REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CITCO INTERNATIONAL SUPPORT SERVICES LIMITED – PHILIPPINE ROHQ,	**CTA CASE NO. 10462**
Petitioner,	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 06 2025 9:15 a

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DECISION

***FERRER-FLORES, J.*:**

The *Petition for Review* prays that judgment be rendered:

a. declaring petitioner entitled to a refund of unutilized input value-added tax (VAT) in the total amount of **₱13,971,397.52**, representing the input tax on zero-rated sales for the third and fourth quarters of calendar year (CY) 2018; and,

b. ordering respondent to refund or issue a tax credit certificate to petitioner in the amount of **₱13,971,397.52**.[1]

[1] Statement of the Case, Pre-Trial Order dated September 15, 2022, Docket – Vol. 2, p. 807.

THE PARTIES

Petitioner Citco International Support Services Limited – Philippine ROHQ is a foreign company, duly organized and existing under the laws of Cayman Islands, duly licensed as a regional operating headquarters (ROHQ) and doing business as such in the Philippines, with principal office address at the 27th Floor, GT Tower International, 6813 Ayala Ave. cor. H.V. Dela Costa, Makati City 1200.[2] It is a VAT registered taxpayer having been issued a Certificate of Registration No. OCN 9RC000553130 by the Bureau of Internal Revenue (BIR), Revenue Region No. 8, Revenue District Office (RDO) No. 50.[3]

Respondent is the Commissioner of the BIR, vested by law to enforce and implement the provisions of the National of Internal Revenue Code (NIRC), as amended, as well as related statutes and their implementing rules and regulations. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[4]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On September 29, 2020, or within the period allowed by Section 112(A) of the NIRC of 1997, as amended, and Revenue Regulations (RR) No. 27-2020, petitioner filed with the BIR VAT Credit Audit Division (VCAD), an *Application for Tax Credits/Refunds* for VAT refund of the unutilized and excess creditable input taxes attributable to its zero-rated sales for the period covering the third and fourth quarters of CY 2018 which amounted to ₱13,971,397.52.[5] In support of petitioner's claim for refund, petitioner submitted all applicable supporting documents together with its letter dated September 24, 2020.[6]

On January 4, 2021, petitioner received the letter dated November 27, 2020 of the BIR, signed by Assistant Commissioner for the Assessment Service, Ms. Maria Luisa I. Belen, which wholly denied petitioner's claim for VAT refund for the reason that "no bank certification was submitted to prove inward remittance" of the proceeds from petitioner's export sales. Moreover, the input tax credits on certain purchases were disallowed for various reasons.[7]

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2 Par. 1, Stipulated Facts, *Joint Stipulations of Facts and Issues* (JSFI), Docket – Vol. 1, p. 276. Refer also to Exhibit "P-1", Docket – Vol. 1, p. 48.
3 Par. 2, Stipulated Facts, JSFI, Docket – Vol. 1, p. 276.
4 Par. 7, Stipulated Facts, JSFI, Docket – Vol. 1, p. 277.
5 Pars. 3 and 6, Stipulated Facts, JSFI, Docket – Vol. 1, pp. 276 to 277. Exhibit "P-38", BIR Records (Exhibit "R-6"), p. 115.
6 Par. 2, Admitted Facts, JSFI, Docket – Vol. 1, p. 275. Refer also to Exhibit "P-39", Docket – Vol. 2. pp. 790 to 791; and Exhibits "P-40" and "R-2", BIR Records (Exhibit "R-6"), p. 116.
7 Par. 3, Admitted Facts, JSFI, Docket – Vol. 1, p. 276. Refer also to Exhibits "P-41" and "R-5", BIR Records (Exhibit "R-6"), pp, 166 to 167.

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the present *Petition for Review* with this Court on February 3, 2021.[8]

Respondent's *Answer (Re: Petition for Review dated 28 January 2021)* was filed on May 26, 2021.[9]

On July 30, 2021, respondent transmitted to this Court the *BIR Records* of this case consisting of 169 pages in one folder.[10]

The Pre-Trial Conference was initially scheduled on September 2, 2021,[11] but was reset to, and held on, February 2, 2022.[12] Prior thereto, petitioner's *Pre-Trial Brief* was filed through registered mail on August 27, 2021,[13] while *Respondent's Pre-Trial Brief* was filed on October 21, 2021.[14]

On March 1, 2022, the parties submitted their *Joint Stipulation of Facts and Issues*,[15] which was admitted and approved by the Court in its Resolution dated March 10, 2022,[16] thereby terminating the Pre-Trial. Subsequently, the Pre-Trial Order dated September 15, 2022 was issued by the Court.[17]

Trial then ensued, with the parties presenting and offering their respective documentary and testimonial evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Jocelyn L. Payuyo,[18] its Senior Financial Controller; and, (2) Mr. Adan T. Delamide,[19] the Court-commissioned Independent Certified Public Accountant (ICPA).[20]

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[8] Docket – Vol. 1, pp. 6 to 29.
[9] Docket – Vol. 1, pp. 180 to 191.
[10] *Compliance* dated July 30, 2021, Docket – Vol. 1, pp. 202 to 204.
[11] Notice of Pre-Trial Conference dated June 2, 2021, Docket – Vol. 1, pp. 185 to 186.
[12] Resolution dated October 28, 2021, Docket – Vol. 1, p. 248; Notice of Hearing via Video Conference (For Pre-trial Conference) dated January 31, 2022, Docket – Vol. 1, pp. 250 to 251; Minutes of the hearing held on, and Order dated, February 2, 2022, Docket – Vol. 1, pp. 252 to 255.
[13] Docket – Vol. 1, pp. 206 to 216.
[14] Docket – Vol. 1, pp. 220 to 223.
[15] Docket – Vol. 1, pp. 275 to 284.
[16] Docket – Vol. 1, p. 316.
[17] Docket – Vol. 2, pp. 807 to 819.
[18] Exhibit "P-42", Docket – Vol. 1, pp. 30 to 47; Minutes of the hearing held on, and Order dated, June 14, 2022, Docket – Vol. 1, pp. 486 to 488.
[19] Exhibit "P-44", Docket – Vol. 1, pp. 462 to 472; Minutes of the hearing held on, and Order dated, June 14, 2022, Docket – Vol. 1, pp. 486 to 488.
[20] *Oath of Commission* dated March 24, 2022, Docket – Vol. 1, p. 320; Minutes of the hearing held on, and Order dated, March 24, 2022, Docket – Vol. 1, pp. 319, and 321 to 322, respectively.

The *Report* of the ICPA was filed through registered mail on May 10, 2022,[21] and the *Amended ICPA Report* was filed on May 25, 2022.[22]

The *Formal Offer of Evidence for Petitioner with Motion for Amendment of Marking* was filed on June 24, 2022.[23] Respondent filed his *Comment (Re: Formal Offer of Evidence dated 24 June 2022)* on June 27, 2022.[24] In the Resolution dated March 3, 2023,[25] the Court admitted all of petitioner's offered exhibits.

For his part, respondent presented the testimonies of the following: (1) Revenue Officer Michele J. Alonzo-Bucayu;[26] and, (2) Group Supervisor Janine Mycka P. Espiritu.[27]

On December 5, 2023, respondent filed his *Formal Offer of Evidence*,[28] to which petitioner filed its *Comment (to Respondent's Formal Offer of Evidence)* on December 21, 2023.[29] In the Resolution dated March 20, 2024,[30] the Court admitted all of respondent's offered exhibits.

Thereafter, on April 11, 2024, respondent filed a *Manifestation*,[31] stating that he is adopting the arguments raised in his *Answer* dated May 21, 2023 as his *Memorandum*. On April 24, 2024, the *Memorandum for Petitioner* was filed.[32]

The case was considered submitted for decision on May 8, 2024.[33]

THE STIPULATED ISSUE

The sole issue to be resolved by the Court as stipulated by the parties is whether petitioner is entitled to a refund in the total amount of

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[21] Docket – Vol. 1, pp. 343 to 399.
[22] Exhibit "P-43", Docket – Vol. 1, pp. 402 to 456.
[23] Docket – Vol. 2, pp. 491 to 513.
[24] Docket – Vol. 2, pp. 795 to 797.
[25] Docket – Vol. 2, pp. 825 to 826.
[26] Exhibit "R-8", Docket – Vol 1, pp. 239 to 246; Minutes of the hearing held on, and Order dated, November 30, 2023, Docket – Vol. 2, pp. 833 to 834.
[27] Exhibit "R-7", Docket – Vol 1, pp. 295 to 300; Minutes of the hearing held on, and Order dated, September 26, 2023, Docket – Vol. 2, pp. 827 to 828.
[28] Docket – Vol. 2, pp. 835 to 838.
[29] Docket – Vol. 2, pp. 841 to 843.
[30] Docket – Vol. 2, p. 848.
[31] Docket – Vol. 2, pp. 849 to 851.
[32] Docket – Vol. 2, pp. 853 to 875.
[33] Minute Resolution dated May 8, 2024, Docket – Vol. 2, p. 880.

₱13,971,397.52 representing unutilized and excess input VAT attributable to zero-rated sales for the third and fourth quarters of CY 2018.[34]

Petitioner's arguments

Petitioner argues that it is entitled to a refund in the total amount of ₱13,493,509.53 representing the duly substantiated unutilized and excess creditable input VAT attributable to export zero-rated sales for the third and fourth quarters of CY 2018.

Respondent's counter-arguments

In his *Answer*, respondent contends that the instant claim should be denied for petitioner's failure to substantiate its claim for refund at the administrative level; that it is incumbent upon petitioner to prove that it is entitled to the refund sought because a claim for refund is not *ipso facto* granted upon filing of the claim; that tax refunds are subject to administrative routinary investigation; and, that tax refunds are strictly construed against the taxpayer.

THE COURT'S RULING

The present *Petition for Review* is denied.

Section 112 of the NIRC of 1997, as last amended by Republic Act No. 10963,[35] provides, in part, as follows:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko*

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[34] Stipulation of Issue, JSFI, Docket – Vol. 1, p. 277.

[35] 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.

> *Sentral ng Pilipinas* (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> xxx xxx xxx
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> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> 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.

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

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

1. the refund claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[36]

2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 90 days, the judicial claim has been filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 90-day period;[37]

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[36] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.

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

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

3. the taxpayer is a VAT-registered person;[38]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[39]

5. for zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2),[40] the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[41]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[42]

7. the input taxes are due or paid;[43]

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[44] and,

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[45]

In addition, in claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the NIRC of 1997, as amended, and other implementing rules and regulations.[46] Thus, petitioner's compliance with all the VAT invoicing requirements is required to be able to

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[38] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; *AT&T Communications Services Philippines, Inc., vs. Commissioner of Internal Revenue, supra.*

[39] *Id.*

[40] Under RA No. 10963, Section 106(A)(2)(a)**(2)** was renumbered to Section 106(A)(2)(a)**(3)** while Section 106(A)(2)(**b**) was deleted. However, there was no corresponding amendment to the subsections cited in Section 112(A) of the NIRC of 1997, as amended.

[41] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; *AT&T Communications Services Philippines, Inc., vs. Commissioner of Internal Revenue, supra.*

[42] *Id.*

[43] *Id.*

[44] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.

[45] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.

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

file a claim for input taxes attributable to zero-rated sales.[47] The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[48] Moreover, it must be pointed out that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[49]

Strict compliance with substantiation and invoicing requirements is necessary considering VAT's nature and VAT system's tax credit method, where tax payments are based on output and input taxes and where the seller's output tax becomes the buyer's input tax that is available as tax credit or refund in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates computation of tax credits, and provides accurate audit trail or evidence for BIR monitoring purposes.[50]

Furthermore, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[51] Thus, it behooves petitioner to show compliance with each of the foregoing requisites and invoicing requirements. As a corollary, the absence of *any* of the said requisites is already a valid ground to deny the refund claim.

Petitioner's administrative and judicial claims were timely filed.

To reiterate, the *first* requisite pertains to the filing of the refund claim for tax credit or refund of input VAT before the BIR, within two years from the close of the quarter when the sales were made.

The present claim covers the taxable period from July 1, 2018 to December 31, 2018. Counting two years from the close of the subject taxable quarters, petitioner had until the following dates to file its administrative claim:

[47] *J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.
[48] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.
[49] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[50] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, supra.
[51] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

Period Covered	Close of the Taxable Quarter	Last Day to File Administrative Claim
Third Quarter (July 1 to September 30, 2018)	September 30, 2018	September 30, 2020
Fourth Quarter (October 1 to December 31, 2018)	December 31, 2018	December 31, 2020

Hence, petitioner timely filed its *Application for Tax Credits/ Refunds* in the amount of ₱13,971,397.52 on September 29, 2020.[52]

The *second* requisite is that the judicial claim must have been filed within 30 days from receipt of respondent's decision or after the expiration of the 90-day period, in case of inaction within the said 90-day period.

Thus, from the filing of petitioner's administrative claim on September 29, 2020, respondent had 90 days or until December 28, 2020, to act on the said claim. The 90-day period to decide, however, was suspended at that time pursuant to RR No. 27-20,[53] which provides as follows:

> Section 4. Processing of VAT Refunds – The 90-day processing of VAT refund claims pursuant to Section 112 (C) of the Tax Code of 1997, as amended, is hereby suspended during the effectivity of R.A. No. 11494 or until the next adjournment of the Eighteenth Congress on December 19, 2020.

Following the above, the 90-day period to decide petitioner's claim should be reckoned from December 20, 2020 or until March 19, 2021. Petitioner received the denial letter on January 4, 2021.[54] Petitioner, then, had until February 3, 2021 to file its judicial claim before this Court.

Petitioner filed its judicial claim, via the present *Petition for Review*,[55] on February 3, 2021, or within the prescribed 30-day period from receipt of the BIR's decision.

Hence, petitioner has shown compliance with the above-stated *first* and *second* requisites.

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[52] Pars. 3 and 6, Stipulated Facts, JSFI, Docket – Vol.1, pp. 276 to 277; Exhibit "P-38", BIR Records (Exhibit "R-6"), p. 115; Par. 2, Admitted Facts, JSFI, Docket – Vol. 1, p. 275; Exhibit "P-39", Docket – Vol. 2. pp. 790 to 791; Exhibits "P-40" and "R-2", BIR Records (Exhibit "R-6"), p. 116

[53] SUBJECT: Regulations Suspending the Filing and Ninety (90)-Day Processing of Value Added Tax (VAT) Refund Claims Anchored Under Section 112 of the Tax Code of 1997, as Amended, in Relation to Section 4(tt) of Republic Act (R.A.) No. 11494, Otherwise Known as the "Bayanihan to Recover as One Act", October 6, 2020

[54] Par. 3, Admitted Facts, JSFI, Docket – Vol. 1, p. 276; Exhibits "P-41" and "R-5", BIR Records (Exhibit "R-6"), pp, 166 to 167.

[55] Docket – Vol. 1, pp. 6 to 29.

Petitioner is a VAT-registered entity.

Anent the *third* requisite, it is stipulated that petitioner is a VAT registered taxpayer having been issued a Certificate of Registration No. OCN 9RC000553130 by the BIR, Revenue Region No. 8, RDO No. 50.[56] It is further stipulated that for the period covering the third and fourth quarters of CY 2018, petitioner was registered as a VAT taxpayer with Revenue Region No. 8, RDO No. 50 under Certificate of Registration No. OCN 9RC0000419141.[57] Thus, there is no question that petitioner complied with the above-stated *third* requisite.

Petitioner, however, failed to establish that it was engaged in zero-rated sales or effectively zero-rated sales during the third to fourth quarters of CY 2018.

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

In its Quarterly VAT Returns (BIR Form No. 2550-Q) for the third and fourth quarters of CY 2018, petitioner reported total zero-rated sales of ₱921,859,963.64, as follows:

Exhibit No.	Period Covered (CY 2018)	Zero-Rated Sales
"P-34-a"	3rd Quarter	₱ 475,569,224.39
"P-35-a"	4th Quarter	446,290,739.25
	Total	**₱ 921,859,963.64**

Petitioner claims that during the said quarters, zero-rated sales of services were rendered to its 31 affiliates, who are non-resident foreign corporations (NRFCs),[58] to wit:

1. Aexeo Technology Ltd.;
2. Citco Bank and Trust Company (Bahamas) Ltd. – Bank;

[56] Par. 2, Stipulated Facts, JSFI, Docket – Vol. 1, p. 276.
[57] Par. 3, Stipulated Facts, JSFI, Docket – Vol. 1, p. 276; Exhibit "P-33", Docket – Vol. 2, p. 761.
[58] Exhibit "P-42" (QA14), Docket – Vol. 1, pp, 32 to 33.

3. Citco Banking Corporation N.V.;
4. Citco Bank Canada;
5. Citco Bank and Trust Company Limited;
6. Citco Vilnius, UAB;
7. Citco Custody Limited;
8. B&C Technology Ltd;
9. Citco C&T Holdings (Luxembourg) S.a.r.l.;
10. Citco Fund Services (Europe) B.V.;
11. Citco Fund Administration (Cayman Islands) Limited;
12. Citco Fund Services (Australia) Pty. Ltd.;
13. Citco Fund Services (Bahamas) Limited;
14. Citco Fund Services (Bermuda) Limited;
15. Citco REIF Services (Canada) Ltd.;
16. Citco Fund Services (Cayman Islands) Limited;
17. Citco Fund Services (Curacao) B.V.;
18. Citco Fund Services (Ireland) Limited;
19. Citco Fund Services (Guernsey) Limited;
20. Citco Fund Services (Holdings) Limited;
21. Citco Fund Services (Jersey) Limited;
22. Citco Fund Services (Luxembourg) S.A.;
23. Citco Fund Services (Malta) Limited;
24. Citco Fund Services (USA) Inc.;
25. Citco Fund Services (San Francisco), Inc.;
26. Citco Fund Services (Singapore) Pte. Ltd.;
27. The Citco Group Limited;
28. Citco Hong Kong Limited;
29. Citco (Mauritius) Limited;
30. Citco Fund Services (Malvern) Inc.; and,
31. Citco Singapore Pte Ltd.

Relative thereto, petitioner avers that its sale of services to its non-resident foreign affiliates are subject to VAT at zero-rated pursuant to Section 108(B)(2) of the NIRC of 1997, as amended, to wit:

> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – The following **services 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); M

> **(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);** *(Emphases added)*

Based on the foregoing provision, certain essential elements must be present for a sale or supply of services to be subject to the VAT rate of zero percent thereunder, to wit:

1. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a nonresident person not engaged in business who is outside the Philippines when the services were performed;[59]

2. The services fall under any of the categories under Section 108(B)(2),[60] or simply, the services rendered should be other than *"processing, manufacturing or repacking goods"*;[61]

3. The services must be performed in the Philippines[62] by a VAT-registered person; and,

4. The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[63]

As to the *first* essential element, as already intimated earlier, to prove that its clients are NRFCs for purposes of VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended, petitioner must prove that: (1) the client was established under the laws of a foreign country; and, (2) it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of both requirements to establish that the clients are foreign corporations and are not doing business in the Philippines.[64]

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[59] *Sitel Philippines Corporation (Formerly Clientlogic Phils. Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017; *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007; *Accenture, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 190102, July 11,2012.

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

[61] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., supra*.

[62] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., supra*; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), supra*.

[63] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., supra; Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), supra*.

[64] *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*, G.R. No. 234445, July 15, 2020.

Thus, petitioner must submit for the said clients at the very least, both: (1) the Securities and Exchange Commission (SEC) Certificate of Non-Registration of Corporation/Partnership; and, (2) proof of Certificate/Articles of Foreign Incorporation/Association showing the state/province/country where the entity was organized.

The SEC Certificate of Non-Registration shows that the foreign client is not engaged in trade or business in the Philippines; on the other hand, the Certificate/Articles of Foreign Incorporation/Association proves that the client was established under the laws of a foreign country. Together, these two documents prove the two requisites necessary to establish the status of a client, as NRFCs.

In this case, petitioner complied with the *first* essential element as it presented the SEC Certificate of Non-Registration and Certificates of Registration/ Foreign Incorporation/ Association for each of the recipients of the services rendered by petitioner, to wit:[65]

	Client's Name	SEC Certification of Non-Registration (Exhibit Nos.)	Certificate/ Articles of Incorporation/ Registration (Exhibit Nos.)
1	Aexeo Technology Ltd.	"P-6-B"	"P-6-A"
2	Citco Bank and Trust Company (Bahamas) Ltd. - Bank	"P-2-B"	"P-2-A"
3	Citco Banking Corporation N.V.	"P-5-B"	"P-5-A"
4	Citco Bank Canada	"P-4-B"	"P-4-A"
5	Citco Bank and Trust Company Limited	"P-9-B"	"P-9-A"
6	Citco Vilnius, UAB	"P-11-B"	"P-11-A"
7	Citco Custody Limited	"P-7-B"	"P-7-A"
8	B&C Technology Ltd	"P-10-B"	"P-10-A"
9	Citco C&T Holdings (Luxembourg) S.a.r.l.	"P-12-B"	"P-12-A"
10	Citco Fund Services (Europe) B.V.	"P-3-B"	"P-3-A"
11	Citco Fund Administration (Cayman Islands) Limited	"P-8-B"	"P-8-A"
12	Citco Fund Services (Australia) Pty. Ltd.	"P-13-B"	"P-13-A"
13	Citco Fund Services (Bahamas) Limited	"P-14-B"	"P-14-A"
14	Citco Fund Services (Bermuda) Limited	"P-22-B"	"P-22-A"
15	Citco REIF Services (Canada) Ltd.	"P-16-B"	"P-16-A"
16	Citco Fund Services (Cayman Islands) Limited	"P-15-B"	"P-15-A"

[65] Docket – Vol, 2, pp. 514 to 760.

17	Citco Fund Services (Curacao) B.V.	"P-21-B"	"P-21-A"
18	Citco Fund Services (Ireland) Limited	"P-20-B"	"P-20-A"
19	Citco Fund Services (Guernsey) Limited	"P-17-B"	"P-17-A"
20	Citco Fund Services (Holdings) Limited	"P-19-B"	"P-19-A"
21	Citco Fund Services (Jersey) Limited	"P-18-B"	"P-18-A"
22	Citco Fund Services (Luxembourg) S.A.	"P-25-B"	"P-25-A"
23	Citco Fund Services (Malta) Limited	"P-23-B"	"P-23-A"
24	Citco Fund Services (USA) Inc.	"P-30-B"	"P-30-A"
25	Citco Fund Services (San Francisco), Inc.	"P-24-B"	"P-24-A"
26	Citco Fund Services (Singapore) Pte. Ltd.	"P-29-B"	"P-29-A"
27	The Citco Group Limited	"P-28-B"	"P-28-A"
28	Citco Hong Kong Limited	"P-27-B"	"P-27-A"
29	Citco (Mauritius) Limited	"P-31-B"	"P-31-A"
30	Citco Fund Services (Malvern) Inc.	"P-32-B"	"P-32-A"
31	Citco Singapore Pte Ltd	"P-26-B"	"P-26-A"

Relative to the *second* and *third* essential elements, petitioner presented only two service agreements with the following NRFCs, to wit:

1. *Services Agreement* between Citco Fund Administration (Cayman Islands) Limited and petitioner effective August 15, 2016;[66] and,

2. *Delegation Agreement* between Citco Bank and Trust Company Limited and petitioner effective December 14, 2015.[67]

Further, the *Services Agreement* states that petitioner was engaged as an independent contractor by Citco Fund Administration (Cayman Islands) Limited to perform some or all of the Services as set out in *Schedule I*, i.e., net asset value calculations services and administrative and registrar and transfer agency services.[68] As for *Delegation Agreement*, it provides that Citco Bank and Trust Company Limited delegated to petitioner the performance of certain duties and functions as delineated in *Schedule A*, i.e., statement input and reconciliation, data gathering, mandatory corporate actions - shares.[69] Certainly, the services it renders are not in the same category as *"processing, manufacturing or repacking of goods"*; hence, petitioner satisfactorily complied with the *second* essential element, only insofar as its clients, Citco Fund Administration (Cayman Islands) Limited and Citco Bank and Trust Company Limited are concerned. [initial]

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66 Exhibit "P-8", Docket – Vol. 1, pp. 56 to 71.
67 Exhibit "P-9", Docket – Vol. 1, pp. 73 to 96.
68 Exhibit "P-8", Docket – Vol. 1, pp. 68 to 69.
69 Exhibit "P-9", Docket – Vol. 1, pp. 95 to 96.

Petitioner failed to submit in evidence the relevant *Services Agreement* or *Delegation Agreement* for other NRFCs that would establish the nature of services to be performed. Hence, while petitioner is primarily engaged in services *"other than processing, manufacturing or repacking of goods"*, no proof was presented that the services rendered to other NRFCs indeed falls in the category of *"other than processing, manufacturing or repacking of goods"*. Settled is the rule that mere allegation is not evidence and is not equivalent to proof.[70] It is incumbent upon petitioner to submit in evidence proof that would substantiate its allegations.

Anent the *third* essential element, both the *Services Agreement* and *Delegation Agreement* do not clearly indicate as to where the services were performed. Nevertheless, Ms. Jocelyn L. Payuyo, petitioner's Senior Financial Controller stated that the services it rendered to its affiliates were performed from petitioner's principal office in the Philippines, to wit:[71]

> Q12. Please explain the nature of the services rendered by Petitioner to its affiliates.
>
> **A12. As an ROHQ, the services rendered by the Company to its Citco affiliates include technical support and data processing services. <u>The Company performs these services through its employees working from the Company's principal office in the Philippines</u>.**
>
> xxx xxx xxx
>
> Q51. You mentioned that the Petitioner performs its services through its employees **<u>located and working in the Philippines</u>**. Do you have any proof of this?
>
> **A51. Yes. First, the Company's annual income tax return for 2018 show that the Company paid income tax on its net income from its service revenue and that it incurred as cost of its services direct charges such as: the salaries, wages and benefits paid to the Company's employees, materials, supplies, and facilities, and rental for the Company's office space. Second, the Company's returns of withholding tax on compensation for 2018 and receipts for its SSS contributions in 2018 also show that the Company remitted to the BIR and the SSS the income tax and the SSS contributions on the salaries, wages, and benefits paid to the Company's employees for their <u>work in the Philippines</u>.** (*Emphases and underscoring added*)

In view thereof, petitioner has shown compliance with the *third* essential element, insofar as its transactions with Citco Fund Administration

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[70] *Melissa Angela Fernando v. Atty. Alejandro Jose C. Pallugna*, A.C. No. 9338, February 20, 2023
[71] Exhibit "P-42" (Q&A Nos. 12 and 51), Docket – Vol. 1, pp. 32 and 42.

(Cayman Islands) Limited and Citco Bank and Trust Company Limited are concerned.

In relation to the the *fourth* essential element, of equal importance is the requirement that the foreign currency remittances referred to under Section 108(B)(2) of the NIRC of 1997, as amended, must not only be duly accounted for in accordance with the rules and regulations of the BSP but are also supported by VAT zero-rated official receipts (ORs) in accordance with the pertinent invoicing requirements, containing all the required information under Section 113(A) and (B) of the NIRC of 1997, as amended, as implemented by Section 4.113-1(A) and (B) of RR No. 16-05, as amended. Further, the ORs must be duly registered with the BIR as prescribed under Section 237, in relation to Section 238 of the NIRC of 1997, as amended.

Simply put, since petitioner's reported sales are in the nature of sale of services under Section 108(B)(2) of the NIRC of 1997, as amended, petitioner is required to issue BIR-registered VAT ORs for the foreign currency proceeds of each sales transaction, the information contained therein must be compliant with the applicable provisions previously cited, such as the word "zero-rated", and the taxpayer's TIN-VAT number.

Here, petitioner submitted the VAT zero-rated ORs it issued to its clients to support its zero-rated sales for CY 2018.

Upon scrutiny of the documents, the Court finds that for its transactions with Citco Fund Administration (Cayman Islands) Limited and Citco Bank and Trust Company Limited, only the amount of ₱171,834,892.36 is duly supported by ORs, viz.:

Official Receipt	Name of Customer	Amount Billed (in US$)	Exchange Rate	Amount Billed (in Ph₱)
"P-47"	Citco Bank and Trust Company Limited	5,127.00	53.37	273,633.12
"P-61"	Citco Fund Administration (Cayman Islands) Limited	557,204.00	53.37	29,738,534.68
"P-96"	Citco Fund Administration (Cayman Islands) Limited	498,639.00	53.36	26,608,374.32
"P-101"	Citco Bank and Trust Company Limited	9,313.00	54.32	505,900.79
"P-112"	Citco Fund Administration (Cayman Islands) Limited	522,481.00	54.32	28,382,212.88
	Total - 3rd Quarter	**1,592,764.00**		**85,508,655.79**

"P-140"	Citco Fund Administration (Cayman Islands) Limited	575,842.00	53.73	30,941,142.34
"P-167"	Citco Bank and Trust Company Limited	8,437.00	52.52	443,136.55
"P-169"	Citco Fund Administration (Cayman Islands) Limited	492,477.00	52.52	25,866,369.47
"P-186"	Citco Bank and Trust Company Limited	5,170.00	53.06	274,330.54
"P-198"	Citco Fund Administration (Cayman Islands) Limited	542,785.00	53.06	28,801,257.67
	Total – 4th Quarter	**1,624,711.00**		**86,326,236.57**
	Total	**3,217,475.00**		**171,834,892.36**

However, the Court finds that petitioner fell short in proving that the corresponding payments thereof were inwardly remitted through the Philippine banking system and duly accounted for in accordance with BSP rules and regulations.

Nevertheless, petitioner presented the *Certified Bank Statement* issued by petitioner's foreign bank "Citco Banking Corporation N.V.",[72] showing the remittances in US Dollars of the alleged direct payments of its foreign clients during the subject period of claim.

In his *Report*, the ICPA stated that, from the Citco Bank Account, funds were then transferred to petitioner's bank account in the Philippines maintained with the Union Bank of the Philippines (Union Bank) net of any charges and expenses payable to petitioner's affiliates. For the year 2017 to 2018, the total foreign currency remitted to the Philippines into petitioner's bank account as certified by Union Bank amounted to US$28,196,964.94.[73] Of this amount, US$799,975, net of charges, pertains to the inward remittance from Citco Bank Account of US$800,000.[74]

Moreover, the ICPA attested that petitioner transfers funds from its foreign bank account to its Philippine bank account to fund its Philippine operations. All the rest of its revenues are retained in the said foreign bank account. The amounts inwardly remitted to its Union Bank account in the Philippines show only the amount it remitted to the Philippines for its operational needs not all its revenue proceeds.[75]

[72] Exhibit No. "P-2372", USB Marked as Exhibit "P-43-B".
[73] Exhibit "P-2373", USB Marked as Exhibit "P-43-B".
[74] Exhibit "P-43", Docket – Vol. 1, p. 407.
[75] Q&A15, Exhibit "P-44", Docket – Vol. I, pp. 469 to 470.

Needless to say, it is noteworthy that the remittances to petitioner's Union Bank account do not particularly pertain to the payments received by petitioner for the services rendered to its clients, but funds needed for petitioner's operational needs.

Petitioner claimed that the BSP does not require that all sales proceeds must be inwardly remitted to the Philippines. Petitioner anchors its claim on Revenue Memorandum Circular (RMC) No. 57-97, which published the full text of the letter from the BSP to the Commissioner of Internal Revenue regarding the effect of the liberalization of BSP rules on foreign exchange and foreign trade transactions on the processing of applications for VAT refunds. The relevant portion from RMC No. 57-97 is reproduced below:

> Under CB Circular No. 1389 dated April 13, 1993, foreign exchange receipts, acquisitions or earnings of residents from exports may now, at the option of said exporter be sold for Pesos to AABs or outside the banking system, retained or deposited in foreign currency accounts, whether in the Philippines or abroad and used freely for any purpose. The exporter may or may not inwardly remit the foreign exchange proceeds for his exports, at his option.

Petitioner alleged that, pursuant to RMC No. 57-97 and Central Bank (CB) Circular No. 1389 dated 13 April 1993, the inward remittance of the foreign currency paid by its non-resident foreign affiliates for the former's export services is no longer necessary for the qualification of petitioner's export services as VAT zero-rated.[76]

However, petitioner's invocation of RMC No. 57-97 as its basis for dispensing the proof of inward remittance is bereft of merit. RMC No. 57-97 cannot serve as petitioner's anchor to dispense with the proof of payment in foreign currency, as such Circular does not constitute any directive on the part of the BIR. In fact, contrary to petitioner's supposition, proof of inward remittance of foreign currency is still being required as stressed by the Supreme Court, most notably in the case of *San Roque Power Corp. vs. Commissioner of Internal Revenue*,[77] and echoed in recent cases such as in *Chevron Holdings, Inc. vs. Commissioner of Internal Revenue*[78] and *Maibarara Geothermal, Inc. vs. Commissioner of Internal Revenue*.[79] Thus, proof of inward remittance of foreign currency is still required by no less than the *Supreme Court*, and as consistently held by this Court.

Moreover, Section 108(B)(2) of the NIRC of 1997, as amended, explicitly provides that the consideration for the services rendered must be *"paid for in acceptable foreign currency and accounted for in accordance*

[76] *Petitioner's Memorandum*, Docket - Vol. 2, p. 872 to 873.
[77] G.R. No. 180345, November 25, 2009,620 PHIL 554 to 584.
[78] G.R. No. 215159, July 5, 2022.
[79] G.R. No. 250479, July 18, 2022.

with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)". It is a basic rule in statutory construction that where the law does not distinguish, the courts should not distinguish. *Ubi lex non distinguit nec nos distinguere debemos*. No distinction should be made in the application of the law where none has been indicated. Courts can only interpret the law; it cannot read into the law what is not written therein.[80]

Verily, petitioner's sale of services falling under Section 108(B)(2) of the NIRC of 1997, as amended, must be supported with a certificate of inward remittance or a bank-certified credit memo to show that it was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP. As there is no showing that the proceeds from its sale of services were inwardly remitted thru the Philippine banking system and duly accounted for in accordance with BSP rules and regulations, it is clear that there is no compliance with the said *fourth* essential element.

At this juncture, petitioner has already fallen short in establishing that its sale or supply of services qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended. Needless to state, it is only when the sales of a VAT-registered person are zero-rated or effectively zero-rated that such person may have the option of applying for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales.[81] Considering petitioner's failure to establish its zero-rated or effectively zero-rated sales for the subject periods, the present *Petition for Review* must necessarily fail.

Consequently, it becomes unnecessary to look into petitioner's compliance with the other remaining requisites.

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

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

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[80] *Ambrose vs. Suque-Ambrose*, G.R. No. 206761, June 23, 2021.
[81] *Coca-Cola Bottlers Philippines, Inc. vs Commissioner of Internal Revenue,* G.R. No. 222428, July 19, 2018.

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice