REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

BW SHIPPING PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9888

Members:

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

Promulgated:
SEP 11 2021 4:10 p.m.

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DECISION

BACORRO-VILLENA, J.:

Before this Court is a Petition for Review[1] filed by BW Shipping Philippines, Inc. (**petitioner/BSPI**) pursuant to Section 3(a)[2], Rule 8 in

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[1] Filed on 26 July 2018, Division Docket, Volume I, pp. 10-66, 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, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction 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.

relation to Section 3(a)(2)[3], Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It seeks the refund or issuance of a tax credit certificate (**TCC**) of its alleged unutilized input value-added tax (**VAT**) on its domestic purchases of goods and services attributable to zero-rated sales for the taxable year (**TY**) 2016 in the aggregate amount of ₱5,847,484.71.

PARTIES OF THE CASE

Petitioner is a domestic corporation registered with the Securities and Exchange Commission (**SEC**) with Company Registration No. 145414 and principal address at Goodland I.T. Center, 377 Sen. Gil J. Puyat Ave., Makati City.[4] It is also registered with the Bureau of Internal Revenue (**BIR**) as a VAT taxpayer with Taxpayer's Identification No. (**TIN**) 000-160-779-000, as evidenced by BIR Certificate of Registration No. OCN 9RC0000426666.[5]

As stated in its Amended Articles of Incorporation[6], petitioner's primary purpose is as follows:

> ...
> To engage in overseas shipping business for the carriage of passengers, freight, mail, livestock, goods and lawful merchandise of every kind and description, by oceans, seas, canals, rivers, and other

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[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:

...

(2) Inaction by 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, where the National Internal Revenue Code or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code[.]

[4] Exhibit "P-1", Division Docket, Volume III, pp. 908-915.

[5] Exhibit "P-2", id., p. 916.

[6] Supra at note 4, p. 909.

> waterway, between any and all parts of the world by means of vessels and other modes of transportation used in the business of overseas shipping which may either be owned by the Corporation or by other shipping [C]orporation, and for such purpose, to hire, purchase, charter, owe or otherwise acquire and work ships and vessels of any class, to establish and maintain lines or regular services of ships or other vessels between any part of the world, to engage in manning and crewing of vessels, and generally to carry on the business of shipping.
>
> ...

Pursuant to its primary purpose, petitioner renders manpower services to foreign shipping companies that includes, among others, the screening of competent and qualified Filipino seamen for employment on board the vessels of foreign shipping companies and other ancillary services.[7]

Respondent, on the other hand, is the Commissioner of Internal Revenue (**respondent/CIR**), who was duly appointed and is empowered to perform the duties of his office, including the power to grant or deny a refund for creditable input taxes pursuant to Section 112(C) of the National Internal Revenue Code (**NIRC**) of 1997, as amended, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.

FACTS OF THE CASE

Petitioner filed its Original and Amended Quarterly VAT Returns (BIR Form No. 2550-Q) for TY 2016 on the following dates:

Return	Date filed
Original Quarterly VAT Return for the 1st Quarter[8]	22 April 2016
Amended Quarterly VAT Return for the 1st Quarter[9]	18 November 2016
Original Quarterly VAT Return for the 2nd Quarter[10]	20 July 2016
Amended Quarterly VAT Return for the 2nd Quarter[11]	22 November 2016
Original Quarterly VAT Return for the 3rd Quarter[12]	19 October 2016

7 Id.
8 Exhibit "P-33", Division Docket, Volume III, pp. 1172-1173.
9 Exhibit "P-34", id., pp. 1174-1175.
10 Exhibit "P-39", id., pp. 1184-1185.
11 Exhibit "P-40", id., pp. 1186-1187.

Return	Date filed
Amended Quarterly VAT Return for the 3rd Quarter[13]	22 November 2016
Original Quarterly VAT Return for the 4th Quarter[14]	25 January 2017
Amended Quarterly VAT Return for the 4th Quarter[15]	16 June 2017

On 28 March 2018, petitioner filed with the BIR its Letter-Request for Refund dated 15 March 2018[16] and its Application for Tax Credits/Refunds (BIR Form No. 1914)[17] for TY 2016, in the aggregate amount of ₱5,847,484.71, along with all supporting documents.

Under Section 112(C) of the NIRC of 1997, as amended, and further amended by Republic Act (**RA**) No. 10963[18] of the Tax Reform for Acceleration and Inclusion (**TRAIN Law**), petitioner alleges that respondent has ninety (90) days from the filing of the administrative claim last 28 March 2018, or until 26 June 2018, within which to decide whether to grant a refund. The said 90-day period lapsed without any action on the part of respondent.

On 26 July 2018 and within thirty (30) days from the lapse of the aforesaid 90-day period for respondent to act on its administrative claim, petitioner filed the instant Petition for Review before the Court in Division to appeal the deemed denial due to inaction on its administrative claim.[19] The same was raffled to the Second Division, docketed as CTA Case No. 9888.[20]

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12 Exhibit "P-45", id., pp. 1196-1197.
13 Exhibit "P-46", id., pp. 1198-1199.
14 Exhibit "P-49", id., pp. 1204-1205.
15 Exhibit "P-50", id., pp. 1206-1207.
16 Exhibit "P-51", id., p. 1208.
17 Exhibit "P-52", id., p. 1209.
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, 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 Supra at note 1.
20 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.

After being granted an extension by the Second Division[21], respondent filed his Answer[22] on 20 September 2018, interposing special and affirmative defenses, to wit:

1. petitioner's alleged claim for refund or issuance of a TCC is still subject to administrative investigation/examination by the BIR;
2. taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;
3. petitioner failed to present proof that the recipient of the services it allegedly rendered is a foreign enterprise doing business outside the Philippines;
4. petitioner's claim for refund or issuance of a TCC, if any, in the aggregate amount of ₱5,847,484.71, representing alleged unutilized input VAT for TY 2016, was not substantiated by proper documents, such as sales invoices and official receipts (**ORs**), pursuant to Revenue Regulations (**RR**) No. 7-95 in relation to Sections 113 and 237 of the NIRC of 1997, as amended;
5. in an action for refund/credit, the burden of proof is on petitioner to establish its right to claim refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit;
6. it is incumbent upon petitioner to show that it has complied with the provisions under Section 204(c) in relation to Section 229 of the NIRC of 1997, as amended by the TRAIN Law and its failure to prove the same is fatal to its claim for refund; and,
7. claims for refund are construed strictly against petitioner since the same partakes the nature of exemption from taxation.

On 05 October 2018, the Court issued a Notice of Pre-Trial[23] for a Pre-Trial Conference on 22 November 2018. Accordingly, petitioner filed its Pre-Trial Brief[24] on 29 November 2018, while respondent filed *via* registered mail his Pre-Trial Brief[25] on 26 November 2018.

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21 See Order dated 10 September 2018, Division Docket, Volume I, p. 72.
22 Id., pp. 73-76.
23 Id., pp. 78-79.
24 Id., pp. 89-102.
25 Id., pp. 533-535.

On 31 January 2019, the Pre-Trial Conference proceeded where the Second Division granted both parties fifteen (15) days within which to file their Joint Stipulation of Facts and Issues (**JSFI**).[26] On 15 February 2019, the parties submitted their JSFI.[27]

On 15 February 2019, petitioner filed a "Motion for Extension of Time to File Motion to Commission Independent Certified Public Accountant."[28] The Court granted the same and gave petitioner a non-extendible period of 30 days from 15 February 2019, or until 17 March 2019, within which to file its Motion to Commission an Independent Certified Public Accountant (**ICPA**).[29]

On 06 March 2019, the Second Division issued a Pre-Trial Order[30], approving the parties' JSFI and terminating the pre-trial.

On 15 March 2019, petitioner filed a "Motion for Extension of Time to File Motion to Avail of the Provisions of Rule 13 of the Revised Rules of the Court of Tax Appeals (With Motion to Cancel Commissioning set on March 25, 2019)."[31]

During the hearing previously set on 25 March 2019, upon motion of petitioner's counsel (on the ground that petitioner has not yet finalized the engagement of the ICPA and without objection from respondent's counsel), the Court reset the continuation of petitioner's evidence to 24 April 2019.[32] However, on 16 April 2019, the Court cancelled the hearing previously set on 24 April 2019 and reset the same to 22 May 2019.[33]

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26 See Order dated 31 January 2019, id., Volume II, p. 540.
Prior to the pre-trial conference, on 18 October 2018, petitioner filed *via* registered mail an Urgent Motion to Reset Pre-Trial Conference, citing a conflict of schedule. In the Resolution dated 26 October 2018, the Court granted the same and reset the Pre-Trial Conference to 06 December 2018. Thereafter, the Pre-Trial Conference was again reset to 31 January 2019 due to another conflict of schedule, particularly the courtesy call of the justices of the Court of Tax Appeals (**CTA**) to then Chief Justice Lucas P. Bersamin.

27 Id., pp. 550-555.

28 Id., pp. 546-549.

29 See Order dated 20 February 2019, id., p. 556.

30 Id., pp. 558-568.

31 Id., pp. 571-575.

32 See Order dated 25 March 2019, id., p. 578.

33 See Notice of Resetting dated 16 April 2019, id., p. 614.

On 15 April 2019, petitioner filed another "Motion to Avail the Provisions of Rule 13 of the Revised Rules of the Court of Tax Appeals"[34], asking the Court to commission Raymund J. Manaig (**Manaig**) as the ICPA. In the Order dated 22 May 2019[35], the Second Division appointed Manaig as the 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 27 May 2019 and 29 May 2019, for the comparison of petitioner's exhibits.[36]

On 21 June 2019, petitioner filed its "Compliance (with Attached ICPA Report)"[37], submitting the ICPA Report dated 19 June 2019[38] with attached annexes and schedules, as well as the flash drive containing the scanned copies of the documents examined by the ICPA. Subsequently, on 12 July 2019, petitioner filed a "Motion to Admit Supporting Documents for Independent Certified Public Accountant Report".[39] In the Order dated 17 July 2019[40], the Court granted the same and ordered petitioner's counsel to furnish respondent's counsel with hard copies of its supporting documents.

In the trial that ensued, petitioner presented four (4) witnesses, namely: (1) Herminia Dela Pena[41] (**Dela Pena**), its General Accountant; (2) Carmencita Escalante[42] (**Escalante**), its Manager of Accounts; (3) Christin Faith Palomar[43] (**Palomar**), its Assistant Controller; and, (4) Manaig[44], the Court-commissioned ICPA.

On 24 October 2019, after completing the presentation of its testimonial evidence, petitioner filed its Formal Offer of Evidence[45] (**FOE**) consisting of Exhibits "P-1" to "P-172", inclusive of sub-markings.

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[34] Id., pp. 595-598.
[35] Id., p. 617.
[36] Id.
[37] Id., pp. 626-629.
[38] Exhibit "P-100", id., pp. 630-729.
[39] Id., pp. 763-822, with annexes.
[40] Id., p. 824.
[41] See Judicial Affidavit of Herminia Dela Pena, Exhibit "P-90", id., Volume I, pp. 108-215, with attached exhibits.
[42] See Judicial Affidavit of Carmencita Escalante, Exhibit "P-91", id., pp. 221-532, with attached exhibits.
[43] See Judicial Affidavit of Christin Faith Palomar, Exhibit "P-94", id., Volume II, pp. 868-874, with attached exhibit.
[44] See Judicial Affidavit and Supplemental Judicial Affidavit of Raymund J. Manaig, Exhibits "P-92" and "P-95", id., pp. 736-762 and 854-862, respectively.
[45] Id., Volume III, pp. 882-907.

Respondent, on the other hand, failed to file his comment on petitioner's FOE despite notice.[46]

In the Resolution dated 02 December 2019[47], the Second Division admitted petitioner's exhibits *except* for: (1) Exhibit "P-118"[48], for failure of the document formally offered and identified to correspond with the document marked; (2) Exhibits "P-153-EB", "P-153-OJ" to "P-153-OK", "P-153-SW", "P-153-XG", "P-153-ZS" and "P-171-Y"[49], for not being found in the records or no scanned copies were found in the USB submitted; and, (3) Exhibits "P-153-JR", "P-153-KA" to "P-153-KB", "P-153-RF" and "P-154-BV" to "P-154-BW"[50], for being blurred, unreadable, or not properly scanned.

On 17 December 2019, petitioner filed a "Motion for Reconsideration"[51] (**MR on the FOE Resolution**), asking the Second Division to admit the previously denied exhibits (*i.e.*, Exhibits "P-118", "P-153-EB", "P-153-OJ" to "P-153-OK", "P-153-SW", "P-153-XG", "P-153-ZS", "P-171-Y", "P-153-JR", "P-153-KA" to "P-153-KB", "P-153-RF" and "P-154-BV" to "P-154-BW") as these were already examined, identified, scanned and submitted by ICPA Manaig. Likewise, petitioner mentioned that, as regards Exhibit "P-118"[52], the discrepancy was due to a mere clerical error in the Judicial Affidavit; particularly, in the description of the document identified by the affiant. As for Exhibits

46 See Records Verification dated 14 November 2019, id., p. 1268.

47 Id., pp. 1270-1272.

48 BW Shipping and BW Maritime Pte. Ltd. Consularized Crew Agency Agreement.

49

Exhibit No.	Description
"P-153-EB"	Input VAT on domestic purchases of services with proper supporting documents
"P-153-OJ" to "P-153-OK"	
"P-153-SW"	
"P-153-XG"	
"P-171-Y"	Amortized Input VAT with proper supporting documents

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Exhibit No.	Description
"P-153-JR"	Input VAT on domestic purchases of services with proper supporting documents
"P-153-KA" to "P-153-KB"	
"P-153-RF"	
"P-154-BV" to "P-154-BW"	Input VAT on domestic purchases of goods with proper supporting documents

51 Division Docket, Volume III, pp. 1276-1293.

52 Supra at note 48.

"P-153-EB", "P-153-XG", "P-153-ZS" and "P-171-Y"[53], copies thereof were attached to its MR on the FOE Resolution. Lastly, it implored the Court's benevolence and understanding with respect to Exhibits "P-153-JR", "P-153-KA" to "P-153-KB", "P-153-RF" and "P-154-BV" to "P-154-BW"[54] and resubmitted clearer copies thereof.

On 06 January 2020, the Second Division ordered respondent to comment on petitioner's MR on the FOE Resolution within ten (10) days from notice thereof.[55] Respondent, however, failed to file a comment thereto despite notice.[56]

In the Resolution dated 08 June 2020[57], the Second Division granted petitioner's MR on the FOE Resolution, that is, it admitted Exhibits "P-118", "P-153-EB", "P-153-XG", "P-153-ZS", "P-171-Y", "P-153-JR", "P-153-KA" to "P-153-KB", "P-153-RF" and "P-154-BV" to "P-154-BW". Considering respondent's manifestation during the 02 December 2019 Hearing[58] that there is yet no report of investigation from the Revenue Officer (**RO**) and that he will no longer present evidence and upon motion of the parties, the Court reiterated in the same Resolution that the parties are granted a period of 30 days within which to file their respective memoranda.

Thereafter, on 16 July 2020, petitioner filed its Memorandum[59] *via* LBC (a private courier). Respondent, on the other hand, failed to file his memorandum *per* Records Verification dated 01 September 2020.[60] Accordingly, on 11 September 2020, the Second Division considered the case submitted for decision.[61]

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53 Supra at note 49.
54 Supra at note 50.
55 See Resolution dated 06 January 2020, Division Docket, Volume III, p. 1295.
56 See Records Verification dated 27 January 2020, id., p. 1296.
57 Id., pp. 1298-1301.
58 See Minutes of the Hearing dated 02 December 2019, id., p. 1273.
59 Id., pp. 1302-1331.
60 Id., p. 1332.
61 See Resolution dated 11 September 2020, id., p. 1333.

ISSUE

As the parties so stipulated[62], the main issue for this Court's determination is —

> WHETHER PETITIONER BW SHIPPING PHILIPPINES, INC. IS ENTITLED TO ITS CLAIM FOR REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE (TCC) IN THE TOTAL AMOUNT OF ₱5,847,484.71, REPRESENTING UNUTILIZED INPUT TAXES ATTRIBUTABLE TO ZERO-RATED SALES OR RECEIPTS FOR THE TAXABLE YEAR (TY) 2016.

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 on Section 110, correlated with Section 112 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.**
> ...
>
> **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**

62 Issue, Joint Stipulation of Facts and Issues (JSFI), id., Volume II, p. 550.

> **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.[63]
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> ...

Pursuant to the above-quoted provisions and as laid down by the Supreme Court in a number of cases[64], the requisites for claiming

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

[64] *CIR v. Toledo Power Company*, G.R. No. 195175, 10 August 2015; *Luzon Hydro Corporation v. CIR*, G.R. No. 188260, 13 November 2013; *Southern Philippines Power Corporation v. CIR*, G.R. No. 179632, 19 October 2011; *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. CIR*, G.R. No. 172378, 17 January 2011; *AT&T Communications Services Philippines, Inc. v. CIR*, G.R. No. 182364, 03 August 2010; *San Roque Power Corporation v. CIR*, G.R. No. 180345, 25 November 2009; *Intel Technology Philippines, Inc. v. CIR*, G.R. No. 166732, 27 April 2007.

excess and unutilized input VAT, except transitional input VAT, are as follows:

> ...
>
> 1. the taxpayer-claimant is VAT-registered;
> 2. the taxpayer-claimant is engaged in zero-rated or effectively zero-rated sales;
> 3. there are creditable input taxes due or paid attributable to zero-rated or effectively zero-rated sales;
> 4. the input taxes have not been applied against output taxes during and in the succeeding quarters; and,
> 5. the application and the claim for refund have been filed within the prescribed period both in the administrative and judicial levels.
>
> ...

Considering that claims filed beyond the reglementary period will not prosper and that compliance with the prescriptive period in filing claims for refund is determinative of this Court's jurisdiction to take cognizance of the instant petition, the Court shall first determine petitioner's compliance with the last requisite, which is the timeliness of the filing of the present claim.

I. PETITIONER'S ADMINISTRATIVE AND JUDICIAL CLAIMS WERE TIMELY FILED.

In accordance with Section 112(A)[65] of the NIRC of 1997, as amended, the administrative claim for the issuance of a TCC or refund of 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 present claim covers the 1st to 4th quarters of TY 2016. Thus, petitioner's last day for the filing of its administrative claim for the four (4) taxable quarters of TY 2016 fell on the following dates:

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65 Supra at p. 10.

Period Covered	Last day of the two (2)-year period
January to March 2016 (1st Quarter)	31 March 2018
April to June 2016 (2nd Quarter)	30 June 2018
July to September 2016 (3rd Quarter)	30 September 2018
October to December 2016 (4th Quarter)	31 December 2018

Petitioner filed its Letter-Request for Refund[66] and Application for Tax Credits or Refunds (BIR Form No. 1914)[67], together with the supporting documents, in the total amount of ₱5,847,484.71 on **28 March 2018**. Clearly, petitioner's administrative claim was seasonably filed within the two-year prescriptive period.

As to the timeliness of petitioner's judicial claim, pursuant to the TRAIN Law amendment to Section 112(C) of the NIRC of 1997, as amended, respondent had 90 days from the date of submission of the ORs or invoices and other documents in support of the administrative claim, or until 26 June 2018, to decide on petitioner's claim. However, respondent failed to act on petitioner's claim within the said 90-day period.

Section 7(a)(2) of RA 1125[68], as amended by RA 9282[69] provides:

> ...
> SEC. 7. *Jurisdiction*. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> ...
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue,

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66 Supra at note 16.
67 Supra at note 17.
68 AN ACT CREATING THE COURT OF TAX APPEALS.
69 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> **where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial.**[70]
>
> ...

Furthermore, Section 11 of RA 1125, as amended by RA 9282, states:

> ...
>
> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — **Any party adversely affected by** a decision, ruling or **inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days** after the receipt of such decision or ruling or **after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.**[71]
>
> ...

Based on the foregoing and considering the prevailing rule that inaction on the part of the CIR is deemed a denial,[72] petitioner had 30 days from 26 June 2018, or until **26 July 2018**, to appeal such inaction to the Court. Evidently, petitioner's judicial claim for refund was timely filed on 26 July 2018.

We shall now proceed to determine petitioner's compliance with the other requisites.

II. PETITIONER IS A VALUE-ADDED TAX (VAT)-REGISTERED ENTITY.

Petitioner complied with the *first* requisite as it is undisputed that it is duly registered with the BIR as a VAT taxpayer with TIN 000-160-779-000, as evidenced by its Certificate of Registration No. OCN 9RC0000426666.[73]

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70 Emphasis supplied.

71 Emphasis supplied.

72 *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, 12 February 2013.

73 Supra at note 5.

III. PETITIONER IS ENGAGED IN ZERO-RATED OR EFFECTIVELY ZERO-RATED SALES, WHICH HAVE BEEN DULY ACCOUNTED FOR IN ACCORDANCE WITH BANGKO SENTRAL NG PILIPINAS (BSP) RULES AND REGULATIONS DURING THE TAXABLE YEAR (TY) 2016.

Petitioner claims that its sale of services to foreign shipping companies located and doing business outside the Philippines 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).**[74]
>
> ...

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

In *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[75] (**Burmeister**), the Supreme Court held that for the supply of services to be treated as VAT zero-rated under the above-mentioned provision, the taxpayer-claimant must prove the following:

1. The services must be other than processing, manufacturing or repacking of goods;
2. The recipient of such services is doing business outside the Philippines; and,
3. The payment for such services must be in acceptable foreign currency accounted for in accordance with the Bangko Sentral ng Pilipinas (**BSP**) rules and regulations.

i. SERVICES MUST BE OTHER THAN PROCESSING, MANUFACTURING OR REPACKING OF GOODS.

As stated in its Amended Articles of Incorporation[76], petitioner is primarily engaged in the overseas shipping business for the carriage of passengers, freight, mail, livestock, goods and lawful merchandise of every kind and description, by oceans, seas, canals, rivers and other waterway, between any and all parts of the world, to hire, purchase, charter, owe or otherwise acquire and work ships and vessels of any class, to establish and maintain lines or regular services of ships or other vessels between any part of the world, to engage in manning and crewing of vessels, and generally to carry on the business of shipping.

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 Section 108(B)(2) of the NIRC of 1997, as amended.

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75 541 Phil. 119 (2007).
76 Supra at note 4.

ii. RECIPIENTS OF SUCH SERVICES ARE DOING BUSINESS OUTSIDE THE PHILIPPINES.

Following *Burmeister*, the Supreme Court, in *Accenture, Inc. v. Commissioner of Internal Revenue*[77] (**Accenture**), emphasized that a taxpayer claiming for a VAT refund or credit under Section 108(B) of the NIRC of 1997, as amended, has the burden to prove not only that the recipient of the service is a foreign corporation, but also that said corporation is doing business outside the Philippines, to wit:

> ...
>
> We rule that the recipient of the service must be doing business outside the Philippines for the transaction to qualify for zero-rating under Section 108(B) of the Tax Code.
>
> ...
>
> The evidence presented by Accenture may have established that its clients are foreign. This fact does not automatically mean, however, that these clients were doing business outside the Philippines. After all, the Tax Code itself has provisions for a foreign corporation engaged in business within the Philippines and vice versa, to wit:
>
> > SEC. 22. *Definitions.* — When used in this Title:
> >
> > ...
> >
> > (H) The term *"resident foreign corporation"* applies to a foreign corporation engaged in trade or business within the Philippines.
> >
> > (I) The term *"nonresident foreign corporation"* applies to a foreign corporation not engaged in trade or business within the Philippines.
>
> Consequently, to come within the purview of Section 108(B)(2), **it is not enough that the recipient of the service be proven to be a foreign corporation; rather, it must be specifically proven to be a nonresident foreign corporation.**
>
> There is no specific criterion as to what constitutes "doing" or "engaging in" or "transacting" business. We ruled thus in

---

77 690 Phil. 679 (2012); Citations omitted, italics in the original text and emphasis supplied.

> *Commissioner of Internal Revenue v. British Overseas Airways Corporation*:
>
> > ... There is no specific criterion as to what constitutes "doing" or "engaging in" or "transacting" business. Each case must be judged in the light of its peculiar environmental circumstances. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization. "**In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character**.
>
> A taxpayer claiming a tax credit or refund has the burden of proof to establish the factual basis of that claim. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.
>
> Accenture failed to discharge this burden. It alleged and presented evidence to prove *only* that its clients were foreign entities. However, as found by both the CTA Division and the CTA *En Banc*, **no evidence was presented by Accenture to prove the fact that the foreign clients to whom petitioner rendered its services were clients doing business outside the Philippines**.
>
> As ruled by the CTA *En Banc*, the Official Receipts, Intercompany Payment Requests, Billing Statements, Memo Invoices-Receivable, Memo Invoices-Payable, and Bank Statements presented by Accenture merely substantiated the existence of sales, receipt of foreign currency payments, and inward remittance of the proceeds of such sales duly accounted for in accordance with BSP rules, all of these were devoid of any evidence that the clients were doing business outside of the Philippines.[78]
>
> ...

In the same vein, the Supreme Court held in *Sitel Philippines Corp. v. Commissioner of Internal Revenue*[79] (**Sitel**) that Certifications issued by the SEC and Agreements between Sitel and its foreign clients only establish that Sitel rendered services to foreign corporations in 2004 and received payments therefor through inward remittances, said

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[78] Emphasis supplied and citations omitted.
[79] 805 Phil. 464 (2017).

documents **failed to specifically prove that such foreign clients were doing business outside the Philippines or have a continuity of commercial dealings outside the Philippines.**

Moreover, the Supreme Court, citing *Accenture* and *Sitel* in *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[80] reiterated the two (2) components fatal to a claim for credit or refund of unutilized input VAT under Section 108(B)(2) of the NIRC of 1997, as amended, to wit:

> ...
>
> 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, in order to be considered as a non-resident foreign corporation (**NRFC**) doing business outside the Philippines, each entity must be supported, **at the very least**, by both the **SEC Certificate of Non-Registration of Corporation/ Partnership** and the **proof of incorporation, association or registration in a foreign country**.

In the instant case, to prove that it rendered services to NRFCs doing business outside the Philippines, petitioner presented the SEC Certificates of Non-Registration of Company, Consularized Certificates of Registration, Consularized Articles of Association, Consularized Memoranda of Association, and Service Agreements, summarized as follows:

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

Registered Name	SEC Certificate of Non-Registration of Company	Certificate of Registration	Screenshot of the Foreign Government's Registry	Articles of Association	Memorandum of Association	Service Agreement
BW Gas Foreign Manning AS	"P-10"[81]	"P-11"[82]	"P-12"[83]	-	-	"P-4"[84]
BW Offshore Global Manning Pte. Ltd.	"P-19"[85]	-	"P-21"[86]	"P-20"[87]	-	"P-7"[88]
BW Maritime Pte. Ltd.	"P-13"[89]	-	"P-15"[90]	-	"P-14"[91]	-
Berge Bulk Maritime Pte. Ltd.	"P-16"[92]	-	"P-18"[93]	"P-17"[94]	"P-17"[95]	"P-6"[96]
BW Fleet Management AS	"P-25"[97]	"P-26"[98]	-	-	-	"P-9"[99]
BW Fleet Management Pte. Ltd.	"P-22"[100]	-	"P-24"[101]	-	"P-23"[102]	"P-8"[103]

In *Columbia Pictures, Inc., et al. v. Court of Appeals, et al.*[104] (**Columbia**), the Supreme Court clarified what constitutes "doing business in the Philippines" on the part of a foreign corporation as follows:

> ...
>
> No general rule or governing principle can be laid down as to what constitutes "doing" or "engaging in" or "transacting" business. Each case must be judged in the light of its own peculiar environmental circumstances. **The true tests, however, seem to be whether the foreign corporation is continuing the body or**

81 Dated 23 November 2016, Division Docket, Volume III, p. 988.
82 Id., pp. 989-991.
83 Id., p. 992.
84 Id., pp. 918-934.
85 Dated 23 November 2016, id., p. 1082.
86 Id., p. 1119.
87 Id., pp. 1083-1118.
88 Id., pp. 964-975.
89 Dated 23 November 2016, id., p. 993.
90 Id., p. 1039.
91 Id., pp. 994-1038.
92 Dated 28 February 2017, id., p. 1040.
93 Id., p. 1081.
94 Id., pp. 1041-1080.
95 Id.
96 Id., pp. 935-949.
97 Dated 23 November 2016, id., p. 1159.
98 Id., pp. 1160-1162.
99 Id., pp. 976-987.
100 Dated 23 November 2016, id., p. 1120.
101 Id., p. 1158.
102 Id., pp. 1121-1157.
103 Id., pp. 964-975.
104 329 Phil. 875 (1996); Citations omitted and emphasis supplied.

> **substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another.**
>
> As a general proposition upon which many authorities agree in principle, subject to such modifications as may be necessary in view of the particular issue or of the terms of the statute involved, it is recognized that a foreign corporation is "doing", "transacting", "engaging in", or carrying on "business in the State **when, and ordinarily only when, it has entered the State by its agent and is there engaged in carrying on and transacting through them some substantial part of its ordinary or customary business**, usually continuous in the sense that it may be distinguished from merely casual, sporadic, or occasional transactions and isolated acts.
>
> The Corporation Code does not itself define or categorize what acts constitute doing or transacting business in the Philippines. Jurisprudence has, however, held that the term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to or in progressive prosecution of the purpose and subject of its organization.
>
> ...

Upon perusal of the said service agreements entered into by petitioner with its customers, services rendered by petitioner are limited to the following purposes: (1) recruitment of Filipino seamen for employment on board such vessels managed by the foreign shipping companies acting as principals; and, (2) providing information technology and purchasing support services for its clients' vessels.

Applying the "true test" in *Columbia*, the service agreements show no indication that petitioner was continuing the body or substance of its clients' shipping activities. Hence, petitioner's foreign clients cannot be considered as doing business in the Philippines.

It also bears noting that the SEC Certificates of Non-Registration of Company of the following foreign clients were issued on 23 November 2016, which is a little over a month short of the subject period of the claim for refund, *i.e.*, 01 January 2016 to 31 December 2016:

1. BW Gas Foreign Manning AS;[105]
2. BW Offshore Global Manning Pte. Ltd.;[106]
3. BW Maritime Pte. Ltd.;[107]
4. BW Fleet Management AS;[108] and,
5. BW Fleet Management Pte. Ltd.[109]

As such, for the period beyond the issue date of the pertinent SEC Certificates of Non-Registration of Company (*i.e.*, **24 November 2016 to 31 December 2016**), the aforementioned foreign entities cannot be considered NRFCs not engaged in business in the Philippines. Correspondingly, the zero-rated sales to the aforementioned foreign entities during the said period (*per* OR date) shall be disallowed, to wit:

Date	**OR No.**	**Exhibit**	**Amount in USD *per* ORs**	**Amount in PHP *per* Summary of Billing Statements**[110]
1. BW Gas Foreign Manning AS				
24 November 2016	9	"P-124-GN"	$95,620.00	₱4,692,322.01
20 December 2016	25	"P-124-HD"	87,500.00	4,287,247.13
2. BW Offshore Global Manning Pte. Ltd.				
07 December 2016	20	"P-124-GY"	18,260.00	872,190.91
3. BW Maritime Pte. Ltd.				
24 November 2016	10	"P-124-GO"	67,200.00	3,306,367.68
23 December 2016	26	"P-124-HE"	66,500.00	3,276,286.09
4. BW Fleet Management AS				
02 December 2016	11	"P-124-GP"	877.00	41,765.87
05 December 2016	12	"P-124-GQ"	516.00	24,573.76
02 December 2016	13	"P-124-GR"	7,016.00	334,126.90
02 December 2016	14	"P-124-GS"	13,829.00	660,543.71
05 December 2016	16	"P-124-GU"	516.00	24,573.76
05 December 2016	17	"P-124-GV"	877.00	41,765.87
05 December 2016	18	"P-124-GW"	877.00	41,765.87
05 December 2016	19	"P-124-GX"	2,631.00	125,297.58
15 December 2016	21	"P-124-GZ"	5,063.00	241,118.08

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105 Supra at note 81.
106 Supra at note 85.
107 Supra at note 89.
108 Supra at note 92.
109 Supra at note 100.
110 Exhibit "P-128", USB.

Date	OR No.	Exhibit	Amount in USD *per* ORs	Amount in PHP *per* Summary of Billing Statements[110]
29 December 2016	28	"P-124-HG"	361.00	17,192.11
29 December 2016	29	"P-124-HH"	361.00	17,192.11
29 December 2016	30	"P-124-HI"	5,902.00	281,909.68
5. BW Fleet Management Pte. Ltd.				
22 December 2016	22	"P-124-HA"	1,512.00	72,006.82
22 December 2016	23	"P-124-HB"	14,749.00	704,487.60
23 December 2016	24	"P-124-HC"	3,607.00	171,778.18
			Total	**₱19,234,511.72**

Moreover, the related foreign exchange (**forex**) gain on the above-listed sales transactions shall likewise be disallowed, to wit:

Date	OR No.	Exhibit	Billing Statement No.	Realized Forex Gain *per* General Ledger[111]
1. BW Gas Foreign Manning AS				
24 November 2016	9	"P-124-GN"	123	₱60,948.19
20 December 2016	25	"P-124-HD"	158	85,127.87
2. BW Offshore Global Manning Pte. Ltd.				
07 December 2016	20	"P-124-GY"	90/92	38,435.29
3. BW Maritime Pte. Ltd.				
24 November 2016	10	"P-124-GO"	124	34,144.32
23 December 2016	26	"P-124-HE"	159	34,083.91
4. BW Fleet Management AS				
02 December 2016	11	"P-124-GP"	69/80	1,970.12
05 December 2016	12	"P-124-GQ"	64	1,159.16
02 December 2016	13	"P-124-GR"	62/74	15,761.02
02 December 2016	14	"P-124-GS"	99	29,108.52
05 December 2016	16	"P-124-GU"	66	1,159.16
05 December 2016	17	"P-124-GV"	63/75	1,970.12
05 December 2016	18	"P-124-GW"	67/78	1,970.12
05 December 2016	19	"P-124-GX"	68/79	5,910.39
15 December 2016	21	"P-124-GZ"	84	10,918.06
29 December 2016	28	"P-124-HG"	77	767.64
29 December 2016	29	"P-124-HH"	76	767.64
29 December 2016	30	"P-124-HI"	121	11,714.82

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111 Exhibit "P-144", USB.

Date	OR No.	Exhibit	Billing Statement No.	Realized Forex Gain *per* General Ledger[111]
5. BW Fleet Management Pte. Ltd.				
22 December 2016	22	"P-124-HA"	85	3,260.54
23 December 2016	23	"P-124-HB"	108/109	29,717.62
23 December 2016	24	"P-124-HC"	81	7,778.28
Total				**₱376,672.79**

iii. PAYMENT FOR SUCH SERVICES MUST BE IN ACCEPTABLE FOREIGN CURRENCY.

Before We look into the manner by which payment was received by petitioner, it is necessary that petitioner show full compliance with Section 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, and Section 4.113-1 (A)(2), B(1) and (2)(c) of RR No. 16-2005, which require that a VAT taxpayer like herein petitioner shall, for every lease of goods or properties and for every sale, barter or exchange of services, issue a VAT OR. The said VAT OR must contain the following information:

> ...
> **SEC. 113**. *Invoicing and Accounting Requirements for VAT-Registered Persons.* —
>
> (A) *Invoicing Requirements.* — A VAT-registered person shall issue:
> ...
>
> **(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:

(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;
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;

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service

...

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

(A) ***A VAT-registered person shall issue***: —

...

(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:

...

(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[.]"[112]

...

[112] Emphasis supplied.

Pursuant to the foregoing provisions, the foreign currency remittances referred to under Section 108(B)(2) of the NIRC of 1997, as amended, must likewise be supported by VAT zero-rated ORs.

As indicated in petitioner's Amended Quarterly VAT returns for TY 2016, petitioner declared zero-rated sales in the total amount of ₱192,465,617.10, detailed as follows:

Period	Zero-Rated Sales	Exhibit
January to March 2016 (1st Quarter)	₱47,278,958.68	"P-34"[113]
April to June 2016 (2nd Quarter)	48,282,096.68	"P-40"[114]
July to September 2016 (3rd Quarter)	47,375,674.49	"P-46"[115]
October to December 2016 (4th Quarter)	49,528,887.25	"P-50"[116]
Total	**₱192,465,617.10**	

As determined by ICPA Manaig, petitioner's declared zero-rated sales can be broken down as follows:

Exhibit	Nature	Principal	Amount
Table 4, "P-100" "P-128" Note 11, "P-146"	Manning and Service Fees	BW Gas Foreign Manning AS	₱53,511,450.52
		BW Offshore Global Manning Pte. Ltd.	11,609,716.30
		BW Maritime Pte. Ltd.	39,406,237.89
		Berge Bulk Maritime Pte. Ltd.	23,778,929.46
		BW Fleet Management AS	31,688,600.47
		BW Fleet Management Pte. Ltd.	28,493,045.89
Total Service Fees			**₱188,487,980.53**
Table 4, "P-100"	Forex Gain		3,977,636.57
Total			**₱192,465,617.10**

Petitioner's 2016 Audited Financial Statements[117] (**AFS**), however, disclosed only a realized forex gain of ₱3,112,305.00. *Per* ICPA Report, the difference was due to an unrealized forex loss on long-term debt recorded in the books and reflected in the 2016 AFS as of year-end[118],

113 Supra at note 9.
114 Supra at note 11.
115 Supra at note 13.
116 Supra at note 15.
117 See Statements of Comprehensive Income, Exhibit "P-146", USB.
118 See Table 7, ICPA Report dated 19 June 2019, supra at note 38.

but petitioner did not submit any relevant document to substantiate the said transaction. Thus, of the ₱3,977,636.57 total realized forex gain, the amount of ₱470,095.57 must be disallowed, computed as follows:

Realized Forex Gain		₱3,977,636.57
Less: Forex Gain *per* 2016 AFS[119]	₱3,112,305.00	
Add: Unrealized Forex Loss[120]	395,236.00	3,507,541.00
Disallowed Realized Forex Gain		**₱470,095.57**

Furthermore, Note 11[121] of the 2016 AFS provides that ₱17,927,739.00 (out of the total billed service fees of ₱188,487,981.00) remained outstanding as of 31 December 2016 and formed part of the "Receivables from shipping principals" account, to wit:

> ...
> Manning fees and service fees recognized from the aforementioned principals for the services referred to above amounted to ₱188,487,981 and ₱157,272,033 in 2016 and 2015, respectively (see Note 12), of which **₱17,927,739** and ₱21,794,662 **remained outstanding as of December 31, 2016 and 2015, respectively, and are included as part of "Receivables from shipping principals" account in the balance sheets (see Note 5).**[122]
> ...

Considering that the amount of ₱17,927,739.00 (out of the total billed service fees of ₱188,487,981.00) remained outstanding as of 31 December 2016, these are supported merely by billing statements and not by VAT zero-rated ORs.

It must be noted that for taxpayers engaged in the sale of services such as petitioner, the VAT is imposed upon the gross receipts. Thus, it follows that the VAT on sale of services accrues upon actual or constructive receipt of the consideration, whether or not the service has been rendered. On the other hand, for sale of goods or

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[119] Supra at note 118.
[120] See Statements of Cash Flows, id.
[121] See Manning Agreements (a), par. 3, id.
[122] Emphasis supplied.

properties, the VAT is imposed upon the gross selling price. In other words, the VAT on sale of goods or properties accrues upon the consummation of the sale, whether or not the consideration was actually received by the seller.[123] Moreover, it is specifically provided under Section 113 of the NIRC of 1997, as amended, that "[a] VAT-registered person shall issue... [a] **VAT official receipt** for every lease of goods or properties, and for every **sale**, barter or exchange **of services.**"

The case of *Commissioner of Internal Revenue v. Takenaka Corporation Philippine Branch*[124], decided by this Court and which was fully concurred in by the Supreme Court in *Takenaka Corporation-Philippine Branch v. Commissioner of Internal Revenue*[125], elucidated the distinction between an OR and a sales invoice, to wit:

> ...
>
> In the case of *Commissioner of Internal Revenue vs. Manila Mining Corporation* (468 SCRA 590), the Supreme Court defined a "**receipt**" **as a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer.**
>
> Clearly, a receipt is the best evidence of the fact of payment of the consideration for every sale. **Since the VAT on the sale of services accrues upon actual or constructive receipt of the consideration, the best evidence to prove that the services were paid is the official receipt. The requirement of the law for the presentation of VAT official receipts for sale of services is <u>a preventive measure to avoid an absurd situation where the purchaser of the service (taxpayer) can claim a tax refund/credit representing input VAT even before there is payment of the output VAT by the seller on the sale pertaining to the same transaction</u>**.
>
> Apparently, the construction of the statute shows that there is intent to distinguish the use of an invoice from an official receipt. It is more logical to conclude that subsections of a statute under the same heading should be construed as having relevance to its heading. The argument that the above quoted provisions are not

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123 Section 108 *vis-à-vis* Section 106 of the NIRC of 1997, as amended.

124 C.T.A. EB No. 514 (C.T.A. Case No. 6886), 29 March 2010; Italics in the original text, emphasis and underscoring supplied

125 G.R. No. 193321, 19 October 2016.

applicable as the same do not pertain to the substantiation requirements, but rather only to the computation of the VAT on sales of goods or services, is misplaced. The legislature separately categorized VAT on sale of goods from VAT on sale of services, not only by its treatment with regard to tax, but also with respect to substantiation requirements. Having been grouped under *Section 108, its subparagraphs, (A) to (C),* have significant relations with each other.

Legislative intent must be ascertained from a consideration of the statute as a whole and not of an isolated part or a particular provision alone. This is a cardinal rule of statutory construction. For taken in the abstract, a word or phrase might easily convey a meaning quite different from the one actually intended and evident when the word or phrase is considered with those with which it is associated. Thus, an apparently general provision may have a limited application if viewed together with the other provisions (*Aboitiz Shipping Corp., et al. vs. City of Cebu,* 13 SCRA 449, 453).

Settled is the rule that every part of the statute must be considered with the other parts (*Planters Association of Southern Negros Inc. vs. Hon. Bernardo Ponferrada, et al.,* 317 SCRA 463). Accordingly, the whole of *Section 108* should be read in conjunction with *Sections 113 and 237* so as to give life to all the provisions intended for the sale of services. There is no conflict between the provisions of the law that cover sale of services that are subject to zero rated sales, thus, it should be read altogether to reveal the true legislative intent.

By express provision of *Section 108 of the NIRC of 1997, as amended,* the determination of respondent Takenaka's tax liabilities with respect to sale of services will be computed on the basis of the official receipts it issued to its clients. Since respondent Takenaka is engaged in the sale of services, its transactions should be evidenced by official receipts, as prescribed by law, which is the only acceptable proof of its zero rated sale of services. Therefore, respondent Takenaka **should produce and present official receipts to prove the sale of services to its clients.** The law itself prescribes that an official receipt should cover sale of services. A careful examination of the evidence presented by respondent Takenaka shows that it presented sales invoices, and not official receipts, as required by law. **<u>Without proper VAT official receipts issued to its clients, the payments received by respondent Takenaka for providing services to PEZA-registered entities cannot qualify for VAT zero-rating</u>**. Hence, it cannot claim such sales as zero-rated VAT not subject to output tax.

...

Clearly from the foregoing, sales of services amounting to ₱17,927,739.00, supported by mere billing statements, failed to qualify as zero-rated sales for TY 2016 and shall thus be disallowed for being unsupported by VAT zero-rated ORs.

Moreover, upon further verification by the Court of the ORs supporting petitioner's zero-rated sales, the additional amount of ₱9,386,995.04 shall also be disallowed for the following reasons:

Customer	**OR No.**	**Amount in USD *per* ORs**	**Gross Receipts in PHP**	**Exhibit No.**	**Reason**
BW Gas Foreign Manning AS	1246	$6,993.50	₱4,710,951.00[126]	"P-124-C"	Customer's name/ registered name in the ORs is NOT the same with the one reflected in the Articles of Association, Certificate of Registration, and SEC Certificate of Non-Registration of Company
	1247	8,253.50		"P-124-D"	
	1248	17,913.50		"P-124-E"	
	1249	65,513.50		"P-124-F"	
	1292	17,213.50	4,453,836.80[127]	"P-124-Y"	Noted erasures in the ORs without countersignature
	1293	6,713.50		"P-124-Z"	
	1294	7,553.50		"P-124-AA"	
	1295	64,813.50		"P-124-AB"	
BW Fleet Management AS	1315	279.50	13,464.00[128]	"P-124-AT"	
	1337	4,485.50	208,743.24[129]	"P-124-BM"	
Total			**₱9,386,995.04**		

126 *Computed as follows:*
Amount in PHP *per* Summary of Billing Statements (Exhibit "P-128") ₱4,657,277.94
Related Realized Forex Gain (Exhibit "P-141") 53,673.06
Gross Receipts in PHP **₱4,710,951.00**

127 *Computed as follows:*
Amount in PHP *per* Summary of Billing Statements (Exhibit "P-128") ₱4,393,865.08
Related Realized Forex Gain (Exhibit "P-142") 59,971.72
Gross Receipts in PHP **₱4,453,836.80**

128 *Computed as follows:*
Amount in PHP *per* Summary of Billing Statements (Exhibit "P-128") ₱13,377.21
Related Realized Forex Gain (Exhibit "P-142") 86.79
Gross Receipts in PHP **₱13,464.00**

129 *Computed as follows:*
Amount in PHP *per* Summary of Billing Statements (Exhibit "P-128") ₱203,776.39
Related Realized Forex Gain (Exhibit "P-142") 4,966.85
Gross Receipts in PHP **₱208,743.24**

As regards the 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 for the four (4) quarters of TY 2016, petitioner submitted documents such as: (1) Details of Inward Remittances[130] issued by Bank of the Philippine Islands (**BPI**); (2) List of ORs[131]; and, (3) ORs.[132]

Per the Court's independent examination, the following must likewise be disallowed because the remitter's name in the Details of Inward Remittances is not the same with the one reflected in the pertinent Articles of Association, Certificates of Registration, and SEC Certificates of Non-Registration of Company:

OR No.	Customer	Remitter *per* Details of Inward Remittances	Amount in USD	Gross Receipts in PHP
1280	BW Fleet Management AS	Slng Yemen Ii As	$403.50	₱19,485.46[133]
1281		Sonartech Bergensen Ship Man	403.50	19,485.46[134]
1282		Slng Yemen I As	403.50	19,485.46[135]
1283		Pr Bergensen Bw Gas Fluxys Da	403.50	19,485.46[136]
1304		Slng Yemen I As	996.50	12,325.57[137]
1305				21,467.08[138]
1306				13,464.00[139]
1307		Pr Bergensen Bw Gas Fluxys Da	996.50	12,325.57[140]

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130 Exhibit "P-122", USB.
131 Exhibit "P-124", USB.
132 Exhibit "P-124-A" to "P-124-HI", USB.
133 *Computed as follows:*
Amount in PHP *per* Summary of Billing Statements (Exhibit "P-128") ₱19,221.93
Related Realized Forex Gain (Exhibit "P-142") 263.53
Gross Receipts in PHP **₱19,485.46**
134 Id.
135 Id.
136 Id.
137 *Computed as follows:*
Amount in PHP *per* Summary of Billing Statements (Exhibit "P-128") ₱12,227.12
Related Realized Forex Gain (Exhibit "P-142") 98.45
Gross Receipts in PHP **₱12,325.57**
138 *Computed as follows:*
Amount in PHP *per* Summary of Billing Statements (Exhibit "P-128") ₱21,328.70
Related Realized Forex Gain (Exhibit "P-142") 138.38
Gross Receipts in PHP **₱21,467.08**
139 *Computed as follows:*
Amount in PHP *per* Summary of Billing Statements (Exhibit "P-128") ₱13,377.21
Related Realized Forex Gain (Exhibit "P-142") 86.79
Gross Receipts in PHP **₱13,464.00**
140 Supra at note 137.

OR No.	Customer	Remitter *per* Details of Inward Remittances	Amount in USD	Gross Receipts in PHP
1308				21,467.08[141]
1309				13,464.00[142]
1310		Sonartech Bergensen Ship Man	996.50	12,325.57[143]
1311				21,467.08[144]
1312				13,464.00[145]
1313		Slng Yemen Ii As	996.50	12,325.57[146]
1314				21,467.08[147]
1315				13,464.00[148]
1350		Sonartech Bergensen Ship Man	1,047.50	28,625.52[149]
1351				20,353.86[150]
1352		Slng Yemen I As	1,047.50	28,625.52[151]
1353				20,353.86[152]
1354		Pr Bergensen Bw Gas Fluxys Da	1,047.50	28,625.52[153]
1355				20,353.86[154]
1356		Slng Yemen Ii As	1,047.50	28,625.52[155]
1357				20,353.86[156]
1392		Pr Bergensen Bw Gas Fluxys Da	792.50	21,116.47[157]
1393				16,460.50[158]

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141 Supra at note 138.
142 Supra at note 139.
143 Supra at note 137.
144 Supra at note 138.
145 Supra at note 139.
146 Supra at note 137.
147 Supra at note 138.
148 Supra at note 139.
149 *Computed as follows:*

Amount in PHP *per* Summary of Billing Statements (Exhibit "P-128")	₱27,944.40
Related Realized Forex Gain (Exhibit "P-142")	681.12
Gross Receipts in PHP	**₱28,625.52**

150 *Computed as follows:*

Amount in PHP *per* Summary of Billing Statements (Exhibit "P-128")	₱19,869.56
Related Realized Forex Gain (Exhibit "P-142")	484.30
Gross Receipts in PHP	**₱20,353.86**

151 Supra at note 149.
152 Supra at note 150.
153 Supra at note 149.
154 Supra at note 150.
155 Supra at note 149.
156 Supra at note 150.
157 *Computed as follows:*

Amount in PHP *per* Summary of Billing Statements (Exhibit "P-128")	₱20,734.19
Related Realized Forex Gain (Exhibit "P-142")	382.28
Gross Receipts in PHP	**₱21,116.47**

158 *Computed as follows:*

Amount in PHP *per* Summary of Billing Statements (Exhibit "P-128")	₱16,162.51
Related Realized Forex Gain (Exhibit "P-142")	297.99
Gross Receipts in PHP	**₱16,460.50**

OR No.	Customer	Remitter *per* Details of Inward Remittances	Amount in USD	Gross Receipts in PHP
1394		Sonartech Bergensen Ship Man	792.50	21,116.47[159]
1395				16,460.50[160]
1396		Slng Yemen Ii As	792.50	21,116.47[161]
1397				16,460.50[162]
1398			792.50	21,116.47[163]
1399				16,460.50[164]
1414		Slng Yemen I As	816.50	38,434.10[165]
1415		Pr Bergensen Bw Gas Fluxys Da	816.50	38,434.10[166]
1416		Sonartech Bergensen Ship Man	816.50	38,434.10[167]
1417		Slng Yemen Ii As	816.50	38,434.10[168]
1429		Pr Bergensen Bw Gas Fluxys Da	929.50	176,080.32[169]
		Sonartech Bergensen Ship Man	929.50	
		Slng Yemen Ii As	929.50	
		Slng Yemen I As	929.50	
1440		Slng Yemen Ii As	919.50	178,532.80[170]
		Sonartech Bergensen Ship Man	919.50	
		Slng Yemen I As	919.50	
		Pr Bergensen Bw Gas Fluxys Da	919.50	
1455		Slng Yemen Ii As	907.50	44,383.84[171]
1456		Slng Yemen I As	907.50	44,383.84[172]

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159 Supra at note 157.
160 Supra at note 158.
161 Supra at note 157.
162 Supra at note 158.
163 Supra at note 157.
164 Supra at note 158.
165 *Computed as follows:*

Amount in PHP *per* Summary of Billing Statements (Exhibit "P-128")	₱37,852.40
Related Realized Forex Gain (Exhibit "P-143")	581.70
Gross Receipts in PHP	**₱38,434.10**

166 Id.
167 Id.
168 Id.
169 *Computed as follows:*

Amount in PHP *per* Summary of Billing Statements (Exhibit "P-128")	₱173,046.60
Related Realized Forex Gain (Exhibit "P-143")	3,033.72
Gross Receipts in PHP	**₱176,080.32**

170 *Computed as follows:*

Amount in PHP *per* Summary of Billing Statements (Exhibit "P-128")	₱171,569.72
Related Realized Forex Gain (Exhibit "P-144")	6,963.08
Gross Receipts in PHP	**₱178,532.80**

171 *Computed as follows:*

Amount in PHP *per* Summary of Billing Statements (Exhibit "P-128")	₱41,793.58
Related Realized Forex Gain (Exhibit "P-144")	2,590.26
Gross Receipts in PHP	**₱44,383.84**

172 Id.

OR No.	Customer	Remitter *per* Details of Inward Remittances	Amount in USD	Gross Receipts in PHP
1457		Pr Bergensen Bw Gas Fluxys Da	907.50	44,383.84[173]
1458		Sonartech Bergensen Ship Man	907.50	44,383.84[174]
1467	BW Fleet Management AS	Bw Pacific Pte. Ltd.	4,266.50	207,496.88[175]
Total				**₱1,506,575.60**

To summarize, out of the total reported zero-rated sales for TY 2016 amounting to ₱192,465,617.10, only the amount of ₱143,563,027.38 represents petitioner's valid zero-rated sales for the same period, to wit:

Total Zero-Rated Sales *per* VAT Returns		₱192,465,617.10
Less: Disallowances		
Unsupported by SEC Certificate of Non-Registration of Company	₱19,611,184.51[176]	
Unsupported realized forex gain	470,095.57	
Service fees not supported with ORs	17,927,739.00	
Difference in the name in the OR and the registered name *per* Articles of Association, Certificate of Registration, SEC Certificate of Non-Registration of Company and noted erasures in the OR without counter-signature	9,386,995.04	
Difference in the name of the remitter *per* Details of Inward Remittances and the registered name *per* Articles of Association, Certificate of Registration, SEC Certificate of Non-Registration of Company	1,506,575.60	48,902,589.72
Total Valid Zero-Rated Sales		**₱143,563,027.38**

173 Id.

174 Id.

175 *Computed as follows:*

Amount in PHP *per* Summary of Billing Statements (Exhibit "P-128")	₱196,994.32
Related Realized Forex Gain (Exhibit "P-144")	10,502.56
Gross Receipts in PHP	**₱207,496.88**

176 Sum of the zero-rated sales to foreign entities for the period from 24 November 2016 to 31 December 2016 (not covered by the SEC Certificates of Non-Registration of Company of such foreign entities) of **₱19,234,511.72** and the related realized forex gain of **₱376,672.79**.

IV. PETITIONER INCURRED UNUTILIZED INPUT VALUE-ADDED TAX (VAT) ATTRIBUTABLE TO ITS ZERO-RATED SALES.

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

a. The input taxes are due or paid;
b. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of the sales volume; and,
c. The input taxes have not been applied against output taxes during and in the succeeding quarters.

In its Amended Quarterly VAT Returns for TY 2016[177], petitioner declared an excess and unutilized input VAT of ₱5,847,484.71 on its domestic purchases of capital goods exceeding ₱1 Million and importation of goods other than capital goods as well as the amortization of capital goods, as shown below:

TY 2016	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Input tax deferred on capital goods exceeding ₱1 Million from the previous period	₱4,054,325.23	₱3,785,279.39	₱3,713,576.80	₱3,434,323.55	₱4,054,325.23
Input tax on purchase of capital goods exceeding ₱1 Million	-	204,148.19	-	265,607.14	469,755.33
Input tax on domestic purchase of goods other than capital goods	1,146,511.40	1,457,849.36	1,023,520.46	1,102,920.01	4,730,801.23
Total Input Tax	**₱5,200,836.63**	**₱5,447,276.94**	**₱4,737,097.26**	**₱4,802,850.70**	**₱9,254,881.79**

[177] Exhibits "P-34", "P-40", "P-46", and "P-50", supra at notes 9, 11, 13 and 15, respectively.

TY 2016	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Less: Input tax on purchases of capital goods exceeding ₱1 Million deferred for the succeeding period	3,785,279.39	3,713,576.80	3,434,323.55	3,407,397.08	3,407,397.08
Total Allowable Input VAT Refund	**₱1,415,557.24**	**₱1,733,700.14**	**₱1,302,773.71**	**₱1,395,453.62**	**₱5,847,484.71**

As stated in the ICPA Report, petitioner's input VAT refund claim in the amount of ₱288,104.08 must be disallowed for not being properly substantiated by VAT zero-rated ORs as prescribed under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, in relation to Sections 4.110-2, 4.110-3, 4.110-8 and 4.113-1 of RR No. 16-05. ICPA Manaig's findings[178] are as follows:

Exhibit	Description	Amount
a. Input Taxes on Domestic Purchase of Services		
"P-155-A" to "P-155-W", "P-157-A" to "P-157-B", "P-158", "P-165-A" to "P-165-B"	Domestic purchase of services supported by VAT OR with missing and/or incorrect Company name	₱121,770.42
"P-155-X", "P-165-C"	Domestic purchase of services supported by VAT OR with missing and/or incorrect Company name and incorrect VAT breakdown	265.29
"P-156"	Domestic purchase of services supported by VAT OR with missing and/or incorrect Company name and no TIN	226.80
"P-159"	Domestic purchase of services supported by VAT OR with missing and/or incorrect registered address and no VAT breakdown	1,570.44
"P-160-A" to "P-160-F", "P-163-A" to "P-163-C"	Domestic purchase of services supported by VAT OR with missing and/or incorrect TIN	14,587.53
"P-161"	Domestic purchase of services supported by VAT OR with missing and/or incorrect TIN and incorrect VAT breakdown	2,173.15
"P-162", "P-164-A" to "P-164-E"	Domestic purchase of services supported by VAT OR with missing and/or incorrect VAT breakdown	55,217.22
"P-167-A" to "P-167-C"	Domestic purchase of services supported by VAT OR but the VATable amount is not indicated	4,011.19
"P-166-A" to "P-166-AH"	Overclaim of input VAT	31,911.20
"P-168"	Domestic purchase of services supported by VAT OR that contains erasures but no countersignature	3,140.88

178 See Table 13, ICPA Report dated 19 June 2019, supra at note 38.

Exhibit	Description	Amount
-	Domestic purchases without supporting ORs	11,339.24
	Subtotal	**₱246,213.36**
b. Input Taxes on Domestic Purchase of Goods		
"P-169-A" to "P-169-C"	Domestic purchase of goods supported by VAT sales invoice with missing and/or incorrect Company name	₱41,827.93
"P-170"	Domestic purchase of goods supported by VAT sales invoice with missing and/or incorrect TIN	62.79
	Subtotal	**₱41,890.72**
	Total	**₱288,104.08**

Upon scrutiny of the ICPA Report[179] together with the other submitted documentary evidence, the Court finds that an additional amount of ₱122,393.18 should likewise be disallowed for failure to meet the substantiation requirements, as listed below:

Exhibit	Supplier	Amount	Reason
a. Input Taxes on Domestic Purchase of Services			
"P-153-E	MERALCO	₱8,940.89	Domestic purchase of services supported by VAT OR with incorrect registered address
"P-153-AF		11,475.06	
"P-153-BN		9,232.96	
"P-153-DW		10,201.00	
"P-153-HW		11,281.15	
"P-153-JR"		11,770.25	
"P-153-LU"		10,531.41	
"P-153-OQ"		11,035.99	
"P-153-RR"		9,723.78	
"P-153-XF"		9,429.99	
"P-153-AAF"		8,664.60	
"P-153-PH"	Quickpak Records Management, Inc.	952.80	Domestic purchase of services supported by VAT OR that contains erasures but no countersignature
"P-153-ABD"	Servicio Filipino, Inc.	6,760.80	
"P-153-AAD"	Globe Telecom, Inc.	174.64	Handwritten addition in a computerized OR without countersignature

179 Supra at note 38.

Exhibit	Supplier	Amount	Reason
	Subtotal	**₱120,175.32**	
b. Input Taxes on Domestic Purchase of Goods			
"P-154-AL"	Sanitary Care Products Asia, Inc.	₱2,217.86	Domestic purchase of goods supported by VAT invoice with illegible registered address
	Total	**₱122,393.18**	

Moreover, ICPA Manaig stated that no exception was noted as regards petitioner's claimed amortized input VAT on domestic purchases of capital goods exceeding ₱1 Million amounting to ₱1,116,683.48, computed as follows:

Input Tax Deferred on Capital Goods Exceeding ₱1 Million from Previous Period (TY 2015)	₱4,054,325.23
Input Tax on Purchase of Capital Goods Exceeding ₱1 Million	469,755.33
Total Deferred Input Tax	**₱4,524,080.56**
Less: Input Tax on Purchase of Capital Goods Exceeding ₱1 Million Deferred for the Succeeding period (TY 2017)	3,407,397.08
Total Claimed Amortized Input VAT	**₱1,116,683.48**

The claimed amortized input VAT, as determined by ICPA Manaig, can be broken down as follows:[180]

Date	Supplier	Tax Base	Input VAT Amortization (TY 2016)
19-Jun-14	Manila Commercial Fit-Out Corporation	₱12,018,801.68	₱288,451.20
24-Jul-14		3,292,758.58	79,026.24
11-Aug-14		3,527,262.29	84,654.24
17-Sep-14		4,702,148.13	112,851.60
24-Sep-14		2,394,854.02	57,476.52
7-Nov-14		2,494,714.17	59,873.16
4-Dec-14		3,909,723.72	93,833.40
19-Aug-14	Trends & Technologies Inc.	1,300,748.70	31,217.00
7-Nov-14		1,040,599.01	24,974.40
29-Dec-14		260,149.75	6,243.60

180 Exhibit "P-171", USB.

Date	Supplier	Tax Base	Input VAT Amortization (TY 2016)
11-Jul-14	RSPRO Enterprises	192,232.14	4,613.52
8-Aug-14	Systems Variable Technicom Inc	400,446.43	9,610.68
10-Sep-14		320,357.14	7,688.52
10-Sep-14	Daemcor Management & Power Inc	198,660.71	4,767.84
29-Sep-14	MLB Cooling & Ventilating Systems	50,000.00	1,200.00
16-Oct-14	Daemcor Management & Power Inc	74,464.29	1,787.16
29-Oct-14		124,196.43	2,980.68
31-Oct-14	MLB Cooling & Ventilating Systems	50,000.00	1,200.00
7-Nov-14	Technologies Specialist Incorporated	148,705.36	3,568.92
12-Nov-14	Microphase Corporation	82,901.79	1,989.60
29-Dec-14	Technologies Specialist Incorporated	83,166.09	1,995.96
29-Dec-14		339,275.30	8,142.60
13-Feb-15	Manila Commercial Fit-Out Corporation	1,922,179.72	46,132.32
8-Jun-15		2,321,592.56	55,718.28
18-Jun-15		470,571.43	11,293.68
11-Jun-15	Microphase Corporation	115,357.14	2,768.57
15-Dec-15	Manila Commercial Fit-Out Corporation	2,903,106.20	69,674.52
15-Dec-15	Ergo Contracts Phils. Inc.	102,000.00	2,448.00
27-May-16	Manila Commercial Fit-Out Corporation	1,701,234.96	27,219.76
26-Oct-16	Ford Global City	2,213,392.86	13,280.36
Total		**₱48,755,600.60**	**₱1,116,682.33**[181]

However, based on this Court's independent verification, petitioner failed to substantiate its purchase of capital goods exceeding ₱1 Million from Microphase Corporation dated 11 June 2015. As such, the related input VAT amortization of ₱2,768.57 shall be disallowed.

[181] The difference of ₱1.15 is due to rounding off.

Thus, out of petitioner's claimed input VAT of ₱5,847,484.71 for TY 2016, only the amount of ₱5,434,218.88 represents the substantiated input VAT, computed as follows:

Claimed Input VAT		₱5,847,484.71
Less: Disallowances		
Per ICPA	₱288,104.08	
Per Court's Verification	122,393.18	
Unsupported Amortized Input VAT	2,768.57	413,265.83
Substantiated/Valid Input VAT		**₱5,434,218.88**

Consequently, only the substantiated unutilized input VAT of ₱5,434,218.88 can be attributed to the total zero-rated sales declared by petitioner in the amount of ₱192,465,617.10, and only the input VAT of ₱4,053,466.41 is attributable to the valid zero-rated sales of ₱143,563,027.38, as determined below:

	TY 2016
Declared Zero-Rated Sales [A]	₱192,465,617.10
Valid Zero-Rated Sales [B]	143,563,027.38
Percentage of Valid Zero-Rated Sales [C=B/A]	74.59%
Substantiated/Valid Input VAT [D]	5,434,218.88
Input VAT for Refund [D x C]	**₱4,053,466.41**

The claimed input VAT of ₱5,847,484.71 was carried-over by petitioner in its succeeding Quarterly VAT Returns for the 1st and 2nd quarters of TY 2017.[182] Nevertheless, the same remained unutilized since petitioner had no output VAT liability during those quarters and it was eventually deducted as "VAT Refund/TCC Claimed" in its 3rd Quarterly VAT Return for TY 2017[183]; thus, preventing the carry-over or application of the claimed input VAT in the next taxable periods.

In sum, petitioner has sufficiently proven its entitlement to the refund or issuance of a TCC in the amount of ₱4,053,466.41,

[182] Exhibits "P-55" and "P-60", Division Docket, Volume III, pp. 1215 and 1225, respectively.
[183] Exhibit "P-63", id., p. 1231.

representing the unutilized input VAT attributable to its zero-rated sales for the four (4) quarters of TY 2016.

WHEREFORE, premises considered, the Petition for Review filed on 26 July 2018 by petitioner BW Shipping Philippines, Inc. 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 total amount of **FOUR MILLION FIFTY THREE THOUSAND FOUR HUNDRED SIXTY SIX PESOS and FORTY ONE CENTAVOS** (₱4,053,466.41), representing the unutilized input value-added tax (VAT) attributable to its zero-rated sales for the four (4) quarters of taxable year 2016.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

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