REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Special Third Division

MSCI HONG KONG LIMITED, Petitioner,	**CTA CASE NO. 10131**
	Members:
-versus-	**UY**, *Chairperson*, **RINGPIS-LIBAN**, *and* **MODESTO-SAN PEDRO**, *JJ*.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 02 2022 1:44 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The *Petition for Review* prays that the Court render judgment ordering respondent to refund petitioner the amount of ₱10,948,361.63, representing the petitioner's excess and unutilized input value-added tax (VAT) for calendar year (CY) 2017.[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 Philippine Securities and Exchange Commission 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]

[1] Statement of the Case, Pre-Trial Order dated July 23, 2020, Docket – Vol. 1, p. 490.
[2] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 1, p. 438.
[3] Exhibit "P-1", Docket – Vol. 2, pp. 660 to 673.

Petitioner is also registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, and was issued a Certificate of Registration with Taxpayer's Identification No. (TIN) 008-724-942.[4]

Respondent is the duly appointed Commissioner of Internal Revenue, vested under the appropriate laws with the authority to carry out functions, duties, and responsibilities for his Office, including, *inter alia*, the duty to act upon and approve claims for refund, pursuant to the provisions of the National Internal Revenue Code of 1997 (NIRC) and other tax laws, rules, and regulations. She may be served summons pleadings, and other processes at the Legal Division of Revenue Region 8A- Makati City, located at the 2nd Floor BIR Building 313 Gil Puyat Avenue, Makati City, pursuant to Executive Order No. 175 dated November 3, 1999, as implemented by Revenue Administrative Order No. 10-2000 date August 7, 2000.[5]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On March 28, 2019, petitioner filed with the BIR its *Application for Tax Credits/Refunds* (BIR Form No. 1914), and the letter dated March 27, 2019, requesting the refund of its excess and unutilized input VAT incurred on its purchases of goods and services for the period from January 1, 2017 to December 31, 2017 (CY 2017) which are attributable to its zero-rated sales of services to nonresident foreign corporations (NRFC) engaged in business conducted outside the Philippines, amounting to ₱10,948,361.63.[6] The letter was accompanied by a *Revised Checklist of Mandatory Requirements for Claims for VAT Refund*.[7]

Thereafter, the BIR issued a Tax Verification Notice (TVN) dated March 28, 2019 against petitioner, directing Revenue Officer (RO) Jonathan Ray Colobong to verify the supporting documents and/or pertinent records relative to petitioner's claim.[8]

On July 2, 2019,[9] petitioner received the letter from respondent dated May 28, 2019, which denied its request for the refund of its excess and unutilized input VAT attributable it zero-rated sales of service for CY 2017 for lack of legal and factual basis.[10]

[4] Par. 2, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 438.
[5] Par. 3, Stipulation of Facts, JSFI, Docket – Vol. 1, pp. 438 to 439.
[6] Exhibits "P-10" and "P-11", BIR Records, pp. 3 to 6, and 35, respectively.
[7] Exhibit "R-2", BIR Records, p. 2.
[8] Exhibits "P-12" and "R-1", BIR Records, p. 1.
[9] Exhibit "P-14", Judicial Affidavit of Nerissa Tolentino, petitioner's Vice President for Finance, Docket – Vol. 1, p. 212; *see also* Par. 21, *Petition for Review*, Docket – Vol. 1, p. 16; Par. 19, petitioner's *Memorandum*, Docket – Vol. 2, p. 1975.
[10] Par. 4, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 439; Exhibits "P-13" and "R-5", BIR Records, p. 494.

PROCEEDINGS BEFORE THIS COURT

Accordingly, on July 24, 2019, Petitioner filed the present *Petition for Review*.[11]

Respondent posted his *Answer* on September 20, 2019,[12] interposing the following special and affirmative defenses, to wit:

"SPECIAL AND AFFIRMATIVE DEFENSES

5. Respondent reproduces and repleads all the foregoing allegations insofar as they are relevant to his defenses.

6. The procedure regarding the refund dictates that claims for refund and/or issuance of tax credit certificates (TCC) are still subject to administrative routinary investigation/examination by the Bureau of Internal Revenue;

7. Taxes paid and collected are presumed to have been made in accordance with the laws and regulations. Therefore, not creditable or refundable;

8. In *CIR v. Manila Electric Company*, the Supreme Court explained that 'a corporate taxpayer's option to avail of tax credit does not, however, mean that it is ipso facto granted. For petitioner has still to investigate and ascertain the veracity of the claim.'

9. Moreover, in order to validly claim for tax credit/refund, it is imperative for petitioner to prove its compliance with the following, viz:

a. The registration requirements of a value-added taxpayer under the pertinent provision of the 1997 NIRC, as amended, and its implementing revenue regulations;

b. The invoicing and accounting requirements for VAT registered persons, as well as the filing and payment of VAT pursuant to the provisions of Sections 113 and 114 of the 1997 NIRC, as amended. Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax of the taxpayer claimant.

c. The submission of complete documents in support of the administrative claim for tax refund, otherwise, there would be no sufficient compliance regarding the filing of administrative claim for tax credit/refund which is a condition sine qua non prior to the filing of such claim.

[11] Docket – Vol. 1, pp. 10 to 32.
[12] Docket – Vol. 1, pp. 156 to 160.

d. The input taxes of ₱10,948,361.63 allegedly representing unutilized input VAT from its purchases of goods and services from VAT-registered supplier were:

i. paid by the petitioner;
ii. attributable to its zero-rated or effectively zero-rated sales; and
iii. such input taxes paid should not have been applied against any output tax.

e. That petitioner's claim for tax credit/refund allegedly representing unutilized input VAT in the amount of ₱10,948,361.63 was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112 (A) of the 1997 NIRC, as amended.

10. Furthermore, in *Commissioner of Internal Revenue (CIR) vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, the Supreme Court held that in order for the supply of services to be considered VAT zero-rated under Section 108(B) of the NIRC of 1997, as amended, the following requirements are mandatory, *viz*:

a. The services by a VAT-registered person must be other than processing, manufacturing or repacking of goods;

b. The payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and

c. The recipient of such services is doing business outside the Philippines.

11. Petitioner's claim for refund in the amount of ₱10,948,361.63 representing alleged excess and unutilized input taxes for taxable year 2017 was not fully substantiated by proper documents such as sales invoice and official receipts, pursuant to Sections 113 and 237 of the 1997 Tax Code, as amended;

12. Petitioner must show that it has complied with the provision of Sections 108(B)(2), 110(A) and (C) of the 1997 Tax Code, as amended. Failure to prove the same is fatal to its claim for refund.

13. The Supreme Court recognizes, as it always has, that the burden of proof to establish entitlement to refund is on the claimant taxpayer.

14. Being in the nature of a claim for exemption, refund is construed in strictissimi juris against the entity claiming the refund and in favor of the taxing power. This is the reason why a claimant must positively show compliance with the statutory requirements provided for in the NIRC in order to successful pursue one's claim."

Respondent transmitted the *BIR Records* of this case to the Court on September 27, 2019.[13]

[13] *Compliance* dated September 25, 2019, Docket – Vol. 1, p. 162.

Respondent's *Pre-Trial Brief*,[14] and *Petitioner's Pre-Trial Brief*,[15] were filed on January 17, 2020. The Pre-trial Conference was set and held on January 23, 2020.[16]

On February 12, 2020, the parties submitted their *Joint Stipulation of Facts and Issues* (JSFI).[17] In the February 26, 2020 Resolution,[18] the Court approved the JSFI and terminated the Pre-Trial. Subsequently, the Pre-Trial Order dated July 23, 2020 was issued.[19]

Trial ensued and petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely:

- Ms. Nerissa Tolentino,[20] petitioner's Vice President for Finance; and,
- Mr. Glenn Ian D. Villanueva,[21] the Court-commissioned Independent Certified Public Accountant (ICPA).[22]

On September 11, 2020, the ICPA submitted his *Report*.[23]

Petitioner filed its *Formal Offer of Exhibits* on December 23, 2020.[24] Respondent then filed his *Comment (To Petitioner's Formal Offer of Evidence)* on September 18, 2019.[25] In the Resolution dated January 31, 2020,[26] the Court admitted petitioner's offered exhibits, except for Exhibit "P-2", for failure of the document offered and identified to correspond with the document marked.

Thereafter, on March 5, 2021, petitioner filed a *Motion for Reconsideration (Re: Resolution dated February 23, 2021)*,[27] praying, *inter alia*, for the admission of the Authenticated Memorandum of Association of petitioner as Exhibit "P-2", which was attached to the motion. Respondent then posted a *Comment (Re: Motion for Reconsideration dated 05 March 2021)* on March 5, 2021.[28]

[14] Docket – Vol. 1, pp. 168 to 171.
[15] Docket – Vol. 1, pp. 194 to 208.
[16] Notice of Pre-Trial Conference dated October 1, 2019, Docket – Vol. 1, pp. 163 to 164; Minutes of the hearing held on, and Order dated, January 23, 2020, Docket – Vol. 1, pp. 432, and 436 to 437, respectively.
[17] Docket – Vol. 1, pp. 438 to 450.
[18] Docket – Vol. 1, p. 452.
[19] Docket – Vol. 1, pp. 490 to 497.
[20] Exhibit "P-14", Docket – Vol. 1, pp. 212 to 228; Minutes of the hearing held on, and Order dated, October 22, 2020, Docket – Vol. 2, pp. 614 to 616.
[21] Exhibit "P-16", Docket – Vol. 2, pp. 620 to 632; Minutes of the hearing held on, and Order dated, November 24, 2020, Docket – Vol. 2, pp. 634 to 636.
[22] *Oath of Commission* dated July 28, 2020, Docket – Vol. 1, p. 499; Minutes of the hearing held on, and Order dated, July 28, 2020, Docket – Vol. 1, pp. 498 and 500 to 501, respectively.
[23] Exhibit "P-15", Docket – Vol. 2, pp. 526 to 611.
[24] Docket – Vol. 2, pp. 640 to 659.
[25] Docket – Vol. 2, pp. 906 to 917.
[26] Docket – Vol. 2, pp. 926 to 928.
[27] Docket – Vol. 2, pp. 929 to 933.
[28] Docket – Vol. 2, pp. 956 to 959.

Respondent, likewise, presented her testimonial and documentary evidence. She offered the testimony of RO Jonathan Ray Colobong.[29]

Subsequently, respondent posted her *Formal Offer of Evidence* on March 12, 2021.[30] Petitioner filed its *Comment (Re: Respondent's Formal Offer of Evidence)* on May 18, 2021.[31]

In the Resolution dated July 8, 2021,[32] the Court admitted respondent's offered exhibits, and granted petitioner's *Motion for Reconsideration (Re: Resolution dated February 23, 2021).*

Petitioner posted its *Memorandum* on August 26, 2021,[33] while the *Memorandum (for the Respondent)* was posted on October 27, 2021.[34]

On December 16, 2021, the case was deemed submitted for decision.[35]

THE ISSUES STIPULATED BY THE PARTIES

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 PHP10,948,361.63 REPRESENTING ITS EXCESS AND UNUTILIZED INPUT VAT ATTRIBUTABLE TO ITS ZERO-RATED SALES OF SERVICE FOR THE FOUR (4) QUARTERS OF CY 2017."[36]

The foregoing main issue is further broken down by the parties into the following sub-issues, *viz.*:

> "(a) Whether or not Petitioner paid and incurred input taxes on its purchase of goods and services attributable to zero-rated sales of services in CY 2017,

[29] Exhibit "R-6", Docket – Vol. 1, pp. 175 to 182; Minutes of the hearing held on, and Order dated, March 3, 2021, Docket – Vol. 2, pp. 943 to 945.
[30] Docket – Vol. 2, pp. 950 to 954.
[31] Docket – Vol. 2, pp. 946 to 948.
[32] Docket – Vol. 2, pp. 964 to 968.
[33] Docket – Vol. 2, pp. 1909 to 2001.
[34] Docket – Vol. 2, pp. 2004 to 2020.
[35] *Resolution* dated December 16, 2021, Docket – Vol. 2, p. 2024.
[36] Par. 5, Stipulated Issue, JSFI, Docket – Vol. 1, p. 439.

(b) Whether or not the excess input taxes paid and incurred by Petitioner in CY 2017 are duly supported by VAT invoices and official receipts.

(c) Whether or not the input taxes paid and incurred by Petitioner in CY 2017 amounting to Php10,948,361.63 were applied against any output taxes or carried over to succeeding taxable periods.

(d) Whether or not Petitioner's administrative and judicial claims for refund or issuance of TCC for its excess and unutilized input taxes were filed within the period prescribed by law."[37]

Petitioner's arguments:

Petitioner claims that it is a VAT-registered entity; that its sales of services to persons who are engaged in business conducted outside the Philippines are zero-rated sales; that it paid or incurred input VAT which are properly substantiated in accordance with the law and regulations; that the input VAT it paid or incurred are attributable to zero-rated sales; that the input VAT have not been applied against output taxes in the same and the succeeding periods; and that its claim for refund was filed within the mandatory period provided under the law.

Respondent's counter-arguments:

Respondent counter-argues that in an appeal on the denial of its administrative claim for refund, it is incumbent upon the taxpayer-claimant to show that it satisfied all the documentary and evidentiary requirement for an administrative claim for refund; that the burden of proof of its entitlement to its claim for refund rests upon the claimant-taxpayer; that failure to discharge this burden of proof is fatal to its claim; that petitioner failed to establish that it is engaged in zero-rated sales or effectively zero-rated sales during the four (4) quarters of 2017; and that compliance with the invoicing and accounting requirements under the Tax Code, as amended, must be established.

THE COURT'S RULING

The petition is partially granted.

[37] *Id.*, Docket – Vol. 1, pp. 439 to 440.

The case is a judicial claim for refund of excess and unutilized input VAT attributable to VAT zero-rated sales of services for the four quarters of CY 2017 in the amount of ₱10,948,361.63.[38]

In this connection, Section 112 of the 1997 NIRC, as last amended by RA No. 10963,[39] provides in pertinent part:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> xxx xxx xxx
>
> (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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[38] Statement of the Case, Pre-Trial Order dated July 23, 2020, Docket – Vol. 1, p. 490.

[39] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however*, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code."

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

<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;[40]
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 documents in support of the application, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision;

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

3. the taxpayer is a VAT-registered person;[41]

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

4. The taxpayer is engaged in zero-rated or effectively zero-rated sales;[42]
5. For zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); 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;[43]

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

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[40] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 155732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; *AT&T Communications Services Philippines, Inc.*, G.R. No. 182364, August 3, 2010.
[41] *Id.*
[42] *Id.*
[43] *Id.*

6. The input taxes are not transitional input taxes;[44]
7. The input taxes are due or paid;[45]
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;[46] and
9. The input taxes have not been applied against output taxes during and in the succeeding quarters.[47]

In addition, in claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the NIRC and other implementing rules and regulations.[48] Thus, petitioner's compliance with all the VAT invoicing requirements is required to be able to file a claim for input taxes attributable to zero-rated sales.[49] Compliance with the invoicing and substantiation requirements is necessary because it is the only way to determine the veracity of the taxpayer's claims.[50] It must be emphasized that compliance with all the VAT invoicing requirements provided by tax laws and regulations is *mandatory*.[51]

Furthermore, it bears stressing that the taxpayer "should prove every minute aspect of its case by presenting, formally offering and submitting ... to the Court of Tax Appeals [all evidence] . . . required for the successful prosecution of [its] administrative claim."[52] Thus, during trial, it is essential for the petitioner to show compliance with each of the foregoing requisites. The absence of *any* of the requisites is a valid ground to deny the refund claim.

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[44] *Id.*
[45] *Id.*
[46] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009.
[47] *Id.* and *AT&T Communications Services Philippines, Inc.*, G.R. No. 182364, August 3, 2010.
[48] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.
[49] *JRA Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.
[50] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.
[51] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[52] *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.

Petitioner's administrative and judicial claims were timely filed.

The *first* requisite of the claim pertains to the filing of the same 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.

As previously stated, the present claim covers the four (4) quarters of CY 2017. Counting two (2) years from the close of each of the said quarters, the following table indicates the pertinent *last* day for the filing of an administrative claim:

Periods	Close of the Taxable Quarter	Last Day to File Administrative Claim
January 1 to March 31, 2017 (1st Quarter)	March 31, 2017	March 31, 2019
April 1 to June 30, 2017 (2nd Quarter)	June 30, 2017	June 30, 2019
July 1 to September 30, 2017 (3rd Quarter)	September 30, 2017	September 30, 2019
October 1 to December 31, 2017 (4th Quarter)	December 31, 2017	December 31, 2019

Based on the table above, there is no dispute that petitioner timely filed its administrative claim for refund with BIR on March 28, 2019.[53]

As to 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 90-day period under Section 112(C) of the NIRC of 1997, as amended.

Based on Section 112 of the NIRC, as amended, respondent had ninety (90) days from the filing of petitioner's administrative claim on March 28, 2019, or until June 26, 2019, to act on the said claim.

Respondent issued the letter dated May 28, 2019 (which appears to be within the 90-day period prescribed by law), informing petitioner that its request for the refund of its excess and unutilized input VAT attributable it zero-rated sales of service for CY 2017 is *denied*, for lack of legal and factual basis.

[53] Exhibits "P-10" and "P-11", BIR Records, pp. 3 to 6, and 35, respectively.

It is not disputed that petitioner received the *denial* on July 2, 2019,[54] accordingly, the filing of the present *Petition for Review* on July 24, 2019[55] was timely made within the prescribed 30-day period.

Such being the case, the Court finds that petitioner complied with the above-stated *first* and *second* requisites.

Petitioner is a VAT-registered person/entity.

As to the *third* requisite, it is undisputed that petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, and was issued a Certificate of Registration with Taxpayer's Identification No. (TIN) 008-724-942.[56] Petitioner, likewise, complied with this requisite.

Petitioner was able to establish that it was engaged in zero-rated or effectively zero-rated sales in CY 2017.

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

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

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

[54] Exhibit "P-14", Judicial Affidavit of Nerissa Tolentino, petitioner's Vice President for Finance, Docket – Vol. 1, p. 212; *see also* Par. 21, *Petition for Review*, Docket – Vol. 1, p. 16; Par. 19, petitioner's *Memorandum*, Docket – Vol. 2, p. 1975.
[55] Docket – Vol. 1, pp. 10 to 32.
[56] Par. 2, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 438.

> (1) Processing, manufacturing or repacking of goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
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> (2) **Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)**;" *(Emphases added)*

Based on the foregoing provisions, these essential elements must be present for a sale or supply of services to be subject to the VAT rate of zero percent (0%) under Section 108(B)(2) of the NIRC of 1997, as amended, to wit:

1. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a nonresident person not engaged in business who is outside the Philippines when the services were performed;[57]

2. The services fall under any of the categories under Section 108(B)(2),58 or simply, the services rendered should be *other than* "processing, manufacturing or repacking goods";[59]

3. The services must be performed in the Philippines[60] 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.[61]

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

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

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

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

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

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

Incorporation/Registration and/or Tax Residence Certificate). The former establishes that the recipient of the service has no registered business in the Philippines, and that it is not engaged in trade or business within the Philippines; while the latter proves that the recipient of the service is indeed foreign. The said documents have been consistently required by this Court, for purposes of the said *first* essential element.

In *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*,[62] 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 these affiliates are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines.**" *(Emphasis and underscoring added)*

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

In this case, the following table shows whether petitioner complied with the *first* essential element vis-à-vis the presentation of the required documents pertinent to the alleged recipients of the services rendered by petitioner, *viz.*:

Client's Name	SEC Certification of Non-Registration of Company (Exhibit No.)	Certificate/ Articles of Incorporation/ Registration (Exhibit No.)
Investment Property Databank Limited	"P-6-a"[63]	"P-5-a"[64]
MSCI Inc.	"P-6-b"[65]	"P-5-b"[66]
MSCI Limited	"P-6-c"[67]	"P-5-c"[68]
MSCI Barra (Suisse) Sàrl	"P-6-d"[69]	"P-5-d"[70]

Thus, as can be gleaned from the foregoing, it is shown that petitioner complies with the *first* essential element for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

With regard to the *second*, petitioner presented the Service Agreements[71] it entered into with its clients. The following table summarizes the services ought to be performed by petitioner, *viz.*:

Client's Name	Services
Investment Property Databank Limited	"*sales support services*"[72]
MSCI Inc.	"*administration, sales support and marketing, analytics, management and index research and production services*"[73]
MSCI Limited	"*administration, sales support and marketing services*"[74]
MSCI Barra (Suisse) Sàrl	"*certain analytics, management and index research and production services*"[75]

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

[63] BIR Records, p. 115.
[64] Docket – Vol. 2, pp. 725 to 760.
[65] BIR Records, p. 114.
[66] Docket – Vol. 2, pp. 761 to 799.
[67] BIR Records, p. 113.
[68] Docket – Vol. 2, pp. 800 to 839.
[69] BIR Records, p. 112.
[70] Docket – Vol. 2, pp. 840 to 856.
[71] Exhibits "P-4-a" to "P-4-d, Docket – Vol. 1, pp. 693 to 724.
[72] Exhibit "P-4-a", Docket – Vol. 2, at p. 699.
[73] Exhibit "P-4-b", Docket – Vol. 2, at p. 707.
[74] Exhibit "P-4-c", Docket – Vol. 2, at p. 712.
[75] Exhibit "P-4-d", Docket – Vol. 2, at p. 720.

Petitioner has also demonstrated its compliance with respect to the *third* essential element. Petitioner's witness, Ms. Nerissa Tolentino, testified in this connection:[76]

> "Q16: What services were covered by these zero-rated sales of services for CY 2017?
>
> A: In CY 2017, Petitioner rendered in the Philippines administration; sales support and marketing analytics, management and index research; and production services to four entities, namely: Investment Property Databank Limited (IPD UK), MSCI Inc., MSCI Ltd., and MSCI Barrra (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 establish and doing business under the laws of Delaware, United States of America (US). MSCI Barra (Suisse) Sàrl is a corporation establish 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) Sàrl."

In addition, the Service Agreements[77] also established that the services to be rendered by petitioner to its clients will be performed in the Philippines:

Service-Recipient	**Service Agreement**
Investment Property Databank Limited	*"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."*
MSCI Inc.	*"B. MSCI 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.*
MSCI Limited	*"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.*
MSCI Barra (Suisse) Sarl	*"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.*

The foregoing testimony and the Service Agreements between the petitioner and its service-recipients serve as acceptable proof that the subject

[76] Exhibit "P-14", Docket – Vol. 1, at p. 215, Sworn Statement, Q16:
[77] Exhibits "P-4-a", "P-4-b", "P-4-c" and "P-4-d", Docket – Vol. 2, pp. 699, 707, 712 and 719.

services were indeed performed by petitioner in the Philippines. Clearly, petitioner complied with the said *third* essential element.

Finally, the *fourth* essential element requires that petitioner's sales must be paid in acceptable foreign currency accounted for in accordance with the BSP rules and regulations, by clients who are not doing business in the Philippines.

Furthermore, the foreign currency remittances referred to under Section 108(B)(2) must not only be duly accounted for in accordance with the rules and regulations of the BSP but <u>must also be supported by official receipts that comply with the pertinent invoicing requirements</u>, containing all the required information under Section 113(A) and (B) of the NIRC of 1997, as amended, to wit:

> "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."

These provisions of the 1997 NIRC, as amended, are further implemented by Section 4.113-1(A) and (B) of Revenue Regulations (RR) No. 16-05, 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;
>
> (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 pesos (₱1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section."

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

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

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

To prove that petitioner's clients paid for its services in acceptable foreign currency in accordance with BSP Rules and Regulations, petitioner provided

Certification of Inward Remittances issued by Bank of America,[78] replicated as follows:

NAME OF CUSTOMER	DATE	REFERENCE	AMOUNT (IN USD)
MSCI, Inc	1/20/2017	019LAD19	550,804.35
Investment Property Databank Ltd	1/26/2017	026LAA29	3,241.44
MSCI, Inc	2/16/2017	047LAA84	502,005.80
Investment Property Databank Ltd	2/21/2017	052LAA42	1,779.50
MSCI, Inc	3/20/2017	076LAC77	249,557.00
MSCI Barra (Suisse) Sàrl	3/24/2017	083LAA92	323,818.00
MSCI Limited (UK)	3/24/2017	083LAA02	39,392.00
Investment Property Databank Ltd	3/24/2017	083LAA01	2,545.50
[redacted]			
MSCI, Inc	4/20/2017	109LAD97	300,976.73
MSCI Barra (Suisse) Sàrl	4/24/2017	112LAA79	208,631.09
MSCI Limited (UK)	4/24/2017	111LAD06	25,454.27
Investment Property Databank Ltd	4/24/2017	111LAD10	2,187.13
MSCI, Inc	5/18/2017	138LAA62	320,739.00
MSCI Barra (Suisse) Sàrl	5/30/2017	150LAA04	246,473.00
Investment Property Databank Ltd	5/30/2017	150LAA11	2,329.34
MSCI, Inc	6/20/2017	170LAC39	88,212.00
MSCI Barra (Suisse) Sàrl	6/23/2017	173LAC46	492,805.00
MSCI Limited (UK)	6/23/2017	173LAC43	95,905.00
Investment Property Databank Ltd	6/23/2017	173LAC47	5,276.83
[redacted]			
MSCI, Inc	7/20/2017	200LAC62	224,086.00
MSCI Barra (Suisse) Sàrl	7/24/2017	202LAC37	388,567.00
MSCI Limited (UK)	7/24/2017	202LAC39	51,868.00
MSCI Barra (Suisse) Sàrl	8/30/2017	241LAC80	388,555.00
MSCI Limited (UK)	9/14/2017	257LAF59	51,866.00
MSCI, Inc	9/15/2017	257LAH48	224,067.00
MSCI Barra (Suisse) Sàrl	9/26/2017	268LAB63	437,313.00
MSCI, Inc	9/26/2017	268LAB72	158,773.00
Investment Property Databank Ltd	9/26/2017	268LAB64	2,972.00
MSCI Limited (UK)	9/27/2017	269LAC61	45,223.00
[redacted]			
MSCI Barra (Suisse) Sàrl	10/20/2017	293LAA42	474,568.00
MSCI, Inc	10/23/2017	293LAC25	153,624.00
Investment Property Databank Ltd	10/25/2017	297LAD28	3,990.00
MSCI Barra (Suisse) Sàrl	11/21/2017	324LAD10	470,874.00

[78] Exhibit "P-7", Docket – Vol. 2, pp. 857 to 858.

MSCI Limited (UK)	11/21/2017	325LAB84	63,326.00
MSCI Limited (UK)	11/21/2017	325LAB83	53,709.00
Investment Property Databank Ltd	11/21/2017	325LAB82	2,408.00
MSCI, Inc	11/27/2017	328LAC95	73,101.00
MSCI Barra (Suisse) Sàrl	12/22/2017	356LAC21	459,379.00
MSCI, Inc	12/26/2017	356LAE13	151,947.00
MSCI Limited (UK)	12/26/2017	356LAE42	57,851.00
Investment Property Databank Ltd	12/26/2017	356LAE11	1,112.00
[redacted]			
Total Inward Remittances			**US$7,401,311.98**

Aside from the Certificates of Inward Remittance from Bank of America, petitioner also presented the corresponding VAT ORs stamped with the words "Zero-Rated Sales"[79] that it issued to its clients to prove that for services rendered during CY 2017, petitioner was paid in US Dollars amounting to US$7,401,311.98 with a Philippine Peso equivalent of ₱372,953,811.58.[80]

Based on the court-commissioned ICPA's examination, there are no differences between the amounts per VAT ORs issued by respondent vis-à-vis the amounts per Certification of Inward Remittance.[81]

After a careful review of the VAT ORs[82] submitted by petitioner, the Court confirms the findings of the ICPA. The ORs submitted comply with invoicing requirements set forth by Section 113 of the Tax Code, as amended, hence, petitioner satisfied the *fourth* essential element.

The ICPA also reported that petitioner's Vice President for Finance, Nerissa Tolentino, disclosed that the amount received from clients, which are denominated in US Dollars, are automatically converted to pesos by petitioner's accounting system using the US Dollars to Philippine Peso spot rate of the transaction date in Bloomberg Generic Composite (BGN).

However, upon re-computation of the conversion from dollars to pesos using the BGN rates,[83] the peso equivalent of petitioner's zero-rated sales of US$7,401,311.98 should only be ₱372,952,466.69, to wit:

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[79] Exhibit "P-21", USB.
[80] Exhibit "P-15", ICPA Report, Annex A-1, Docket – Vol. 2, pp. 549 to 550.
[81] Exhibit "P-15", ICPA Report, Docket, Vol. 2, pp.531-532; ICPA Report, "Exhibit P-15", Annex B, Docket, Vol. 2, pp.555-556.
[82] Exhibit "P-21", USB Exhibit.
[83] Exhibits "P-20-a"; "P-20-b", "P-20-c"and "P-20-d", USB.

EXH "P-21"	NAME OF CUSTOMER	ZERO-RATED SALES (IN USD)	Conversion Rate	ZERO-RATED SALES (IN PHP)
Page 1	MSCI Inc.	550,804.35	49.712	27,381,585.85
Page 2	Investment Property Databank Ltd	3,241.44	49.713	161,141.71
Page 3	MSCI Inc.	502,005.80	49.765	24,982,318.64
Page 4	Investment Property Databank Ltd	1,779.50	49.729	88,492.76
Page 5	MSCI Inc.	249,557.00	50.473	12,595,890.46
Page 6	MSCI Barra (Suisse) Sarl	323,818.00	49.999	16,190,576.18
Page 7	MSCI Ltd.	39,392.00	49.999	1,969,560.61
Page 8	Investment Property Databank Limited	2,545.50	50.188	127,753.55
[redacted]				
Page 9	MSCI Inc.	300,976.73	50.280	15,133,109.98
Page 10	MSCI Barra (Suisse) Sarl	208,631.09	50.280	10,489,971.21
Page 11	MSCI Ltd.	25,454.27	50.280	1,279,840.70
Page 12	Investment Property Databank Limited	2,187.13	50.280	109,968.90
Page 13	MSCI Barra (Suisse) Sarl	246,473.00	49.829	12,281,503.12
Page 14	Investment Property Databank Limited	2,329.34	49.829	116,068.68
Page 15	MSCI Inc.	320,739.00	49.829	15,982,103.63
Page 16	MSCI Inc.	88,212.00	49.845	4,396,927.14
Page 17	MSCI Barra (Suisse) Sarl	492,805.00	49.845	24,563,865.23
Page 18	MSCI Ltd.	95,905.00	49.840	4,779,905.20
Page 19	Investment Property Databank Limited	5,276.83	49.845	263,023.59
[redacted]				
Page 20	MSCI Inc.	224,086.00	49.870	11,175,168.82
Page 21	MSCI Barra (Suisse) Sarl	388,567.00	49.870	19,377,836.29
Page 22	MSCI Ltd.	51,868.00	49.870	2,586,657.16
Page 23	MSCI Barra (Suisse) Sarl	388,555.00	50.633	19,673,705.32

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Page 24	MSCI Ltd.	51,866.00	50.633	2,626,131.18
Page 25	MSCI Inc.	224,067.00	50.633	11,345,184.41
Page 26	MSCI Barra (Suisse) Sarl	437,313.00	50.942	22,277,598.85
Page 27	MSCI Inc.	158,773.00	50.943	8,088,372.94
Page 28	Investment Property Databank Limited	2,972.00	50.979	151,509.59
Page 29	MSCI Ltd.	45,223.00	50.943	2,303,795.29
[redacted]				
Page 30	MSCI Barra (Suisse) Sarl	474,568.00	50.968	24,187,781.82
Page 31	MSCI Inc.	153,624.00	50.968	7,829,908.03
Page 32	Investment Property Databank Limited	3,990.00	50.968	203,362.32
Page 33	Cancelled OR - MSCI Ltd.	-	-	-
Page 34	MSCI Barra (Suisse) Sarl	470,874.00	51.387	24,196,802.24
Page 35	MSCI Ltd.	63,326.00	51.387	3,254,133.16
Page 36	Investment Property Databank Limited	2,408.00	51.387	123,739.90
Page 37	MSCI Ltd.	53,709.00	50.968	2,737,440.31
Page 38	MSCI Inc.	73,101.00	51.387	3,756,441.09
Page 39	MSCI Barra (Suisse) Sarl	459,379.00	50.968	23,413,628.87
Page 40	MSCI Inc.	151,947.00	50.968	7,744,434.70
Page 41	MSCI Ltd.	57,851.00	50.968	2,948,549.77
Page 42	Investment Property Databank Limited	1,112.00	50.969	56,677.53
[redacted]				
TOTAL		**7,401,311.98**		**372,952,466.69**

From the foregoing, it can be concluded that petitioner was able to comply with the requisites proving that it has valid zero-rated sales in the amount of ₱372,952,466.69.

The input taxes being claimed were due or paid and not transitional input taxes and attributable to zero-rated sales.

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, to wit:

> "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 any inventory according to the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be allowed input tax on her 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."

Transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisitions 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.[84]

In this case, records show that petitioner is not a newly VAT-registered entity, thus, in the absence of any indication that the claimed input taxes are transitional input taxes, the Court holds that petitioner has complied with the *sixth* requisite.

The *seventh* requisite pertains to the existence and validity of the excess and unutilized *input* tax for the four (4) quarters of CY 2017, pursuant to the invoicing requirements under Section 113 of the 1997 NIRC, as amended.

Below is the current input VAT portion of petitioner's Amended Quarterly VAT Returns for the 1st, 2nd, 3rd and 4th quarters of CY 2017, which comprises the total claim in the instant case amounting to ₱10,948,361.63:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Purchase of Capital Goods Not Exceeding P1 Million	₱4,457.14	₱5,678.36	₱24,810.66	₱0.00	₱34,946.16
Amortization of Input Tax on Capital Goods Exceeding P1 Million	259,225.60	271,899.04	295,187.83	330,997.08	1,157,309.55

[84] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, et al.,* G.R. Nos. 158885 and 170680, April2, 2009.

Domestic Purchases of Goods Other Than Capital Goods	19,725.32	124,699.20	43,187.54	54,663.47	242,275.53
Domestic Purchases of Services	2,646,488.89	3,192,146.02	2,593,620.54	1,081,574.94	9,513,830.39
Total Excess Unutilized Input Tax	**₱2,929,896.95**	**₱3,594,422.62**	**₱2,956,806.57**	**₱1,467,235.49**	**₱10,948,361.63**

The ICPA compared the Input VAT per Petition for Review with the following documents:

- Input VAT per Quarterly VAT Returns;
- Summary List of Purchases (SLP); and,
- Petitioner's schedules.

With respect to the comparison between Input VAT per Petition for Review and those from the Quarterly VAT Returns, the ICPA found no differences. We find the foregoing in order.

As earlier discussed, the purchases of goods must be supported by VAT-registered SIs, while purchases of services must be supported by VAT-registered ORs, and *both* should contain the information required in Section 113 of the 1997 NIRC, as amended.

Based on the ICPA's review of the supporting documents, he noted that out of the ₱9,756,105.92 total input VAT on domestic purchases of goods and services per Schedules *(Annex J)* for CY 2017, only ₱8,960,967.73 is supported by SIs[85] and ORs[86] that meet the substantiation requirements for input VAT, as summarized below:

Particulars	Reference	Input VAT
Purchases of goods		
Purchases of goods supported by compliant VAT invoices	*Annex D-1*	₱ 135,458.45
Subtotal (A)		***₱ 135,458.45***
Purchases of services		
Purchases of services supported by compliant VAT ORs	*Annex E-1*	₱ 7,557,023.88
Purchases of goods supported by compliant VAT invoices but reported as purchases of services in the VAT Returns for the second and fourth quarter of CY 2017	*Annex E-2*	10,693.92
Purchases of services supported by original VAT ORs with corrections countersigned by authorized representative of the supplier and	*Annex F*	1,257,791.48

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[85] Exhibits "P-27-a" to "P-27-s", USB Exhibit.
[86] Exhibits "P-28-a" to "P-28-ab", USB Exhibit.

Particulars	Reference	Input VAT
with notarized sworn statements of correction		
Subtotal (B)		***8,825,509.28***
Total input VAT without exceptions		**₱ 8,960,967.73**

The remaining, albeit disallowable, portion of the claim based on the results of the ICPA's examination can be broken down as follows:

Particulars	Reference	Input VAT
Purchases of goods		
Purchases of goods supported by original invoices with no date indicated	*Annex D-2*	₱ 44.87
Purchases of goods supported by original invoices where name, TIN, address, and/or nature of transaction are not indicated, incorrect or incomplete and the business style is incorrect	*Annex D-3*	15,219.81
Purchases of services supported by original ORs but reported as purchases of goods in the VAT Returns for the second quarter of CY 2017 where nature of transaction is not indicated	*Annex D-4*	86,785.72
Purchases of goods supported by original invoices where erasures/alterations are not countersigned	*Annex D-5*	321.43
Purchases of goods supported by original invoices where ATP/PTU/CAS is expired or not indicated	*Annex D-6*	4,445.25
Subtotal (A)		***106,817.08***
Purchases of services		
Purchases of goods reported as purchases of services supported by documents other than original invoices	*Annex E-3*	13,987.50
Purchases of services supported by original ORs where amount of VAT is not separately indicated or incorrect	*Annex E-4*	447,776.18
Purchases of services supported by original ORs where name, TIN, address, and/or nature of transaction are not indicated, incorrect or incomplete and the business style is incorrect	*Annex E-5*	182,024.78
Purchases of services supported by original ORs where erasures/alterations are not countersigned	*Annex E-6*	44,532.65
Subtotal (B)		***688,321.11***
Total input VAT with exceptions (A+B)		**₱ 795,138.19**

Purchase of Capital Goods Not Exceeding ₱1Million (₱34,946.16)

The ICPA also checked if petitioner's purchases of capital goods not exceeding ₱1 million were supported by sales invoices that comply with the substantiation requirements under Section 113 of the NIRC, as amended. As a preliminary procedure, the ICPA first determined whether the aggregate acquisition cost of all depreciable assets reported as capital goods during each month of CY 2017 did not exceed ₱1 million.

Otherwise, the input tax paid on the relevant capital goods should be spread over sixty (60) months or the useful life of the asset, *whichever is shorter*, and only the amortized input VAT during CY 2017 shall be creditable or refundable pursuant to Section 4.110-3 of RR No. 16-05, as amended by RR Nos. 2-07 and 4-07.

The ICPA showed the following capital goods reported by petitioner in CY 2017:

Month	Capital Goods Not Exceeding ₱1 Million	Capital Goods Exceeding ₱1 Million	Total Acquisition Cost of Capital Goods	Subject to Amorti-zation?
January	₱ -	₱ 3,358,133.93	₱ 3,358,133.93	Yes
February	-	2,337,606.83	2,337,606.83	Yes
March	37,142.84	-	37,142.84	No
April	47,319.67	-	47,319.67	No
May	-	9,389,872.74	9,389,872.74	Yes
June	-	3,971,261.19	3,971,261.19	Yes
July	206,755.50	-	206,755.50	No
August	-	1,596,026.75	1,596,026.75	Yes
September	-	1,632,613.00	1,632,613.00	Yes
October	-	1,227,532.76	1,227,532.76	Yes
November	-	3,063,933.25	3,063,933.25	Yes
December	-	3,579,876.75	3,579,876.75	Yes
Total Purchases (A)	**₱ 291,218.01**	**₱ 30,156,857.20**	**₱ 30,448,075.21**	
Total Input VAT (A x 12%)	**₱ 34,946.16**	**₱ 3,618,822.86**	**₱ 3,653,769.03**	

Since the aggregate cost of capital goods acquired during the months of March, April and July 2017 did not exceed ₱1 Million, the input VAT on these purchases were properly not subjected to amortization. Said purchases are as follows:

EXHIBIT REF.	NAME OF SUPPLIER	DOC. NO.	DOC. DATE	DESCRIPTION, QUANTITY AND/OR UNIT COST OF GOODS	INPUT VAT (IN PHP)
P-29-b	Vismay International Corp.	9044	3/1/2017	iPhone SE units	₱ 2,228.57
P-29-b	Vismay International Corp.	9125	3/21/2017	iPhone SE units	2,228.57
SUBTOTAL - 1ST QUARTER					*4,457.14*
P-29-b	Vismay International Corp.	9188	4/17/2017	iPhone unit	2,785.61
P-29-b	Vismay International Corp.	9194	4/18/2017	iPhone unit	2,892.75
SUBTOTAL - 2ND QUARTER					*5,678.36*
P-29-a	Artwist Ventures	1735	7/17/2017	Office Carpet	24,810.66
SUBTOTAL - 3RD QUARTER					*24,810.66*
TOTAL					**₱ 34,946.16**

The Court, upon verifying the SLP, found that input taxes amounting to ₱4,457.14, ₱5,678.36, and ₱24,810.66 were properly reported for the 1st,[87] 2nd[88] and 3rd[89] relevant quarters, respectively, pertaining to the said acquisitions of Capital Goods *not* exceeding ₱1 Million.

Furthermore, upon review of the related supporting SIs[90], the ICPA found *no* exceptions, which the Court confirms and finds in order.

Purchase of Capital Goods Exceeding P1Million (₱1,157,309.55)

The ICPA's review of the amortization of input VAT on petitioner's Purchases of Capital Gods Exceeding ₱1 Million in the amount of ₱1,157,309.55 was computed as follows:

Particulars	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total CY 2017
	(Exhibit P-8-c)	*(Exhibit P-8-f)*	*(Exhibit P-8-h)*	*(Exhibit P-8-j)*	
Input tax deferred on capital goods exceeding ₱1 million from previous quarter	₱1,338,520.33	₱1,762,783.62	₱3,094,220.66	₱3,186,469.60	

[87] Exhibit "P-23-a", CD Exhibit.
[88] Exhibit "P-23-b", CD Exhibit.
[89] Exhibit "P-23-b", CD Exhibit.
[90] Exhibits "P-29-a" to "P-29-b", USB Exhibit.

Add: Input tax on capital goods exceeding ₱1 million purchased during the period	683,488.89	1,603,336.08	387,436.77	944,561.13	₱ 3,618,822.87
Less: Input tax on purchases of capital goods exceeding ₱1 million deferred to succeeding period	1,762,783.62	3,094,220.66	3,186,469.60	3,800,033.65	11,843,507.53
Amortization of input tax on capital goods exceeding ₱1 million	**₱259,225.60**	**₱271,899.04**	**₱295,187.83**	**₱330,997.08**	**₱ 1,157,309.55**

An evaluation of the supporting documents[91] for the acquisition of capital goods exceeding ₱1 Million during the taxable year 2017, as well as the schedule[92] of amortization of capital goods and petitioner's purchases of capital goods exceeding ₱1Million during CY2017 submitted to the ICPA yielded the following results:

Particulars	Reference	Input VAT
Without Exceptions		
Purchases of capital goods exceeding ₱1 million supported by compliant VAT invoices	*Annex H-1*	₱ 933,756.00
Purchases of capital goods exceeding ₱1 million supported by compliant VAT invoices of which the amount per return and schedule does not tally with the amount indicated in the SLP for the second quarter of CY 2017	*Annex H-2*	25,625.06
Purchases of services reported as capital goods exceeding ₱1 million supported by original VAT ORs with corrections countersigned by authorized representative of the supplier and with notarized sworn statements of correction	*Annex I*	9,756.69
Sub-total (A)		**₱ 969,137.75**
With Exceptions		
Purchases of capital goods exceeding ₱1 million supported by documents other than invoices	*Annex H-3*	28,917.72

91 Exhibits "P-30-a" to "P-30-s", USB Exhibit.
92 Exhibits "P-26-a" to "P-26-d", USB Exhibit.

Particulars	Reference	Input VAT
Purchases of services reported as capital goods exceeding ₱1 million supported by original OR where amount of VAT is not separately indicated or incorrect and/or nature of transaction are not indicated	*Annex H-4*	12,475.22
Purchases of capital goods exceeding ₱1 million where name, TIN, address, and/or nature of transaction are not indicated, incorrect or incomplete and the business style is incorrect	*Annex H-5*	132,951.48
Purchases of capital goods exceeding ₱1 million supported by original invoices where erasures/alterations are not countersigned	*Annex H-6*	13,827.38
Sub-total (B)		**₱ 188,171.80**
Total input VAT on capital goods exceeding ₱1 million (C=A+B)		**₱ 1,157,309.55**

Upon careful scrutiny of petitioner's supporting documents, the Court concurs with the foregoing findings of the ICPA.

However, the Court notes additional input VAT disallowances amounting to ₱76,751.03 that requires a downward adjustment to petitioner's claim for reasons stated therein:

Exhibit Reference		Name of Supplier	Input VAT	Reasons
P-27-i	p. 33	LSY Office and Computer Supplies	₱ 208.93	Invoice Without Signature
P-27-h	p. 3	Lou Anne's Flower Shop	375.00	Invoice Without Signature
P-27-d	p. 1	Cedarside Industries Inc	53.57	Invoice Without Signature
P-27-i	p. 39	LSY Office and Computer Supplies	257.14	Invoice Without Signature
P-27-i	p. 43	LSY Office and Computer Supplies	246.43	Invoice Without Signature
P-27-i	p. 41	LSY Office and Computer Supplies	527.04	Invoice Without Signature
P-27-j	p. 17	Mercury Drug Corporation	602.01	Invoice Not Readable
P-27-j	p. 19	Mercury Drug Corporation	245.52	Invoice Not Readable
P-27-j	p. 21	Mercury Drug Corporation	294.67	Invoice Not Readable
P-27-i	p. 45	LSY Office and Computer Supplies	160.71	Invoice Without Signature
P-27-s	p. 1	Workcube Inc	2,310.00	Invoice Without Signature
P-27-i	p. 49	LSY Office and Computer Supplies	1,071.96	Invoice Without Signature

P-27-j	p. 23	Mercury Drug Corporation	562.04	Invoice Not Readable
P-27-j	p. 23	Mercury Drug Corporation	638.44	Invoice Not Readable
P-27-h	p. 5	Lou Anne's Flower Shop	321.43	Invoice Without Signature
P-27-i	p. 51	LSY Office and Computer Supplies	53.57	Invoice Without Signature
P-27-j	p. 27	Mercury Drug Corporation	313.98	Invoice Not Readable
P-27-j	p. 29	Mercury Drug Corporation	746.84	Invoice Not Readable
P-27-i	p. 53	LSY Office and Computer Supplies	1,176.43	Invoice Without Signature
P-27-i	p. 55	LSY Office and Computer Supplies	246.43	Invoice Without Signature
P-27-i	p. 57	LSY Office and Computer Supplies	604.29	Invoice Without Signature
P-30-e	p. 2	Cornersteel Systems Corporation	65,734.60	Without Supporting Document
		TOTAL	**₱ 76,751.03**	

To summarize, out of the declared input VAT of the petitioner for CY 2017 amounting to ₱10,948,361.63, *only ₱9,888,300.61* were substantiated and supported by proper documents as computed below:

Total Input VAT per Claim		₱ 10,948,361.63
Less: Disallowances		
Per ICPA (Non-Compliant Documents)		
Goods	₱106,817.08	
Services	688,321.11	
Cap. Goods Exceeding 1Million	188,171.80	983,309.99
Per Court's Further Examination		76,751.03
Total Substantiated Input VAT		**₱ 9,888,300.61**

The *eighth* requisite requires that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, because 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.

For the period of claim, *i.e.* CY 2017, petitioner reported zero-rated sales only in the aggregate amount of ₱372,953,811.58. Therefore, its input VAT is entirely attributable thereto.

Considering that petitioner's input VAT cannot be directly or entirely attributed to any of the transactions, the valid input VAT of ₱9,888,300.61 shall be allocated proportionately on the basis of the volume of its total sales, in accordance with Section 112(A) of the NIRC of 1997, as amended, thus:

Valid Zero-Rated Sales/Receipts	₱372,952,466.69
Divided by Total Sales/Receipts Per VAT Return	372,953,811.58
Multiply by Valid Input VAT	9,888,300.61
Input VAT Attributable to Valid Zero-Rated Sales	₱ 9,888,264.95

Consequently, only the remaining excess input VAT of ₱9,888,264.95 can be attributed to the substantiated zero-rated sales of ₱372,952,466.69.

Thus, for purposes of the *eighth* requisite, the excess input VAT attributable to petitioner's valid zero-rated sales is only **₱9,888,264.95.**

Having determined that petitioner had excess input VAT attributable to its zero-rated sales, the Court shall proceed to determine whether the petitioner complied with the *ninth* requisite. The ninth requisite requires that input VAT was not applied against its output VAT liability during and in the succeeding quarters.

Petitioner's amended VAT returns show that it did not have Vatable Sales/Receipts during the four (4) quarters of CY 2017. Therefore, no part of its available input taxes was utilized in the same period. Furthermore, to prove that petitioner did not apply the input taxes in this instant claim against any output taxes in the succeeding periods, petitioner presented its amended quarterly VAT return for the 1st quarter of CY 2018.[93]

It was noted that claim amount of ₱10,948,361.33 was declared and deducted under Line 23D "*VAT Refund / TCC Claimed*"[94] of the said amended quarterly VAT return, preventing the carry-over or application of the claimed input VAT in the next taxable quarter.

In conclusion, petitioner has sufficiently proven its entitlement to the refund or issuance of a TCC in the reduced amount of **₱9,888,264.95**, representing the excess and unutilized input VAT attributable to its zero-rated sales for CY 2017.

[93] Exhibit "P-9", Docket – Vol. 2, p.904.
[94] Exhibit "P-9", Docket – Vol. 2, p. 904.

WHEREFORE, premises considered, the *Petition for Review* is **PARTIALLY GRANTED**.

Respondent is **ORDERED** to refund/issue a Tax Credit Certificate in the total amount of **Nine Million Eight Hundred Eighty Eight Thousand Two Hundred Sixty Four and 95/100 (₱9,888,264.95)**, representing petitioner's excess and unutilized input VAT, attributable to its zero-rated sales of services for the four quarters of CY 2017.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice