REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MSCI HONG KONG LIMITED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10474

Members:

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

Promulgated:

JUL 17 2024

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DECISION

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

This *Petition for Review* prays that judgment be rendered ordering respondent to refund to petitioner the amount of **₱5,289,571.33**, representing petitioner's excess and unutilized input value-added tax (VAT) for the period April 1, 2018 to December 31, 2018.[1]

THE PARTIES

Petitioner **MSCI Hong Kong Limited** is the Philippine branch of MSCI Hong Kong Limited, with office address at the 29th Floor, Zuellig Building, Makati Avenue Corner Paseo de Roxas, Makati City.[2] It is licensed by the Securities and Exchange Commission (SEC) to establish a regional operating headquarters (ROHQ) in the Philippines to engage in index bench marking, portfolio risk and performance analytics and research support services.[3] It is also registered with the Bureau of Internal Revenue

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[1] Statement of the Case, Pre-Trial Order dated July 18, 2022, Docket – Vol. I, p. 469.
[2] Paragraph 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 452.
[3] Exhibit "P-1", Docket – Vol. II, pp. 604 to 618.

(BIR) as a VAT taxpayer, and was issued a Certificate of Registration with Taxpayer's Identification Number (TIN) 008-724-942.[4]

Respondent is the **Commissioner of Internal Revenue** (CIR) vested by law to enforce and implement the provisions of the National Internal Revenue Code (NIRC) of 1997,[5] as amended by Republic Act (R.A.) No. 10963,[6] as well as related statutes and their implementing rules and regulations. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[7]

THE ANTECEDENTS (ADMINISTRATIVE LEVEL)

On August 13, 2020, petitioner filed with the BIR an *Application for Tax Credits/Refunds* (BIR Form No. 1914) of input taxes for the period from April 1, 2018 to December 31, 2018, amounting to ₱10,813,448.05.[8] The same was accompanied by the *Revised Checklist of Mandatory Requirements on Claims for VAT Refund.*[9]

Petitioner then received a Tax Verification Notice (TVN) from the VAT Credit Audit Division (VCAD) authorizing Revenue Officers Marjorie C. Dioso and Michele J. Alonzo-Bucayu to verify the supporting documents and/or pertinent records relative to its VAT refund filed.[10]

On January 29, 2021, petitioner received the *VAT Refund Notice* dated December 16, 2020 from the Office of the Assistant Commissioner, Assessment Service, BIR, partially granting its administrative claim for refund in the amount of ₱5,523,776.22, computed as follows:[11]

VAT Refund Claimed	₱ 10,813,448.05
Deductions from Claim	(5,289,571.33)
Net Allowable VAT Refund	**₱ 5,523,776.22**

[4] Par. 2, Stipulation of Facts, JSFI, Docket – Vol. I, p. 452.
[5] Republic Act No. 8424.
[6] 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 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.
[7] Par. 3, Stipulation of Facts, JSFI, Docket – Vol. I, p. 452.
[8] Exhibits "P-10", Docket – Vol. II, pp. 848 to 855.
[9] Exhibit "P-11", Docket – Vol. II, p. 856; and, Exhibit "R-2", BIR Records, p. 138.
[10] Paragraph 4, Stipulation of Facts, JSFI, Docket – Vol. I, p. 453; Exhibit "P-12", Docket – Vol. II, p. 857; and, Exhibit "R-1", BIR Records, p. 140.
[11] Paragraph 5, Stipulation of Facts, JSFI, Docket – Vol. I, p. 453; Exhibits "P-13", Docket – Vol. I, pp. 314 to 327; and, Exhibit "R-5", BIR Records, pp. 235 to 247.

THE PROCEEDINGS BEFORE THIS COURT

On February 26, 2021, petitioner filed the present *Petition for Review* seeking the disallowed portion of its administrative claim for refund in the amount of ₱5,289,571.33 for the period April 1, 2018 to December 31, 2018.[12]

Respondent submitted his *Answer* on October 25, 2021.[13]

On February 15, 2022, respondent transmitted to this Court the *BIR Records* of this case.[14]

The Pre-trial Conference was initially set on March 8, 2022[15] but was eventually reset to and held on May 31, 2022.[16] Prior thereto, *Respondent's Pre-Trial Brief* was filed on February 18, 2022[17] while *Petitioner's Pre-Trial Brief* was submitted on May 27, 2022.[18]

On June 30, 2022, the parties submitted their *Joint Stipulation of Facts and Issues*,[19] which was admitted and approved by the Court in its Resolution dated July 7, 2022;[20] thereby, deeming the termination of the Pre-Trial. Subsequently, the Pre-Trial Order dated July 18, 2022 was issued.[21]

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

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Nerissa Tolentino,[22] petitioner's Vice President for Finance; and, (2) Mr. Glenn Ian D. Villanueva,[23] the Court-commissioned Independent Certified Public Accountant (ICPA).[24] The *Report* of the ICPA was submitted on August 25, 2022.[25]

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[12] Paragraph 6, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 453 and Docket – Vol. 1, pp. 7 to 31.

[13] Docket – Vol. 1, pp. 341 to 355.

[14] Respondent's *Compliance* dated January 20, 2022, Docket – Vol. I, pp. 367 to 369.

[15] Notice of Pre-Trial Conference dated November 12, 2021, Docket – Vol. I, pp. 362 to 363.

[16] Notice of Resetting dated February 17, 2022, Docket – Vol. I, p. 372 and Minutes of the hearing and Order dated May 31, 2022, Docket – Vol. I, pp. 413 to 415.

[17] Docket – Vol. I, pp. 373 to 376.

[18] Docket – Vol. I, pp. 416 to 432.

[19] Docket – Vol. I, pp. 452 to 465.

[20] Docket – Vol. I, p. 467.

[21] Docket – Vol. I, pp. 469 to 476.

[22] Exhibit "P-14", Docket – Vol. I, pp. 32 to 48 and Minutes of the hearing and Order dated August 30, 2022, Docket – Vol. II, pp. 548 to 549.

[23] Docket – Vol. II, pp. 553 to 572; Minutes of the hearing held on, and Order dated, September 20, 2022, Docket – Vol. II, p. 575.

[24] *Oath of Commission* dated July 26, 2022, Docket – Vol. I, p. 485; Minutes of the hearing held on July 26, 2022, Docket – Vol. I, p. 484; and, Order dated July 26, 2022, Docket – Vol. I, pp. 486 to 487.

[25] Exhibit "P-15", Docket – Vol. II, pp. 494 to 546.

On October 10, 2022, petitioner filed its *Formal Offer of Evidence*,[26] to which respondent filed his *Comment Re: Petitioner's Formal Offer of Evidence* on October 24, 2022.[27]

In the Resolution dated December 7, 2022,[28] the Court admitted petitioner's offered exhibits.

On the other hand, respondent offered the testimony of Revenue Officer Marjorie C. Dioso.[29] Thereafter, on March 24, 2023, respondent filed his *Formal Offer of Evidence*,[30] to which petitioner filed its *Comment (Re: Formal Offer of Evidence dated March 23, 2023)* on April 4, 2023.[31]

In the Resolution dated May 16, 2023,[32] the Court admitted respondent's offered exhibits.

Petitioner submitted its *Memorandum* on June 16, 2023,[33] while respondent's *Memorandum* was filed on June 26, 2023.[34]

On July 17, 2023, the case was considered submitted for decision.[35]

THE STIPULATED ISSUE

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

> Whether or not petitioner is entitled to the refund of the amount of ₱5,289,571.33 representing its partially denied excess and unutilized input VAT attributable to its zero-rated sales of service for the period from April 1, 2018 to December 31, 2018.[36]

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[26] Docket – Vol. II, pp. 582 to 603.
[27] Docket – Vol. II, pp. 859 to 861.
[28] Docket – Vol. II, pp. 866 to 867.
[29] Exhibit "R-7", Docket – Vol. I, pp. 383 to 388 and Minutes of the hearing held on March 14, 2023, Docket – Vol. II, p. 868.
[30] Docket – Vol. II, pp. 872 to 876.
[31] Docket – Vol. II, pp. 878 to 886.
[32] Docket – Vol. II, p. 889.
[33] Docket – Vol. II, pp. 890 to 935.
[34] Docket – Vol. II, pp. 936 to 951.
[35] Resolution dated July 17, 2023, Docket – Vol. II, p. 954.
[36] Paragraph 7, Stipulated Issue, JSFI, Docket – Vol. I, p. 453.

Petitioner's arguments:

Petitioner argues that this Court has jurisdiction to review the decisions of respondent on claims for refund of internal revenue taxes. Petitioner asserts that it is entitled to the refund of its excess and unutilized input VAT attributable to its zero-rated sales of service for the period of claim in the amount of ₱5,289,571.33. It claims that it is a VAT-registered entity and that its sales of services to Investment Property Databank Limited (IPD UK), MSCI Inc., MSCI Ltd., and MSCI Barra (Suisse) Sàrl, constitute zero-rated sales. Further, petitioner alleges that it paid or incurred input VAT which were properly substantiated in accordance with law and regulations and that the said paid or incurred input VAT were attributable to its zero-rated sales or effectively zero-rated sales. Petitioner also avers that the input VAT has not been applied against output taxes during and in the succeeding periods. Finally, petitioner contends that its claim for refund/tax credit certificate was filed within the mandatory period provided under the law.

Respondent's counter-arguments:

Respondent contends that petitioner failed to substantiate its claim for refund in the administrative level. He asserts that petitioner failed to comply with the submission of necessary documents essential to its claim for refund and failed to comply with Sec. 112(A) of the NIRC of 1997, as amended. Likewise, respondent posits that tax refunds are strictly construed against the taxpayer and in favor of the government.

THE COURT'S RULING

The present *Petition for Review* is partially meritorious.

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

Section 112 of the NIRC of 1997, as amended, provides, in part, as follows:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund

> of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> xxx xxx xxx
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> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
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> 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 afore-quoted provision and jurisprudence, there are certain requisites which the taxpayer-applicant must comply with in order to successfully obtain a credit/refund of input VAT, *viz*:

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

1. the refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[37]

2. in case of full or partial denial of the refund claim rendered within a period of ninety (90) days from the date of submission of the official receipts or invoices and other

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

documents in support of the application, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision;[38]

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

3. the taxpayer is a VAT-registered person;[39]

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

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[40]

5. for zero-rated sales under Sections 106(A)(2)(1) and (2), 106(B),[41] and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[42]

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

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

[40] *Ibid.*

[41] Section 106(B) cited in Section 112(A) of R.A. No. 8424 was later amended by R.A. No. 9337 to pertain to Section 106(A)(2)(b). Accordingly, Section 112(A), as amended by RA No. 9337, reads as follows:

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

However, in view of the amendments introduced by R.A. No. 10963, Section 106(A)(2)(b) is now deleted.

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

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

6. the input taxes are not transitional input taxes;[43]

7. the input taxes are due or paid;[44]

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;[45] and,

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[46]

In addition, in claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the NIRC of 1997, as amended, and other implementing rules and regulations.[47] The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims[48] and is mandatory.[49]

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

Furthermore, it must be emphasized that *"cases filed before the CTA, which are litigated* de novo, *party-litigants must prove every minute aspect*

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[43] *Ibid.*
[44] *Ibid.*
[45] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and, *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.
[46] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and, *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.
[47] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.
[48] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.
[49] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[50] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, supra.

of their case";[51] thus, it behooves petitioner to show compliance with each of the foregoing requisites and invoicing requirements. The absence of *any* of the said requisites is already a valid ground to deny the refund claim.

Petitioner's administrative and judicial claims were timely filed.

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

The present claim covers the period from April 1, 2018 to December 31, 2018. Counting two (2) years from the respective close of taxable quarters, the table below will show the last days for the filing of an administrative claim for the corresponding quarter, to wit:

2018	Period	Close of the Taxable Quarter	Last Day to File Administrative Claim
2nd quarter	April 1, 2018 to June 30, 2018	June 30, 2018	June 30, 2020
3rd quarter	July 1, 2018 to September 30, 2018	September 30, 2018	September 30, 2020
4th quarter	October 1, 2018 to December 31, 2018	December 31, 2018	December 31, 2020

Records show that petitioner filed its claim for refund with the BIR on August 13, 2020;[52] hence, it appears that, for the quarter ending June 30, 2018, the claim for refund of petitioner may be said to be filed out of time since the last day for filing the administrative claim for the said period, is on June 30, 2020.

However, the claim for VAT refund for the quarter ending June 30, 2018 was extended until August 31, 2020 through the issuance of Revenue Regulations (RR) No. 16-20[53] by then Secretary of Finance Carlos G. Dominguez on June 19, 2020, due to the effects of the Corona Virus Disease

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[51] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and, *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

[52] Exhibits "P-10", Docket – Vol. 2, pp. 848 to 855.

[53] 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.

2019 (COVID-19), consistent with the spirit of R.A. No. 11469[54] or otherwise known as the "Bayanihan to Heal as One Act". Section 2 of RR No. 16-20 reads:

> 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 ending March 31, 2018 — July 15, 2020
>
> Fiscal Quarter ending April 30, 2018 — July 31, 2020
>
> Fiscal Quarter ending May 31, 2018 — August 15, 2020
>
> **Calendar Quarter ending June 30, 2018 — August 31, 2020**
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> **This however does not apply to areas not yet declared to be in a general community quarantine state**. In which case, the deadline shall be thirty (30) days from the lifting of the ECQ or Modified ECQ in the affected areas of taxpayer-claimant or the above stated deadlines, whichever comes later.[55] (Boldfacing supplied)

Considering that, on June 15, 2020, the Inter-Agency Task Force (IATF) for the Management of Emerging Infectious Disease issued Joint Resolution No. 46-A, s. 2020, extended the imposition of general community quarantine (GCQ) and enforcement of minimum public health standards over the National Capital Region (NCR) from June 16, 2020 to June 30, 2020 and subsequently extended in its Joint Resolution Nos. 50-A and 55-A, s. 2020, until July 31, 2020, the filing of claim for VAT refund for the calendar quarter ending June 30, 2018 was consequently extended until <u>August 31, 2020</u> by virtue of RR No. 16-2020. The administrative claim for refund of petitioner for calendar quarter ending June 30, 2018 was therefore timely filed on <u>August 13, 2020</u>.

As regards the *second* requisite, the same necessitates that the judicial claim must have been filed within thirty (30) days from receipt of respondent's decision or after the expiration of the ninety (90)-day period under Section 112(C) of the NIRC of 1997, as amended, whichever comes earlier.

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[54] AN ACT DECLARING THE EXISTENCE OF A NATIONAL EMERGENCY ARISING FROM THE CORONAVIRUS DISEASE 2019 (COVID-19) SITUATION AND A NATIONAL POLICY IN CONNECTION THEREWITH, AND AUTHORIZING THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES FOR A LIMITED PERIOD AND SUBJECT TO RESTRICTIONS, TO EXERCISE POWERS NECESSARY AND PROPER TO CARRY OUT THE DECIDED NATIONAL POLICY AND FOR OTHER PURPOSES.

[55] On 15 June 2020, the Inter-Agency Task Force (IATF) for the Management of Emerging Infectious Disease issued Joint Resolution No. 46-A, s. 2020, extending the imposition of general community quarantine (GCQ) and enforcement of minimum public health standards over the National Capital Region (NCR) from June 16, 2020 to June 30. 2020 and subsequently extended in its Joint Resolution Nos. 50-A and 55-A, s. 2020, until 31 July 2020.

Petitioner filed its administrative claim for refund on August 13, 2020. Respondent had ninety (90) days, or until November 11, 2020, to act on the said claim. In case of respondent's inaction within the said 90-day period, petitioner had thirty (30) days from such expiration to file its judicial claim with this Court or until December 11, 2020.

Records show that petitioner filed its *Petition for Review* on February 16, 2021; thus, it appears that the judicial claim was filed out of time. However, then Secretary Dominquez issued RR No. 27-20 on October 6, 2020[56] suspending the processing of VAT refunds during the effectivity of R.A. No. 11494[57] or until the next adjournment of the Eighteenth Congress on December 19, 2020 due to the COVID-19 pandemic.[58] This means that the processing of VAT refunds was suspended during the effectivity of R.A. No. 11494 or from September 15, 2020[59] until December 19, 2020.

Counting from the time petitioner filed its administrative claim for refund on August 13, 2020 up to the date of the effectivity of R.A. No. 11494 on September 15, 2020, respondent had consumed a total of thirty-three (33) days leaving only fifty-seven (57) days to complete the ninety (90)-day period allowed by law to act on petitioner's claim for refund. Since R.A. No. 11494 expired on December 19, 2020, the running of fifty-seven (57) days resumed on December 20, 2020; thus, the fifty-seventh (57th) day from December 20, 2020 fell on February 15, 2021.

On December 16, 2020, respondent acted on the claim of petitioner for refund and issued the VAT Refund Notice[60] (VRN) denying the sum of ₱5,289,571.33 out of the total amount of ₱10,813,448.05 being claimed. The VRN was received by petitioner on January 29, 2021 which was still within the 90-day period to act on petitioner's claim. Petitioner therefore

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

57 An Act Providing for COVID-19 Response and Recovery Interventions and Providing Mechanisms to Accelerate the Recovery and Bolster the Resiliency of the Philippine Economy, Providing Funds Therefor, and for Other Purposes.

58 *President Duterte retains Metro Manila's GCQ status from December 1 to 31*, https://pco.gov.ph/news_releases/president-duterte-retains-metro-manilas-gcq-status-from-december-1-to-31/, visited on July 1, 2024.

59 Section 18 of Republic Act No. 11494 provides:

> **Section 18.** *Effectivity.* - Except as otherwise specifically provided herein, this Act shall be in full force and effect until the next adjournment of the Eighteenth Congress on December 19, 2020. This Act shall take effect immediately upon its publication in a newspaper of general circulation or in the Official Gazette: *Provided,* That Section 4(cc) of this Act shall be deemed to be in effect since Republic Act No. 11469 expired.

R.A. No. 11964 was Signed on September 11, 2020 and published in Manila Bulletin on September 15, 2020.

60 Paragraph 5, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 453; Exhibits "P-13" and "R-5", Docket – Vol. 1, p. 314 and BIR Records, p. 247, respectively.

had thirty (30) days from January 29, 2021 to file a judicial claim for refund with this Court.

On February 26, 2021, petitioner filed the present *Petition for Review*,[61] which was well within the thirty (30)-day period from the receipt of the BIR's decision (i.e., the VRN).

Clearly, petitioner complied with the above-stated *first* and *second* requisites.

Petitioner is a VAT-registered person.

Anent the *third* requisite, petitioner is a VAT-registered person as evidenced by its BIR Certificate of Registration OCN 9RC0000482588 with TIN 008-724-942-000.[62]

Petitioner was able to prove its effectively zero-rated sales for the period from April 1, 2018 to December 31, 2018 in the amount of ₱311,311,282.00.

The *fourth* and *fifth* requisites, respectively, require that the taxpayer is engaged in zero-rated or effectively zero-rated sales; and, that for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (B),[63] and 108(B)(1) and (2) of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations.

In its amended Quarterly VAT Returns (BIR Form No. 2550-Q) for the 2nd, 3rd, and 4th quarters of calendar year (CY) 2018, petitioner reported a total sales/receipts amounting to ₱311,311,282.00 which was comprised **entirely** of zero-rated sales, as follows:

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[61] Docket – Vol. I, pp. 7 to 31.
[62] Paragraph 2, Stipulation of Facts, JSFI, Docket – Vol. I, p. 452; Exhibit "P-3", Docket – Vol. 2, p. 632.
[63] Section 106(B) cited in Section 112(A) of RA No. 8424 was later amended by RA No. 9337 to pertain to Section 106(A)(2)(b). However, in view of the amendments introduced by RA No. 10963, Section 106(A)(2)(b) is now deleted.

Exhibit No.	CY 2018	Amount
"P-8-4"[64]	2nd Quarter	₱ 97,777,010.00
"P-8-6"[65]	3rd Quarter	103,298,645.00
"P-8-8"[66]	4th Quarter	110,235,627.00
Total Zero-Rated Sales/Receipts		**₱311,311,282.00**

The amount of ₱311,311,282.00 which petitioner treated as zero-rated sales/receipts consists of sales of services to its non-resident affiliates doing business outside the Philippines, summarized as follows:[67]

	Zero-rated Sales (in US$)	**Zero-rated Sales (In Ph₱)**
MSCI Barra (Suisse) Sarl		
2nd Quarter	$ 1,656,818.00	₱ 86,378,077.00
3rd Quarter	1,742,971.00	92,839,229.00
4th Quarter	1,823,761.00	97,670,143.00
Sub total	***$ 5,223,550.00***	***₱ 276,887,449.00***
MSCI Ltd.		
2nd Quarter	$ 211,547.00	₱ 11,031,770.00
3rd Quarter	189,324.00	10,087,235.00
4th Quarter	227,561.00	12,202,671.00
Sub total	***$ 628,432.00***	***₱ 33,321,676.00***
Investment Property Databank Limited		
2nd Quarter	$ 7,042.00	₱ 367,163.00
3rd Quarter	6,988.00	372,181.00
4th Quarter	6,773.00	362,813.00
Sub total	***$ 20,803.00***	***₱ 1,102,157.00***
Total Zero-Rated Sales	**$ 5,872,785.00**	**₱ 311,311,282.00**

Petitioner claims that its sales of services to its non-resident foreign affiliates are subject to VAT at zero percent (0%) 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. –*
>
> xxx xxx xxx

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64 Lines 17 and 19A, Docket – Vol. 2, p. 825.
65 Lines 17 and 19A, Docket – Vol. 2, p. 834.
66 Lines 17 and 19A, Docket – Vol. 2, p. 843.
67 Exhibit "P-15", Docket – Vol. 2, p. 499; Annexes A and B, Exhibit "P-15", Docket – Vol. 2, pp. 513 to 515.

> (B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services **performed in the Philippines** by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);
>
> (2) **Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP)**; (Boldfacing supplied)

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

1. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a non-resident person not engaged in business who is outside the Philippines when the services are performed;[68]

2. The services fall under any of the categories under Section 108(B)(2),[69] or simply, the services rendered should be other than "*processing, manufacturing or repacking goods*";[70]

3. The service must be performed in the Philippines[71] 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.[72]

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

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

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

[71] *Id.*

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

Anent the *first* essential element, in order to be considered as a non-resident foreign corporation (NRFC) doing business outside the Philippines, each entity must be supported, at the very least, by **both** a *Certification of Non-Registration of Corporation/Partnership* issued by the Philippine SEC, **and** proof of incorporation/registration in a foreign country (*e.g.*, Articles/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 said recipient of the service is indeed foreign. The said documents have been consistently required by this Court for purposes of complying with the *first* essential element. In fact, in *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*,[73] the Supreme Court affirmed the necessity of presenting the said documents in this wise:

> **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.**
>
> <u>**Such proof must be especially required from ROHQs**</u> 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**

[73] G.R. No. 234445, July 15, 2020.

> **their 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.** (Boldfacing and underlining supplied)

In the present case, to prove that its clients are NRFC doing business outside the Philippines, petitioner provided the following documents:

1. Certificate of Incorporation of Investment Property Databank Limited (IPD UK), dated January 22, 1985; and Articles of Association, dated September 26, 2016;[74]

2. Certificate of Incorporation of MSCI Ltd. dated April 26, 2000, as amended on August 17, 2000 and September 17, 2007, and Articles of Association;[75]

3. Third Amended and Restated Certificate of Incorporation of MSCI Inc. dated May 2, 2012;[76]

4. Certificate of Commercial Registration of MSCI Barra (Suisse) Sarl dated August 28, 1998 and Articles of Incorporation;[77]

5. SEC Certificate of Non-Registration of IPD UK;[78]

6. SEC Certificate of Non-Registration of MSCI Inc;[79]

7. SEC Certificate of Non-Registration of MSCI Ltd;[80] and,

8. SEC Certificate of Non-Registration of MSCI Barra (Suisse) Sarl.[81]

With regard to the *second* essential element, the Service/s Agreements entered into by petitioner and its clients[82] provide the following services:

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[74] Exhibit "P-5-1", Docket – Vol. 2, pp. 669 to 705.
[75] Exhibit "P-5-2", Docket – Vol. 2, pp. 706 to 743.
[76] Exhibit "P-5-3", Docket – Vol. 2, pp. 744 to 783.
[77] Exhibit "P-5-4", Docket – Vol. 2, pp. 785 to 802.
[78] Exhibit "P-6-1", Docket – Vol. 2, p. 803.
[79] Exhibit "P-6-2", Docket – Vol. 2, p. 804.
[80] Exhibit "P-6-3", Docket – Vol. 2, p. 805.
[81] Exhibit "P-6-4", Docket – Vol. 2, p. 806.
[82] Exhibits "P-4-1", "P-4-2", "P-4-3", and "P-4-4", Docket – Vol. 2, pp. 633 to 641; 660 to 668; 642 to 654; and 655 to 659, respectively.

Customer Name	Exhibit No.	Scope of services
Investment Property Databank Limited (IPD UK)	"P-4-1"	Sales support services[83]
MSCI Inc.	"P-4-2"	Administration, sales support and marketing, analytics, management and index research and production services[84]
MSCI Ltd.	"P-4-3"	Administration, sales support and marketing services[85]
MSCI Barra (Suisse) Sàrl	"P-4-4"	Analytics, management and index research and production services[86]

The services provided by petitioner clearly fall within the scope of *"services other than processing, manufacturing or repacking goods"*; hence, petitioner satisfactorily complied with the *second* essential element.

Anent the *third* essential element, *i.e.,* the services must be performed in the Philippines by a VAT-registered person, the Service/s Agreements entered into by petitioner with IPD UK, MSCI Inc., and MSCI Ltd. establish that the parties to the contracts have agreed that petitioner's services shall be performed in the Philippines, to wit:

> B. IPD UK desires to appoint MSCI Manila **to provide sales and marketing support activities in Manila**. MSCI Manila is willing to render such services and assistance to IPD UK.[87]
>
> B. MSCI Limited desires to appoint MPHIL **to provide certain services to be performed in the Philippines** (hereinafter referred to as 'PH' in connection with MSCI's business as specified in Clause 2 of this Agreement and MPHIL is willing to render such services and assistance to MSCI.[88]
>
> B. MSCI Limited desires to appoint MSCI Manila to provide certain services **to be performed in the Philippines** in connection with MSCI LIMITED's business as specified in Clause 2 of this Agreement and MSCI Manila is willing to render such services and assistance to MSCI Limited.[89] (Boldfacing supplied)

The above Service/s Agreements are categorical in indicating that that the services of petitioner to its clients are to be performed in the Philippines. Petitioner, therefore, complied with the *third* essential element.

[83] Paragraph 2.1, Exhibit "P-4-1", Docket – Vol. 2, p. 638.
[84] Paragraph 2.1, Exhibit "P-4-2", Docket – Vol. 2, p. 665.
[85] Paragraph 2.1, Exhibit "P-4-3", Docket – Vol. 2, p. 643.
[86] Paragraph 2.1, Exhibit "P-4-4", Docket – Vol. 2, p. 657.
[87] Exhibit "P-4-1", p. 638.
[88] Exhibit "P-4-2", Docket – Vol. 2, p. 665.
[89] Exhibit "P-4-3", Docket – Vol. 2, p. 642.

On the other hand, petitioner's Services Agreement with MSCI Barra (Suisse) Sàrl does not bear any indication that the subject services were to be performed by petitioner in the Philippines, to quote:

> B. MSCI SWITZERLAND desires to appoint MSCI Manila to provide certain services to be performed in connection with MSCI SWITZERLAND's business as specified in Clause 2 of this Agreement and MSCI Manila is willing to render such services and assistance to MSCI SWITZERLAND.[90]

Nonetheless, the testimony of petitioner's Vice President for Finance, Ms. Nerissa Tolentino, by way of a Sworn Statement, shows where the services are to be rendered, to quote:[91]

> **Q16: What services were covered by these zero-rated sales of services for the Period of Claim?**
>
> A: During the Period of Claim, Petitioner **rendered in the Philippines** administration; sales support and marketing analytics, management and index research; and production services **to** four (4) entities, namely: Investment Property Databank Limited (IPD UK), MSCI Inc., MSCI Ltd., and **MSCI Barra (Suisse) Sàrl.**
>
> IPD UK and MSCI Ltd. are corporations established and doing business under the laws of the United Kingdom (UK), while MSCI Inc. is a corporation established and doing business under the laws of Delaware, United States of America (US). MSCI Barra (Suisse) Sàrl is a corporation established and doing business under the laws of Geneva, Switzerland.
>
> These **services were rendered pursuant to Petitioner's Service Agreements with** IPD UK, MSCI Inc., MSCI Ltd., and **MSCI Barra (Suisse) Sarl.** (Boldfacing supplied)

The above testimony of Ms. Tolentino was not contested by respondent; therefore, petitioner was able to establish that the stipulated services based on the respective services agreements were actually performed in the Philippines.

As regards the *fourth* essential element and in relation to the *fifth* requisite for the granting of input VAT refund, *i.e.,* the payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules, petitioner presented the Certificate of Inward Remittance issued by the Bank of America[92] indicating inward remittances in US Dollars from its foreign clients for the CY 2018.

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[90] Exhibit "P-4-4", Docket – Vol. 2, p. 656.
[91] Exhibit "P-14", Docket – Vol. I, p. 35.
[92] Exhibit "P-7", Docket – Vol. 2, pp. 807 to 808.

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

> 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;
>
> (b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed prominently on 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;**
>
> (d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(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. (Boldfacing supplied)

The afore-quoted provisions of the NIRC of 1997, as amended, are implemented by Section 4.113-1(A) and (B) of RR No. 16-2005,[93] as amended, to wit –

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**; and

(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**;

(b) If the sale is exempt from VAT, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

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[93] SUBJECT: Consolidated Value-Added Tax Regulations of 2005.

> (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) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.
>
> (3) In the case of sales in the amount of one thousand peso (₱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. (Boldfacing supplied)

In addition to the above requirements, the sales invoices and official receipts (ORs) must be duly registered with the BIR as prescribed under Section 237, in relation to Section 238, of the NIRC of 1997, as amended, to quote:

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

Aside from the *Certificate of Inward Remittance* issued by the Bank of America,[94] petitioner likewise presented its Summary of Zero-Rated Sales per VAT ORs per Customer, Summary of VAT ORs for Zero-Rated Sales

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[94] Exhibit "P-7", Docket – Vol. 2, pp. 807 to 808.

per Quarter, Tracing of VAT Zero-Rated Sales per VAT ORs to the Remittances per Bank Certificate of Inward Remittances,[95] and the corresponding VAT zero-rated ORs,[96] proving that for services rendered to IPD UK, MSCI Ltd., and MSCI Barra (Suisse) Sarl, petitioner was paid in the aggregate amount of US$5,872,785.00, with the corresponding Philippine Peso equivalent of ₱311,311,282.00 for the 2nd to 4th quarters of CY 2018.

Considering that the certification of inward remittances attests to the fact of payment *"in acceptable foreign currency... and accounted for in accordance with the rules and regulations of the BSP"*,[97] and that the remittances pertain to foreign clients' payments for the services rendered by petitioner, which are duly supported by official receipts, petitioner is considered to have complied with the above-stated *fourth* essential element.

The entire ₱311,311,282.00 (equivalent to US$5,872,785.00) total zero-rated sales/receipts declared in petitioner's Quarterly VAT Returns for the 2nd to 4th quarters of CY 2018 qualifies for VAT zero-rating under Section 108(B)(2), in relation to Section 113(A)(2), (B)(1), (2)(c) and (3), both of the NIRC of 1997, as amended.

Verily, petitioner complied with the *fourth* and *fifth* requisites.

The input VAT being claimed do not appear to be transitional input taxes.

The *sixth* requisite provides that the claimed input taxes do *not* appear to be transitional input taxes, pursuant to Section 111(A) of the NIRC of 1997, as amended, *viz*:

> SEC. 111. *Transitional/Presumptive Input Tax Credits.* –
>
> (A) *Transitional Input Tax Credits.* – A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory according to the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to two percent (2%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax.

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[95] Annexes A to C, Exhibit "P-15", Docket – Vol. 2, pp. 513 to 516.

[96] Exhibit "P-21".

[97] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.

Transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisition of their beginning inventory of goods, materials and supplies. During the period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer.[98]

Since there is no showing that the claimed input VAT is transitional input VAT, petitioner was able to comply with the *sixth* requisite for the grant of an input VAT refund.

Not all of petitioner's input VAT being claimed for refund were duly substantiated.

Anent the *seventh* requisite in claiming VAT refund, petitioner must provide supporting documents to prove that the input taxes being claimed were actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, as implemented by Sections 4.110-1 to 4.110-3 and 4.110-8 of RR No. 16-2005, as amended. The said documents must also conform with the invoicing requirements under Sections 113(A) and (B), 237, and 238 of the NIRC of 1997, as amended, as implemented by Section 4.113-1(A) and (B) of RR No. 16-2005, as amended.

In its amended Quarterly VAT Returns for the 2nd, 3rd, and 4th quarters of CY 2018, petitioner declared a total input VAT of ₱9,776,153.45 from its current domestic purchases of goods and services and amortized input VAT from purchase of capital goods, as shown below:

CY 2018	**2nd Quarter**[99]	**3rd Quarter**[100]	**4th Quarter**[101]	**Total**
Input Tax on:				
Purchase of Capital Goods not exceeding ₱1Million	₱ 193,700.61	₱ 0.00	₱ 0.00	₱ 193,700.61
Domestic Purchases of Goods Other than Capital Goods	25,020.39	28,616.39	78,544.35	132,181.13
Domestic Purchase of Services	2,384,076.42	2,505,070.41	3,330,466.51	8,219,613.34
Sub-total	*2,602,797.42*	*2,533,686.80*	*3,409,010.86*	*8,545,495.08*
Amortized input tax:				
Deferred on Capital Goods Exceeding ₱1M from Previous Quarter	3,717,555.47	3,334,353.58	3,136,578.05	10,188,487.10

[98] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 158885 and 170680, April 2, 2009.
[99] Exhibit "P-8-4", Docket – Vol. 2, pp. 824 to 826.
[100] Exhibit "P-8-6", Docket – Vol. 2, pp. 833 to 835.
[101] Exhibit "P-8-8", Docket – Vol. 2, pp. 842 to 844.

Add: Purchase of Capital Goods exceeding ₱1Million	0.00	196,333.80	1,085,384.87	1,281,718.67
Less: Purchases of Capital Goods exceeding ₱1Million deferred for the succeeding period	3,334,353.61	3,136,578.05	3,768,615.74	10,239,547.40
Sub-total	*383,201.86*	*394,109.33*	*453,347.18*	*1,230,658.37*
Total Input tax	**₱2,985,999.28**	**₱2,927,796.13**	**₱3,862,358.04**	**₱9,776,153.45**

Nevertheless, in its Application for Tax Credits/Refunds (BIR Form No. 1914),[102] petitioner claimed a higher amount of ₱10,813,448.05 as refund. The latter amount was arrived at by allocating the total input taxes for all the quarters of CY 2018 to the ratio of total VAT zero-rated sales from the 2nd to 4th quarters of CY 2018 over the total VAT zero-rated for CY 2018, computed as follows:[103]

Total input tax for all quarters of CY2018		₱ 14,153,927.26
Multiply by: Ratio of VAT zero-rated sales from Q2 to Q4 of CY2018 over total zero-rated sales for CY2018 (a)		
Total Zero-rated Sales for Q2 to Q4 [b] over	₱311,311,282.00	
Total Zero-rated Sales for CY2018 [c]	407,481,242.00	76.39892341%
Input tax allocated to Q2 to Q4 of CY2018 [d] = [(b/c)*a]		**₱10,813,448.05**

Since the total amount filed by petitioner for refund in the administrative level is higher than the total actual input VAT per Quarterly VAT Returns for the 2nd to 4th quarters of CY 2018, the difference in the amount of ₱1,037,294.60,[104] representing over-claimed input tax, shall be disallowed outright for not pertaining to the period involved. Even the ICPA, Mr. Villanueva, also found the same disallowance but in the slightly lesser amount of ₱1,037,294.47.[105]

In the administrative proceeding, out of the claimed unutilized/excess input VAT of ₱10,813,448.05 covering the period from April 1, 2018 to December 31, 2018, respondent only approved the refund of input VAT amounting to ₱5,523,876.72 and denied the amount of ₱5,289,571.33 which is now the subject of the present judicial appeal of petitioner.[106] Hence, to

102 Exhibit "P-10", Docket – Vol. 2, p. 848.
103 Item No. 2, Part II, Exhibit "P-15", Docket – Vol. 2, p. 501.
104 ₱10,813,448.05 per Application for Tax Credits/Refunds *less* ₱9,776,153.45 per Quarterly VAT Returns for the 2nd to 4th quarters of 2018; ₱1,037,294.47 per Respondent's Denial Letter, Annex "A", Exhibit "P-13", Docket – Vol. I, p. 315. With ₱0.13 difference (₱1,037,294.60 vs. ₱1,037,294.47).
105 Item no. 2 in the Table, Summary of Findings and Observations, Exhibit "P-15", Docket – Vol. 2, p. 507; Item No. 2, Part II, Exhibit "P-15", Docket – Vol. 2, pp. 500 to 501; the ₱1,037,294.47 disallowed by the BIR is lower by ₱0.13; ₱1,037,294.47 per Respondent's Denial Letter, Annex "A", Exhibit "P-13", Docket – Vol. I, p. 315 as compared to ₱10,813,448.05 per Application for Tax Credits/Refunds *less* ₱9,776,153.45 per Quarterly VAT Returns for the 2nd to 4th quarters of 2018.
106 Annex "A", Exhibit "P-13", Docket – Vol. I, p. 315.

prove its entitlement to a further refund, petitioner submitted the following evidence to the Court:

1. Summary List of Purchases (SLP);[107]

2. Schedule of Purchases of Goods other than Capital Goods and Capital Goods Not Exceeding ₱1 million;[108]

3. Schedule of Purchases of Services;[109]

4. Schedule of amortization of input tax on purchases of capital goods exceeding ₱1 million;[110] and,

5. the related ORs, sales invoices, and other documents.[111]

The above documents were examined by the Court-commissioned ICPA in order to verify petitioner's compliance with the substantiation and invoicing requirements prescribed under the NIRC of 1997, as amended, and its implementing regulations.

Based on the examination performed by the ICPA, out of the total input VAT claim of ₱5,289,571.33 appealed by petitioner, the following input VAT exceptions in the aggregate amount of ₱1,186,245.75,[112] were disallowed for being overclaimed or for failure to comply with the invoicing and/or substantiation requirements, detailed as follows:[113]

Particular	Exhibit "P-15"[114]	Input VAT
Overclaimed input VAT-lower between application vs. books		
Overclaimed input tax	Pages 6 to 7	₱1,037,294.60[115]
Subtotal		***₱1,037,294.60***

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[107] Exhibits "P-23-1" to "P-23-3".
[108] Exhibits "P-24-1" to "P-24-3".
[109] Exhibits "P-25-1" to "P-25-3".
[110] Exhibits "P-26-1" to "P-26-3".
[111] Exhibits "P-28-1" to "P-28-72", "P-29-1" to "P-29-30", "P-30-1" to "P-30-3", "P-31", "P-32", "P-33-1" to "P-33-3", "P-34", "P-35", "P-36-1" to "P-36-9", "P-37-1" to "P-37-61", "P-38-1" to "P-38-12", "P-39-1" to "P-39-6", "P-40-1" to "P-40-6", "P-41", and "P-42-1" to "P-42-156".
[112] As adjusted by ₱0.13; Item No. 2, Part II, Exhibit "P-15", Docket – Vol. 2, pp. 500 to 501; The ₱1,037,294.47 disallowed by the BIR is lower by ₱0.13; ₱1,037,294.47 per Respondent's Denial Letter, Annex "A", Exhibit "P-13", Docket – Vol. I, p. 315 vs. ₱10,813,448.05 per Application for Tax Credits/Refunds *less* ₱9,776,153.45 per Quarterly VAT Returns for the 2nd to 4th quarters of 2018.
[113] Part II and Summary of Findings and Observations, Exhibit "P-15", Docket – Vol. 2, pp. 497 and 507, respectively.
[114] Docket – Vol. 2, pp. 495 to 546.
[115] As adjusted by ₱0.13; Item No. 2, Part II, Exhibit "P-15", Docket – Vol. 2, pp. 500 to 501; The ₱1,037,294.47 disallowed by the BIR is lower by ₱0.13; ₱1,037,294.47 per Respondent's Denial Letter, Annex "A", Exhibit "P-13", Docket – Vol. I, p. 315 vs. ₱10,813,448.05 per Application for Tax Credits/Refunds *less* ₱9,776,153.45 per Quarterly VAT Returns for the 2nd to 4th quarters of 2018.

Particular	Exhibit "P-15"[114]	Input VAT
Input VAT on local purchases		
Purchase of services supported by VAT OR where amount of VAT was indicated in the line for zero-rated sales without notarized sworn statements of correction from the supplier[116]	Annex F	₱ 240.00
Subtotal		***₱ 240.00***
Amortized portion of input VAT from prior period[117] Amortization of input VAT for the 4th quarter of CY2018 on purchases of capitalizable services exceeding ₱1 million not claimed outright upon payment in the prior period	Annex K-1	₱ 46,418.64
Amortization of input VAT for the 4th quarter of CY2018 on purchases of capital goods from prior periods exceeding ₱1 million supported by documents other than VAT invoices	Annex K-2	56,536.82
Amortization of input VAT for the 4th quarter of CY2018 on purchases of capital goods from prior periods exceeding ₱1 million where TIN and/or address of Petitioner are not indicated, incorrect or incomplete	Annex K-3	43,408.89
Amortization of input VAT for the 4th quarter of CY2018 on purchases of capitalizable services exceeding ₱1 million not claimed outright upon payment in the prior period where nature of services is not indicated, incorrect or incomplete in the official receipt	Annex K-4	2,346.80
Subtotal		***₱ 148,711.15***
Total Exceptions noted by the ICPA		**₱1,186,245.75**

In addition, the Court finds that input VAT in the amount of ₱57,306.61 should be disallowed for failure to comply with the invoicing requirements, to wit:[118]

Exhibit No.	Supplier	Input VAT	Useful life (in months)	Amortized Input VAT (9 months)
Amortized portion of input VAT from prior period supported by VAT invoice but petitioner's TIN is not indicated				
"P-37-5"	CWC Industries Inc.	₱ 28,219.50	58	₱ 4,378.89
"P-37-6"	CWC Industries Inc.	32,942.57	58	5,111.78
"P-37-10"	CWC Industries Inc.	4,703.25	59	717.44
	Sub-total			*₱ 10,208.11*
Amortized portion of input VAT from prior period supported by VAT invoice but bearing incorrect TIN of petitioner				
"P-37-49"	Accent Micro Technologies Inc	₱ 56,160.00	36	₱ 14,040.00
"P-37-52"	Accent Micro Technologies Inc	132,234.00	36	33,058.50
	Sub-total			*₱ 47,098.50*
	TOTAL			**₱57,306.61**

Verily, for purposes of compliance with the *seventh* requisite, out of the total input VAT claim of ₱5,289,571.33, only the amount of

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[116] Exhibit "P-32", USB; Table, B. Other Finding, Item No. 3, Part II, Exhibit "P-15", Docket – Vol. 2, p. 502.
[117] Table, B. Other Findings, Item No. 6, Part II, Exhibit "P-15", Docket – Vol. 2, pp. 506 to 507.
[118] Lifted from Annex J, Exhibit "P-15", Docket – Vol. 2, pp. 538 to 539.

₱4,046,018.97 represents petitioner's validly supported creditable input VAT for April 1, 2018 to December 31, 2018, computed as follows:

Input VAT per claim	₱ 5,289,571.33
Less: Disallowances	
Per ICPA's findings	1,186,245.75
Per this Court's findings	57,306.61
Valid input VAT	**₱4,046,018.97**

Petitioner's input VAT claimed are attributable to zero-rated sales.

The *eighth* requisite requires that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. In instances 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 those sales, the input taxes shall be proportionately allocated on the basis of sales volume.

In the present case, petitioner had no other type of sales for the period 2nd to 4th quarters of CY 2018 but only zero-rated sales in the gross amount of ₱311,311,282.00. It follows therefore that all the validly supported creditable input taxes in the sum of ₱4,046,018.97 are entirely attributable thereto.

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

Relative to the *ninth* requisite, petitioner having purely zero-rated sales for the 2nd to 4th quarters of CY 2018, the Court shall now determine whether the valid input VAT of ₱4,046,018.97 was not applied against its output VAT, if any, during and in the succeeding quarter/s.

To prove the same, petitioner presented its amended Quarterly VAT Return for the 1st quarter of CY 2019.[119] The amended VAT return shows that the total input VAT of ₱14,153,927.26[120] for the four (4) quarters of CY 2018, which includes the ₱5,289,571.33 input VAT subject of the present claim, was deducted under Line 23D "VAT Refund/ TCC claimed",[121] preventing its carry-over or application in the next taxable quarter/period.

Verily, petitioner complied with the *ninth* requisite for the grant of the input VAT claimed for refund. Y

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[119] Exhibit "P-9", Docket – Vol. 2, pp. 845 to 847.

[120] Exhibits "P-8-2", "P-8-4", "P-8-6" and "P-8-8", Docket – Vol. 2, pp. 815 to 817, 824 to 826, 833 to 835 and 842 to 844, respectively; Refer also to item no. 2, Exhibit "P-15", Docket – Vol. 2, p. 500.

[121] Line 23D, Exhibit "P-9", Docket – Vol. 2, p. 847.

In sum, petitioner has sufficiently proven its entitlement to VAT refund in the reduced amount of ₱4,046,018.97, representing the unutilized creditable input VAT attributable to its zero-rated sales for the 2nd to 4th quarters of CY 2018.

WHEREFORE, in light of the foregoing, the present *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** in favor of petitioner the amount of **₱4,046,018.97,** representing unutilized creditable input VAT attributable to its zero-rated sales for the period from April 1, 2018 to December 31, 2018.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Division Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice