REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

SITEL PHILIPPINES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10200

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
JAN 3 1 2024

x- -x
1:00 p.m.

DECISION

CUI-DAVID, J.:

Before the Court is the *Petition for Review*[1] filed by Sitel Philippines Corporation on October 24, 2019, praying for the Court to render judgment ordering respondent to refund the amount of ₱38,457,558.61, representing petitioner's alleged unutilized input value-added tax (VAT) attributable to its zero-rated sales for the second (2nd) quarter of taxable year (TY) 2017.

THE PARTIES

Petitioner Sitel Philippines Corporation (formerly Clientlogic Philippines, Inc., and Contact World, Inc.) is a corporation duly organized and existing under the laws of the Philippines.[2] It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer under Tax Identification Number (TIN) 208-780-708-000, with address at Ground Floor, One Julia Vargas Bldg., Ortigas Home Depot Complex 1, Julia Vargas Ave., Brgy. Ugong, Pasig City, Metro Manila 1604.[3]

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[1] Docket – Vol. I, pp. 6 to 20.
[2] Exhibits "P-1", "P-1.1", "P-1.2", and "P-1.3", Docket – Vol. II, pp. 652 to 704.
[3] Exhibit "P-2", Docket – Vol. II, p. 705.

It is also registered with the Philippine Economic Zone Authority (PEZA) as an Ecozone Information Technology (IT) Enterprise at the Baguio City Economic Zone, Wynsum Corporate Plaza, One Julia Vargas Building, Eastwood City Cyberpark, Robinsons Cyberpark, Eton Cyberpod Corinthian, Robinsons Luisita, and SM Baguio Cyberzone Building.[4]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue represented by the Litigation Division of the BIR-National Office who may be served with pleadings and court processes at the 7th Floor, Litigation Division, BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

THE FACTS AND THE PROCEEDINGS

Petitioner avers that it filed with the BIR through the Electronic Filing and Payment System (*e*FPS) its Quarterly VAT Return for the 2nd quarter of TY 2017 on July 24, 2017, and amended it on April 30, 2019.

In the aforesaid Quarterly VAT Returns, petitioner reported zero-rated and exempt sales of services in the amounts of ₱829,710,761.20 and ₱1,357,117,643.03, respectively, or in the aggregate amount of ₱2,186,828,404.23.

Petitioner further avers that out of the total zero-rated sales of ₱829,710,761.20 in the 2nd quarter of 2017, zero-rated sales to clients' Sitel Operating Corporation and Sitel UK Limited, both non-resident foreign corporations, rendered in petitioner's Palawan Facility and Technopoint Facility, respectively, amounting to ₱277,875,100.00 is relevant to the instant petition.

During the same period, petitioner paid input taxes on its domestic purchases of goods (other than capital goods) and services and purchases of capital goods exceeding ₱1 million, in the total amount of ₱41,103,478.09. Out of the total input VAT incurred during the 2nd quarter of 2017, only the amount of ₱40,214,756.31 is directly attributable to zero-rates sales. Further, of the ₱40,214,756.31 input VAT attributable to zero-rated sales, only the amount of ₱38,457,558.62 is being claimed for refund.

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[4] Exhibits "P-30", "P-30.1", "P-30.2", "P-30.3", "P-30.4", and "P-30.5", Docket – Vol. II, pp. 916 to 932.
[5] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, p. 478.

Allegedly, the amount of ₱38,457,558.62 was not applied against any output VAT liability during the remaining quarters of 2017 and in the succeeding taxable quarter/s. Further, said amount was deducted from petitioner's available input VAT in its Quarterly VAT Return filed for the 2nd quarter of TY 2018 and 1st quarter of TY 2019.

Thus, on June 28, 2019, petitioner filed with the Office of the BIR VAT Credit Audit Division its administrative claim, together with petitioner's *Application for Tax Credits/Refunds* (BIR Form No. 1914),[6] and submitted supporting documents for the said claim in compliance with Revenue Memorandum Circular (RMC) No. 47-2019.[7]

Alleging inaction, petitioner elevated its claim for refund before the Court *via* the instant *Petition for Review* filed on October 24, 2019.

In his *Answer*[8] filed on November 21, 2019, respondent submits that the instant Petition for Review should be dismissed for failure of petitioner to substantiate its claim for refund and/or be denied for lack of merit. According to respondent, since a decision has been rendered in this case denying petitioner's administrative claim for failure to substantiate the same, the Court is confined to a more limited issue of whether the denial was proper given the evidence submitted at the administrative level. Petitioner cannot submit documents it did not present at the administrative level.

Nevertheless, respondent asserts that petitioner is not entitled to a refund. According to respondent, the alleged zero-rated sales were realized from petitioner's Puerto Prinsesa Palawan "Site." However, the Certificate of Registration revealed that the said "Site" was registered with the Regular Large Taxpayers Audit Division III – Large Taxpayers Service only on August 9, 2017, beyond the period of the claim from January to March 2017 (*sic*).

Moreover, the said "Site" was registered as a "Facility." For respondent, since the Palawan Site was registered only as a "Facility" instead of a "Branch," the dealings undertaken by the

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[6] Par. 2, Stipulation of Facts, JSFI, Docket – Vol. II, p. 478; Exhibit "P-23" to "P-24", Docket – Vol. II, pp. 902 to 904; Exhibit "P-26" to "P-26.1", Docket – Vol. II, p. 906.
[7] Par. 3, Stipulation of Facts, JSFI, Docket – Vol. II, p. 478; Exhibits "P-25" to "P-25.1", Docket – Vol. II, p. 905.
[8] Docket – Vol. I, pp. 69 to 76.

subject Site are beyond the scope of its registered activity as it is not authorized to conduct sales transactions.

Lastly, respondent submits that petitioner has the burden of proof to establish the factual basis of its claim for refund. After all, tax refunds, like tax exemptions, are construed strictly against the taxpayer.

After the *Pre-Trial Conference* on March 12, 2020, the parties filed their *Joint Stipulation of Facts and Issues*[9] on June 24, 2020, on the basis of which a *Pre-Trial Order*[10] was issued on June 30, 2020.

The trial then ensued, during which petitioner presented its witnesses, namely: (1) Mr. Ronald R. Portula, its Senior Tax Analyst, and (2) Mr. Emmanuel Y. Mendoza, the Court-commissioned Independent Certified Public Accountant (ICPA).

By way of *Judicial Affidavit*,[11] **Mr. Ronald R. Portula (Mr. Portula)** testified that he is petitioner's current Senior Tax Analyst, tasked to: (a) prepare pertinent tax returns, including VAT Declarations and Returns, and financial statements to be submitted and/or filed with the appropriate government agencies; (b) prepare the documents attached to, and/or supporting the contents of, the tax returns; (c) prepare financial reports and other reportorial requirements required by or to be submitted to various government agencies; and (d) safekeep documents of petitioner pertaining to its operations and financial transactions such as but not limited to the tax returns, invoices, registration certificates with different government agencies, contracts, and other pertinent documents.

He declared that petitioner is registered with the Securities and Exchange Commission (SEC) to provide outsourced call center services from the Philippines to domestic and offshore businesses, particularly to non-resident foreign affiliates, including but not limited to tactical telemarketing campaigns and programs and customer relationship management services; that petitioner secured a Certificate of Registration with the BIR before commencing rendering services to its affiliates; that the BIR issued that petitioner various Certificates of Registration for its various sites or facilities it established in different locations

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[9] Docket – Vol. II, pp. 478 to 489.
[10] Docket – Vol. II, pp. 492 to 499.
[11] Exhibit "P-32", Docket – Vol. I, pp. 134 to 161.

in the Philippines; and that petitioner registered some of its sites or facilities with the PEZA as Ecozone IT Enterprise.

According to Mr. Portula, petitioner's sites were registered as facility because it is petitioner's understanding that a "facility," as distinguished from a "branch," is a place or establishment where no sales transactions or activities are conducted. It cannot conduct operations independently from the Head Office or Main Office. He added that the sites established by petitioner were intended to be a place where its contact center agents would be located and would perform contact center services. However, no invoices or official receipts would be issued on such sites. Hence, considering the nature of the transaction being performed in the sites, petitioner deemed it proper to register it as a "facility" rather than a "branch." Besides, in the course of applying for a permit for its computerized accounting system with the BIR, petitioner obtained confirmation from the BIR of the registration of its sites as "Facilities."

Mr. Portula further testified that based on the Certificate of Registration issued by the BIR, petitioner is a registered taxpayer of income tax, VAT, and withholding taxes. Hence, petitioner must periodically file income tax returns, VAT returns, and withholding tax returns and pay the corresponding taxes due unless otherwise exempted under the law.

According to Mr. Portula, the present case is a claim for refund of unutilized input VAT arising from petitioner's domestic purchases of goods (other than capital goods) and services and purchases of capital goods exceeding one (1) million, which are attributable to zero-rated sales for the 2nd quarter of 2017. He is familiar with the instant case because, as the senior tax analyst of petitioner, he supervised the preparation of the application for refund and assisted in organizing the various financial documents, including VAT returns, that were submitted to support the application. He added that the application for refund or tax credit of unutilized input VAT attributable to zero-rated sales is based on Section 110(B) and Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Section 108(B)(2) of the same Code.

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He declared that petitioner's zero-rated sales for the 2nd quarter of TY 2017 amounted to ₱829,710,761.20. Out of the total zero-rated sales for the 2nd quarter of 2017, the amount of ₱277,875,100.00 is relevant to this case as this pertains to zero-rated sales to petitioner's clients, Sitel Operating Corporation and Sitel UK Limited, both non-resident foreign affiliates, rendered in petitioner's Palawan Facility and Technopoint Facility, respectively. He also declared that petitioner did not incur output VAT since petitioner's revenues for the 2nd quarter of 2017 consisted only of exempt and zero-rated sales.

Mr. Portula further declared that the input VAT attributable to zero-rated sales for the 2nd quarter of TY 2017 remained unutilized since they were not applied against any output VAT liability during the subsequent quarters. Said input VAT was continuously carried over until the time petitioner filed its administrative claim for input VAT refund or tax credit on June 28, 2019, when petitioner deducted the amount claimed for refund or tax credit in the Quarterly VAT Returns for the 2nd quarter of TY 2018 and 1st quarter of TY 2019. Based on petitioner's Quarterly VAT Return for the 4th quarter of 2018 and 1st quarter of 2019, the amount claimed for refund or tax credit for the 2nd quarter of TY 2017 is ₱38,457,558.61. While the total input VAT incurred for the 2nd quarter of 2017 amounted to ₱41,103,478.09, only the amount of ₱38,457,558.62 was applied for a refund because petitioner only seeks a refund of the input VAT directly attributable to the zero-rated sales generated from petitioner's Palawan and Technopoint Facilities.

After the filing of the administrative claim for refund, petitioner was informed by its handling examiner that its administrative claim for refund was denied because the Palawan and Technopoint Facilities, where the zero-rated sales were generated, were registered as "Facility" instead of "Branch." However, petitioner did not receive any decision from respondent within the 90-day period from filing the administrative claim or until September 26, 2019. Hence, petitioner filed a Petition for Review on October 24, 2019, in relation to its claim for refund or tax credit of input VAT attributable to zero-rated sales for the 2nd quarter of TY 2017.

Lastly, when asked about his position on the alleged ground for denial of petitioner's administrative claim, Mr. Portula opined that the registration of the Palawan and Technopoint Facilities should not at all affect the propriety of

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the refund claim. According to Mr. Portula, regardless of the site's registration as a facility or branch, the sales generated therefrom are zero-rated if they are made to a person or corporation engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*.

ICPA Emmanuel Y. Mendoza (ICPA Mendoza), on the other hand, testified[12] that after he was commissioned by the Court as ICPA for this case, he and his team examined and verified the documentary evidence of petitioner relating to its claim for a tax refund in the aggregate amount of ₱38,457,558.61, representing unutilized input VAT arising from petitioner's domestic purchases of goods (other than capital goods) and services, purchases of capital goods, which are attributable to zero-rated sales for the 2nd quarter of TY 2017.

ICPA Mendoza declared that after performing the procedures outlined in their Report dated October 16, 2020, it is their conclusion that out of the total claim of ₱38,457,558.61, the amount of ₱36,878,108.78 was supported by documents based on the result of their audit.

There being no more witness to present, and upon the instance of petitioner's counsel, petitioner was granted thirty (30) days from February 10, 2021, or until March 12, 2021 to file its Formal Offer of Evidence (FOE). Respondent was also given thirty (30) days from receipt of petitioner's FOE to file his comment.[13]

On March 12, 2021, petitioner filed its *Formal Offer of Evidence [with Motion to Set Commissioner's Hearing for the Marking of Exhibits]*,[14] to which respondent filed his *Comment (Re: Petitioner's Formal Offer of Evidence)*[15] on May 27, 2021.

In the Resolution[16] dated June 25, 2021, the Court granted petitioner's *Motion to Set Commissioner's Hearing* for marking its exhibits on July 26, 2021. However, given the surge of COVID-19 cases in the National Capital Judicial Region and

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[12] Exhibit "P-47", Docket – Vol. II, pp. 572 to 577.
[13] Order dated February 10, 2021, Docket – Vol. II, pp. 603.
[14] Docket – Vol. II, pp. 604 to 651.
[15] Docket – Vol. III, pp. 938 to 940.
[16] Docket – Vol. III, pp. 944 to 945.

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nearby provinces, the Commissioner's Hearing set for July 26, 2021, was cancelled. The Court instead directed the parties' counsels to proceed with the marking and comparison of petitioner's documentary exhibits and file a joint manifestation on the result of such comparison.[17] Hence, in compliance with the Court's directive, the parties filed a *Joint Manifestation*[18] on March 14, 2022.

Subsequently, in the Resolution[19] dated May 10, 2022, the Court resolved to admit petitioner's exhibits, *except* for (1) Exhibits "P-30.1", "P-30.2", "P-42-1" and "P-44-5", for being mere photocopies/provisionally marked; and (2) Exhibits "P-38-9-B", "P-39-26-B", "P-39-30-B", "P-39-35-B", "P-39-37-B", "P-39-40-B-1", "P-39-40-B-2", "P-39-44-B" and "P-41-15", for not being found in the records.

Thus, petitioner filed a *Motion for Reconsideration (of Resolution dated May 10, 2022)*[20] on June 3, 2022, praying for the admission of the following: (1) Exhibits "P-30.1", "P-30.2", "P-42-1", "P-44-5" Exhibits "P-39-26-B", "P-39-30-B", "P-39-35-B", "P-39-37-B", "P-39-40-B-1", "P-39-40-B-2" and "P-41-15", as part of petitioner's evidence for the purposes for which they were offered. Despite notice, respondent failed to file his comment thereto.[21]

On July 22, 2022, the Court issued a Resolution[22] granting petitioner's *Motion for Reconsideration* and admitted (1) Exhibits "P-30.1", "P-30.2", "P-42-2", "P-44-5" and (2) the appropriately re-marked ICPA Exhibits "P-39-27-B", "P-39-31-B", "P-39-36-B", "P-39-38-B", "P-39-41-B-1", "P-39-41-B-2", "P-39-46-B", "P-41-15" and "P-43-5-B".

On his turn to present evidence, respondent presented Revenue Officer (RO) Denise R. Dayanan as his lone witness.

RO **Denise R. Dayanan** testified[23] that she came to know petitioner when the latter filed a claim for refund of alleged unutilized input VAT on purchases of goods and services for the period April 1, 2017 to June 30, 2017, in the amount of Php38,457,558.61.

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[17] Resolution dated October 27, 2021, Docket – Vol. III, p. 947.
[18] Docket – Vol. III, pp. 949 to 951.
[19] Docket – Vol. III, pp. 957 to 959.
[20] Docket – Vol. III, pp. 977 to 982.
[21] Records Verification Report dated June 22, 2022 issued by the Judicial Records Division of this Court, Docket – Vol. III, p. 991.
[22] Docket – Vol. III, pp. 993 to 995.
[23] Judicial Affidavit (of Denise R. Dayanan), Exhibit R-6, Docket – Vol. III, pp. 964 to 969.

According to her, after filing petitioner's administrative claim for refund, a Tax Verification Notice TVN 201800083095, dated June 28, 2019, was issued authorizing the examination/verification of petitioner's document in support of its claim.

She declared that in the *Memorandum*[24] dated September 5, 2019, they recommended the denial of petitioner's administrative claim for refund for lack of legal and factual basis.

On November 3, 2022, respondent filed his *Formal Offer of Evidence*,[25] to which petitioner filed its Comment[26] on November 10, 2022.

In the Resolution[27] dated January 5, 2023, the Court admitted all respondent's offered evidence. In the same Resolution, the parties were given thirty (30) days from notice to file their respective memoranda.

On March 7, 2023, the case was submitted for decision considering petitioner's Memorandum filed on February 27, 2023, and respondent's Memorandum filed on February 10, 2023.[28]

Meanwhile, the Court notes petitioner's *Manifestation* filed on July 13, 2023, stating that on April 27, 2023, the SEC approved its new corporate name from Sitel Philippines Corporation to **Foundever Philippines Corporation**.

THE ISSUE

The lone issue[29] submitted by the parties for this Court's resolution is as follows:

> "WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND OF ITS ALLEGED UNUTILIZED INPUT VAT ARISING FROM DOMESTIC PURCHASES OF GOODS (OTHER THAN CAPITAL GOODS) AND SERVICES AND PURCHASES OF CAPITAL GOODS ALLEGEDLY ATTRIBUTABLE TO ZERO-

[24] Docket – Vol. III, pp. 972 to 974.
[25] Docket – Vol. III, pp. 1002 to 1006.
[26] Docket – Vol. III, pp. 1008 to 1010.
[27] Docket – Vol. III, p. 1013 to 1014.
[28] Resolution dated March 7, 2023, Docket – Vol. III, p. 1063.
[29] Stipulation of Issue, JSFI, Docket – Vol. II, p. 479.

RATED SALES FOR THE 2ND QUARTER OF TAXABLE YEAR 2017 IN THE AMOUNT OF P38,457,558.61.

***Petitioner's Arguments*:**

Petitioner argues that it timely filed the instant *Petition for Review* on October 24, 2019 with this Court in accordance with Section 112(C) of the NIRC of 1997; that petitioner is a VAT-registered entity; that it was engaged in zero-rated export sale of services, other than processing, manufacturing, or repacking goods, during the 2nd quarter of taxable year 2017 rendered to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which was paid for in acceptable foreign currency and accounted for in accordance with *Bangko Sentral ng Pilipinas* rules and regulations; that petitioner incurred or paid input taxes, which are not transitional input taxes; that the input taxes were not applied against output tax liability during the 2nd quarter of taxable year 2017 and in the succeeding quarters; that the claim is filed within two (2) years after the close of the taxable quarter when such sales were made; and that respondent incorrectly denied petitioner's administrative claim for refund.

***Respondent's Arguments*:**

Respondent contends that the petition must be dismissed for failure of petitioner to substantiate its administrative claim for refund; that since it has rendered a decision denying petitioner's administrative claim, the jurisdiction of the Court shifts from trial court to appellate tribunal so that the Court should confine itself to whether the findings of respondent are consistent with law; that petitioner is not entitled to the refund of ₱38,457,558.61; and that claims for refund are construed strictly against the taxpayer and in favor of the government.

THE COURT'S RULING

The instant *Petition for Review* lacks merit.

At the outset, respondent contends that since he rendered a decision at the administrative level, the jurisdiction of this Court becomes strictly appellate and that the Court should confine itself to whether the findings of respondent are consistent with the law, invoking the ruling of the Supreme Court in *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue.*[30] The pertinent ruling states as follows:

> "At this stage, a review of the nature of a judicial claim before the CTA is in order. In *Atlas Consolidated Mining and Development Corporation vs. CIR,*[31] it was ruled –
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>> x x x **First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claim. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit. Second, cases filed in the CTA are litigated *de novo*. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.**
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> A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but of the taxpayer's failure to substantiate the claim at the administrative level. **When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim**

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[30] G.R. No. 207112, December 8, 2016.
[31] G.R. No. 145526, March 16, 2007.

> **<u>for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirement for an administrative claim</u>. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place.** Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA." *(Boldfacing and underscoring supplied)*

Based on the foregoing jurisprudential pronouncements, when a judicial claim for refund or tax credit in this Court is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the same Court that respondent had no reason to deny its claim. Thus, it becomes imperative for the taxpayer to show this Court that it is entitled under substantive law to its claim for refund or tax credit and satisfied all the documentary and evidentiary requirements for an administrative claim.[32]

In other words, two (2) matters must be shown before this Court upon appeal of an unsuccessful administrative claim, to wit: *first*, all documentary and evidentiary requirements for an administrative claim were satisfied at the BIR level, and *second*, the taxpayer's entitlement to the claim for refund or tax credit under substantive law. The *first* matter involves a review of whether respondent has basis in fact and/or in law for his denial of the administrative claim, and this entails the exercise of the appellate jurisdiction of this Court, while the *second* matter to be proved entails a determination of petitioner's compliance with the requisites established by law.

More significantly, the *first* matter concerns the proper exercise of this Court's appellate jurisdiction as conferred by law. Relative thereto, it must be remembered that appellate jurisdiction is the authority of a court higher in rank **to re-examine** the final order or judgment of a lower court that tried the case now elevated for judicial review.[33] The *second* matter to be proved is in accord with the principle that cases filed in this Court are litigated *de novo*.

However, in this case, contrary to respondent's assertions, the issue of the denial of petitioner's administrative claim for refund or tax credit is of no consequence since the present

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[32] Refer also to *Western Mindanao Power Corporation vs. Commissioner of Internal Revenue*. G.R. No. 181136, June 13, 2012.
[33] *Garcia, et al. vs. De Jesus, et al., etseq.*, G.R. Nos. 88158 and 97108-09. March 4, 1992.

Petition for Review is premised on respondent's inaction in ruling on petitioner's administrative claim for refund or tax credit of unutilized input taxes filed on June 28, 2019.

It is to be noted that petitioner avers that it did not receive any decision from the respondent within the 90-day period required under the law or until September 26, 2019. [34] Allegedly, petitioner received respondent's denial letter only after filing the instant *Petition for Review*.[35]

On the other hand, respondent's witness testified that she was able to inform petitioner of the result of the audit/examination through a VAT Refund Notice dated 5 September 2019, which was purportedly served to Ms. Maria Teresa Tijidor, Chief Financial Officer of petitioner,[36] on an unspecified date.

However, a scrutiny of the *BIR Records*[37] shows that the VAT Refund Notice/BIR letter dated September 5, 2019,[38] denying petitioner's claim for input VAT refund, does not contain any indication or signature acknowledging receipt of the same or any date indicating when it was received by petitioner or the latter's duly authorized representative.

In *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (Formerly Nissan Motor Philippines, Inc.)*,[39] the Supreme Court held as follows:

> **"In the instant case, respondent's failure to submit the complete documents at the administrative level did not render its petition for review with the CTA dismissible for lack of jurisdiction.** xxx.
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> xxx xxx xxx
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> **Considering that the administrative claim was never acted upon, there was no decision for the CTA to review on appeal *per se*. However, this does not preclude the CTA from considering evidence that was not presented in the administrative claim with the BIR.** xxx.
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> xxx xxx xxx

[34] Q/A-99 & 101, Judicial Affidavit of Ronal R. Portula (Exhibit "P-32"), Docket – Vol. I, pp. 157 to 158.
[35] Par. 86, *Memorandum for Petitioner*, Docket – Vol. III, p. 1055.
[36] Q/A No. 6, *Judicial Affidavit of Denise R. Dayanan*, Exhibit "R-6", Docket – Vol. III, p. 965.
[37] Exhibit "R-5".
[38] Exhibit "R-4", BIR Records (Exhibit "R-5"), pp. 256 to 257.
[39] G.R. No. 231581, April 10, 2019.

> Cases filed in the CTA are litigated *de novo* as such, respondent 'should prove every minute aspect of its case by presenting, formally offering and submitting x x x to the Court of Tax Appeals all evidence x x x required for the successful prosecution of its administrative claim.' Consequently, **the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.**" *(Boldfacing supplied)*

Thus, considering that the BIR's denial of petitioner's claim was issued beyond the 90-day period prescribed by law, the corresponding judicial claim was filed due to respondent's alleged *"inaction."* Consequently, the Court may give credence to all evidence presented by petitioner, as the case is being essentially decided in the first instance. As a result, petitioner must prove every minute aspect of its case by presenting and formally offering its evidence to the Court, which must include whatever is required for the successful prosecution of an administrative claim.

With the foregoing disquisitions, this Court shall now determine whether petitioner is entitled to its claim for a refund or tax credit.

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

Section 112 of the NIRC of 1997, as amended by RA No. 10963,[40] otherwise known as the Tax Reform for Acceleration and Inclusion Act (TRAIN law), provides as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
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> (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

[40] 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.

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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(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.

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."

Pursuant to the above provision, the taxpayer-applicant must comply with specific requisites to successfully obtain a refund or tax credit of input VAT. Said requisites are classified into specific categories, to wit:

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

1. The claim is filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made;[41]

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[41] *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.

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.[42]

With reference to the taxpayer's registration with the BIR:

3. The taxpayer is a VAT-registered person;[43]

In relation to the taxpayer's output VAT:

4. The taxpayer is engaged in zero-rated or effectively zero-rated sales;[44]

5. For zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b), and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[45]

As regards the taxpayer's input VAT being refunded:

6. The input taxes are not transitional;[46]

7. The input taxes are due or paid;[47]

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;[48] and

9. The input taxes have not been applied against output taxes during and in the succeeding quarters.[49]

In addition, in claims for VAT refund or tax credit, applicants must satisfy the substantiation and invoicing requirements under the NIRC and other implementing rules

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[42] Refer to *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.

[43] *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.

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.

[49] *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.

and regulations.[50] Thus, petitioner's compliance with all the VAT invoicing requirements is required to file a claim for input taxes attributable to zero-rated sales.[51] The invoicing and substantiation requirements should be followed because they are the only way to determine the veracity of the taxpayer's claims.[52] Moreover, it must be pointed out that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[53]

Strict compliance with 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 a tax credit or refund in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates the computation of tax credits, and provides an accurate audit trail or evidence for BIR monitoring purposes.[54]

Furthermore, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[55] Thus, it behooves petitioner to comply with the foregoing requisites and invoicing requirements. As a corollary, the absence of *any* of the said requisites is a valid ground to deny the refund or tax credit claim.

First and second requisites: Petitioner's administrative and judicial claims were timely filed.

To reiterate, the *first* requisite pertains to filing a claim for 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.

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[50] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.
[51] *JRA Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.
[52] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.
[53] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[54] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, supra.
[55] *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.

The present claim covers the 2nd quarter of taxable year 2017. Counting two (2) years from the close of the said quarter, the table below indicates the pertinent last day for the filing of an administrative claim, to wit:

2017	**Period**	**Close of the Taxable Quarter**	**Last Day to File Administrative Claim**
2nd quarter	April 1, 2017 to June 30, 2017	June 30, 2017	June 30, 2019

Considering that on June 28, 2019, petitioner filed with the Office of the BIR VAT Credit Audit Division its administrative claim together with petitioner's *Application for Tax Credits/Refunds* (BIR Form No. 1914) [56] and submitted supporting documents for the said claim in compliance with RMC No. 47-2019,[57] the same was timely made.

In connection with the *second* requisite, from the filing of petitioner's administrative claim on June 28, 2019, respondent had ninety (90) days or until September 26, 2019, within which to act on the same and within thirty (30) days from receipt of respondent's decision, the judicial claim must be filed with this Court.

However, in case of inaction on the part of respondent within the said 90-day period, petitioner has thirty (30) days from such expiration to file its judicial claim, or until October 26, 2019, pursuant to Sections 7(a)(2) and 11 (first paragraph) of Republic Act (RA) No. 1125,[58] as amended by RA No. 9282,[59] to wit:

> "SEC. 7. *Jurisdiction.* — **The CTA shall exercise:**
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided:**
>
> xxx xxx xxx
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties**

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[56] Par. 2, Stipulation of Facts, JSFI, Docket – Vol. II, p. 478; Exhibit "P-23" to "P-24", Docket – Vol. II, pp. 902 to 904; Exhibit "P-26" to "P-26.1", Docket – Vol. II, p. 906.
[57] Par. 3, Stipulation of Facts, JSFI, Docket – Vol. II, p. 478; Exhibits "P-25" to "P-25.1", Docket – Vol. II, p. 905.
[58] AN ACT CREATING THE COURT OF TAX APPEALS.
[59] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> **in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, <u>where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial</u>;**" *(Emphases and underscoring added)*
>
> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling,** or inaction **of the Commissioner of Internal Revenue...may file an appeal with the CTA within thirty (30) days** after receipt of such decision or ruling or **after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.**" *(Emphases added)*

In the present case, while the BIR issued the letter denying petitioner's entire claim for refund on September 5, 2019, within the 90-day period, the same letter was received by petitioner only after it had filed the present *Petition for Review* with the Court. Such being the case, petitioner's judicial claim filed on October 24, 2019, *via* the present *Petition for Review*,[60] is well within the prescribed 30-day period from the lapse of the 90 days for the BIR to act on its claim.

Such being the case, petitioner fulfilled both the *first* and *second* requisites.

Third requisite: Petitioner cannot be considered a "VAT-registered person."

The *third* requisite pertains to the taxpayer being a VAT-registered person.

Petitioner alleges that the various sites (*i.e.*, Palawan Facility and Technopoint Facility) were correctly registered as "facility" as defined under Revenue Regulations (RR) No. 7-2012, which means place of production, showroom, warehouse, storage place, garage, bus terminal, or real property for lease with *no sales activity*; that a "facility," as distinguished from "branch," is a place or establishment where no sales transaction or activities are conducted; that a facility cannot conduct operations or transactions independently from the Head Office or Main Office.

[60] Docket – Vol. I, pp. 6 to 23.

According to petitioner, the sites it established were intended to be a place where its contact center agents would be located and would perform contact center services. However, no invoices or official receipts would be issued on such sites. Thus, it is deemed proper to register such sites as "facility" rather than "branch," considering the nature of the transaction.

The Court disagrees.

Section 236 of the NIRC of 1997 reads, in part, as follows:

> "SEC. 236. *Registration Requirements.* –
>
> (A) *Requirements.* – Every person subject to any internal revenue tax shall register once with the appropriate Revenue District Officer:
>
> (1) Within ten (10) days from date of employment, or
>
> (2) **On or before the commencement of business,** or
>
> (3) Before payment of any tax due, or
>
> (4) Upon filing of a return, statement or declaration as required in this Code.
>
> The registration shall contain the taxpayer's name, style, place of residence, business, and such other information as may be required by the Commissioner in the form prescribed therefor.
>
> **A person maintaining a head office, branch or <u>facility</u> shall register with the Revenue District Officer having jurisdiction over the head office, branch or <u>facility</u>. For purposes of this Section, the term <u>'facility'</u> may include but not limited to sales outlets, places of production, warehouses or storage places.**
>
> (B) *Annual Registration Fee.* – **An annual registration fee in the amount of Five hundred pesos (₱500) for <u>every separate or distinct establishment or place of business, including facility types where sales transactions occur</u>, shall be paid upon registration and every year thereafter on or before the last day of January**: xxx
>
> **The registration fee shall be paid** to an authorized agent bank located within the revenue district, or to the Revenue Collection Officer, or duly authorized Treasurer of the city or municipality where each place of business or branch is registered. xxx *(Boldfacing and underscoring supplied)*

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Based on the foregoing provision, it is clear that every person subject to any internal revenue tax within a certain period is mandated to register with the BIR. If such a person maintains a head office, a branch, or a facility, such registration shall be made with the BIR office having jurisdiction thereover. Moreover, the said person must pay an annual registration fee of ₱500.00 for every separate or distinct establishment or place of business, which specifically includes *"facility types where sales transactions occur."* Thus, based on Section 236 of the NIRC of 1997, as amended, a facility must be registered with the BIR, and in case sales transactions occur therein, the annual registration fee of ₱500.00 must be paid.

Moreover, implementing the said Section 236 for VAT purposes, Section 9.236-1(a) of RR No. 16-2005[61] provides as follows:

> "SEC. 9.236-1. *Registration of VAT Taxpayers.* --
>
> (a) *In general.* — **Any person who, in the course of trade or business, sells, barters, exchanges goods or properties, or engaged in the sale of services subject to VAT imposed in Secs. 106 and 108 of the Tax Code shall register with the appropriate RDO using appropriate BIR forms and pay an annual registration fee in the amount of Five Hundred Pesos (₱500) using BIR Form No. 0605 <u>for every separate and distinct establishment or place of business</u> (save a warehouse without sale transactions)** before the start of such business and every year thereafter on or before the 31st day of January.
>
> ***'Separate or distinct establishment'*** **shall mean any branch or <u>facility where sales transaction occur</u>.**
>
> ***'<u>Branch</u>'*** **means <u>a fixed establishment in a locality which conducts sales operations of the business as an extension of the principal office</u>.**
>
> *'Principal place of business'* refers to the place where the head or main office is located as appearing in the corporation's Articles of Incorporation. In the case of an individual, the principal place of business shall be the place where the head or main office is located and where the books of accounts are kept.
>
> *'Warehouse'* means the place or premises where the inventory of goods for sale are kept and from which such goods are withdrawn for delivery to customers, dealers, or persons acting in behalf of the business.

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

> **Any person who maintains a head or main office and branches in different places shall register with the RDO which has jurisdiction over the place wherein the main or head office or branch is located.** However, the registration fee shall be paid to any accredited bank in the Revenue District where the head office or branch is registered provided that in areas where there are not accredited banks, the same shall be paid to the RDO, collection agent, or duly authorized treasurer of the municipality where each place of business or branch is situated.
>
> **Each VAT-registered person shall be assigned only one TIN. The branch shall use the 9-digit TIN of the Head Office plus a 3-digit Branch Code.**
>
> ***'VAT-registered person'* refers to any person registered in accordance with this section.**" *(Boldfacing and underscoring supplied)*

On the basis thereof, for VAT purposes, it is explicit that any person who, in the course of trade or business, sells, barters, exchanges goods or properties, or engages in the sale of services subject to VAT under the law must register with the appropriate Revenue District Office (RDO) for every separate and distinct establishment or place of business, save in the case of warehouses without sale transactions. Notably, the phrase *"separate or distinct establishment"* has been defined to mean *"any branch or* ***facility where sales transactions occur,"*** and the term *"branch"* as *"a fixed establishment in a locality which conducts sales operations of the business as an extension of the principal office."* Correspondingly, a facility is akin to a branch if it conducts sales transactions or operations of the business as an extension of the principal office. Relative thereto, it must be pointed out that it is mandated that any person who maintains a head or main office and branches (as defined) in different places must register with the RDO having jurisdiction over the place where the main or head office or branch is located, and must pay the corresponding annual registration fee of ₱500.00.

Furthermore, it is noteworthy that each VAT-registered person shall be assigned only one TIN, and the branch shall use the 9-digit TIN of the head office plus a 3-digit branch code.

More importantly, the term *"VAT-registered person"* is likewise defined to mean *"any registered in accordance with"* the above-quoted provision. Conversely, if the concerned person is not registered in accordance with Section 9.236-1 of RR No. 16-

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2005, such a person cannot be treated as a "VAT-registered person."

Moreover, consistent with Section 236 of the NIRC of 1997 and Section 9.236-1 of RR No. 16-2005, pertinent portions of RR No. 7-2012[62] provide:

> "SECTION 3. DEFINITION OF TERMS. For purposes of these Regulations, the following words and/or phrases shall be defined as follows:
>
> xxx xxx xxx
>
> 3. *'Taxpayer Identification Number (TIN)'* – shall pertain to the system-generated reference index number issued and assigned by the BIR to each and every person registered in its database. xxx.
>
>   **The TIN comprises of a 9 to 13 digit numeric code where the first 9 digits is the TIN proper and the last 4 digits is the <u>branch code</u>.** The branch code digits may be increased depending on future systems enhancements and policy declarations of the Commissioner of Internal Revenue (CIR).
>
> xxx xxx xxx
>
> 6. *'Head Office (HO)'* – refers to the declared specific or identifiable principal place/head office of business as stated in the Articles of Incorporation/Articles of Partnership/Articles of Cooperation/DTI Certificate of Registration, as the case may be, or, in the absence thereof, the place where the complete books of accounts are kept. xxx.
>
> 7. ***'Branch'*** – means a separate or distinct establishment or place of business where sales transactions are conducted independently from the HO. **For purposes of these Regulations, branch shall include the following:**
>
>   i. Sales outlet or establishment situated in another location/address other than at the HO;
>
>   ii. **<u>Facility with sales activity</u>**;
>
> xxx xxx xxx
>
> 8. *'Facility'* – may include but not limited to place of production, showroom, warehouse, storage place, garage, bus terminal, or real property for lease with no sales

[62] SUBJECT: Amended Consolidated Revenue Regulations On Primary Registration, Updates, And Cancellation.

> activity. **A facility shall be registered as a branch whenever sales transactions/activities are conducted thereat.** Registration of the 'Facility' with no sales activity is not subject to payment of Annual Registration Fee (ARF).
>
> xxx xxx xxx
>
> SECTION 6. PRESCRIBED PERIODS TO COMPLETE PRIMARY REGISTRATION – Every person subject to any internal revenue tax to be filed/paid periodically shall complete its registration with the BIR as follows:
>
> 1. **On or before the commencement of business** – Self-employed individuals, estates and trusts, **corporations and their branches**, if any: –
>
>   Commencement of business shall be reckoned as defined in Section 3(6) hereof. **A person shall be considered to have violated this provision when** he/**it proceeded to this stage after the lapse of thirty (30) days from** the issuance of Mayor's Permit/PTR by the concerned LGU, or COR issued by the SEC or **the date of its first sales transaction prior to its registration.** (*Boldfacing supplied*)
>
> xxx xxx xxx

Based on the foregoing provisions, it is explicit that the term *"branch"* includes "(f)*acility with sales activity,"* and that "(a) *facility shall be registered as a branch whenever sales transactions/activities are conducted thereat."* Moreover, it is likewise clear that the registration of a branch shall be made on or before the commencement of business, and such rule is considered to have been violated by the taxpayer when the latter proceeded to such state after the lapse of thirty (30) days from, *inter alia*, the date of its first sales transaction prior to its registration.

Anent the TIN of a branch, the same is now made to have an additional four (4) digits representing the branch code, unlike that mandated under the earlier quoted Section 9.236-1(a) of the RR No. 16-2005, which only required three (3) additional digits, for the said branch code.

Given the foregoing, petitioner has not complied with the above provisions in this case, particularly in its Palawan Facility.

It must be pointed out that petitioner's Palawan Facility (in Puerto Princesa) and Technopoint Facility (in Pasig City) were not yet registered at the time of the period of the subject refund or tax credit claim (*i.e.*, the 2nd quarter of taxable year 2017). Yet, it generated sales of call center services to Sitel Operating Corporation and Sitel UK Limited in the same period, in the aggregate amount of ₱277,875,100.00.[63] Since sales transactions occur and emanate from Palawan and Technopoint Facilities, petitioner should have registered these with the BIR as a branch before the commencement or start of the business therein and paid the corresponding annual registration fee of ₱500.00, in accordance with the foregoing provisions, especially Section 9.236-1(a) of RR No. 16-2005.

The fact that petitioner was able to obtain a *Certificate of Registration of Facility* (OCN: 8RC0001131729E)[64] for its Palawan Facility and a *Certificate of Registration of Facility* (OCN: 8RC000000F0024-M)[65] for its Technopoint Facility is of no moment. This is because the same was issued only on August 9, 2017 and October 31, 2019, respectively. Thus, it is apparent that the dates of issuance thereof are already after the 2nd quarter of the taxable year 2017, when the subject sales were made, contrary to the afore-quoted provisions regarding the requirement of BIR registration.

More importantly, notwithstanding such later registration, the said facilities were not properly registered with the BIR – both *Certificates of Registration of Facility*[66] stated that *"No Sales Transactions are conducted in this Facility, otherwise, it shall be registered as a branch office."* In addition, it is noteworthy that the TIN indicated in both *Certificates* does not bear an additional four (4) digits, which should represent the branch code. These are indicia that the Palawan and Technopoint Facilities were not registered with the BIR as a branch and simply as a "facility," *i.e.*, with no sales activity.

To repeat, petitioner had sales of call center services conducted in its Palawan and Technopoint Facilities during the subject period. Thus, petitioner should have registered these facilities with the BIR as a branch.

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[63] Par. 15, *Petition for Review*, Docket – Vol. I, p. 10; Exhibit "P-8", Docket – Vol. II, p. 720; ICPA Report dated October 16, 2020 (binder), p. 3.
[64] Exhibit "P-29", Docket – Vol. II, p. 913.
[65] Exhibit "P-29.1", Docket – Vol. II, p. 914.
[66] Exhibits "P-29" and "P-29.1", Docket – Vol. II, pp. 913 to 914.

In fine, the registration of petitioner's Palawan and Technopoint Facilities with the BIR is not one of *"branch,"* as required to be registered under Section 236 of the NIRC of 1997, Section 9.236-1(a) of RR No. 16-2005, and the pertinent provisions of RR No. 7-2012.

Correspondingly, petitioner cannot be considered a "VAT-registered person" since the aforementioned facilities were not registered in accordance with, and pursuant to, Section 9.236-1(a) of RR No. 16-2005 during the 2nd quarter of 2017. As such, petitioner cannot be considered to have complied with the *third* requisite to successfully obtain a refund or tax credit of input VAT.

Fourth requisite: Petitioner failed to establish that it was engaged in zero-rated sales or effectively zero-rated sales for the 2nd quarter of 2017.

The *fourth* requisite requires the taxpayer to be engaged in zero-rated or effectively zero-rated sales.

Petitioner claims that during the 2nd quarter of the taxable year 2017, the call center services rendered to its non-resident foreign affiliates/clients are subject to zero percent (0%) VAT, pursuant to Section 108(B) of the NIRC of 1997, as amended. Said provision reads, in part, as follows:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* - **The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate**:
>
> (1) Processing, manufacturing or repacking of goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

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

Based on the foregoing provision, certain essential elements must be present for a sale or supply of services to be subject to the VAT rate of 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 nonresident person not engaged in business who is *outside* the Philippines when the services were performed;[67]

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

3. The services must be performed in the Philippines[70] by a VAT-registered person; and

4. The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[71]

Anent the *first* essential element, to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by **both** 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

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[67] *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.

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

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

[70] *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.

[71] *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.

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 said recipient of the service is indeed foreign. This Court has consistently required the said documents for purposes of the said *first* essential element. In fact, in *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*,[72] 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[73] 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.
>
> xxx xxx xxx
>
> 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**

[72] G.R. No. 234445, July 15, 2020.
[73] That is, "Nonresident foreign corporation."

***prima facie* evidence that their clients are not engaged in trade or business in the Philippines.**" *(Boldfacing supplied)*

Per its Amended Quarterly VAT Return for the 2nd quarter of 2017, petitioner declared zero-rated sales in the aggregate amount of ₱829,710,761.20.[74] Based on the findings of the ICPA,[75] only ₱277,875,100.00 of the zero-rated sales were traced to Palawan and Technopoint sites,[76] which is composed of sales by petitioner of call center services to its affiliates, namely, (1) Sitel Operating Corporation and (2) Sitel UK Limited.

A scrutiny of the documents submitted by petitioner shows that the foregoing clients of petitioner are considered non-resident foreign corporations doing business outside the Philippines for purposes of Section 108(B)(2) of the NIRC of 1997, as amended, to wit:

ME OF COMPANY	**SEC CERTIFICATION OF NON-REGISTRATION** (Exhibit No.)	**PROOF OF FOREIGN INCORPORATION/REGISTRATION** (Exhibit No.)
1. SITEL OPERATING CORPORATION	"P-17"[77]	"P-15"[78]
2. SITEL UK LIMITED	"P-17.1"[79]	"P-15.1"[80]

With regard to the *second* essential element, petitioner presented the Amended and Restated Services Agreement[81] and Confirmation Agreements,[82] with Sitel Operating Corporation, as well as the Amended and Restated Services Agreement[83] and Confirmation Agreements,[84] with Sitel UK Limited. Based thereon, the scope of services to be rendered by petitioner consists of Customer Care, Client Retention, Technical Support, Collection Services, Item Processing, or Outbound Call Services. Apparently, the said services are not in the same category as *"processing, manufacturing or repacking goods"*; hence, the *second* essential element was satisfied.

This notwithstanding, petitioner failed to comply with the *third* essential element since both the Amended and Restated Services Agreements, and Confirmation Agreements of

[74] Exhibit "P-6", Docket – Vol. II, pp. 716 to 717.
[75] ICPA Report dated October 16, 2020 (Exhibit "P-34"), p. 3.
[76] Exhibits "P-45-1" and "P-45-2".
[77] Docket – Vol. II, p. 862.
[78] Docket – Vol. II, pp. 832 to 835.
[79] Docket – Vol. II, p. 863.
[80] Docket – Vol. II, pp. 836 to 849.
[81] Exhibit "P-13", Docket – Vol. II, pp. 783 to 790.
[82] Exhibits "P-13.2" and "P-13.3", Docket – Vol. II, pp. 799 to 813.
[83] Exhibit "P-13.1", Docket – Vol. II, pp. 791 to 798.
[84] Exhibits "P-13.4-a" and "P-13.5", Docket – Vol. II, pp. 814 to 828.

petitioner with (1) Sitel Operating Corporation and (2) Sitel UK Limited do not indicate where the said services are to be performed. In any case, even granting that this Court can simply presume that the subject services were performed in the Philippines, petitioner cannot still be considered to have complied with the said *third* essential element simply because it cannot be treated as a *"VAT-registered person,"* as it failed to register with the BIR its Palawan and Technopoint Facilities in accordance with, and pursuant to, Section 9.236-1(a) of RR No. 16-2005, as earlier discussed. To be sure, entitlement to VAT zero-rating is premised on the fact that the person who rendered the pertinent services is a VAT-registered person under Section 108(B)(2) of the NIRC of 1997, as amended.

Hence, petitioner has fallen short in establishing that its sales of call center services qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

Apropos, it must be emphasized that it is only when the sales of a VAT-registered person are zero-rated or effectively zero-rated that it may have the option of applying for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales.[85] Consequently, considering this Court's findings that petitioner is not a VAT-registered person and that its sales of call center services are not subject to VAT zero-rating, it becomes unnecessary to look into petitioner's compliance with the remaining requisites to successfully obtain a refund or tax credit of input VAT, under Section 112 of the same Code, as amended.

In fine, actions for refund or tax credit, as in the present case, are in the nature of tax exemptions. As such, they are regarded as a derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[86] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[87] Hence, an applicant for a claim for refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary

[85] *Coca-Cola Bottlers Philippines, Inc. vs Commissioner of Internal Revenue*, G.R. No. 222428, July 19, 2018.
[86] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc.*, G.R. No. 127105, June 25, 1999.
[87] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011 citing *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

requirements.[88] Unfortunately for petitioner, it has failed to prove such entitlement.

WHEREFORE, premises considered, the *Petition for Review* filed by petitioner Sitel Philippines Corporation is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

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[88] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015 citing *J.R.A. Philippines, Inc. vs. CIR*, G.R. No. 171307, August 28, 2013.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice