CTA Form No. 8

19-000513-0077

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NOS. 10194 & 10228

CF SHARP CREW MANAGEMENT, INC.,
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. MICHAEL KEVIN P. BAYONA
Bureau of Internal Revenue
Litigation Division, Room 703, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

MARTINEZ VERGARA & GONZALEZ SOCIEDAD (MVGS LAW)
33rd Floor, The Orient Square
F. Ortigas Jr. Road, Ortigas Center
Pasig City

GREETINGS:

You are hereby notified by these presents that on **January 5, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **January 8, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
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SPECIAL FIRST DIVISION

CF SHARP CREW MANAGEMENT, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case Nos. 10194 & 10228

Members:

DEL ROSARIO, *PJ, Chairperson,*
MANAHAN, and
REYES-FAJARDO, *JJ.*

Promulgated:
JAN 0 5 2024 1:30PM

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DECISION

REYES-FAJARDO, J.:

Before the Court are consolidated Petitions for Review[1] filed by CF Sharp Crew Management, Inc. (CF Sharp) against respondent Commissioner of Internal Revenue (CIR), seeking a refund in the aggregate amount of ₱3,748,004.86, representing alleged excess and/or unutilized input value-added tax (VAT) credits relative to second, third, and fourth quarters of calendar year (CY) 2017, computed as follows:

Docket No.	Quarter - CY 2017	Amount
CTA Case No. 10194	Second	₱1,342,396.53
CTA Case No. 10228	Third and Fourth	2,405,608.33
Total		**₱3,748,004.86**

FACTS

Petitioner CF Sharp is a domestic corporation, duly organized and existing under and by virtue of the laws of the Philippines, with

[1] Docket (CTA Case No. 10194) – Vol. 1, pp. 6-15; Docket (CTA Case No. 10228) – Vol. 1, pp. 6-15.

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principal office at Casa Rocha Bldg., 290 Gen. Luna St., Intramuros, Manila, Philippines, and duly registered with the Bureau of Internal Revenue (BIR) under Tax Identification Number (TIN) 000-004-584-029. In its BIR Certificate of Registration, petitioner's registered activities involve the payment of: (i) income tax; (ii) VAT; (iii) expanded withholding tax (EWT); (iv) registration fee; (v) withholding tax on compensation; and (vi) final withholding tax.[2]

Respondent CIR is the head of the Bureau of Internal Revenue (BIR), empowered to perform the duties of the office, including acting upon and approving claims for refund or tax credit. Its office address is at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

VAT Returns

For the second, third, and fourth quarters of CY 2017, CF Sharp filed Quarterly VAT Returns (BIR Form No. 2550-Q) and reported total sales amounting to ₱160,326,783.20, which included zero-rated sales of ₱159,643,141.10, computed as follows:

Quarter CY 2017	VATable Sales	Sales to Government	Zero-rated Sales	Total Sales
Second[3]	₱381,142.86		₱51,341,955.59	₱51,723,098.45
Third[4]	247,214.29	₱23,284.95	53,898,560.86	54,169,060.10
Fourth[5]	32,000.00		54,402,624.65	54,434,624.65
Total	**₱660,357.15**	**₱23,284.95**	**₱159,643,141.10**	**₱160,326,783.20**

Correspondingly, CF Sharp reported output VAT from its vatable sales and sales to government in the second, third, and fourth quarters amounting to ₱45,737.14,[6] ₱32,459.90,[7] and ₱3,840.00,[8] respectively.

[2] Par. 1, Pre-Trial Order dated July 29, 2021, Docket (CTA Case No. 10194) – Vol. II, p. 612. Refer also to par. 2, *Petition for Review*, vis-à-vis par. 1, *Answer*, Docket (CTA Case No. 10228) – Vol. I, pp. 7 and 78, respectively.
[3] Exhibit "P-7", Docket (CTA Case No. 10194) - Vol. II, pp. 679-680.
[4] Exhibit "P-7.3", Docket (CTA Case No. 10194) - Vol. II, pp. 688-689.
[5] Exhibit "P-7.7", Docket (CTA Case No. 10194) - Vol. II, pp. 700-701.
[6] Exhibit "P-7", Item 19B, Docket (CTA Case No. 10194) - Vol. II, p. 679.
[7] Exhibit "P-7.3", Item 19B, Docket (CTA Case No. 10194) - Vol. II, p. 688.
[8] Exhibit "P-7.7", Item 19B, Docket (CTA Case No. 10194) - Vol. II, p. 700.

On the other hand, it declared input VAT from its current domestic purchases of goods and services amounting to ₱1,388,133.67,[9] ₱1,253,448.75,[10] and ₱1,188,459.48[11] in the second, third, and fourth quarters, respectively.

On account of the excess of input over output VAT, CF Sharp reported net VAT *overpayment* in the second, third, and fourth quarters amounting to ₱4,755,847,.75,[12] ₱5,976,836.60,[13] and ₱7,161,456.08.[14]

Proceedings before the BIR

CF Sharp filed two separate Applications for Tax Credits/Refunds (BIR Form No. 1914), including the duly accomplished Revised Checklists of Mandatory Requirements on Claims for VAT Refund (administrative claims), as follows:

Date of Filing	Quarter - CY 2017	Amount	Reference
June 28, 2019	Second	₱1,342,396.53	*First Administrative Claim*[15]
September 30, 2019	Third and Fourth	2,405,608.33	*Second Administrative Claim*[16]
	Total	**₱3,748,004.86**	

The BIR issued separate Tax Verification Notices[17] after the filing of each administrative claim. Subsequently, a VAT Refund Notice dated August 30, 2019[18] and letter dated November 5, 2019[19] were issued denying the First and Second Administrative Claims, respectively, for lack of factual basis. CF Sharp received the

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[9] Exhibit "P-15", Item 21F; scanned copy contained in USB marked as Exhibit "P-17".

[10] Exhibit "P-7.3", Item 21F, Docket (CTA Case No. 10194) - Vol. II, p. 688.

[11] Exhibit "P-7.7", Item 21F, Docket (CTA Case No. 10194) - Vol. II, p. 700.

[12] Exhibit "P-15", Item 29; scanned copy contained in USB marked as Exhibit "P-17".

[13] Exhibit "P-7.3", Item 29, Docket (CTA Case No. 10194) - Vol. II, p. 689.

[14] Exhibit "P-7.7", Item 29, Docket (CTA Case No. 10194) - Vol. II, p. 701.

[15] Exhibit "P-10", Docket (CTA Case No. 10194) – Vol. II, p. 709; Exhibits "P-21" and "R-3", BIR Records (Exhibit "R-11"), p. 108.

[16] Exhibit "P-31", BIR Records (Exhibit "R-12"), p. 123; Exhibit "R-4", BIR Records (Exhibit "R-12"), p. 124.

[17] *Tax Verification Notice No. TVN201800083100 dated June 28, 2019*, Exhibit "R-1", BIR Records (Exhibit "R-11"), p. 110; *Tax Verification Notice No. TVN201800116156 dated September 30, 2019*, Exhibit "R-2", BIR Records (Exhibit "R-12"), p. 126.

[18] Exhibit "P-11", Docket (CTA Case No. 10194) – Vol. II, pp. 710 to 712; Exhibit "R-9", BIR Records (Exhibit "R-11"), p. 141.

[19] Exhibits "P-14" and "P-14.1", Docket (CTA Case No. 10194) – Vol. II, pp. 715 to 722; Exhibit "R-10", BIR Records (Exhibit "R-12"), p. 173.

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corresponding notices thereof on September 18, 2019[20] and November 29, 2019.[21]

The adverse rulings prompted CF Sharp to file the present Petitions for Review on October 18, 2019 and December 20, 2019, respectively.

Proceedings before the Court

The CIR filed separate Answers in CTA Case Nos. 10194 and 10228 on January 27, 2020[22] and July 1, 2020,[23] respectively. Upon CF Sharp's motion,[24] the Court resolved to consolidate the cases.[25]

Meanwhile, the CIR submitted the relevant BIR Records on July 1, 2020,[26] January 13, 2021,[27] and July 5, 2021.[28]

After the parties' submission of their respective pre-trial briefs[29] and the conduct of a pre-trial conference,[30] the Court issued a Pre-Trial Order on July 29, 2021.[31]

During trial, the following persons testified for CF Sharp: (1) Ms. Emillie T. Bernaldo,[32] General Accounting Manager, CF Sharp, and (2) Atty. Edward M. Menor, the Court-commissioned Independent Certified Public Accountant (ICPA).[33] The ICPA Report was submitted on May 21, 2021.[34]

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[20] Exhibits "P-12" and P-12.1", Docket (CTA Case No. 10194) – Vol. II, p. 714.
[21] Exhibits "P-14" and "P-14.1", Docket (CTA Case No. 10194) – Vol. II, pp. 715 to 722; Exhibit "R-10", BIR Records (Exhibit "R-12"), p. 173.
[22] Docket (CTA Case No. 10194) – Vol. I, pp. 59-71.
[23] Docket (CTA Case No. 10228), pp. 78-83.
[24] Motion to Consolidate Cases, Docket (CTA Case No. 10228), pp. 63-67.
[25] Granted by the Third Division per Resolution dated July 16, 2020 (Docket (CTA Case No. 10228), pp. 89-90) and approved by the First Division per Resolution dated September 24, 2020 (Docket (CTA Case No. 10194) – Vol. I, pp. 134-135).
[26] Compliance dated June 30, 2020, Docket (CTA Case No. 10194) – Vol. I, pp. 112-114.
[27] Compliance filed on January 13, 2021, Docket (CTA Case No. 10194) – Vol. I, pp. 266-268.
[28] Compliance dated July 23, 2021, Docket (CTA Case No. 10194) – Vol. II, pp. 591-592.
[29] For CF Sharp, see Docket (CTA Case No. 10194) – Vol. I, pp. 139-161; for the CIR, see Docket (CTA Case No. 10194) – Vol. I, pp. 254-258.
[30] Order dated December 2, 2020, Docket (CTA Case No. 10194) – Vol. I, pp. 260-261. Order dated February 18, 2021, Docket (CTA Case No. 10194) – Vol. I, pp. 352-354.
[31] Docket (CTA Case No. 10194) – Vol. II, pp. 606-620.
[32] Exhibit "P-16", Docket (CTA Case No. 10194) – Vol. II, pp. 511-526; Order dated July 27, 2021, Docket (CTA Case No. 10194) – Vol. II, pp. 601-603.
[33] Order dated February 18, 2021, Docket (CTA Case No. 10194) – Vol. I, pp. 352-354.
[34] Exhibit "P-17", Docket (CTA Case No. 10194) – Vol. I, pp. 397-478.

CF Sharp filed its Formal Offer of Evidence[35] and a supplement[36] thereto on October 27, 2021 and April 18, 2022, respectively. In Resolutions dated March 7, 2022[37] and June 3, 2022,[38] the Court admitted the exhibits offered by CF Sharp, **except for "P-5.5," "P-5.14," "P-5.19," "P-6," "P-6.2" to "P-6.13" and "P-6.15" to "P-6.18," for failure to lay the predicate for the admission as secondary evidence.**

For its part, the CIR presented the testimonies of the following revenue officers: (1) Mr. Dexter C. Bustillos,[39] (2) Ms. Janine Mycka P. Espiritu,[40] and (3) Mr. Orlan S. Rabelista.[41] Subsequently, the Court resolved to admit all exhibits offered by the CIR.[42]

The case was submitted for decision on January 6, 2023.[43]

CF Sharp's Arguments

Petitioner anchors its claims for refund or credit on Sections 108 (B)(2) and 112(A) and (C), in relation to Section 110 (B), of the 1997 National Internal Revenue Code (Tax Code). It avers as follows: *First,* it is a registered VAT taxpayer. *Second,* it generated zero-rated sales during the second, third, and fourth quarters of CY 2017. *Third,* during the subject period, it incurred input VAT amounting to ₱3,748,004.86 attributable to said zero-rated sales. *Fourth,* said input VAT has remained unutilized and/or unapplied against its output VAT liability. *Fifth,* its claims for refund had been filed within the two-year prescriptive period.

The CIR's Arguments

Respondent CIR insists that the present judicial claims should be dismissed/denied for the following reasons: *First,* CF Sharp failed to

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[35] Docket (CTA Case No. 10194) – Vol. II, pp. 621- 639.
[36] Docket (CTA Case No. 10194) – Vol. II, pp. 766-774.
[37] Docket (CTA Case No. 10194) – Vol. II, pp. 733-738.
[38] Docket (CTA Case No. 10194) – Vol. II, pp. 809-821.
[39] Exhibit "R-13", Docket (CTA Case No. 10194) – Vol. I, pp. 247-253; Minutes of the hearing held on, and Order dated, July 5, 2022, Docket (CTA Case No. 10194) – Vol. II, pp. 822-824.
[40] Exhibit "R-14", Docket (CTA Case No. 10194) – Vol. I, pp. 237-242; Minutes of the hearing held on, and Order dated, July 5, 2022, Docket (CTA Case No. 10194) – Vol. II, pp. 822-824.
[41] Exhibit "R-15", Docket (CTA Case No. 10194) – Vol. I, pp. 227-232; Minutes of the hearing held on, and Order dated, August 2, 2022, Docket (CTA Case No. 10194) – Vol. II, pp. 833-835.
[42] In a Resolution dated September 28, 2022, Docket (CTA Case No. 10194) – Vol. II, pp. 852-853.
[43] Docket (CTA Case No. 10194) – Vol. II, p. 903.

substantiate its claims at the administrative level. *Second,* CF Sharp failed to comply with the requirements set out in Sections 112(A) and 113 of the Tax Code. *Third,* pursuant to the Supreme Court's pronouncement in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue* (*Pilipinas Total Gas*),[44] the CTA's review in refund cases shall be limited to determining whether the CIR's decision/denial of the claim is proper.

ISSUES

The Court is tasked to ascertain CF Sharp's entitlement to a refund or credit of alleged unutilized input VAT attributable to zero-rated sales relative to the second, third, and fourth quarters of CY 2017. Resolution of this main issue turns upon the following questions: *First,* in resolving the present judicial claims, may the Court consider even evidence not presented before the CIR at the administrative level? *Second,* did CF Sharp comply with the requirements under Section 112(A) of the Tax Code?

OUR RULING

The consolidated Petitions for Review are partially granted.

The Court may consider all evidence presented to support a judicial claim, even those not presented at the administrative level.

We reject the CIR's argument that, pursuant to *Pilipinas Total Gas,* CF Sharp is prohibited from adducing evidence in support of its judicial claim, without first establishing that it was presented previously at the administrative level for the CIR's evaluation.

In relation to an administrative claim for input VAT refund, *Pilipinas Total Gas* envisioned two (2) scenarios, namely: (1) dismissal thereof by the BIR due to the taxpayer's failure to submit complete documents, despite the former's notice or request; or (2) inaction tantamount to a denial, or denial *other than* due to taxpayer's failure to submit complete documents despite notice or request. In

[44] G.R. No. 207112, December 8, 2015.

the *first* scenario, the refund claimant must show the Court its entitlement to a VAT refund under substantive law, and submission of complete supporting documents at administrative level requested by petitioner. In the *second* scenario, a taxpayer-claimant may present all evidence to prove its entitlement to a VAT refund, and the Court will consider all evidence offered even those not presented before respondent at the administrative level.

In the present case, the CIR's denial of CF Sharp's administrative claims fall within the *second* scenario. To be precise, the CIR denied the administrative claims for lack of factual basis, after verifying that, among others: (a) purchases associated with the input VAT claim were not supported with proofs of payment, (b) documents submitted in support of the input VAT claim did not meet invoicing requirements under the law and regulations, and (c) input VAT claimed had been attributable to exempt sales.[45]

Following *Pilipinas Total Gas*, the Court may give credence to all evidence presented by CF Sharp to support its prayer for refund, irrespective of whether such evidence was presented at administrative level, as the case is being essentially decided in the first instance.

Furthermore, it is already settled that the Court is not foreclosed from considering the totality of the evidence offered by the claimant, whether or not submitted previously at the administrative level.

Verily, the law authorizes the CIR to issue a tax credit certificate relative to or refund creditable input VAT due or paid attributable to zero-rated sales.[46] Thus, the CIR is given sufficient discretion to grant or deny the claim for refund or credit, after evaluating the claimant's submissions in support of its request.

The CIR's denial is appealable to this Court.[47] On appeal, the claimant must convince the Court that the CIR's denial was not justified. It may re-submit the documents already presented to the CIR, as well as additional documents which may further bolster its entitlement to a refund or credit. Put in another way, "part of the evidence to be submitted to the CTA must necessarily include

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[45] See Docket (CTA Case No. 10194) – Vol. II, pp. 711, 716.
[46] Section 112(C), Tax Code.
[47] Section 112(C), Tax Code.

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whatever is required for the successful prosecution of an administrative claim."[48]

CF Sharp failed to establish its entitlement to a full refund or credit.

The totality of the evidence submitted in support of the present claims does not establish that CF Sharp is fully entitled to the refund sought.

The recent case of *Chevron Holdings, Inc. v. Commissioner of Internal Revenue*,[49] set out the requisites for a grant of refund or credit of unutilized input VAT attributable to zero-rated sales, *viz.*:

> Under Section 112 (A) of the Tax Code, the taxpayer may claim for refund or issuance of tax credit certificate of unutilized input VAT attributable to zero-rated sales subject to the following conditions: (1) the taxpayer is VAT-registered; (2) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (3) the claim must be filed within two (2) years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

We find that CF Sharp is entitled only to a **partial** refund on account of its failure to convince the Court of the zero-rated character of the sales upon which the instant claims are founded.

1) VAT Registration

CF Sharp's VAT registration is established by its Certificate of Registration[50] with TIN 000-004-584-029.[51]

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48 See *Atlas Consolidated Mining and Development Corp. v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007, 547 Phil. 332-340.

49 G.R. No. 215159, July 5, 2022.

50 Exhibit "P-2", Docket (CTA Case No. 10194) – Vol. II, p. 654.

51 Par. 1, Pre-Trial Order dated July 29, 2021, Docket (CTA Case No. 10228) – Vol. II, p. 612. Refer also to par. 2, *Petition for Review*, vis-à-vis par. 1, *Answer*, Docket (CTA Case No. 10228) – Vol. I, pp. 7 and 78, respectively.

2) Timeliness of Administrative and Judicial Claims

CF Sharp's claims were filed within the reglementary period.

The present claim covers the second, third, and fourth quarters of CY 2017. Counting two (2) years from the close of each of these quarters, respectively, the following table indicates the last day for filing of the administrative claim, *viz.*:

VAT Return	Close of the Taxable Quarter	Last Day to File Administrative Claim
2nd quarter	June 30, 2017	June 30, 2019
3rd quarter	September 30, 2017	September 30, 2019
4th quarter	December 31, 2017	December 31, 2019

It is clear from the foregoing that CF Sharp's **June 28, 2019** and **September 30, 2019** filing of its first and second **administrative claims,** respectively, fell within the two (2)-year prescriptive period set out in Section 112(A) of the Tax Code. Subsequently, however, the CIR denied these administrative claims.

Based on the records, the CIR denied both claims and CF Sharp received copies thereof on September 18, 2019[52] and November 29, 2019,[53] respectively. It then proceeded to this Court and filed the present **judicial claims** on **October 18, 2019**[54] and **December 20, 2019,**[55] respectively. Likewise, the judicial claim was timely as it was filed within the thirty (30)-day reglementary period counted from receipt of the CIR's decision.

3) VAT Zero-Rating

CF Sharp failed to prove the zero-rated character of its sales of services upon which the present claim is based.

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52 Exhibits "P-12" and P-12.1", Docket (CTA Case No. 10194) – Vol. II, p. 714.
53 Exhibits "P-14" and "P-14.1", Docket (CTA Case No. 10194) – Vol. II, pp. 715 to 722; Exhibit "R-10", BIR Records (Exhibit "R-12"), p. 173.
54 Docket (CTA Case No. 10194) – Vol. I, pp. 6 to 16.
55 Docket (CTA Case No. 10228), pp. 6 to 16.

CF Sharp avers that the input VAT it seeks to refund is attributable to sales of crewing and manning services (*i.e.*, supply of qualified seafarers) to foreign corporations not engaged in business in the Philippines, which they regard as subject to zero percent (0%) VAT, pursuant to Section 108(B)(2) of the Tax Code, *viz.*:

> Sec. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. -
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> xxx xxx xxx
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> (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:
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> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
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> (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)** x x x (Emphases supplied)

The preliminary consideration for VAT zero-rating of a sale or supply of service is that it must have been **performed in the Philippines.**

That CF Sharp's services were performed **in the Philippines** is supported by its Amended Articles of Incorporation (AOI)[56] and BIR Certificate of Registration dated March 25, 1995.[57] In particular, these documents show that its registered address and principal place of business is in the Philippines. In Our view, that a corporation was incorporated in the Philippines and is registered herein are *prima facie* proofs that, necessarily, it conducts its business in the Philippines, where it resides and is registered.[58] Significantly, CF Sharp's domestic

[56] Exhibit "P-1", Docket (CTA Case No. 10194) - Vol. II, pp. 642-653.
[57] Exhibit "P-2", Docket (CTA Case No. 10194) - Vol. II, p. 654.
[58] *Stefanini Philippines, Inc. v. Commissioner of Internal Revenue,* C.T.A. Case No. 10188, November 23, 2022.

registered address is no longer disputed, as this fact has been settled and accepted between the parties.[59]

Sales or supplies of services performed in the Philippines may fall into two categories for purposes of zero-rating: **export services** under sub-paragraph (B)(1) (*e.g.*, processing, manufacturing or repacking of goods intended for consumption outside the Philippines) and **other services** under sub-paragraph (B)(2) (*e.g.*, sale or supply of services other than those referred to in sub-paragraph (B)(1)).

CF Sharp's primary purpose is indicated in its AOI, *viz.*:

> To engage in the business of providing or furnishing any and all forms or types of services and facilities relating to placement or employment and to engage in the business of contracting, enlisting, recruiting and arranging transportation for Filipino professionals, and skilled and unskilled workers for overseas work; to maintain and operate an information bureau for the collection and supply of information as to proposals for work and job opportunities, available unemployed labor (whether skilled or unskilled), business conditions, credit ratings, and other subjects or trade interest; and otherwise, to act, and to appoint others to act, as general agent, special agent, broker, factor, representative and commission merchant for individuals or firms, whether domestic or foreign.[60]

This establishes that CF Sharp's services (*i.e.*, crewing and manning services) are zero-rated sales or supplies of **other services**. Consequently, its services must meet the criteria set out in Section 108 sub-paragraph (B)(2).

In *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*,[61] the Supreme Court enumerated the conditions under Section 108 (B)(1), viz.:

> Sales of "other services," such as those qualifying services rendered by DKS to its foreign affiliates-clients, shall be zero-rated pursuant to Section 108 (B)(2) of the Tax Code if the following conditions are met: *First*, the seller is VAT-registered. *Second*, the services are rendered "to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in

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[59] Par. III(1), Pre-Trial Order dated July 29, 2021, Docket (CTA Case No. 10194) – Vol. II, p. 606.
[60] Docket (CTA Case No. 10194) – Vol. II, p. 644.
[61] G.R. No. 234445, July 15, 2020.

> business who is outside the Philippines when the services are performed." *Third*, the services are "paid for in acceptable foreign currency and accounted for in accordance with [BSP] rules and regulations."
>
> xxx xxx xxx
>
> Proof of NRFC Status
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> 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.

In the present case, CF Sharp's compliance with the aforementioned requisites is **incomplete**.

First requisite. As discussed above, CF Sharp is a VAT-registered taxpayer, as shown by its **BIR Certificate of Registration**.

Second requisite. CF Sharp did not present sufficient evidence to establish its clients' NRFC status.

Verily, to prove that its clients are NRFCs doing business outside the Philippines, CF Sharp relies on the following documents: (1) Certifications issued by the SEC stating that CF Sharp's clients are not registered in the Philippines (SEC Negative Certifications) (Exhibits "P-5" to "P-5.23"); (2) apostilled/authenticated Certificates of Incorporation or proof of incorporation of petitioner's non-resident clients (Exhibits "P- 6" to "P-6.18"); and (3) underlying contracts, *i.e.*, Manning Agreements, between CF Sharp and its clients. However, the Court denied the admission of Exhibits "P-5.5", "P-5.14", "P-5.19", "P-6", "P-6.2" to "P-6.13", and "P- 6.15" to "P-18" for failure to lay the predicate for the exhibits' admission as secondary evidence. In a Resolution dated June 3, 2022, the Court explained:

> Petitioner failed to prove that it has done all in its power to secure the best evidence by giving notice to respondent to produce the subject exhibits which may be in the form of a motion for the production of the original or made in open court in the presence of

the adverse party or via a subpoena duces tecum. Petitioner's Manifestation (with Urgent Motion for the Transmittal of Complete BIR Records), filed on May 26, 2021, which merely manifested that petitioner discovered that the supporting documents (including, but not limited to, the original authenticated/apostilled articles of incorporation/association or equivalent documents and original negative certifications issued by the SEC) were not attached to the BIR Records and moved that the Court order respondent to transmit the complete BIR Records of the case, cannot be considered the notice to respondent to produce the originals of the subject exhibits as the documents subject of production were not reasonably described or designated in the said motion but were merely described in generic terms as 'supporting documents.'

In Solidbank Corporation vs. Gateway Electronic Corporation, et al., the Supreme Court held that 'The motion [for production or inspection of documents] must designate the documents, papers, books, accounts, letters, photographs, objects or tangible things which the party wishes to be produced and inspected' while in Lozada, Jr., et al. vs. Macapagal-Arroyo, et al., the Supreme Court held that 'Well-settled is the rule that before a subpoena duces tecum may issue, the court must first be satisfied that the following requisites are present: (1) the books, documents or other things requested must appear prima facie relevant to the issue subject of the controversy (test of relevancy); and (2) such books must be reasonably described by the parties to be readily identified (test of definiteness).'

Hence, petitioner should file the appropriate motion and comply with the requisites in order that it may compel the respondent to produce or allow the inspection of documents or comply with the requisites for the issuance of a subpoena duces tecum so that respondent will be properly notified of the documents required of him to be produced, and if said motion is granted, respondent will be apprised that non-production of these documents have consequences.

In sum, the Court finds that petitioner did not satisfactorily prove, by documentary and testimonial evidence, the loss, destruction or unavailability of all the originals and its reasonable diligence and good faith in the search for or attempt to produce the originals or certified true copies of the subject exhibits.[62]

Resultantly, in ascertaining whether it was engaged in zero-rated or effectively zero-rated sales, We shall consider CF Sharp's proof **only to the extent that these were admitted in evidence**.

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[62] Docket (CTA Case No.10194) – Vol. II, pp. 814 to 815.

To recall, in the subject Quarterly VAT returns, CF Sharp reported zero-rated sales in the aggregate amount of ₱159,643,141.10. According to the ICPA's findings,[63] such zero-rated sales were generated from services rendered to the following entities:

List of foreign customers
Blue Ocean Ship Management, Ltd.
Claus-Peter Offen Tankschiffreederei (Gmbh and Co) KG
Coral Marine Pte. Ltd.
CPO Crewing GMBH and Co KG
Fairfield Maxwell Services, Ltd.
Dufry Cruise Services, Inc. (Formerly, Flagship Retail Services, Inc.)
Fugro Singapore Pte Ltd.
Global Marine Systems Guernsey Ltd.
Global Marine Systems Ltd.
Gulf Energy Maritime (GEM) PJSC
International Cruise Services Ltd (Formerly International Cruise Services, Inc.)
James Fisher Guernsey Ltd.
Norwegian Cruise Line Ltd.
Ocean Fresh Foods AS
Odyssey International Management and Human Resource Consultants Ltd.
Optimum Shipmanagement Services SA
Prestige Cruise Services LLC
RB British Marine India Private Limited
Reederei Nord Shipmanagement Limited
RK8 Offshore Shipmanagement Pte Ltd.
Seven Seas Services Limited
Sharp Crewing Services Pte. Ltd.
Strada Maritime Corporation
Uming Marine Transport Singapore Pte. Ltd.
Walsh Enterprises Inc.

We summarize below the **SEC Negative Certifications and/or Proof of Foreign Incorporation/Registration** presented by CF Sharp relative to the above-enumerated clients and duly admitted in evidence by the Court.

	Exhibit No.	
Client Name	**SEC Negative Certification**	**Documents of Foreign Incorporation/ Registration**
Blue Ocean Ship Management, Ltd.	"P-5"	NONE

[63] Pages 9 to 10 of the ICPA Report, Docket - Vol. I, pp. 405-406.

	Exhibit No.	
Client Name	**SEC Negative Certification**	**Documents of Foreign Incorporation/ Registration**
Claus-Peter Offen Tankschiffreederei (Gmbh and Co) KG	"P-5.1"	NONE
Coral Marine Pte. Ltd.	**"P-5.2"**	**"P-6.1"**
CPO Crewing GMBH and Co KG	"P-5.3"	NONE
Fairfield Maxwell Services, Ltd.	"P-5.4"	NONE
Dufry Cruise Services, Inc. (Formerly, Flagship Retail Services, Inc.)	"P-5.5"	NONE
Fugro Singapore Pte Ltd	"P-5.6"	NONE
Global Marine Systems Guernsey Ltd	NONE	NONE
Global Marine Systems Ltd	NONE	NONE
Gulf Energy Maritime (GEM) PJSC	"P-5.7"	NONE
International Cruise Services Ltd (Formerly International Cruise Services, Inc.)	"P-5.8"; "P-5.9"	NONE
James Fisher Guernsey Ltd	"P-5.10"	NONE
Norwegian Cruise Line Ltd.	"P-5.11"	NONE
Ocean Fresh Foods AS	"P-5.12"	NONE
Odyssey International Management and Human Resource Consultants Ltd	"P-5.13"	NONE
Optimum Shipmanagement Services SA	"P-5.14"	NONE
Prestige Cruise Services LLC	"P-5.15"	NONE
RB British Marine India Private Limited	"P-5.16"	NONE
Reederei Nord Shipmanagement Limited	"P-5.17"	NONE
RK8 Offshore Shipmanagement Pte Ltd	"P-5.18"	NONE
Seven Seas Services Limited	"P-5.20"	NONE
Sharp Crewing Services Pte. Ltd.	NONE	"P-6.14"
Strada Maritime Corporation	"P-5.21"	NONE
Uming Marine Transport Singapore Pte Ltd	"P-5.22"	NONE
Walsh Enterprises Inc.	"P-5.23"	NONE

To reiterate, the claimant must demonstrate not only that its clients are foreign corporations, but also are not doing business in the Philippines.[64] Inasmuch as SEC Negative Certifications and Documents of Foreign Incorporation/Registration (*e.g.*, Articles of Incorporation) tend to establish the first and second components of a client's NRFC Status, respectively, *both* documents must be presented to satisfy the claimant's burden. However, it is clear from the foregoing summary that CF Sharp was only able to do so in connection with one client: Coral Marine Pte. Ltd. That, with respect to the rest of its client

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

list, CF Sharp presented only *either one, instead of both,* of the aforementioned documents leads to the conclusion that there is no competent proof of its other clients' NRFC status, showing its foreign character *and* non-engagement in trade in the Philippines.

Third requisite. An examination of CF Sharp's **official receipts** revealed that it received remittances from Coral Marine Pte. Ltd. in the aggregate amount of $571,038.87 during the subject period. As per **reconciliation statements** prepared by CF Sharp, included in said aggregate amount were total billings to Coral Marine Pte. Ltd. amounting to $10,735.54 (equivalent to ₱538,752.18) for services rendered during the subject period. Coral Marine Pte. Ltd. remitted the payments to CF Sharp through BDO. In this regard, BDO issued **certifications** that the remittances were in US Dollar (USD). Below is a summary of Our verification procedures and findings.

Official Receipt				Remittance Date	Per BDO Certification	Per Reconciliation		
Exh.	Ref.	Date	Amount USD			Exh.	Amount Billed for Services USD	PHP
P-43	34864	4/30/2017	8,133.33	4/6/2017	Line 17, P-1590	P-1580	1,519.03	75,115.90
P-76	34897	5/31/2017	31,941.51	5/23/2017	Line 17, P-1589	P-1580	1,441.29	71,487.77
P-107	34928	6/30/2017	28,282.70	6/14/2017	Line 15, P-1588	P-1580	1,085.71	53,905.31
P-138	34959	7/31/2017	199,744.70	7/21/2017	Line 10, P-1592	P-1581	1,277.17	64,369.38
P-169	34990	8/31/2017	199,743.14	8/22/2017	Line 45, P-1592	P-1581	846.96	43,067.98
P-199	35021	9/30/2017	56,893.92	9/29/2017	Line 76, P-1592	P-1581	1,042.08	52,677.26
P-230	35052	10/31/2017	11,727.91	10/25/2017	Line 100, P-1592	P-1581	1,178.88	60,287.71
P-263	35085	11/30/2017	15,181.47	11/29/2017	Line 126, P-1592	P-1581	1,100.61	55,525.74
P-293	35115	12/31/2017	19,390.19	12/29/2017	Line 151, P-1592	P-1581	1,243.81	62,315.13
			571,038.87				**10,735.54**	**538,752.18**

The **BDO Certifications** establish that Coral Marine Pte. Ltd.'s payments to CF Sharp for services rendered were in acceptable foreign currency and accounted for as required by applicable BSP rules.

Further, each **VAT official receipt** examined above bear the information in accordance with the applicable invoicing requirements. To be sure, the amount collected was written and declared as "zero rated sales" in the breakdown portion (left side) on the face of each official receipt. These collections are reflected clearly as zero-rated sales on the official receipts, in compliance with the applicable invoicing requirements and pursuant to applicable jurisprudence directing that the term "zero-rated sale" be written or printed prominently on the face thereof.

In sum, only the sales of services to Coral Marine Pte. Ltd. in the aggregate amount of **₱538,752.18 has been verified to be zero-rated sales** to which input tax may be attributed and eligible for refund. This represents 0.3577%[65] of the total zero-rated sales declared in the subject Quarterly VAT Returns.

4) Validity of unutilized input VAT

Certainly, the input VAT subject of the claim must also be valid; that is, eligible for refund or credit in accordance with relevant Tax Code provisions and regulations. To be valid, the input VAT: (a) must not be transitional input taxes,[66] (b) must be due or paid[67] and substantiated by supporting documents that, in turn, meet the applicable VAT invoicing requirements,[68] (c) must be attributable to zero-rated or effectively zero-rated sales or supplies of service,[69] and (d) must not have been applied against output taxes during and in the succeeding quarters.[70]

In the subject VAT returns, CF Sharp declared input VAT from its current domestic purchases of goods and services amounting to ₱1,388,394.91,[71] ₱1,253,448.75,[72] and ₱1,188,459.48[73] in the second, third, and fourth quarters, respectively, or in the aggregate amount of ₱3,830,303.14. The present claim seeks to refund ₱3,748,004.86 of said aggregate amount.

CF Sharp's compliance with the above-enumerated requisites is discussed below.

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65 Zero-rated sales, as verified ÷ Total zero-rated sales per returns = ₱571,038.87 ÷ ₱159,643,141.10 = 0.00357697 ≈ 0.3577%

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

67 Id.

68 *Team Energy Corporation v. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.

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

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

71 Exhibit "P-7", Item 21F, Docket (CTA Case No. 10194) - Vol. II, p. 679.

72 Exhibit "P-7.3", Item 21F, Docket (CTA Case No. 10194) - Vol. II, p. 688.

73 Exhibit "P-7.7", Item 21F, Docket (CTA Case No. 10194) - Vol. II, p. 700.

- *Not* transitional input VAT

There is no showing that input VAT credits subject of the instant claim are **transitional input VAT** within the meaning of Section 111(A) of the Tax Code. To be sure, the input VAT's non-transitional nature has not been put in issue nor questioned by the CIR.

- Actually due and paid; supported by VAT invoices or official receipts

Whether input VAT was due or paid is conditioned upon the presentation of documents that (a) substantiate the amount of input tax credits, as prescribed under Section 4.110-8 of RR No. 16-2005, and (b) comply with the invoicing requirements under Sections 113 (A) and (B), 237 and 238 of the Tax Code, and implemented by Section 4.113-1 (A) and (B) of RR No. 16-2005.

From the supporting documents submitted by CF Sharp (*e.g.*, VAT invoices and official receipts showing input VAT passed on by their supplier), We ascertained[74] that input VAT amounting to ₱521,206.73 is not supported properly and, thus, should be disallowed, *viz.*:

Findings	Amount	Reference
Second Quarter		
1. Purchases of services supported by VAT ORs with incomplete details	₱6,348.63	Annex C.3.D
2. Purchases of services where VAT is not separately shown on the ORs and without TIN of buyer	45,889.59	Annex C.2.B
3. Purchases of services without supporting documents	18,833.47	Annex C.1
Total recommended disallowed input taxes	₱71,071.69	
Third-Fourth Quarters		
4. Purchases of goods supported by VAT Invoices with incomplete details	₱375.00	Annex C.5.B
5. Purchases of goods supported by a collection receipt	26,038.00	Annex C.5.C
6. Purchases of services supported by VAT ORs with incomplete details	23,465.89	Annex C.6.E
7. Purchases of services supported by VAT ORs dated outside TY 2017	35,528.40	Annex C.6.F

[74] See Pages 12 to 13 of the ICPA Report, Exhibit "P-17", Docket (CTA Case No. 10194) – Vol. I, pp. 408-409.

Findings	Amount	Reference
8. Purchases of services without supporting documents	364,727.75	Annex C.4
Total recommended disallowed input taxes	₱450,135.04	
GRAND TOTAL	**₱521,206.73**	

- Attributable to zero-rated sales

We adopt the ICPA's finding that the input VAT subject of the present claim is directly attributable to zero-rated sales.[75]

- Not applied against output tax during the second, third, and fourth quarters of CY 2017

CF Sharp's claim for refund amounted to ₱3,748,004.86 resulted from offsetting the output tax on VAT-able sales against available input taxes for the third and fourth quarters of CY 2017, respectively, computed as follows:

	Quarter			
	Second	Third	Fourth	Total
Input VAT reported in return	₱1,388,133.67	₱1,253,448.75	₱1,188,459.48	
Less Output VAT still due	45,737.14	32,459.90	3,840.00	
Input VAT sought to be refunded	₱1,342,396.53	₱1,220,988.85	₱1,184,619.48	**₱3,748,004.86**

Significantly, the amount claimed consists only of input VAT on current domestic purchases of goods and services. CF Sharp does not seek to refund the amount of input VAT carried over from previous periods.

It is clear from the foregoing that the amount herein claimed is already *net* of the output tax reported *during* the subject quarters.

- Not applied against output tax in any subsequent period

The input VAT claimed remained unutilized until it was deducted as VAT Refund/TCC Claimed in CF Sharp's amended

[75] See Page 13 of the ICPA Report, Exhibit "P-17", Docket (CTA Case No. 10194) – Vol. I, p. 409.

Quarterly VAT Return for the first quarter of CY 2019.[76] Thus, We are convinced that the input taxes sought to be refunded in the present case were not utilized or applied against output VAT in any given taxable period.

Computation of refundable unutilized or excess input taxes.

Having regard to the foregoing discussions, We have determined that CF Sharp is entitled to the refund of ₱ 11,542.16, computed as follows:

Amount claimed	₱3,748,004.86
Less Disallowed input VAT	521,206.73
Valid input VAT	₱3,226,798.13
Multiply by Percentage attributable to verified zero-rated sales[77]	0.3577%
Input VAT eligible for refund	**₱11,542.16**

WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **DIRECTED TO REFUND OR ISSUE TAX CREDIT CERTIFICATE** in favor of petitioner in the amount ₱11,542.16, representing its unutilized input VAT attributable to its zero-rated sales for the second, third, and fourth quarters of CY 2017.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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[76] Exhibit "P-28", Item 23D; scanned copy contained in USB marked as Exhibit "P-17". Also see Questions 20 to 22 in the Second Amended Judicial Affidavit of Ms. Emillie T. Bernaldo, "P-16", Docket (CTA Case No. 10194) – Vol. I, p. 518.

[77] See Note 65.

WE CONCUR:

On Leave
ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

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

CATHERINE T. MANAHAN
Acting Chairperson
Special First Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 1st Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice