CTA Form No. 8

22-000129-0056

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10813

REGUS SERVICE CENTRE PHILIPPINES B.V.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. CLARISSA J. VIRTUDES-BABARAN
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

CABRERA & COMPANY
29th Floor, AIA Tower (formerly Philamlife Tower)
8767 Paseo de Roxas, 1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **June 30, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **July 1, 2025.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

REGUS SERVICE CENTRE, PHILIPPINES B.V., *Petitioner,*	**CTA CASE NO. 10813**
	Members:
-versus-	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 30 2025; 4:10PM

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DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review*[1] filed on March 21, 2022, by petitioner Regus Service Centre, Philippines B.V. ("**Petitioner**"), against respondent Commissioner of Internal Revenue ("**CIR**" or "**Respondent**"), seeking a refund of the amount of ₱11,316,877.24 allegedly representing petitioner's excess and/or unutilized input value-added tax (**VAT**) attributable to its zero-rated sale of services for calendar year (**CY**) 2018.[2]

THE PARTIES

Petitioner, Regus Service Centre, Philippines B.V., is a regional operating headquarters (**ROHQ**) of Regus Service Centre, Philippines B.V., a corporation organized and existing under the laws of the Netherlands.[3] It is registered with the Bureau of Internal Revenue (**BIR**) as a VAT taxpayer under Taxpayer Identification Number (**TIN**) 287-343-976-000, with

1 Docket, pp. 6–18, Petition for Review.
2 *Id.* at 224, Pre-Trial Order dated October 17, 2022, Summary of the Case.
3 *Id.* at 410, Exhibit "P-1".

address at 3F W High Street Bldg, 28th Street corner 11th Avenue, Bonifacio Global City, Fort Bonifacio, Taguig City 1634.[4] As a registered ROHQ, petitioner is duly licensed to transact and/or enter into business transactions in the Philippines by the Securities and Exchange Commission (**SEC**).[5]

Respondent CIR is vested by law with the power and authority to decide, approve, and grant applications for refund or tax credit of excess internal revenue tax payments.[6]

THE FACTS

On July 15, 2020, petitioner filed with the BIR an *Application for Tax Credits/ Refunds* (BIR Form No. 1914),[7] accompanied by a letter dated June 30, 2020,[8] requesting a refund of unutilized input VAT amounting to ₱11,316,877.24, which allegedly represents the input VAT attributable to petitioner's zero-rated sales of services for CY 2018.

On February 17, 2022, petitioner received a letter dated October 2, 2020, issued by the BIR through Assistant Commissioner Maria Luisa I. Belen of the Assessment Service,[9] denying the application for a refund of the accumulated (excess) input VAT for CY 2018.

PROCEEDINGS BEFORE THE COURT

The present *Petition of Review* was filed on March 21, 2022.[10]

On May 19, 2022, respondent transmitted the *BIR Records* for the case, consisting of 204 pages in one folder.[11]

On May 23, 2022, respondent filed his *Answer*.[12]

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[4] Petitioner's address as indicated in its *Memorandum*, Docket, p. 634, is 14th and 15th NEO Building, 3rd Avenue corner 30th Street, E-Square Crescent Park, Taguig City.
[5] Docket, p. 449, Exhibits "P-2" and "P-2-1".
[6] Docket, pp. 201 and 7, *Joint Stipulation of Facts and Issues* (JSFI), Stipulation of Facts, par. 1(a) vis-a-vis *Petition for Review*, respectively.
[7] Exhibit "P-9", BIR Records (Exhibit "R-5"). p. 8.
[8] Docket, pp. 507–509, Exhibit "P-8".
[9] Docket, pp. 500–506, Exhibits "P-11" and "P-11-1"; Exhibit "R-4", BIR Records (Exhibit "R-5"), pp. 195–200.
[10] Docket, pp. 6–18.
[11] *Id.* at 143–145, *Compliance* dated May 19, 2022.
[12] *Id.* at 170–176.

On August 8, 2022, the Pre-Trial Conference was held.[13] Prior thereto, *Respondent's Pre-Trial Brief* was filed on June 7, 2022,[14] while the *Pre-Trial Brief (of Petitioner Regus Service Centre, Philippines B.V.)* was submitted on August 3, 2022.[15]

On September 7, 2022, the parties filed their *Joint Stipulation of Facts and Issues,*[16] which the Court admitted and approved in a Resolution dated September 22, 2022,[17] thereby terminating the pre-trial stage. The Pre-Trial Order was issued on October 17, 2022.[18]

Trial ensued, during which both parties presented their respective documentary and testimonial evidence.

Petitioner presented the testimonies of: (1) Atty. Rowena Angela C. Salanga,[19] Senior Tax Manager; and (2) Ms. Krista V. Bambao, [20] the Court-commissioned Independent Certified Public Accountant (**ICPA**).[21]

On December 19, 2022, the *ICPA Report* was submitted.[22]

On March 17, 2023, petitioner filed its *Formal Offer of Evidence,*[23] to which respondent filed his *Comment (Re: Formal Offer of Evidence)* on March 20, 2023.[24] In a Resolution dated April 14, 2023,[25] the Court admitted petitioner's exhibits, *except* for the following:

> 1) Exhibits "P-3" and "P-344," for failure to present the originals for comparison;
>
> 2) Exhibits "P-14" and "P-18," for failure of the exhibits offered and identified to correspond with the documents marked; and
>
> 3) Exhibit "P-19" for failure to submit the duly marked exhibit.

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13 *Id.* at 178–179, Notice of Pre-Trial Conference dated May 26, 2022; 196–198, Minutes of the hearing held on, and Order dated, August 8, 2022.
14 *Id.* at 180–183.
15 *Id.* at 185–194.
16 *Id.* at 201–210.
17 *Id.* at 212.
18 *Id.* at 224–229.
19 *Id.* at 65–76, Exhibit "P-25"; 233–238, Exhibits "P-26": 345–347, Minutes of the hearing held on, and Order dated, November 17, 2022.
20 *Id.* at 354–371, Exhibits "P-438"; 378–380, Minutes of the hearing held on, and Order dated, February 9, 2023.
21 *Id.* at 344, *Oath of Commission* dated November 17, 2022; 345–347, Minutes of the hearing held on, and Order dated, November 17, 2022.
22 *Id.* at 348-A–348-Y, Exhibit "P-27".
23 *Id.* at 401–409.
24 *Id.* at 524–526.
25 *Id.* at 529–533.

On May 2, 2023, petitioner filed a *Motion for Reconsideration (of Petitioner Regus Service Centre, Philippines B.V. of the Court's Resolution dated 14 April 2023).* [26] Respondent did not file a comment thereto.[27]

Subsequently, on September 27, 2023, petitioner filed a *Supplemental Formal Offer of Evidence,*[28] to which respondent filed his *Comment (Re: Supplemental Formal Offer of Evidence)* on September 29, 2023.[29] In a Resolution dated November 9, 2023, [30] the Court partially granted petitioner's *Motion for Reconsideration,* admitting Exhibits "P-14," "P-18," and "P-19," but maintained the denial of Exhibits "P-3" and "P-344" for failure to present the originals for comparison.

On February 13, 2024, respondent presented the testimony of Revenue Officer Jayson B. Gordovez.[31]

On February 14, 2024, respondent filed his *Formal Offer of Evidence,* [32] to which petitioner filed its *Comment (Re: Respondent's Formal Offer of Evidence)* on February 26, 2024.[33] In a Resolution dated May 27, 2024,[34] the Court admitted all of respondent's offered evidence.

Respondent's *Memorandum* was filed on June 26, 2024,[35] while petitioner's *Memorandum* was filed on June 28, 2024.[36]

The case was submitted for decision on July 5, 2024.[37]

THE ISSUE

The parties stipulated the following issue for the Court's resolution, to wit:

> Whether the Petitioner is entitled to its claim for refund amounting to Pesos: Eleven Million Three Hundred Sixteen Thousand Eight Hundred Seventy Seven 24/100 (P11,316,877.24) representing its excess and/ or unutilized input VAT attributable to its zero-rated sale of services for

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[26] *Id.* at 534–540.
[27] *Id.* at 544, Records Verification dated June 13, 2023 issued by this Court's Judicial Records Division.
[28] *Id.* at 568–570.
[29] *Id.* at 592–594.
[30] *Id.* at 598–600.
[31] *Id.* at 152–156, Exhibit "R-6"; 601–605, Minutes of the hearing held on, and Order dated, February 13, 2024.
[32] *Id.* at 607–610.
[33] *Id.* at 615–616.
[34] *Id.* at 624–625.
[35] *Id.* at 626–632.
[36] *Id.* at 634–657.
[37] *Id.* at 658, Notice dated July 5, 2024.

taxable CY 2018 or the period 1 January to 31 December 2018.[38]

PETITIONER'S ARGUMENTS

Petitioner contends that its claim for a refund of accumulated (excess) input VAT finds legal support in Section 108(B)(2), in relation to Sections 110(B) and 112(A) of the National Internal Revenue Code (**NIRC**) of 1997, as amended. It asserts that it is a VAT-registered entity as required under Section 112(A) of the NIRC of 1997, as amended; that the administrative and judicial claims for refund were filed within the prescriptive period provided under the pertinent provisions of the NIRC and its implementing rules and regulations; that it is engaged in zero-rated or effectively zero-rated transactions, and the sales were paid in acceptable foreign currency exchange, with the proceeds duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (**BSP**); that the input taxes due from the purchases of goods and services directly attributable to its zero-rated sales were duly supported by VAT invoices or official receipts (**ORs**); that the claimed input VAT payments were not applied against any output tax in the succeeding periods; and that the erroneously paid VAT should be refunded to petitioner under the principle of *solutio indebiti.*

RESPONDENT'S ARGUMENTS

Respondent argues that the petition should be dismissed due to petitioner's failure to substantiate its administrative claim for refund. Consequently, respondent maintains that petitioner is not entitled to a refund in the amount of ₱11,316,877.24.

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[38] Docket, p. 225, Pre-Trial Order, Stipulation of Issue.
The following are the issues as indicated in the Stipulation of Issue, JSFI, Docket, p. 202:
"For the Petitioner

1. Whether the Petitioner is entitled to its claim for refund amounting to Pesos: Eleven Million Three Hundred Sixteen Thousand Eight Hundred Seventy Seven 24/100 (₱ 11,316,877.24) representing its excess and/ or unutilized input VAT attributable to its zero-rated sale of services for taxable CY 2018 or the period 1 January to 31 December 2018.

For the Respondent

1. Whether or not Petitioner is entitled to refund claim of alleged unutilized input VAT on purchases of goods and services attributable to zero-rated sales for the period 1 January 2018 to 31 December 2018 in the amount of Eleven Million Three Hundred Sixteen Thousand Eight Hundred Seventy Seven 24/100 (₱ 11,316,877.24); and

2. Whether or not the Decision of the Commissioner of Internal Revenue in denying the claim for refund is correct based on the documents presented by Petitioner to Respondent."

THE COURT'S RULING

The instant *Petition for Review* lacks merit.

Requisites for the grant of a refund or issuance of a tax credit certificate of unutilized or excess input VAT attributable to zero-rated sales.

Section 112 of the NIRC of 1997, as amended by Republic Act (**RA**) No. 10963,[39] the latest applicable law in the instant case provides, in part:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> ... ...
>
> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in

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[39] 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.

> 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, and as clarified in *Commissioner of Internal Revenue v. Toledo Power Company,*[40] a taxpayer-claimant must comply with the following requisites to successfully obtain a refund or tax credit of unutilized or excess input VAT attributable to zero-rated sales:

> As to the timeliness of the filing of the administrative and judicial claims:
>
> 1. The refund claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made.[41]
>
> 2. 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 ninety (90) 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 90-day period.[42]
>
> Concerning the taxpayer's registration with the BIR:
>
> 3. The taxpayer is a VAT-registered person.[43] Relative thereto, it must be emphasized that registration is an indispensable requirement under our VAT law.[44]

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40 G.R. Nos. 195175 & 199645, August 10, 2015 [Per C.J. Sereno, First Division].

41 *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010 [Per J. Carpio-Morales, Third Division]; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009 [Per J. Chico-Nazario, Third Division]; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007 [Per J. Callejo, Sr., Third Division].

42 See *Commissioner of Internal Revenue v. Vestas Services Philippines, Inc.*, G.R. No. 255085, March 29, 2023 [Per J. Hernando, Third Division]; *Commissioner of Internal Revenue v. CE Casecnan Water and Energy Company, Inc.*, G.R. No. 212727, February 1, 2023 [Per J. Hernando, First Division]; *Energy Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 203367, March 17, 2021 [Per J. Hernando, Third Division]; [cf: Sections 7(a)(1) and (2), and 11 (first paragraph), RA No. 1125, as amended by RA No. 9282].

43 *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010 [Per J. Carpio-Morales, Third Division]; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009 [Per J. Chico-Nazario, Third Division]; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007 [Per J. Callejo, Sr., Third Division].

44 *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, G.R. No. 153866, February 11, 2005 [Per J. Panganiban, Third Division].

In relation to the taxpayer's output VAT:

4. The taxpayer is engaged in zero-rated or effectively zero-rated sales.[45]

5. For zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b) and 108(B)(1) and (2),[46] the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the BSP rules and regulations.[47]

As regards the taxpayer's input VAT being refunded:

6. The input taxes are not transitional.[48]

7. The input taxes are due or paid.[49]

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.[50]

9. The input taxes have not been applied against output taxes during and in the succeeding quarters.[51]

In addition, the taxpayer-applicant must comply with the substantiation and invoicing requirements prescribed under the NIRC and its implementing rules and regulations.[52] Such compliance is indispensable to a "valid claim for input taxes attributable to zero-rated sales,"[53] as it provides the necessary basis to "determine the veracity of the taxpayer's claims."[54]

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45 *Id.*

46 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.

47 *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010 [Per J. Carpio-Morales, Third Division]; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009 [Per J. Chico-Nazario, Third Division]; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007 [Per J. Callejo, Sr., Third Division].

48 *Id.*

49 *Id.*

50 *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009 [Per J. Chico-Nazario, Third Division]; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007 [Per J. Callejo, Sr., Third Division].

51 *Supra* note 41.

52 *Team Energy Corporation (Formerly: Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) v. Commissioner of Internal Revenue*, G.R. Nos. 197663 & 197770, March 14, 2018 [Per J. Leonen, Third Division].

53 *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013 [Per J. Perlas-Bernabe, Second Division].

54 *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018 [Per J. Martires, Third Division].

Strict adherence to these 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 VAT becomes the buyer's input VAT that is available as a refund or tax credit in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates the computation of tax credits, and provides an accurate audit trail or evidence for BIR monitoring purposes.[55]

Furthermore, it must be emphasized that cases before this Court are litigated *de novo.* Party-litigants must prove **every minute aspect** of their case by presenting, formally offering, and submitting their evidence to the Court of Tax Appeals (**CTA**). [56] As such, petitioner must demonstrate compliance with the foregoing requisites. Conversely, failure to satisfy any of these requisites constitutes valid ground for the denial of its refund or tax credit claim.

First and second requisites: Petitioner's administrative and judicial claims for refund/credit were timely filed.

The *first* requisite concerns the timely filing of an administrative claim for refund or tax credit of input VAT with the BIR, which must be done within two years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers all four quarters of CY 2018. The corresponding deadlines for filing the administrative claim, computed two years from the close of each taxable quarter, are set forth in the table below:

[55] *Team Energy Corporation v. Commissioner of Internal Revenue, et seq.*, supra.

[56] *Edison (Bataan) Cogeneration Corporation v. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 201665 & 201668, August 30, 2017 [Per J. Del Castillo, First Division]; *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, September 29, 2014 [Per J. Leonen, Second Division]; *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014 [Per J. Peralta, Third Division]; *Dizon v. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008 [Per J. Nachura, Third Division]; *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007 [Per J. Corona, First Division]; *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005 [Per J. Carpio-Morales, Third Division].

Period covered	End of Taxable Quarter	Last Day to File Administrative Claim
January 1 to March 31, 2018 (1st Quarter)	March 31, 2018	March 31, 2020
April 1 to June 30, 2018 (2nd Quarter)	June 30, 2018	June 30, 2020
July 1 to September 30, 2018 (3rd Quarter)	September 30, 2018	September 30, 2020
October 1 to December 31, 2016 (4th Quarter)	December 31, 2018	December 31, 2020

Petitioner filed its administrative claim for all four quarters on **July 15, 2020.** [57] While the filing dates for the first and second quarters may appear to be beyond the two-year prescriptive period, such deadlines were effectively extended pursuant to Section 2 of Revenue Regulations (**RR**) No. 16-2020.[58] Specifically, the deadline for filing a refund claim for the quarter ending March 31, 2018 was extended until **July 15, 2020**, while the deadline for the quarter ending June 30, 2018 was extended until **August 31, 2020**. The relevant portion of RR No. 16-2020 provides as follows:

> **SECTION 2. Filing Due Dates by Taxpayer-Claimants.** — Filing of Claims for VAT refund for the following taxable quarters shall be until the herein specified due dates:
>
> **Calendar Quarter <u>ending March 31, 2018</u> - July 15, 2020**
> Fiscal Quarter ending April 30, 2018 - July 31, 2020
> Fiscal Quarter ending May 31, 2018 - August 15, 2020
> **Calendar Quarter <u>ending June 30, 2018</u> - August 31, 2020**
>
> ... ... *(Emphasis supplied)*

Accordingly, petitioner's administrative claim filed with the BIR on **July 15, 2020**, is deemed timely.

The *second* requisite under Section 112(C) of the NIRC of 1997, as amended, provides that the BIR has ninety (90) days from the date of submission of the ORs or invoices and other supporting documents to act on the taxpayer's administrative claim. If the claim is denied or the BIR fails to act within the prescribed period, the taxpayer may file an appeal with the Court within thirty (30) days from either receipt of the denial or the lapse of the 90-day period.

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[57] Exhibits "P-8" and "P-9", Docket pp. 507 to 509 and BIR Records (Exhibit "R-5"), p. 8.
[58] SUBJECT: Regulations Further Suspending the Due Dates in the Application of the Ninety (90)-Day Period to Process Value Added Tax (VAT) Refund/Claim Pursuant to Section 112 of the Tax Code of 1997, as Amended by Republic Act (R.A.) No. 10963 (TRAIN Law) for Taxable Quarters Affected by the Declaration of the National State of Emergency.

In this case, the petitioner filed its administrative claim on July 15, 2020. Hence, the BIR had until **October 13, 2020**, or 90 days therefrom, to act on the claim.

Notably, the BIR is deemed to have acted on petitioner's administrative claim within the said 90-day period when the BIR issued a letter of denial dated October 2, 2020, signed by Assistant Commissioner Maria Luisa I. Belen of the Assessment Service, which petitioner received on February 17, 2022.[59]

Counting 30 days from that date, petitioner had until March 21, 2022,[60] to file its judicial claim. As the present *Petition for Review* was filed on March 21, 2022,[61] the judicial claim was likewise timely filed, thereby vesting this Court with jurisdiction over the case.

Given the foregoing, petitioner has satisfactorily complied with both the *first* and *second* requisites.

<u>Third requisite:</u> Petitioner is a VAT-registered person/entity.

Anent the *third* requisite, it is undisputed that petitioner is a VAT-registered entity with TIN 287-343-976-000.[62] Hence, this requisite is deemed satisfied.

<u>Fourth and fifth requisites:</u> Petitioner failed to establish that it had zero-rated or effectively zero-rated sales in CY 2018.

The *fourth* and *fifth* requisites mandate that the taxpayer be engaged in zero-rated or effectively zero-rated sales, and that in the case of 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, the foreign currency exchange proceeds must be duly accounted for in accordance with BSP rules and regulations.

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59 Docket, pp. 500–506, Exhibits "P-11" and "P-11-1"; Exhibit "R-4", BIR Records (Exhibit "R-5"), pp. 195–200.
60 March 19, 2022 (the 30th day) fell on a Saturday. Thus, Section 1, Rule 22 of the Rules of Court applies, *viz.*:

"SECTION 1. *How to compute time.* – In computing any period of time prescribed or allowed by these Rules, or by order of the court, by any applicable statute, the day to act or even from which the designated period of time begins to run is to be excluded and the date of performance included. **If the last day of the period, as thus computed, falls on a Saturday,** a Sunday, or a legal holiday in the place where the court sits, **the time shall not run until the next working day.**" *(Emphasis supplied)*

61 Docket, pp. 6–18.
62 Exhibit "P-3-1", Docket (in between pp. 499 and 500).

In its Amended Quarterly VAT Returns for the four quarters of CY 2018, petitioner reported total sales of ₱1,039,637,904.25, which it claims comprised entirely of zero-rated sales, as shown below:

Period	**Total Sales**
1st Quarter[63]	₱ 231,538,773.48
2nd Quarter[64]	262,936,693.83
3rd Quarter[65]	254,199,086.03
4th Quarter[66]	290,963,350.91
Total	**₱1,039,637,904.25**

Petitioner claims that its sales of services to its non-resident foreign client are subject to zero percent (0%) VAT pursuant to Section 108(B)(2) of the NIRC of 1997, as amended, which states:

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

As gleaned from the foregoing provision, the application of the 0% VAT rate on the sale or supply of services requires the establishment of certain *essential elements*:

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63 Docket, pp. 492–493, Exhibit "P-4".
64 *Id.* at 494–495, Exhibit "P-5".
65 *Id.* at 496–497, Exhibit "P-6".
66 *Id.* at 498–499, Exhibit "P-7".

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;[67]

2. The services fall under any of the categories under Section 108(B)(2),[68] or simply, the services rendered should be other than "*processing, manufacturing or repacking goods*";[69]

3. The services must be performed in the Philippines[70] 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.[71]

On the First Element

To be considered as a non-resident foreign corporation (**NRFC**) doing business outside the Philippines, each entity must be substantiated, at the very least, by **both** a *Certification of Non-Registration of Corporation/Partnership* issued by the Philippine SEC, **and** proof of incorporation/registration in a foreign country, such as Articles or Certificate of Incorporation/Registration and/or Tax Residence Certificate.

The former establishes that the recipient of the service has no registered business in the Philippines, and is not engaged in trade or business within the Philippines; while the latter proves that the recipient is indeed a foreign entity.

The Court has consistently required the submission of such documents to prove compliance with the *first* essential element. In *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*,[72] the Supreme Court affirmed the necessity of presenting these documents in this wise:

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67 *Sitel Philippines Corporation (Formerly Clientlogic Phils. Inc.) v. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017 [Per J. Caguioa, First Division]; *Accenture, Inc. v. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012 [Per J. Sereno, Second Division]; *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007 [Per J. Carpio, Second Division].

68 *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005 [Per J. Panganiban, Third Division].

69 *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007 [Per J. Carpio, Second Division].

70 *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007 [Per J. Carpio, Second Division]; *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005 [Per J. Panganiban, Third Division].

71 *Id.*

72 G.R. No. 234445, July 15, 2020 [Per J. Inting, Second Division].

> **For purposes of zero-rating under Section 108(B)(2) of the Tax Code, the claimant must establish the two components of a client's NRFC status, *viz.*: (1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of both of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines.**
>
> **Such proof must be especially required from ROHQs** such as DKS. **That the law expressly authorizes ROHQs to render services to local and foreign affiliates alike only stresses the ROHQ's burden to distinguish among their clients' nationalities and actual places of business operations and establish that they are seeking refund or credit of input VAT only to the extent of their sales of services to foreign clients doing business outside the Philippines.**
>
> To recall, the CTA found that the SEC Certification of Non-Registration of Company and Authenticated Articles of Association and/or Certificates of Registration/Good Standing/Incorporation sufficiently established the NRFC status of 11 of DKS's affiliates clients.
>
> The Court upholds these findings.
>
> The Court accords the CTA's factual findings with utmost respect, if not finality, because the Court recognizes that it has necessarily developed an expertise on tax matters. Significantly, both the CTA Division and CTA *En Banc* gave credence to the aforementioned documents as sufficient proof of NRFC status. The Court shall not disturb its findings without any showing of grave abuse of discretion considering that the members of the tax court are in the best position to analyze the documents presented by the parties.
>
> In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court *a quo's* findings. **To the Court's mind, the SEC Certifications of Non-Registration show that these affiliates are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines.** *(Emphasis supplied)*

In the present case, petitioner satisfied the *first* essential element as it proved that its sole client for the period of claim, Franchise International S.A.R.L., is an NRFC doing business outside the Philippines, as evidenced by the following documents:

1. Updated Articles of Association of Franchise International (Luxembourg) as at December 17th, 2012;[73]

2. Apostilled Certificate of Residence of Franchise International issued by Cantonal Tax Administration Zug;[74]

3. Certificate of Non-Registration as a corporation or partnership issued by the Philippines SEC to Franchise International S.A.R.L;[75] and

4. Apostilled document as to the change of name of the private limited liability company *(societe a responsabilite limitee* or S.A.R.L.) from Franchise International (Luxembourg) to Franchise International.[76]

On the Second Element

The *Service Agreement* between petitioner's Head Office and Franchise International S.A.R.L.[77] which commenced on January 1, 2015, and became valid and effective for an indefinite period, provides in part the following services to be rendered to Franchise International S.A.R.L., to wit:

1. Billing Support;
2. Debt Management and Collections;
3. Accounts Receivable and Cash Application Support;
4. Accounts Payable Support;
5. Treasury Support;
6. General Ledger/Accounting Support;
7. Reporting and Business Analytical Support;
8. Information Technology Services;
9. Marketing and Public Relations Services;
10. Finance and Legal Services;
11. Human Resources and Training Services;
12. Sales Support Services;
13. New Centre Opening Team;
14. Various Ad Hoc general support services;
15. Provision of performance reports against agreed KPI's in a standardized form and frequency;
16. Consultancy on relevant process methodology and on process change management/continuous process improvement; and
17. IT Helpdesk support offered to associated companies worldwide.

W

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73 Exhibit "P-13", BIR Records (Exhibit "R-5"), pp. 137–149.
74 Exhibit "P-14", Docket, pp. 571–572.
75 Exhibit "P-15", BIR Records (Exhibit "R-5"), p. 121.
76 Exhibit "P-18", Docket, pp. 573–589.
77 Exhibit "P-16", BIR Records (Exhibit "R-5"), pp. 122–131.

Verily, these services fall within the scope of *"services other than processing, manufacturing, or repacking goods."* Hence, petitioner satisfactorily complied with the *second* essential element.

On the Third Element

Petitioner must prove that the subject services were performed in the Philippines by a VAT-registered person.

Notably, the *Service Agreement* between petitioner's Head Office and Franchise International S.A.R.L. does not indicate that the services were to be performed by petitioner in the Philippines. Neither has petitioner submitted any other evidence to prove such fact. Furthermore, a careful reading of the *Services Agreement* reveals that the subject services may be performed not only by petitioner, but also by its Head Office or even a third-party provider.

Nonetheless, Atty. Rowena Angela C. Salanga, petitioner's Senior Tax Manager, categorically testified that the services rendered to its foreign affiliate were indeed performed in the Philippines, to wit:[78]

> 5. Q: What services do you render to Franchise International?
>
> A: We provide them with assistance in areas including billing and contract management support, payroll and human resources, debt management, and collections and accounting matters.
>
> 6. Q: What is your basis for classifying the sales transactions of the ROHQ with Franchise International as zero-rated sales?
>
> 7. A: The services rendered in the **Philippines** by the ROHQ, which is a VAT registered taxpayer, to Franchise International, a non-resident foreign corporation incorporated in Luxembourg, involves services other than processing manufacturing or repacking of goods and the payment for the said services are in US Dollars and accounted in accordance with BSP rules. Under Section

[78] Exhibit "P-26", Supplemental Judicial Affidavit of Atty. Rowena Angela C. Salanga, Docket, pp. 235–236.

108 (B)(2) of the Tax Code, the services qualify for VAT at 0%.

... ...

9. Q: These services you rendered to Franchise International, they were rendered here in the Philippines?

A: **Yes. These services were rendered by the ROHQ here in the Philippines**.

10. Q: What document could you show as proof of your statement?

A: I have here the breakdown of the management fees incurred by the ROHQ for the CY 2018, [pre-marked as Exhibit P-23]

These fees pertain to property costs, transportation, internet salaries, other similar expenses incurred and paid in the **Philippines** in the course of the rendition of services by the ROHQ in the **Philippines** for Franchise International.

... ... (*Emphasis supplied*)

Accordingly, based on the foregoing testimony, petitioner has sufficiently established that the subject services were rendered in the Philippines by a VAT-registered entity, thereby satisfying the said *third* essential element.

On the Fourth and Fifth Elements

To satisfy the *fourth* and *fifth* essential elements for the grant of an input VAT refund, petitioner presented a Certification from HSBC Limited,[79] purportedly evidencing receipt of foreign currency remittances as payment for services rendered to Franchise International S.A.R.L.

Under Section 113(A) and (B) of the NIRC of 1997, as amended, petitioner must show that the claimed VAT zero-rated sales, to which the said foreign currency remittances correspond, are supported by duly issued VAT zero-rated ORs, containing all the required information, to wit:

[79] Exhibit "P-17", BIR Records, pp. 118–119.

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

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

(1) A **VAT invoice for every sale, barter or exchange of goods or properties; and**

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

... ...

(c) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;

... ...

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

(4) In the case of sales in the amount of One thousand pesos (1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client. *(Emphasis and underscoring supplied)*

The above requirements are further implemented by Section 4.113-1(A) and (B) of RR No. 16-2005, as amended, which states:

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

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

(1) A VAT invoice for every sale, barter or exchange of goods or properties; an

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

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

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

(B) Information contained in VAT invoice or VAT official receipt. — The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:

(a) The amount of tax shall be shown as a separate item in the invoice or receipt;

... ...

(c) If the sale is subject to zero percent (0%) VAT, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;

(d) In the case of sales in the amount of one thousand pesos (1,000.00) 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." *(Underscoring added)*

In addition to the above requirements, under Section 237, in relation to Section 238 of the NIRC of 1997, as amended, such ORs must be duly registered with the BIR, as follows:

> SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* —
>
> (A) All persons subject to an internal revenue tax shall, at the point of each sale and transfer of merchandise or for services rendered valued at One hundred pesos (P100.00) or more, issue duly registered receipts or sale or commercial invoices, **showing the** date of transaction, quantity, unit cost and description of merchandise or **nature of service**: ...
>
> ... ...
>
> 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. *(Emphasis supplied)*

In support of its zero-rated sales of services for CY 2018, petitioner submitted the following VAT zero-rated ORs issued to Franchise International S.A.R.L., with details as follows:

Exhibit No.	OR No.	Date	Sales Amount (in US Dollars)	Sales Amount (in Philippine Peso)
"P-41"	1026	January 2018	1,695,385.36	84,630,305.16
"P-42"	1027	7 February 2018	1,441,139.96	73,864,167.58
"P-43"	1028	6 March 2018	1,401,434.42	73,044,300.74
"P-44"	1029	10 April 2018	1,652,142.68	86,291,443.92
"P-45"	1030	10 May 2018	1,762,200.00	91,098,725.06
"P-46"	1031	14 June 2018	1,625,586.88	85,546,524.85
"P-47"	1032	6 July 2018	1,678,256.92	89,523,281.59
"P-48"	1033	8 August 2018	1,521,023.19	80,711,559.72
"P-49"	1034	10 September 2018	1,570,306.79	83,964,244.72
"P-50"	1035	4 October 2018	1,538,684.46	83,062,823.31
"P-51"	1036	6 November 2018	1,503,749.63	80,523,611.29
"P-52"	1037	7 December 2018	2,434,943.29	127,651,916.31
Total			**$19,824,853.58**	**₱1,039,912,904.25**

Upon evaluation and verification, however, the submitted ORs were found to be non-compliant with the invoicing requirements set forth in the foregoing provisions because they **failed to indicate the <u>nature of the services</u> rendered** by petitioner. This omission constitutes a fatal defect in the substantiation of the zero-rated sale, thereby rendering petitioner's claim deficient in respect of the *fourth* essential element for VAT zero-rating.

Compliance with all the VAT substantiation and invoicing requirements provided by tax laws and regulations is mandatory.[80] The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[81]

Given that petitioner failed to prove that the subject sale of services to Franchise International S.A.R.L. during CY 2018 qualified for VAT zero-rating and were paid in acceptable foreign currency, duly accounted for under the BSP rules, it did not satisfy the *fourth* and *fifth* requisites for the grant of its claim.

Such being the case, the present refund claim must be denied. Correspondingly, it is no longer necessary to determine whether petitioner satisfied the remaining requisites to merit a favorable consideration of its claim for the refund of unutilized input taxes for CY 2018.

It bears emphasis that tax refund claims are in the nature of tax exemptions. As such, the law is not only construed in *strictissimi juris* against the taxpayer, the pieces of evidence presented entitling a taxpayer to an exemption must also be *strictissimi* scrutinized and duly proven. The burden rests with the taxpayer to clearly and convincingly prove compliance with the conditions for the grant of the refund or tax credit. As taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented, as they are not intended to be liberally construed.[82]

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

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80 *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015 [Per J. Reyes, Third Division]; *JRA Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013 [Per J. Perlas-Bernabe, Second Division].

81 *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018 [Per J. Martires, Third Division].

82 *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018 [Per J. Peralta, Second Division].

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G.DEL ROSARIO
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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