.110-8[125] and 4.113-1[126] of RR No. 16-2005[127], as amended. The ICPA's findings[128] are as follows:

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123 **SEC. 4.110-2.** *Persons Who Can Avail of the Input Tax Credit.* - The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:
(a) To the importer upon payment of VAT prior to the release of goods from customs custody;
(b) To the purchaser of the domestic goods or properties upon consummation of the sale; or
(c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee.

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

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

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

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed One million pesos (P1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition; Provided, however, that the total amount of input taxes (input tax on depreciable capital goods plus other allowable input taxes) allowed to be claimed against the output tax in the quarterly VAT Returns shall be subject to the limitation prescribed under Sec. 4.110-7 of these Regulations.

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

...

125 **SEC. 4.110-8.** *Substantiation of Input Tax Credits.* -
(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:
(1) For the importation of goods - import entry or other equivalent document showing actual payment of VAT on the imported goods.
(2) For the domestic purchase of goods and properties – invoice showing the information required under Secs. 113 and 237 of the Tax Code.
(3) For the purchase of real property – public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.
(4) For the purchase of services – official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

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

126 **SEC. 4.113-1.** *Invoicing Requirements.* -

Nature	3rd Quarter of FY 2016	4th Quarter of FY 2016	Exhibit No.
Purchases of goods			
Input VAT on domestic purchases of goods other than capital goods supported by original copies of VAT invoices which are dated outside the period of claim	₱36,941.81	₱184,571.57	"P-20.7"
Input VAT on domestic purchases of goods other than capital goods supported by original copies of VAT invoices with incorrect and/or insufficient information	17,164.29	3,990.00	"P-20.8"
Input VAT on domestic purchases of goods other than capital goods supported by documents other than original copies of VAT invoices (e.g., collection receipt, photocopy of sales invoice, etc.)	22,339.29	2,851.20	"P-20.9"
Input VAT on domestic purchases of goods other than capital goods which were classified as purchases of services but supported by original copies VAT invoices dated outside the period of claim	1,325,805.46	246,151.94	"P-20.10"
Input VAT on domestic purchases of goods other	1,622.86	702.04	"P-20.11"

(A) A VAT-registered person shall issue: -
(1) A VAT invoice for every sale, barter or exchange of goods or properties; and
(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or official receipts. Said documents shall be considered as a "VAT Invoice" or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice /official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) Information contained in VAT invoice or VAT official receipt. – The following information shall be indicated in VAT invoice or VAT official receipt:
(1) A statement that the seller is a VAT-registered person, followed by his TIN;
(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:
(a) The amount of tax shall be shown as a separate item in the invoice or receipt;
(b) If the sale is exempt from VAT, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;
(c) If the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;
(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.
(3) In the case of sales in the amount of one thousand pesos (P1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section.

[127] Supra at note 25.

[128] ICPA Report dated 01 March 2019, Exhibit "P-21", supra at note 41, pp. 14-15.

Nature	3rd Quarter of FY 2016	4th Quarter of FY 2016	Exhibit No.
than capital goods which were classified as purchases of services but supported by original copies of VAT invoices which are not valid for claiming input taxes			
Input VAT on domestic purchases of goods other than capital goods which were classified as purchases of services but supported by original copies of VAT invoices where alterations are not countersigned	-	39.30	"P-20.12"
Input VAT on domestic purchases of goods other than capital goods which were classified as purchases of services but supported by original copies of VAT invoices with incorrect and/or insufficient information	93.59	141.81	"P-20.13"
Input VAT on domestic purchases of goods other than capital goods without supporting documents	122,748.18	1,499.64	Annex 28 of "P-21"
Subtotal	*₱1,526,715.48*	*₱439,947.50*	
Amortization of capital goods			
Amortization of input tax on purchases of capital goods exceeding Php 1,000,000 supported by original copies of VAT invoices under incorrect name and TIN	₱7,440.00	₱7,440.00	"P-20.14"
Amortization of input tax on purchases of capital goods exceeding Php1,000,000 supported by original copies of documents which are not valid for claiming input taxes	87,463.80	95,540.39	"P-20.15"
Amortization of input tax on purchases of capital goods exceeding Php1,000,000 not supported by VAT invoices	324,073.50	252,850.84	Annex 31 of "P-21"
Subtotal	*₱418,977.30*	*₱355,831.23*	
Purchases of services			
Input VAT on domestic purchases of services supported by original copies of VAT ORs which are dated outside the period of claim	₱-	₱1,040,504.88	"P-20"
Input VAT on domestic purchases of services supported by original copies of VAT ORs where alterations are not countersigned	369,048.15	276.37	"P-20.1"
Input VAT on domestic purchases of services supported by original copies of VAT ORs with incorrect and/or insufficient information	384,833.54	271,133.82	"P-20.2"
Input VAT on domestic purchases of services supported by documents other than original copies of VAT ORs (e.g., statement of account, collection receipt, etc.)	643,743.58	1,998,414.32	"P-20.3"
Disallowed portion - Input VAT on domestic purchases of services supported by original copies of VAT ORs where amount of input tax claimed is greater than amount of input tax per OR	4,319.75	-	"P-19.1"
Input VAT on domestic purchases of services supported by original copies of VAT ORs with faded text printed on thermal paper	2,331.28	83.04	"P-20.4"
Input VAT on domestic purchases of services which were classified as purchases of goods other than	1,672.89	532.56	"P-20.5"

Nature	3rd Quarter of FY 2016	4th Quarter of FY 2016	Exhibit No.
capital goods but supported by original copies of VAT ORs which are dated outside the period of claim			
Input VAT on domestic purchases of services which were classified as purchases of goods other than capital goods but supported by original copies of VAT ORs where alterations are not countersigned	1,680.00	-	"P-20.6"
Input VAT on domestic purchases of services without supporting documents	38,248.81	14,429.13	Annex 20 of "P-21"
Subtotal	*₱1,445,878.00*	*₱3,325,374.12*	
Total	**₱3,391,570.78**	**₱4,121,152.85**	

Thus, out of petitioner's claimed input VAT of ₱63,305,550.50 for the 3rd and 4th quarters of FY 2016, only the amount of ₱55,792,826.85 represents the substantiated input VAT, computed as follows:

Claimed Input VAT	₱63,305,550.50
Less: Disallowances *per* ICPA Report	7,512,723.65
Substantiated/Valid Input VAT	**₱55,792,826.85**

Consequently, only the substantiated input VAT of ₱33,558,436.52 can be attributed to the total zero-rated sales in the amount of ₱1,503,056,166.96, after deducting the output VAT of ₱22,234,390.33, and only the excess and unutilized input VAT of ₱5,349,214.78 is attributable to the valid zero-rated sales of ₱239,660,171.01, as determined below:

	3rd and 4th Quarters FY 2016
Total Zero-Rated Sales [A] Valid Zero-Rated Sales [B]	₱1,503,056,166.96 239,660,171.01
Percentage of Valid Zero-Rated Sales [C=B/A]	15.94%
Substantiated/Valid Input VAT [D] Less: Output VAT [E]	55,792,826.85 22,234,390.33
Substantiated/Valid Input VAT attributable to Zero-Rated Sales [F=D-E]	33,558,436.52
Excess and Unutilized Input VAT attributable to Valid Zero-Rated Sales [F x C]	**₱5,349,214.78**

Furthermore, the claimed input VAT of ₱41,071,160.17 was deducted as "VAT Refund/TCC Claimed" in petitioner's VAT returns as follows:

VAT Return	Amount
Amended 3rd Quarterly VAT Return[129]	₱22,952,008.28
Amended 4th Quarterly VAT Return[130]	18,119,151.89
Total	**₱41,071,160.17**

In sum, petitioner has sufficiently proven its entitlement to the refund or issuance of a TCC in the reduced amount of <u>₱5,349,214.78</u>, representing the excess and unutilized input VAT attributable to its zero-rated sales for the 3rd and 4th quarters of FY 2016 ended 30 June 2016.

A COUNTERCLAIM IN A VALUE-ADDED TAX (VAT) REFUND CASE VIOLATES PETITIONER'S RIGHT TO DUE PROCESS.

Respondent asservates that the instant claim for refund must be denied following the BIR's examination[131] that petitioner's output VAT liability exceeds the amount of the claim mainly due to the following adjustments: (1) imposition of final withholding VAT on petitioner's service fees to foreign affiliates; and, (2) attributing those export sales not supported with certificates of inward remittance as exempt sales. He cited as basis for the said argument the case of *Air Canada v. Commissioner of Internal Revenue*[132] (**Air Canada**), which, in turn, cited the earlier case of *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue* (**SMI-ED Philippines**).[133]

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129 Exhibit "P-8.2", FOE Folder 1.

130 Exhibit "P-8.7", id.

131

Amount Recommended per VCAD Verification	₱20,102,953.87
Disallowances/Adjustments per TARD Review	
Adjustment on input tax	8,138,994.54
Final withholding VAT on service fees	(21,138,672.14)
Additional input tax attributable to exempt sales	(21,472,662.26)
Adjustment on input VAT used by VCAD	0.10
Total	(₱34,472,339.76)
Excess deduction over the amount of claim	**(₱14,369,385.89)**

132 776 Phil. 119 (2016).

133 G.R. No. 175410, 12 November 2014.

We disagree.

We submit that in *SMI-ED Philippines*, the Supreme Court ruled categorically that in an action for refund of taxes allegedly erroneously paid, this Court may determine whether there are taxes that should have been paid in lieu of the taxes paid and that determining the proper category of tax that should have been paid is not an assessment but merely incidental to determining whether there should be a refund. However, a careful reading of the said decision reveals that it is inapplicable to the instant case. The same holds true as regards *Air Canada* which merely cited *SMI-ED Philippines*. The relevant portions of *SMI-ED Philippines* are quoted below:

> ...
>
> Taxes are generally self-assessed. They are initially computed and voluntarily paid by the taxpayer. The government does not have to demand it. If the tax payments are correct, the BIR need not make an assessment.
>
> The self-assessing and voluntarily paying taxpayer, however, may later find that he or she has erroneously paid taxes. Erroneously paid taxes may come in the form of amounts that should not have been paid. Thus, a taxpayer may find that he or she has paid more than the amount that should have been paid under the law. **<u>Erroneously paid taxes</u> may also come in the form of tax payments for the wrong category of tax. Thus, a taxpayer may find that he or she has paid a certain kind of tax that he or she is not subject to.**
>
> **In these instances, the taxpayer may ask for a refund. If the BIR fails to act on the request for refund, the taxpayer may bring the matter to the Court of Tax Appeals.**
>
> ...
>
> Petitioner argued that the Court of Tax Appeals had no jurisdiction to subject it to 6% capital gains tax or other taxes at the first instance. The Court of Tax Appeals has no power to make an assessment.
>
> **As earlier established, the Court of Tax Appeals has no assessment powers. In stating that petitioner's transactions are subject to capital gains tax, however, the Court of Tax Appeals was not making an assessment. It was merely determining the proper category of tax that petitioner should have paid, in view**

of its claim that it erroneously imposed upon itself and paid the 5% final tax imposed upon PEZA-registered enterprises.

The determination of the proper category of tax that petitioner should have paid is an incidental matter necessary for the resolution of the principal issue, which is whether petitioner was entitled to a refund.

The issue of petitioner's claim for tax refund is intertwined with the issue of the proper taxes that are due from petitioner. A claim for tax refund carries the assumption that the tax returns filed were correct. If the tax return filed was not proper, the correctness of the amount paid and, therefore, the claim for refund become questionable. In that case, the court must determine if a taxpayer claiming refund of erroneously paid taxes is more properly liable for taxes other than that paid.

In *South African Airways v. Commissioner of Internal Revenue*, South African Airways claimed for refund of its **erroneously paid 2 1/2% taxes** on its gross Philippine billings. This court did not immediately grant South African's claim for refund. This is because although this court found that South African Airways was not subject to the 2 1/2% tax on its gross Philippine billings, this court also found that it was subject to 32% tax on its taxable income.

In this case, petitioner's claim that it **erroneously paid the 5% final tax** is an admission that the quarterly tax return it filed in 2000 was improper. Hence, to determine if petitioner was entitled to the refund being claimed, the Court of Tax Appeals has the duty to determine if petitioner was indeed not liable for the 5% final tax and, instead, liable for taxes other than the 5% final tax. As in *South African Airways*, petitioner's request for refund can neither be granted nor denied outright without such determination.

If the taxpayer is found liable for taxes other than the erroneously paid 5% final tax, the amount of the taxpayer's liability should be computed and deducted from the refundable amount.

Any liability in excess of the refundable amount, however, may not be collected in a case involving solely the issue of the taxpayer's entitlement to refund. **The question of tax deficiency is distinct and unrelated to the question of petitioner's entitlement to refund. Tax deficiencies should be subject to assessment procedures and the rules of prescription**. The court cannot be expected to perform the BIR's duties whenever it fails to do so either through neglect or oversight. Neither can court

> processes be used as a tool to circumvent laws protecting the rights of taxpayers.[134]
>
> ...

As can gleaned from the above discussion, this Court is required to determine the proper category of tax to be paid by the taxpayer in refund cases only when **such claims for refund are grounded on the theory of erroneous tax payments for the wrong category of tax, *i.e.*, that the taxpayer has paid a certain kind of tax that he or she is not subject to**. In such instances, the issue of claim for tax refund is intertwined with the issue of proper taxes that are due from the taxpayer.

In contrast, the claim for refund subject of the instant case is not based on the theory of erroneous payment but is filed to recover excess and unutilized input VAT under Section 112(A) and (C) of the NIRC of 1997, as amended. Excess input tax or creditable input tax is not an erroneously, excessively, or illegally collected tax.

Concomitantly, under RMC No. 17-18[135] governing the processing of VAT refund claims (following the amendments introduced by the TRAIN Law), if there is a finding of VAT liability on the part of the taxpayer-claimant; the proper recourse would be to subject said taxpayer-claimant to an audit/investigation. The same will start with the issuance of a Letter of Authority (**LOA**) and thereafter, the issuance of an assessment notice, to wit:

> ...
>
> 6. **Cases where the results would be an assessment on VAT instead of a refund/TCC** should be referred to the VATAS, for Regional Offices where the VATAS is already in place, Revenue District Office, Large Taxpayers Audit Division or Large Taxpayers VAT Audit Unit (LTVAU), as the case may be. A copy of the Revenue Officer's memorandum report and documents relevant to the findings shall be furnished to the aforesaid offices. The concerned Revenue District Officer/Chief of LT Audit Division/Head of VATAS/Head of LTVAU shall evaluate the report/findings referred to them and shall **request for the**

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134 Emphasis and underscoring supplied.
135 Supra at note 88.

> **issuance of an electronic Letter of Authority (eLA), if warranted.**
>
> **However, if there is already an existing eLA covering the same period, the concerned office shall consolidate the findings referred to them with their findings and recommend the issuance of a Notice for Informal Conference/Preliminary Assessment Notice (PAN)/Final Assessment Notice (FAN) for the collection of the deficiency tax.** Subsequently, a feedback on the action taken shall be sent to the VAT claim processing office within fifteen (15) days from receipt of the findings.[136]

...

This aforesaid administrative issuance is in consonance with Section 228 of the NIRC of 1997, as amended, which requires that a written assessment be issued informing a taxpayer of the factual and legal bases for his deficiency tax liabilities prior to tax collection, to wit:

> ...
> SEC. 228. *Protesting of Assessment.* — **When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings...**
> ...
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents

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136 Emphasis supplied.

shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

...

Respondent's act of offsetting the alleged VAT deficiency against petitioner's claim deprives petitioner of its rights and remedies available before the administrative proceedings, which include among others: (1) the right to have an LOA issued prior to an audit/investigation, the right to receive a preliminary assessment notice (**PAN**); (2) the right to file a reply to the said PAN; (3) the right to a final assessment notice (**FAN**) (which provides a final demand to pay deficiency taxes due, and the factual and legal bases for an assessment); and, (4) the right to protest the said FAN.

In effect, by setting up the subject counterclaim in a VAT refund case, as elucidated in *SMI-ED Philippines*, respondent is collecting a tax liability without a prior assessment. This manner of tax collection deprives petitioner of its due process rights guaranteed under the Constitution, the NIRC of 1997, as amended, and relevant revenue issuances.

WHEREFORE, premises considered, the Petition for Review filed on 27 July 2018 by petitioner Procter & Gamble International Operations SA - ROHQ is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **FIVE MILLION THREE HUNDRED FORTY NINE THOUSAND TWO HUNDRED FOURTEEN PESOS and SEVENTY- EIGHT CENTAVOS** (₱5,349,214.78), representing the excess and unutilized input value-added tax (VAT) attributable to its zero-rated sales for the 3rd and 4th quarters of the fiscal year 2016.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

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

LANEE S. CUI-DAVID
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COURT OF TAX APPEALS
OFFICE OF THE PRESIDING JUSTICE
RECEIVED
Signature :
Date : JAN 04 2022
Time : 1:35

04 January 2022

HON. ROMAN G. DEL ROSARIO
Presiding Justice
Court of Tax Appeals

Re: Request for extension of time to resolve **CTA Case No. 9897**, entitled ***Procter and Gamble International Operations SA – ROHQ v. Commissioner of Internal Revenue***

To the Honorable Presiding Justice:

Greetings!

May I respectfully request an extension of fifteen (15) days upon approval of this request (if such approval is given), to route the draft decision and the case dockets, and after securing the necessary votes, to have the final copy of the Decision signed by the members of the Second Division for promulgation?

Likewise, please accept my sincere apology for making this request. Unfortunately, due to the operational constraints brought about by the pandemic and the Christmas holidays, I am compelled to request such an extension.

Thank you very much.

Respectfully yours,

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

cc: CLERK OF COURT
ATTACH TO DOCKET.
SERVE UPON PARTIES.
(Sec. 1, Rule 14, RRCTA;
Sec. 15, Par. 3, Art. VIII, Constitution)

upon promulgation of Decision

APPROVED/~~DISAPPROVED~~:

ROMAN G. DEL ROSARIO
Presiding Justice

1.4

COURT OF TAX APPEALS
Office of the Clerk of Court
Second Division
RECEIVED
Signature :
Date : 1-5-22
Time : 8:50