REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

KNUTSEN PHILIPPINES INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9564

Members:

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

Promulgated:
JUN 30 2020
3:52 p.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

This is a *Petition for Review* filed on April 05, 2017 by Petitioner Knutsen Philippines Inc. against Respondent Commissioner of Internal Revenue, praying that judgment be rendered ordering Respondent to refund to Petitioner the amount of Php1,096,338.30, representing unutilized input value-added tax ("VAT") for the taxable year 2015.[1]

The Parties

Petitioner Knutsen Philippines Inc. is a domestic corporation duly organized and existing under and by virtue of the laws of Philippines.[2] It is registered with the Bureau of Internal Revenue ("BIR")[3] as a taxpayer subject to,

1 Statement of the Case, Pre-Trial Order dated February 20, 2018, Docket – Vol. 1, p. 502.
2 Exhibit "P-3", Docket – Vol. 2, pp. 710 to 722.
3 Par. 5, Statement of Facts and Issues, Pre-Trial Order dated February 20, 2018, Docket – Vol. 1, p. 503.

inter alia, VAT, with Taxpayer's Identification Number (TIN) 007-515-345-00, and address at 2/F & 3/F The Gregorian Bldg., 2178 Taft Avenue, Brgy. 725, Zone 079, Malate, Manila.[4]

Respondent Commissioner of Internal Revenue is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund or tax credits as provided by law. He may be served with summons, notices, and other court processes at the BIR – Legal Division, Manila, Revenue Region No. 6, Intramuros, Manila.[5]

The Facts

On December 08, 2016, Petitioner filed its *Application for Tax Credits /Refunds* (BIR Form No. 1914) of input VAT in the total amount of Php1,096,338.30 for taxable year 2015.[6]

On March 06, 2017, Petitioner received from the BIR the letter dated February 23, 2017, denying its claims for VAT refund.[7]

Hence, Petitioner filed the instant *Petition for Review* before this Court on April 05, 2017.[8] The instant case was initially raffled to this Court's First Division.

Respondent filed his *Answer* on June 9, 2017,[9] interposing the following special and affirmative defenses, to wit:

> **"SPECIAL AND AFFIRMATIVE DEFENSES**
>
> Respondent incorporates and repleads all the foregoing averments and by way of special and affirmative defenses further states:

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4 Exhibit "P-4", Docket – Vol. 2, p. 723.
5 Par. 1, Statement of Facts and Issues, Pre-Trial Order dated February 20, 2018, Docket – Vol. 1, p. 503.
6 Exhibits "P-1" and "P-1.2", Docket – Vol. 2, p. 705.
7 Par. 3, Statement of Facts and Issues, Pre-Trial Order dated February 20, 2018, Docket – Vol. 1, p. 503.
8 Docket – Vol. 1, pp. 10 to 23.
9 Docket – Vol. 1, pp. 57 to 71.

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.

9. Petitioner is not entitled to refund or tax credit in the amount of Php1,096,338.30 representing alleged unutilized VAT input tax for taxable year 2015.

10. It must be pointed out that taxes remitted to the Bureau are presumed to have been made in the regular course of business and in accordance with provisions of law.

11. All claims for refund are governed by one same rule: that Respondent still has to investigate and ascertain the veracity of the claim. As the Supreme Court stated in one case, '**A corporate taxpayer's option to avail of tax credit does not, however, mean that it is *ipso facto* granted**.' Hence, Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue.

12. To support its claim, it is imperative for Petitioner to prove and present the following:

> a. The registration requirements of a value-added taxpayer in compliance with Section 6 (a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;
>
> b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code, as amended;
>
> c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Circular (RMC) No. 54-2014 and Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of an administrative application

for refund which is a condition sine qua non prior to the filing of a judicial claim in accordance with Section 112 of the Tax Code, as amended. This requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of the judicial remedies as provided for in the law. Hence, Petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the Petitioner for review;

d. That the input taxes of Php1,096,338.30 allegedly incurred by Petitioner for taxable year 2015 was attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;

e. That Petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within the periods provided in Sections 112 (A) and (C) of the Tax Code, as amended;

f. That Petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code, as amended, and pursuant to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits);

g. The requirements as enumerated under Section 4.104-5 of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits)

13. With all due respect, Respondent humbly manifests that Petitioner failed to substantiate its claim that it is entitled to the refund being prayed for. Petitioner failed to comply with the invoicing and accounting requirements laid down in Sections 113, 114 and 236 of the NIRC of 1997, as amended, and its implementing regulations under RR 16-2005.

14. **Section 4.108-1 of Revenue Regulations No. 7-95** specifically enumerates the information that must appear on the face of the receipt or invoice issued by all VAT-registered persons.

> Section 4.108-1 of Revenue Regulations No. 7-95.- Invoicing requirements – All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:
>
> 1. The name, TIN and address of seller;
>
> 2. The date of transaction;
>
> 3. Quantity, unit cost and description of merchandise or nature of service;
>
> 4. The name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
>
> 5. The word 'zero-rated' imprinted on the invoice covering zero-rated sales;
>
> 6. The invoice value or consideration

15. The requirement of imprinting the word 'zero-rated' is useful, practical and necessary not only with respect to the proper implementation of the provisions of the 1997 NIRC on zero-rated transactions but more importantly, to prevent the granting of refund or tax credit to non-existent input VAT.

16. In **JRA Philippines, Inc. vs. Commissioner of Internal Revenue**, the Second Division of this Honorable Court explained the rationale behind the requirements of imprinting the word 'zero-rated' on sales invoices/official receipts, as follows:

> Section 110 of the NIRC of 1997, as amended provides that:
>
> 'Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax: x x x.' If the invoice or official receipt was not

> imprinted with 'zero-rated', there is a danger that the purchaser of the goods or services may be able to claim input tax on the sale to it by the taxpayer of the goods or services, as the case may be, notwithstanding the fact that no VAT was actually paid on such goods or services since the taxpayer is zero-rated.
>
> The zero-rated taxpayer should be entitled to a tax credit/refund paid on its purchases of goods or services subject to the mandatory compliance with the invoicing requirements under the regulations. Otherwise, there may result the absurd situation where the government would be crediting/refunding non-existent input tax to purchasers of goods or services of such zero-rated taxpayer.

17. In **Taganito Mining Corporation vs. Commissioner of Internal Revenue**, the Honorable CTA En Banc had the occasion to say:

> 'x x x In the same vein, the First Division of this Court ruled in this wise:
>
> > 'After a careful perusal of the documents presented by Petitioner to prove that the amount of Php1,727,504.38 represents export sales, We have noted that the commercial invoices of Petitioner failed to comply with invoicing requirements under Section 4.108.1 of Revenue Regulations No. 7-95 in relation to Sections 108 and 238 of the National Internal Revenue Code of 1993.
> >
> > Section 4.108-1. – *Invoicing Requirements.* – All VAT-registered persons shall, for every sale or lease of goods or properties or service, issue duly registered receipts or sales or commercial invoices which must show:
> >
> > 1. the name, TIN and address of seller;
> > 2. date of transaction;
> > 3. quantity, unit cost and description of merchandise or nature of service;

4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. the word 'zero-rated' imprinted on the invoice covering zero-rated sales; and
6. the invoice value or consideration.

xxx

SEC. 108. *Invoicing and accounting requirements for VAT-registered persons.* —
(a) Invoicing Requirements. — A VAT-registered person, shall for every sale, issue an invoice or receipt. In addition to the information required under Section 238, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(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.

SEC. 238. *Issuance of receipts or commercial invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Php25.00 or more, issue receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided,* That in the case of sales, receipts or transfers in the amount of P100.00 or more, or regardless of amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name,

> business style, if any, and address or the purchaser, customer or client xxx

> The commercial invoices issued by Petitioner to support its export sales failed to meet the above standard. Petitioner failed to indicate that it is a VAT-registered person, followed by his taxpayer's identification number. <u>The word 'zero-rated' is also not imprinted in the invoices. In addition, there was no indication that the commercial invoices were authorized to be printed by the Bureau of Internal Revenue as required in Section 239</u> of the National Internal Revenue Code of 1993 which provides:

> SEC. 239. *Printing of receipts or sales or commercial invoices.* — All persons who print receipts or sales or commercial invoices shall for every job order, secure from the Bureau of Internal Revenue an authority to print said receipts or invoices before printing the same.

> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, taxpayer account number and business address of the person or entity use the same.

xxx

> Corollarily (sic), for failure of Petitioner to comply with the requisites under the law, the export sales in the amount of Php1,727,504.38 cannot be qualified as zero-rated for VAT purposes. Moreover, the commissioned Independent CPA noted the said export sales have either no export declaration/permits or supported by photocopied export declarations/permits. Hence, Respondent's assessment for 10% value-added tax is sustained. xxx' (Underscoring supplied)

18. In addition, Petitioner was not able to prove that it has strictly complied with the submission of all supporting and

relevant documents provided under Revenue Memorandum Circular (RMC) No. 54-2014, Revenue Memorandum Order (RMO) No. 53-98 and other existing rules and regulations to warrant the grant of the application for refund.

19. The aforementioned provisions of the NIRC as well as the existing rules and regulations are necessary to establish its claim that indeed there is the presence of valid zero-rated sales that would warrant the grant of administrative application for refund on its unapplied/unutilized input VAT as well as the submission of supporting documents to corroborate the claim being applied for.

20. As here, Petitioner failed to support its administrative claim for refund by failure to submit all the documents required to prove that it is indeed engaged in zero rated sales. Hence, its denial.

21. In **Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, GR No. 145526 promulgated on March 26, 2007** the Honorable Supreme Court held:

> 'Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceeding in that court. **First a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a Petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have reason to deny its claim.** <u>In this case, it is necessary for Petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claim but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit</u>. x x x' (Emphases supplied)

22. It is well-established in this jurisdiction that claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and are therefore held against the claimant. Following the principle that claims for refund of taxes are construed strictly against claimants for they

partake of the nature of tax exemptions, Petitioner's judicial claim deserves no merit and should therefore fall for failure on their part to establish clearly and convincingly that it is entitled to the claim being sought for.

23. Accordingly, the burden of proof of compliance to substantiate its claim for refund or issuance of tax credit certificate is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to its claim.

The Petitioner's sale of services to its clients are not deemed zero rated transactions. Hence, it is not entitled to Input VAT refund

24. Section 108 (B)(2) of the NIRC, explicitly provides for those transactions which are subject to zero-rated sales, to wit:

> 'SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. —
>
> (A) 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) Xxx
>
> (2) **Services** other than those mentioned in the preceding paragraph **rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for an acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas (BSP)*.** (Emphasis Supplied)
>
> x x x'

25. However, as here, upon verification from Securities and Exchange Commission (SEC) it was disclosed that a certain Knutsen Maritime Services AS (Norwegian) is a stockholder/incorporator with 25% ownership with Knutsen Philippines, Inc. And it must be emphasized that Knutsen Maritime Services AS and Knutsen OAS Shipping, are group of companies.

26. Well settled is the rule that, in order to be entitled to refund or tax credit of unutilized input tax payments directly attributable to zero-rated or effectively zero-rated sales, the Petitioner must prove that:

> a. The claimants must be a VAT-registered person. It is not the application for effective zero-rating that is indispensable to VAT refund or credit;
>
> b. The application for the issuance of a tax credit certificate or refund is filed with the BIR or the DOF Center within two (2) years after the close of the taxable quarter when the sales were made, and with the CTA within 30 days from the date of receipt of denial from the CIR or in case of inaction by the CIR, from the lapse of the 120 days from date of filing of the complete documents in support of the administrative claims;
>
> c. The claimed input tax payments were not applied against any output tax during the period covered by the claim covering the succeeding periods, unless a separate claim covering succeeding such period is filed therefor;
>
> d. Claimant must deduct from its VAT quarterly return the input tax being claimed as refund or tax credit;
>
> e. **The claimed input VAT payments are directly attributable to zero-rated or effectively zero-rated sales**;
>
> f. For the 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); **the recipient of services should be 'doing business outside the Philippines' for the transaction to be zero-rated under Section 108(B)(2) of the 1997 Tax Code**;

g. **The claimed input VAT payments are duly supported by VAT invoices or official receipts in accordance with Section 4.104-5 of Revenue Regulations No. 7-95, in relation to Sections 113 (invoicing requirements) and 237 (issuance of receipts or invoices) of the Tax Code**; and

h. The VAT return for the succeeding quarters covered by the claim for tax refund or credit must be submitted with the CTA.

27. The Honorable Supreme Court has stated in **Accenture, Inc.** v. **CIR, G.R. No. 190102, July 11, 2012**, that 'this Court addressed the squarely raised issue of whether the recipient of services should be doing business outside the Philippines for transaction to qualify for zero-rating. We ruled that it should. Thus, another essential condition for qualification for zero-rating under Section 108 (b)(2) of the 1997 Tax Code is that the recipient of the business be doing that business outside the Philippines.'

28. It is not enough that the recipient of the services be proven to be a foreign corporation doing business outside of the Philippines; it must be specifically proven that the recipient of services must be a non-resident foreign corporation as well.

29. As revealed, the foreign client of services of the Petitioner is undeniably considered engaged in business in the Philippines for the very reason that it had a business related transaction and a group of companies in which the Petitioner is one of its members.

30. Consequently, there can be no claim for tax refund arising from zero-rated transaction.

Bare allegations unsubstantiated by evidence are not equivalent to proof.

31. Petitioner alleged that it is engaged in sales which are VAT zero-rated or effectively zero-rated and that the alleged creditable input tax due or paid by it has not been applied against any output tax. However, other than its own bare allegations, Petitioner offers no proof to such effect.

32. Bare allegations, unsubstantiated by evidence, are not equivalent to proof under our Rules of Court. It is a basic rule of evidence that the party making an allegation has the burden of proving it by preponderance of evidence.

33. At the point of being repetitive, Petitioner should comply with the submission of the required documents enumerated in RMC No. 54-2014 and RMO No. 53-98.

34. Petitioner undoubtedly failed to discharge the burden of proving that its sales are VAT zero-rated or effectively zero-rated as contemplated under Section 112 (A) of the National Internal Revenue Code (NIRC) of 1997, as amended.

35. As can be gleaned from Section 4.112-1 of Revenue Regulations No. 16-2005, the substantiation of input tax credit is as follows:

> SECTION 4.110-8. Substantiation of Input Tax Credits.
>
> (a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:
>
> (1) For the importation of goods — import entry or other equivalent document showing actual payment of VAT on the imported goods.
>
> (2) For the domestic purchase of goods and properties — invoice showing the information required under Secs. 113 and 237 of the Tax Code.

(3) For the purchase of real property — public instrument i.e. deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.

(4) For the purchase of services — official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

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

(b) Transitional input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.

(c) Input tax on 'deemed sale' transactions shall be substantiated with the invoice required under Sec. 4.113-2 of these Regulations.

(d) Input tax from payments made to non-residents (such as for services, rentals and royalties) shall be supported by a copy of the Monthly Remittance Return of Value Added Tax Withheld (BIR Form 1600) filed by the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor.

(e) Advance VAT on sugar shall be supported by the Payment Order showing payment of the advance VAT.

36. As previously mentioned, Petitioner must prove compliance with Sections 113, 114, and 237 of the National Internal Revenue Code (NIRC) of 1997, as amended. The said sections pertain to the invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT. Again it is worthy to stress that Petitioner failed to substantiate compliance with the aforementioned sections when it filed only the application for refund.

37. It cannot be emphasized enough that mere filing of an administrative claim for refund or issuance of tax credit certificate without submitting the complete documents in support of the application thereof is not conclusive to sustain its contention that it has the right to claim a refund.

38. It is said that taxes are essential to government's very existence hence, the dictum that 'taxes are the lifeblood of the government.' And because taxes are the lifeblood of the nation, the court has always applied the doctrine of strict interpretation in construing tax exemptions. A claim of exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Else wise stated, taxation is the rule, exemption therefrom is the exception.

39. For this reason, the right of taxation cannot easily be surrendered, statutes granting tax exemptions are considered as a derogation of the sovereign authority. Since tax refunds are regarded as tax exemptions, therefore, these are to be construed *strictissimi juris* against the person or entity claiming the exemption.

40. **In an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications.** The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund.

41. Following the premise above-mentioned, Petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim."

The pre-trial conference was set, and held, on August 10, 2017.[10]

The *Pre-Trial Brief for the Respondent* was filed on August 01, 2017,[11] while Petitioner's *Pre-Trial Brief* was submitted on August 07, 2017.[12]

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10 Notice of Pre-Trial Conference dated June 22, 2017, Docket – Vol. 1, pp. 73 to 74; Minutes of the hearing held on, and Order dated, August 10, 2017, Docket – Vol. 1, pp. 447 to 452.

11 Docket – Vol. 1, pp. 81 to 83.

12 Docket – Vol. 1, pp. 118 to 131.

Meanwhile, Respondent filed the *BIR Records* for the instant case on August 01, 2017.[13]

In the Resolution dated September 15, 2017,[14] the Court declared that the parties' right to file their *Joint Stipulation of Facts and Issues*, despite the period granted; and that the Pre-Trial is terminated. Subsequently, the Court issued the Pre-Trial Order dated February 20, 2018.[15]

The trial of this case then proceeded.

During the trial, Petitioner presented its documentary and testimonial evidence. As regards testimonial evidence, Petitioner proffered the testimonies of the following individuals, namely: (1) Ms. Leah P. Bartolome, Petitioner's Finance Manager;[16] and (2) Ms. Ma. Milagros F. Padernal,[17] the Court-commissioned Independent Certified Public Accountant ("ICPA").[18]

Thereafter, the *ICPA Report* was submitted on June 25, 2018.[19]

On August 15, 2018, Petitioner filed its *Formal Offer of Evidence* ("FOE").[20] Respondent filed his *Comment/ Opposition (To Petitioner's Formal Offer of Exhibits)* on August 28, 2018.[21] In the Resolution dated October 19, 2018,[22] the Court admitted Petitioner's Exhibits, *except* for Exhibits "P-1.3", "P-11", "P-17", "P-32", and "P-33", for failure to present the originals for comparison; and for Exhibit "P-42-101", for not being found in the records of the case.

In the meantime, the instant case was transferred to this Court's Third Division.[23]

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13 Compliance dated July 31, 2017, Docket – Vol. 1, pp. 116 to 117.
14 Docket – Vol. 1, p. 457.
15 Docket – Vol. 1, pp. 502 to 512.
16 Exhibit "P-36", Docket – Vol. 1, pp. 290 to 303; Minutes of the hearing held on, and Order dated, February 27, 2018, Docket – Vol. 1, pp. 513 to 518.
17 Exhibit "P-54", Docket – Vol. 1, pp. 610 to 630; Order dated July 24, 2018, Docket – Vol. 1, pp. 680 to 681.
18 Exhibit "P-37", Docket – Vol. 1, pp. 583 to 588; Minutes of the hearing held on, and Order dated, May 24, 2018, Docket – Vol. 1, pp. 596 to 598, and 600 to 601, respectively; Oath of Commission dated May 24, 2018, Docket – Vol. 1, p. 599.
19 Docket – Vol. 1, pp. 632 to 678.
20 Docket – Vol. 2, pp. 686 to 704.
21 Docket – Vol. 2, pp. 863 to 865.
22 Docket – Vol. 2, pp. 872 to 874.
23 Docket – Vol. 2, p. 870.

Petitioner then filed a *Motion for Partial Reconsideration and Leave of Court to Submit Documents and Attached Amended Formal Offer* on November 08, 2018,[24] praying for the following:

> "(1) Partially RECONSIDER the Resolution dated October 19, 2018 insofar as it denied the admission of Exhibit **'P-11'** and **'P-17'**;
>
> (2) ISSUE an Amended Resolution admitting **Exhibit 'P-11'** and **'P-17'** upon presentation and comparing with the originals which are marked as Annexes '**A**' and '**B**'.
>
> (3) ISSUE and Amended Resolution allowing Petitioner to modify the markings of Judicial Affidavits of Leah P. Bartolome and Ma. Milagros F. Padernal to Exhibit 'P-55' and 'P-54', respectively;
>
> (4) ISSUE an Amended Resolution allowing Petitioner to submit additional documents; and
>
> (5) ISSUE an Amended Resolution allowing Petitioner to submit an Amended Formal Offer."

Respondent filed his *Comment/Opposition (To Motion for Partial Reconsideration and Leave of Court to Submit Documents and Attached Amended Formal Offer)* on November 29, 2018.[25]

In the Resolution dated February 20, 2019,[26] the Court: (1) partially granted Petitioner's *Motion for Partial Reconsideration*; (2) granted its *Motion for Leave of Court to Submit Documents and Attached Amended Formal Offer*; (3) admitted Exhibits "P-11", "P-46-1-103", and "P-55"; (4) denied Exhibit "P-17", for failure to present the original for comparison; and (5) set for hearing the presentation of Respondent's evidence.

Respondent likewise presented his documentary and testimonial evidence. With respect to testimonial evidence, Respondent offered the testimony of Mr. Dennis B. Magsayo,[27] a Revenue Officer II-Assessment of the BIR.

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[24] Docket – Vol. 2, pp. 875 to 884, and 891 to 908.
[25] Docket – Vol. 3, pp. 1069 to 1071.
[26] Docket – Vol. 3, pp. 1076 to 1080.
[27] Exhibit "R-3", Docket – Vol. 1, pp. 86 to 89; Minutes of the hearing held on, and Order dated, February 26, 2019, Docket – Vol. 3, pp. 1080 to 1083.

Respondent's Formal Offer of Evidence was filed on March 04, 2019.[28] Petitioner filed its *Comment on the Respondent's Formal Offer of Evidence* on March 11, 2019.[29] Thus, in the Resolution dated March 29, 2019,[30] the Court admitted Respondent's Exhibits.

On May 08, 2019, Petitioner filed its *Memorandum,*[31] while *Respondent's Memorandum* was filed on May 06, 2019.[32]

On May 17, 2019, the Court deemed the instant case submitted for decision.[33]

The Issue

The issue raised in this case is as follows, to wit:

> "Whether or not Petitioner is entitled to a claim for refund in the total amount of One Million Ninety Six Thousand Three Hundred Thirty Eight Pesos & 30/100 Centavos (Php1,096,338.30), allegedly representing unutilized input VAT related to zero-rated sales/receipts for year 2015." [34]

Petitioner's arguments:

Petitioner argues that it is a VAT-registered enterprise; that it is engaged in zero-rated sales; that the input taxes have been paid and have not been applied against output taxes in the succeeding quarters; that the input taxes being claimed are attributable to its zero-rated sales; that the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations; that the claim was filed within two (2) years after the close of the taxable quarter when the sales were made; and that Petitioner is entitled to a claim for refund in the total amount of Php1,096,338.30, representing unutilized input taxes related to zero-rated sales/receipts for taxable year 2015.

Respondent's counter-arguments:

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28 Docket – Vol. 3, pp. 1084 to 1086.
29 Docket – Vol. 3, pp. 1088 to 1090.
30 Docket – Vol. 3, pp. 1094 to 1095.
31 Docket – Vol. 3, pp. 1096 to 1119.
32 Docket – Vol. 3, pp. 1121 to 1126.
33 Resolution dated May 17, 2019, Docket – Vol. 3, p. 1129.
34 Pre-Trial Order dated February 20, 2018, Docket – Vol. 3, p. 503.

Respondent counter-argues that Petitioner failed to substantiate its claim that it is entitled to the refund being prayed for as the latter failed to comply with the invoicing and accounting requirements laid down in Sections 113, 114, and 236 of the NIRC of 1997, as amended, and its implementing regulations under Revenue Regulations ("RR") No. 16-2005.

Furthermore, Respondent claims that, upon verification from the Securities and Exchange Commission ("SEC"), it was disclosed that a certain Knutsen Maritime Services AS (Norwegian) is a stockholder/incorporator with twenty-five percent (25%) ownership with Knutsen Philippines, Inc.; and that Knutsen Maritime Services AS and Knutsen OAS Shipping are group of companies.

Respondent also claims that Petitioner's foreign client is *"considered engaged in business in the Philippines for the very reason that it had a business related transaction and a group of companies in which the Petitioner is one of its members."* As such, Respondent is of the considered view that Petitioner's sales of services do not qualify for zero-rating under Section 108 (b)(2) of the NIRC of 1997, as amended, as said provision requires, among others, that the recipient thereof is doing business outside of the Philippines.

Lastly, according to Respondent, claims for refund are strictly construed against Petitioner as it partakes the nature of an exemption.

Discussion/Ruling

The instant *Petition for Review* lacks merit.

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

Section 112 of the NIRC of 1997, as amended by Republic Act ("RA") No. 9337,[35] provides as follows:

"SEC. 112. *Refunds or Tax Credits of Input Tax. –*

[35] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

(A) *Zero-Rated or Effectively Zero-Rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: xxx.

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.*— In proper cases, the Commissioner shall grant a refund or issue a tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Pursuant to the above provisions, 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 claim is filed with the BIR within two (2) 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 one hundred twenty (120) days, the judicial claim has been filed with this Court, within thirty (30) days from receipt of the decision or after the expiration of the said 120-day period;[37]

<u>With reference to the taxpayer's registration with the BIR:</u>

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

<u>In relation to the taxpayer's output VAT:</u>

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), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[40]

<u>As regards the taxpayer's input VAT being refunded:</u>

6. the input taxes are not transitional input taxes;[41]
7. the input taxes are due or paid;[42]
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

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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; and AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 182364, August 3, 2010.

[37] Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue, G.R. No. 205282, January 14, 2019; Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue, G.R. No. 168950, January 14, 2015.

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

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Id.*

attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[43] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[44]

Petitioner's administrative and judicial claims were timely filed.

The *first* requisite pertains to the filing of the refund claim for tax credit or refund of input VAT before the BIR, within two (2) years from the close of the taxable quarter when the supposed zero-rated or effectively zero-rated sales were made.

The present claim covers the four (4) quarters of taxable year 2015, which closed on March 31, 2015, June 30, 2015, September 30, 2015, and December 31, 2015, respectively. Counting two (2) years from the said dates, Petitioner had until March 31, 2017, June 30, 2017, September 30, 2017, and December 31, 2017, respectively, within which to file its administrative claim for refund. Considering that Petitioner's administrative claim for the said quarters was filed with the BIR on December 08, 2016,[45] the same was timely made, thereby fulfilling the *first* requisite.

The *second* requisite is to the effect that the judicial claim must have been filed within thirty (30) days from the receipt of Respondent's decision or after the expiration of the 120-day period under Section 112(C) of the NIRC of 1997, as amended.

In this case, Petitioner received the letter dated February 23, 2017 on March 06, 2017,[46] denying its claim for tax credit certificate/refund for the subject period of claim. Thus, counting thirty (30) days from March 06, 2017, Petitioner had until April 05, 2017 within which to file its judicial claim for refund.

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

44 Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, supra; San Roque Power Corporation vs. Commissioner of Internal Revenue, supra; and AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue, supra.

45 Exhibits "P-1" and "P-1.2", Docket – Vol. 2, p. 705.

46 Par. 3, Statement of Facts and Issues, Pre-Trial Order dated February 20, 2018, Docket – Vol. 1, p. 503.

Considering that Petitioner filed the instant *Petition for Review* on April 05, 2017, the judicial claim was likewise timely made. Such being the case, Petitioner fulfilled both the above-stated *first* and *second* requisites.

Petitioner is a VAT-registered taxpayer.

Moreover, it is undisputed that Petitioner is registered with the BIR as a VAT taxpayer, with TIN 007-515-345-000.[47] Thus, Petitioner likewise complied with the *third* requisite.

However, Petitioner failed to show that its reported sales for the four (4) quarters of CY 2015 qualify for VAT zero-rating.

The *fourth* and *fifth* requisites respectively require that the taxpayer is engaged in zero-rated or effectively zero-rated sales; and that for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2), of the NIRC of 1997, as amended by RA No. 9337, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the BSP rules and regulations.

Section 108(B)(2) of the NIRC of 1997, as amended, provides as follows:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> **(B) *Transactions Subject to Zero Percent (0%) Rate.* - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate**:
>
> (1) Processing, manufacturing or repacking of 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);

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[47] Par. 5, Statement of Facts and Issues, Pre-Trial Order dated February 20, 2018, Docket – Vol. 1, p. 503; Exhibit "P-4", Docket - Vol. 2, p. 723.

> **(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 supplied)*

Based on the foregoing provision, certain essential elements must be present for a sale or supply of services to be subject to the VAT rate of zero percent (0%), to wit:

1) The services fall under any of the categories under Section 108(B)(2),[48] or simply, the services rendered should be other than *"processing, manufacturing or repacking goods"*;[49]

2) 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;[50]

3) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules;[51] and

4) The service must be performed in the Philippines[52] by a VAT-registered person.

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

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

[50] 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.

[51] Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., supra; Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), G.R. No. 152609, June 29, 2005.

[52] 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.

Anent the *first* essential element, Petitioner has entered into Manning Agreements[53] with the following clients:

Exhibit No.	Client's Name
"P-19"	KNOT Management Denmark A/S
"P-20"	Knutsen OAS Shipping AS
"P-21"	Canship Ugland Ltd.
"P-22"	Knutsen España Overseas S.L.U.

The said Manning Agreements, together with the Summary of Terms of Manning Agreements and Addendum to the Manning Agreements[54], disclosed that Petitioner was appointed as the Philippine Crewing Manager, who shall be responsible in supplying its foreign clients with Filipino seafarers as per the client's crew requirements with respect to specified rank(s) and number(s); and that the selected crew will be recruited for employment onboard the vessel, which are owned, operated, managed, and/or chartered by Petitioner's clients.

Evidently, Petitioner complied with the *first* essential element, since the said services are not in the same category as "*processing, manufacturing or repacking of goods*".

As for the *second* essential element, Petitioner presented the following documents[55] to prove that its clients whom it had Manning Agreements with are non-resident foreign corporations doing business outside the Philippines:

Registered Name	Manning Agreement	Proof of Incorporation/ Registration/ Residence outside the Phils.	SEC Certificate of Non-Registration
KNOT Management Denmark A/S	"P-19"	"P-34"	"P-16"
Knutsen OAS Shipping AS	"P-20"	"P-18"	"P-13"
Canship Ugland Ltd.	"P-21"	*(none)*	"P-14"
Knutsen España Overseas S.L.U.	"P-22"	*(none)*	*(none)*
Knutsen España Overseas S.L.	*(none)*	*(none)*	"P-15"

However, each of the aforesaid documents, standing alone, is inadequate proof that Petitioner's client is a non-resident foreign corporation doing business outside the Philippines.

53 Exhibits "P-19" to "P-22", Docket – Vol. 2, pp. 782 to 830.
54 Exhibit "P-36".
55 Exhibits "P-13"to "P-16", "P-18" to "P-22", and "P-34", Docket – Vol. 2, pp. 772 to 775, 779 to 830, and 852 to 860, respectively.

While the *SEC Certificates of Non-Registration* show that the named entities therein are not registered corporations/partnerships in the Philippines, the same do not prove that such entities are non-resident foreign corporations doing business outside the Philippines.

As a corollary, the same holds true with *Certificates/Articles of Foreign Incorporation/Registration* which only prove that the entities named therein were incorporated/organized/domiciled abroad but do not necessarily establish that such entities are not doing business in the Philippines.

Likewise, the Manning Agreements only show the names and addresses/incorporation of Petitioner's clients to whom it renders services, but the same do not establish that such clients are non-resident foreign corporations doing business outside the Philippines.

In *Sitel Philippines Corporation (formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue*,[56] the Supreme Court held that while Sitel's documentary evidence, which included Certificates issued by the SEC and Agreements between Sitel and its foreign clients, may have established that Sitel rendered services to foreign corporations and received payment therefor through inward remittances, said 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.

Therefore, to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by **both** SEC *Certification of Non-Registration of Corporation/Partnership* **and** proof of incorporation/registration in a foreign country (*e.g., Articles/ Certificate of Incorporation/Registration* and/or *Tax Residence Certificate*), and that there is no other indication which would disqualify said entity in being classified as a non-resident foreign corporation.

As a result, only the following clients of Petitioner, namely, KNOT Management Denmark A/S, and Knutsen OAS Shipping AS, shall be considered as non-resident foreign corporations doing business outside the Philippines for taxable year 2015, for purposes of the *second* essential element.

Relative to the *third* essential element, Petitioner presented the *Certificates of Inward Remittances* from Bank of the Philippine Islands[57] ("BPI") and Philippine

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[56] G.R. No. 201326, February 08, 2017.
[57] Exhibit "P-9", Docket – Vol. 2, pp. 758 to760.

National Bank [58] ("PNB"), bank advices [59], and passbooks pages/bank statements[60] purportedly showing the remittances of its foreign clients.

However, equally important to consider is that the said foreign currency remittances referred to under Section 108(B)(2) must be duly supported by VAT zero-rated official receipts ("ORs") in accordance with Section 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, which provides that a VAT taxpayer, like herein Petitioner, shall for every sale, barter or exchange of services, issue a VAT official receipt which must contain the information stated in the said provisions, to wit:

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

58 Exhibit "P-10", Docket – Vol. 2, pp. 761 to762.
59 Exhibits "P-42-1" to "P-42-66".
60 Exhibits "P-42-67" to "P-42-100".

(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;

xxx xxx xxx

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and xxx" *(Underscoring supplied)*

Relative thereto, Section 4.113-1(A)(2), B(1) and (2)(c) of RR No. 16-05, as amended, states:

"Sec. 4.113-1. *Invoicing Requirements.* –

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

xxx xxx xxx

(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:
>
> **xxx xxx xxx**
>
> (c) If the sale is subject to zero percent (0%) VAT, the term **<u>'zero-rated sale'</u>** shall be written or printed prominently on the invoice or receipt; xxx" (*Underscoring supplied)*
>
> (3) In the case of sales in the amount of one thousand pesos (Php1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section."

In addition to the above-stated invoicing requirements, 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, to wit:

> "SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or **for services rendered** valued at Twenty-five pesos (P25.00) or more, **issue duly registered receipts** or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service..."*(Emphasis supplied)*
>
> "SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

In the instant case, aside from the *Certificates of Inward Remittances* from BPI[61] and PNB[62], bank advices,[63] and passbooks pages/bank statements,[64] Petitioner also submitted its *Schedule of Zero-rated Sale of Services,*[65] *Schedule of Collections of Zero-rated Sales,*[66] *Summary of Comparison of Schedule Collection of Zero-rated Sales with VAT ORs,*[67] *Summary of Comparison of Schedule of Collections of Zero-rated Sales with Bank Advices and Passbooks/Bank Statements,*[68] and the corresponding VAT ORs[69] to support its reported zero-rated sales/receipts in the total amount of Php61,842,110.76[70] (per Petitioner's Quarterly VAT Returns), for taxable year 2015, broken down as follows:

Exhibit No.	Period	Amount
"P-5"	1st Quarter	Php15,165,844.75
"P-6"	2nd Quarter	15,190,131.5
"P-7"	3rd Quarter	15,684,027.50
"P-8"	4th Quarter	15,802,107.00
	Total	Php61,842,110.75

Upon verification, however, the Court finds that only the sales in the amount of Php50,098,265.75 (equivalent to US$1,100,950.00) was earned from KNOT Management Denmark A/S and Knutsen OAS Shipping AS, which, as determined earlier, qualify as non-resident foreign entities doing business outside the Philippines, and that such sales are properly supported by ORs compliant with above-stated invoicing requirements under the law, detailed as follows:

Exhibit No.	OR Date (MM/DD/YYYY)	OR No.	Name of Customer	Amount in USD	Amount in PhP
"P-41-1"	01/21/2015	3072	Knutsen OAS Shipping AS	$ 81,250.00	Php 3,630,250.00
"P-41-4"	01/23/2015	3075	Knot Management Denmark AS	9,375.00	418,875.00
"P-41-5"	01/30/2015	3076	Knutsen OAS Shipping AS	4,200.00	185,346.00
"P-41-6"	02/24/2015	3077	Knutsen OAS Shipping AS	81,250.00	3,594,500.00
"P-41-7"	02/24/2015	3078	Knot Management Denmark AS	9,375.00	414,750.00
"P-41-11"	03/20/2015	3082	Knot Management Denmark AS	9,375.00	418,968.75
"P-41-12"	03/20/2015	3083	Knutsen OAS Shipping AS	81,250.00	3,631,062.50
1st Quarter				*276,075.00*	*12,293,752.25*

[61] Exhibit "P-9", Docket – Vol. 2, pp. 758 to 760.
[62] Exhibit "P-10", Docket – Vol. 2, pp. 761 to 762.
[63] Exhibits "P-42-1" to "P-42-66".
[64] Exhibits "P-42-67" to "P-42-100".
[65] Exhibit "P-37".
[66] Exhibit "P-40".
[67] Exhibit "P-41".
[68] Exhibit "P-42".
[69] Exhibits "P-41-1" to "P-41-56".
[70] Exhibits "P-5", "P-6", "P-7", and "P-8" (Line 17), Docket – Vol. 2, pp. 724, 727, 730, and 733, respectively.

"P-41-16"	04/22/2015	3087	Knutsen OAS Shipping AS	81,250.00	3,593,687.50
"P-41-17"	04/22/2015	3088	Knot Management Denmark AS	9,375.00	415,218.75
"P-41-18"	04/27/2015	3089	Knutsen OAS Shipping AS	4,200.00	185,724.00
"P-41-19"	05/20/2015	3090	Knot Management Denmark AS	3,125.00	139,156.25
"P-41-20"	05/20/2015	3091	Knot Management Denmark AS	3,125.00	139,156.25
"P-41-21"	05/20/2015	3092	Knot Management Denmark AS	3,125.00	139,156.25
"P-41-24"	05/22/2015	3095	Knutsen OAS Shipping AS	81,250.00	3,616,437.50
"P-41-26"	06/19/2015	3097	Knot Management Denmark AS	3,125.00	140,687.50
"P-41-27"	06/19/2015	3098	Knot Management Denmark AS	3,125.00	140,687.50
"P-41-28"	06/19/2015	3099	Knot Management Denmark AS	3,125.00	140,687.50
"P-41-30"	06/23/2015	3101	Knutsen OAS Shipping AS	81,250.00	3,658,687.50
2nd Quarter				*276,075.00*	*12,309,286.50*
"P-41-32"	07/21/2015	3103	Knutsen OAS Shipping AS	81,250.00	3,677,375.00
"P-41-34"	07/23/2015	3105	Knot Management Denmark AS	9,375.00	424,500.00
"P-41-35"	07/23/2015	3106	Knutsen OAS Shipping AS	4,200.00	190,050.00
"P-41-37"	08/20/2015	3108	Knutsen OAS Shipping AS	81,250.00	3,762,687.50
"P-41-39"	08/26/2015	3110	Knot Management Denmark AS	9,375.00	437,906.25
"P-41-42"	09/23/2015	3113	Knutsen OAS Shipping AS	81,250.00	3,782,187.50
"P-41-43"	09/23/2015	3114	Knot Management Denmark AS	9,375.00	436,406.25
3rd Quarter				*276,075.00*	*12,711,112.50*
"P-41-46"	10/20/2015	3117	Knutsen OAS Shipping AS	81,250.00	3,744,812.50
"P-41-47"	10/22/2015	3118	Knot Management Denmark AS	9,375.00	432,937.50
"P-41-48"	10/27/2015	3119	Knutsen OAS Shipping AS	4,200.00	194,922.00
"P-41-49"	11/16/2015	3120	Knot Management Denmark AS	9,375.00	440,906.25
"P-41-52"	11/24/2015	3123	Knutsen OAS Shipping AS	80,525.00	3,796,753.75
"P-41-55"	12/18/2015	3126	Knot Management Denmark AS	9,375.00	443,812.50
"P-41-56"	12/21/2015	3127	Knutsen OAS Shipping AS	78,625.00	3,729,970.00
4th Quarter				*272,725.00*	*12,784,114.50*
TOTAL				**$1,100,950.00**	**Php50,098,265.75**

Nevertheless, while Petitioner was able to present the *Summary of Comparison of Schedule of Collections of Zero-Rated Sales with Bank Advices and Passbook/Bank Statement*,[71] and the *Certificates of Inward Remittances* from BPI[72] and PNB[73], bank advices,[74] and passbook pages/bank statements[75] purportedly showing the remittances of its foreign clients, the Court cannot ascertain whether such remittances actually correspond to Petitioner's sales to KNOT Management Denmark A/S and Knutsen OAS Shipping AS, as determined above.

To be sure, a perusal of the amounts reflected in the *Certificates of Inward Remittances* from BPI and PNB, bank advices, and passbooks pages/bank statements reveals that they do not tally with the amounts per the above-stated

71 Exhibit "P-42".
72 Exhibit "P-9", Docket – Vol. 2, pp. 758 to 760.
73 Exhibit "P-10", Docket – Vol. 2, pp. 761 to 762.
74 Exhibits "P-42-1" to "P-42-66".
75 Exhibits "P-42-67" to "P-42-100".

ORs. Moreover, even if the amounts per the said ORs were accordingly traced to foreign currency inward remittances as shown in the said *Summary of Comparison of Schedule of Collections of Zero-Rated Sales with Bank Advices and Passbook/Bank Statement,*[76] significant amounts classified as "not related to claim" and "bank charges" were deducted before arriving at the net remittances reflected therein.

Since Petitioner did not present any document or evidence to support the said significant amounts and to show that the subject amounts actually corresponds to its sales, the Court is not convinced that the foreign currency remittances as reflected in the said *Certificates of Inward Remittances,* bank advices, and passbooks pages/bank statements, refer to Petitioner's sales to KNOT Management Denmark A/S and Knutsen OAS Shipping AS for taxable year 2015, amounting to Php50,098,265.75. Thus, the Court finds that Petitioner failed to show its compliance with the *third* essential element.

Similarly, with regard to the *fourth* essential element, *i.e.*, that the subject services were performed in the Philippines, the same has not been established. No evidence was presented by Petitioner to prove that the said services were performed in the Philippines. In fact, in its FOE and Amended FOE,[77] Petitioner did not offer any specific evidence to show that the subject services were performed in the Philippines.

Considering that Petitioner's compliance with the essential elements must be present for a sale or supply of services to be subject to the VAT rate of zero percent (0%) was never fully established, Petitioner's sales of services to KNOT Management Denmark A/S and Knutsen OAS Shipping AS, cannot qualify as VAT zero-rated sales under Section 108(B)(2) of the NIRC of 1997, as amended. In this connection, it must be emphasized that it is only when the sales of a VAT-registered person are zero-rated or effectively zero-rated that he/she/it 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.[78]

Considering Petitioner's failure to establish its zero-rated or effectively zero-rated sales for taxable year 2015, the instant *Petition for Review* must already be denied.

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76 Exhibit "P-42".
77 Docket – Vol. 2, pp. 686 to 704 and 891 to 908.
78 Coca-Cola Bottlers Philippines, Inc. vs Commissioner of Internal Revenue, G.R. No. 222428, July 19, 2018.

Correspondingly, it is no longer necessary to determine whether Petitioner fulfillled the other remaining requisites to merit favorable consideration of its claim for refund of its input VAT for taxable year 2015.

It bears to stress that statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[79] Tax refunds in relation to the VAT are in the nature of tax exemptions.[80] Thus, the taxpayer claiming the tax credit or refund has the burden of proving that he/she is entitled to the refund or credit, in this case input VAT, by submitting evidence that he/she has complied with the requirements laid down in the tax code and the BIR's revenue regulations under which such privilege of credit or refund is accorded.[81]

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

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[79] Commissioner of Internal Revenue vs. Seagate Technology (Phils.), G.R. No. 153866, February 11, 2005.

[80] Panasonic Communication Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue, G.R. No. 178090, February 8, 2010.

[81] Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 180173, April 6, 2011.

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.

ERLINDA P. UY
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