REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

AVALOQ PHILIPPINES OPERATING HEADQUARTERS, *Petitioner,*	**CTA Case No. 10816**
	Members:
-versus-	**REYES-FAJARDO,** *Chairperson, and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 05 2026 4:12 p.m.

x- -x

DECISION

ANGELES, *J.*:

Before this Court is a *Petition for Review* praying that judgment be rendered ordering respondent to refund in favor of petitioner the amount of ₱7,093,146.67, representing petitioner's unutilized and/or excess input value-added tax (VAT) attributable to its zero-rated sales for the 3rd and 4th quarters of calendar year (CY) 2019, or the period from July 1, 2019 to December 31, 2019.[1]

FACTS

Petitioner is a regional operating headquarters (ROHQ) of Avaloq Group AG[2] licensed to transact business in the Philippines by the Securities and Exchange Commission (SEC).[3] It is primarily engaged in general administration and planning, business planning and coordination, sourcing/procurement of raw materials and components, corporate finance advisory services, marketing control and sales promotion, training and personnel management, logistics services, research and development services, product development,

---

[1] *Petition for Review*, Docket - Vol. I, p. 15.
[2] Docket – Vol. I, p. 187; Exhibit "P-2", Vol. II, p. 538.
[3] Pre-Trial Order dated January 30, 2023, Docket – Vol. I, p. 275.

technical support and maintenance, data processing and communication, and business development.[4]

It is registered with the Bureau of Internal Revenue (BIR), Revenue District Office (RDO) No. 050, as a taxpayer with Taxpayer Identification Number (TIN) 008-637-771-000,[5] with registered address at 8th & 9th Floors, Robinsons Summit Center, Ayala Avenue, Makati City 1226.[6]

Respondent is the Commissioner of the BIR, vested by law to enforce and implement the provisions of the National Internal Revenue Code (Tax Code), as amended, and related statutes and their implementing rules and regulations. He holds office at the BIR, Ligation Division, Room 703, BIR Building, Diliman, Quezon City.[7]

On October 15, 2021, petitioner filed with the BIR an *Application for Tax Credits/Refunds* (BIR Form No. 1914),[8] requesting for the refund of its unutilized input VAT attributable to its zero-rated sales, for the period from July 1, 2019 to December 31, 2019, in the amount of ₱7,093,146.67.

Subsequently, on March 1, 2022, petitioner received the letter dated December 21, 2021,[9] issued by the BIR, through Ms. Maria Lusia I. Belen, Assistant Commissioner for the Assessment Service, denying petitioner's administrative claim for lack of factual and legal basis.

PROCEEDINGS BEFORE THE COURT

The *Petition of Review* was filed on March 25, 2022.[10]

Within the period granted by the Court,[11] respondent filed his *Answer (Re: Petition for Review dated 25 March 2022)* on July 19, 2022.[12]

---

[4] Par. I.b, Stipulation of Facts, JSFI, Docket – Vol. I, pp. 187 to 188; Exhibit "P-2-1", Vol. II, p. 538.
[5] Par. I.c, Stipulation of Facts, JSFI, Docket – Vol. I, p. 188; Exhibit "P-3", Vol. II, p. 539.
[6] Exhibit "P-3", Vol. II, p. 539.
[7] Par. I.e, Stipulation of Facts, JSFI, Docket – Vol. I, p. 188.
[8] Exhibit "P-31", Docket – Vol. II, p. 919; Par. I.d.1, Stipulation of Facts, JSFI, Docket – Vol. I, p. 188.
[9] Exhibit "P-32", Docket – Vol. II, pp. 920 to 947; Exhibit "R-5", BIR Records (Exhibit "R-6"), pp. 260 to 261; Par. I.d.2, Stipulation of Facts, JSFI, Docket – Vol. I, p. 188.
[10] Docket – Vol. I, pp. 6 to 29.
[11] Respondent's *Motion for Extension of Time to File Answer* dated June 16, 2022, Docket – Vol. I, pp. 102 to 105; Resolution dated June 29, 2022, Docket – Vol. I, p. 108.
[12] Docket – Vol. I, pp. 109 to 124.

On September 19, 2022, respondent transmitted the *BIR Records* for this case, consisting of one (1) folder consecutively numbered from pages 1 to 266.[13]

The Pre-Trial Conference was set and held on September 22, 2022.[14] Prior thereto, the *Pre-Trial Brief (of Petitioner Avaloq Philippines Operating Headquarters)* was filed on September 13, 2022,[15] while *Respondent's Pre-Trial Brief* was submitted on September 16, 2022.[16]

On October 12, 2022, the parties filed their *Joint Stipulation of Facts and Issues*,[17] which was approved by the Court in its Resolution dated October 27, 2022,[18] thereby terminating the Pre-Trial. Thereafter, the Pre-Trial Order was issued on January 30, 2023.[19]

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

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Viena Joy S. Mangaring,[20] petitioner's Tax Specialist; and (2) Mr. Christian Gene A. Rasos,[21] the Court-commissioned Independent Certified Public Accountant (ICPA).[22]

The ICPA *Report* was submitted on March 13, 2023.[23]

On May 24, 2023, petitioner filed its *Formal Offer of Evidence*,[24] to which respondent filed his *Comment Re: Petitioner's Formal Offer of Evidence* on June 14, 2023.[25] In the Resolution dated September 26, 2023,[26] the Court admitted petitioner's offered exhibits, *except* Exhibit "P-15", for failure of the exhibit being offered to correspond with the

---

[13] *Compliance* dated September 13, 2022, Docket – Vol. I, pp. 171 to 173.
[14] Notice of Pre-Trial Conference dated July 25, 2022, Docket – Vol. 1, pp. 126 to 128; Minutes of the hearing held on, and Order dated, September 22, 2022, Docket – Vol. I, pp. 176 to 182.
[15] Docket – Vol. I, pp. 129 to 141.
[16] Docket – Vol. I, pp. 143 to 146.
[17] Docket – Vol. I, pp. 187 to 195.
[18] Docket – Vol. I, p. 216.
[19] Docket – Vol. I, pp. 267 to 282.
[20] Exhibits "P-37" and "P-38", Docket – Vol. I, pp. 69 to 83 and 286 to 291, respectively; Minutes of the hearing held on, and Order dated, February 9, 2023, Docket – Vol. I, pp. 414 to 417.
[21] Exhibit "P-39", Docket – Vol. I, pp. 458 to 497; Minutes of the hearing held on, and Order dated, April 25, 2023, Docket – Vol. I, pp. 498 to 502.
[22] *Oath of Commission* dated February 9, 2023, Docket – Vol. I, p. __; Minutes of the hearing held on, and Order dated, February 9, 2023, Docket – Vol. I, pp. 414 to 417.
[23] Exhibit "P-41", Docket – Vol. I, pp. 422 to 453.
[24] Docket – Vol. II, pp. 508 to 521.
[25] Docket – Vol. II, pp. 950 to 952.
[26] Docket – Vol. II, pp. 957 to 962.

document actually marked; and Exhibits "P-43", "P-44", "P-46", "P-86", and "P-197", for not being found in the records of this case.

Thereafter, on October 17, 2023, petitioner filed its *Motion for Reconsideration (Re: Resolution on the Formal Offer of Evidence dated 26 September 2023)*,[27] to which respondent filed a *Manifestation In Lieu of Comment to Petitioner's Motion for Reconsideration* on November 21, 2023.[28] In the Resolution dated July 30, 2024,[29] the Court admitted Exhibits "P-86" and "P-197".

For his part, respondent offered the testimonies of the following Revenue Officers, namely: (1) Rochelle May P. Leonor,[30] and (2) Jan Kevin S. Bautista.[31]

On August 21, 2024, *Respondent's Formal Offer of Evidence* was filed,[32] to which petitioner filed its *Comment (On the Respondent's Formal Offer of Evidence)* on August 27, 2024.[33] In the Resolution dated November 8, 2024,[34] the Court admitted all of respondent's offered evidence.

The *Memorandum (of Avaloq Philippines Operating Headquarters)* was filed on December 13, 2024.[35] On the other hand, respondent filed his *Memorandum* on January 8, 2025.[36]

This case was submitted for decision on February 20, 2025.[37]

ISSUE

The parties stipulated the following issue for this Court's resolution, *viz.*:

---

[27] Docket – Vol. II, pp. 966 to 977.
[28] Docket – Vol. II, pp. 980 to 982.
[29] Docket – Vol. III, pp. 999 to 1005.
[30] Exhibit "R-7", Docket – Vol. I, pp. 164 to 170; Minutes of the hearing held on, and Order dated, August 14, 2024, Docket – Vol. III, pp. 1006 to 1008.
[31] Exhibit "R-8", Docket – Vol. I, pp. 153 to 159; Minutes of the hearing held on, and Order dated, August 14, 2024, Docket – Vol. III, pp. 1006 to 1008.
[32] Docket – Vol. III, pp. 1009 to 1012.
[33] Docket – Vol. III, pp. 1014 to 1016.
[34] Docket – Vol. III, pp. 1020 to 1021.
[35] Docket – Vol. III, pp. 1022 to 1070.
[36] Docket – Vol. III, pp. 1073 to 1096.
[37] Minute Resolution dated February 20, 2025, Docket – Vol. III, p. 1101.

WHETHER OR NOT PETITIONER IS ENTITLED TO A TAX REFUND AMOUNTING TO ₱7,093,146.67 REPRESENTING ITS UNUTILIZED INPUT VAT ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR THE 3RD AND 4TH OF CY 2019 OR THE PERIOD 01 JULY 2019 TO 31 DECEMBER 2019."[38]

Petitioner's arguments

Petitioner argues that it is a VAT-registered entity as required under Section 112(A) of the Tax Code, as amended; that the administrative and judicial claim for refund was filed within the prescriptive period provided under the pertinent provisions of the Tax Code and its implementing rules and regulations; that petitioner is engaged in zero-rated transactions as required under the Tax Code, as amended, and its pertinent regulations, and the sales were paid for in acceptable foreign currency exchange *via* intercompany offsetting agreement and the proceeds have been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP); and that the claimed input VAT payments were not applied against any output tax in the succeeding periods.

Respondent's counter-arguments

Respondent contends that petitioner cannot cure its failure to submit documents at the administrative level by filing the said documents before this Court; that documents that were not submitted before respondent may not be submitted before this Court as clarified in the doctrine established in the case of *Pilipinas Total Gas*;[39] that it is an established fact that a decision by respondent has already been rendered and in such case, the Supreme Court has held that the duty of the Court is now limited to determining whether the decision is proper; that it is incumbent upon petitioner to prove that it is entitled to the refund sought because the claim for refund is not *ipso facto* granted upon filing of the claim; and that tax refunds are strictly construed against the taxpayer and in favor of the government.

RULING OF THE COURT

The instant *Petition for Review* is **PARTIALLY GRANTED.**

---

[38] Stipulation of the Issue, JSFI, Docket – Vol. I, p. 188.
[39] G.R. No. 207112, December 8, 2015.

Requisites under the law for the refund or issuance of tax credit certificate of input VAT

Section 112 of the Tax Code, as amended by Republic Act (RA) No. 10963 or the Tax Reform for Acceleration and Inclusion (TRAIN) Law,[40] provides, in part, as follows:

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

[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 NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> 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."

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

<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;[41]

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 (ORs) or invoices and other documents in support of the application, the judicial claim is filed with this Court within thirty (30) days from receipt of the decision;[42]

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

---

[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.

[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.

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),[45] the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the BSP rules and regulations;[46]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[47]

7. the input taxes are due or paid;[48]

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;[49] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[50]

In addition, in claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the Tax

---

[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] *Ibid.*
[45] Under RA No. 10963, Section 106(A)(2)(a)**(2)** was renumbered to Section 106(A)(2)(a)**(3)** while Section 106(A)(2)**(b)** was deleted. However, there was no corresponding amendment to the subsections cited in Section 112(A) of the National Internal Revenue Code of 1997, as amended.
[46] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc., vs. Commissioner of Internal Revenue*, supra.
[47] *Ibid.*
[48] *Ibid.*
[49] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.
[50] *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.

Code and other implementing rules and regulations.[51] 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.[52] The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[53] Moreover, it must be pointed out that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[54]

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 tax credit or refund in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates computation of tax credits, and provides accurate audit trail or evidence for BIR monitoring purposes.[55]

Furthermore, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[56] Thus, it behooves petitioner to show compliance with each of the foregoing requisites and invoicing requirements. As a corollary, the absence of *any* of the said requisites is already a valid ground to deny the refund claim.

Petitioner's administrative and judicial claims for refund/credit were timely filed

The *first* requisite pertains to the filing of a claim for tax refund or tax credit of input VAT before the BIR, within two (2) years from the

---

[51] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.
[52] *J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.
[53] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.
[54] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[55] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, supra.
[56] *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.

close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

As previously stated, the present claim covers the 3rd to 4th quarters of CY 2019. Counting two (2) years from the close of the said quarters, the following table indicates the respective last day for filing of the administrative claim, to wit:

2019	Period	Close of the Taxable Quarter	Last Day to File Administrative Claim
3rd Quarter	July 1, 2019 to Sept. 30, 2019	Sept. 30, 2019	Sept. 30, 2021
4th Quarter	Oct. 1, 2019 to Dec. 31, 2019	Dec. 31, 2019	Dec. 31, 2021

In the present case, counting two (2) years from the close of the 3rd quarter, petitioner had until September 30, 2021 to file its administrative claim. However, Revenue Memorandum Circular (RMC) No. 101-2021 dated September 17, 2021,[57] was issued which extends the deadline for the filing of applications of VAT refund. RMC No. 101-2021 provides that due to temporary closure of the VAT Credit Audit Division until October 3, 2021, due to COVID-19 pandemic, the deadline for filing of VAT refund was extended to October 15, 2021 where the two (2) year period within which to file the claim falls on September 30, 2021.

Thus, the filing of petitioner's administrative claim covering the said quarters was timely filed on October 15, 2021.[58]

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

Thus, from the filing of petitioner's administrative claim on October 15, 2021, respondent had ninety (90) days or until January 13, 2022, to act on the said claim.

---

57 SUBJECT: Extension of the Deadline for the Filing of Applications and Suspension of the Ninety (90) Day Processing of Value Added Tax (VAT) Refund Claims Pursuant to Section 112 of the Tax Code of 1997, As Amended by the R.A. No. 10963 (TRAIN Law) with the VAT Credit Audit Division.

58 Exhibit "P-31", Docket – Vol. II, p. 919; Par. I.d.1, Stipulation of Facts, JSFI, Docket – Vol. I, p. 188.

Petitioner received the BIR's denial letter dated December 21, 2021 on March 1, 2022.[59] Subsequently, petitioner filed its judicial claim, *via* the present *Petition for Review*, on March 25, 2022,[60] which is within the thirty (30)-day reglementary 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

Anent the *third* requisite, it is undisputed that petitioner is a VAT-registered person/entity, with TIN 008-637-771-000.[61] Thus, there is no question that petitioner showed compliance with the said requisite.

Petitioner was able to establish that it was engaged in zero-rated or effectively zero-rated sales during the 3rd and 4th quarters of CY 2019

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

In its *Quarterly Value-Added Tax Returns* (BIR Form No. 2550-Q) for the 3rd and 4th quarters of CY 2019, petitioner reported total zero-rated sales of ₱233,327,213.59, broken down as follows:

Exhibit	Period Covered (CY 2019)	Zero-Rated Sales
"P-6", Line 17[62]	3rd Quarter	₱ 118,325,088.97
"P-7", Line 17[63]	4th Quarter	115,002,124.62
	Total	**₱ 233,327,213.59**

[59] Exhibit "P-32", Docket – Vol. II, pp. 920 to 947; Exhibit "R-5", BIR Records (Exhibit "R-6"), pp. 260 to 261; Par. I.d.2, Stipulation of Facts, JSFI, Docket – Vol. I, p. 188.
[60] Docket – Vol. I, pp. 6 to 29.
[61] Par. I.c, Stipulation of Facts, JSFI, Docket – Vol. I, p. 188; Exhibit "P-3", Vol. II, p. 539.
[62] Docket – Vol. II, p. 545.
[63] Docket – Vol. II, p. 550.

In this case, petitioner claims that it is engaged in zero-rated transactions as required under Section 108(B)(2) of the NIRC of 1997, as amended, which 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**:
>
> (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 added)*

As can be discerned from 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;[64]

2) The services fall under any of the categories under Section 108(B)(2),[65] or simply, the services rendered

---

[64] *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.

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

should be other than "*processing, manufacturing or repacking goods*";[66]

3) The services must be performed in the Philippines[67] 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.[68]

For the *first* essential element, in order to be considered as a non-resident foreign corporation (NRFC) doing business outside the Philippines, each entity must be supported, at the very least, by **both** a *Certification of Non-Registration of Corporation/Partnership* issued by the Philippine SEC, **and** proof of incorporation/registration in a foreign country (*e.g.*, Articles/Certificate of Incorporation/Registration and/or Tax Residence Certificate). The former document 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 document proves that the said recipient of the service is indeed foreign.

The abovementioned documents have been consistently required by this Court, for purposes of satisfying the said *first* essential element. In fact, in *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*,[69] 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.
>
> **Such proof must be especially required from ROHQs** such as DKS. That the law expressly authorizes ROHQs to render services to local and foreign affiliates alike only stresses the ROHQ's burden to distinguish among their clients' nationalities and actual

---

66 *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra.
67 *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.
68 *Ibid.*
69 G.R. No. 234445, July 15, 2020.

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.**" *(Emphases added)*

Based on the documents submitted, the following clients of petitioner can be considered NRFCs doing business outside the Philippines in compliance with the *first* essential element, to wit:

NAME OF COMPANY	PROOF OF FOREIGN INCORPORATION / REGISTRATION (Exhibit No.)	SEC CERTIFICATION OF NON-REGISTRATION (Exhibit No.)
Avaloq Australia Pty. Ltd.	"P-16"[70]	"P-16-1"[71]
Avaloq Asia Pacific Pte. Ltd.	"P-17"[72]	"P-17-1"[73]
Avaloq License AG	"P-18"[74]	"P-18-1"[75]

[70] Docket – Vol. II, pp. 588 to 637.
[71] BIR Records (Exhibit "R-6"), p. 173.
[72] Docket – Vol. II, pp. 638 to 675.
[73] BIR Records (Exhibit "R-6"), p. 174.
[74] Docket – Vol. II, pp. 676 to 706.
[75] BIR Records (Exhibit "R-6"), p. 171.

Avaloq Sourcing Asia Pacific (Singapore) Pte. Ltd.	"P-19"[76]	"P-19-1"[77]
Avaloq Sourcing (Switzerland & Liechtenstein) SA	"P-20"[78]	"P-20-1"[79]
Avaloq Sourcing (Europe) AG	"P-21"[80]	"P-21-1"[81]
Avaloq UK Limited	"P-22"[82]	"P-22-1"[83]
Articles of Association of Avaloq Evolution AG	"P-23"[84]	"P-23-1"[85]

As to the *second* essential element, petitioner must prove that the services to these clients fall within the scope of *"services other than processing, manufacturing or repacking goods"*. Per the *General Framework Services Agreement*[86] presented by petitioner, the definition of "services" means all kinds of services provided by Avaloq Affiliates as specified in Appendix 1[87] and may include the performance of work leading to a Work Result, to wit:

> Appendix 1: Services
>
> The following services are included in the definition of 'Services' as per this General Framework Agreement and its Appendices (non-exhaustive list).
>
> - Preparation of analyses
> - Making of status quo analyses
> - Consulting
> - Preparation of concepts
> - Documentation
> - Promotion of products and services
> - Sub-project management
> - Training and support in training services
> - Support in implementation services
> - Support in parametrization services
> - Support in maintenance services
> - Support with and coordination of Global Processing Network Projects
> - Coordination
> - Audits
> - Support in acceptance

76 Docket – Vol. II, pp. 707 to 745.
77 BIR Records (Exhibit "R-6"), p. 168.
78 Docket – Vol. II, pp. 746 to 765.
79 BIR Records (Exhibit "R-6"), p. 169.
80 Docket – Vol. II, pp. 766 to 775.
81 BIR Records (Exhibit "R-6"), p. 170.
82 Docket – Vol. II, pp. 776 to 808.
83 BIR Records (Exhibit "R-6"), p. 167.
84 Docket – Vol. II, pp. 809 to 827.
85 BIR Records (Exhibit "R-6"), p. 172.
86 Exhibit "P-26", Docket – Vol. II, pp. 866 to 886.
87 Exhibit "P-26", Docket – Vol. II, p. 881.

ℓ

Moreover, *Exhibit 1* attached to the *Contract Software Research & Development Agreement*[88] executed between petitioner and Avaloq Licence AG provides that the R&D Activities shall consist of the following:

> Software Development
> Software Architecture and Concepts
> Testing
> Business Analysis
> Functionality Deployment
> Product customization and parametrization
> Integration of third-party software
> Cooperation with third parties in specific research projects (with benefits for the Company)

Hence, the *second* essential element was satisfied.

With regard to the *third* essential element, petitioner must show that the subject services were performed in the Philippines by a VAT-registered person.

A perusal of the above *Agreements* reveals that the same lacks any indication that the services were performed in the Philippines. Nonetheless, a clarification was made by petitioner's Tax Specialist, Ms. Viena Joy S. Mangaring, in her *Supplemental Judicial Affidavit*,[89] as follows:

2.	Q:	In your answer to Question No. 21 of your Judicial Affidavit, you mentioned, among others, that 'Considering that all of Petitioner's services were rendered to its non-resident foreign affiliates and the fees billed to these foreign affiliates were subjected to VAT at a zero percent rate, then it did not incur any output VAT liabilities against which its incurred input VAT from purchases may be credited and/or applied with', **can you please elaborate on where Petitioner provided the services it rendered to its non-foreign affiliates** which, as a consequence, were subjected to VAT at zero percent rate?
	A:	Petitioner's **provision of services to its non-resident foreign affiliates were all rendered in the Philippines**. As previously mentioned in my Judicial Affidavit, Petitioner is the regional operating headquarter ('ROHQ') of Avaloq Group AG, a multinational company organized and existing under the laws of Switzerland. Further, Avaloq PH was established to provide general administration and planning, business planning and coordination, training and personnel

[88] Exhibit "P-24", Docket – Vol. II, p. 849.
[89] Exhibit "P-38", Docket – Vol. I, pp. 286 to 291.

		management, logistic services, technical support and maintenance, data processing and communication, and business development to its foreign affiliates.
3.	Q:	Ms. Witness, you mentioned in your answer on the previous question that 'Petitioner's provision of services to its non-resident foreign affiliates were all rendered in the Philippines', what proof, if any, would support your statement?
	A:	I have here our extracted logs in our ProTime monitoring software (Avaloq's Official tool to register working hours, absence hours and performance hours), which we use to attribute our presence time in a specific project. This includes the location of the service, the non-resident affiliate to who it was rendered, the month when the service was rendered and the corresponding time charges. Our services being rendered in the Philippines is established through our extracted **ProTime logs for July to December 2019. Column K**[90] of the said document indicates the location of service for the covered period. xxx Based on Section 4.2.1 of our **ProTime – Employee Booking Guidelines**, the symbol 'AA' signifies that the location of service is in the Domestic Country of the company rendering the service. However, in practice, the same may be replaced with the letter symbols of the country (e.g., 'PH').[91] xxx Correlating Column C [Exhibit P-33-1] and Column K of ProTime logs for July to December 2019 [Exhibit P-33-2], it is shown that the services rendered for the covered period were rendered in the Philippines. xxx xxx xxx Lastly, as an ROHQ, Petitioner is an entity which is only taxable for its income from sources **within the Philippines**. Hence, it would not have declared such an amount of income if its services were not rendered here. There is simply no incentive for Petitioner to declare the same if it were not rendered domestically because it would only result in the imposition of income. *(Emphases added)*

To bolster its position, petitioner also offered the *Extracted ProTime Logs for 2019*[92] as well as the corresponding *ProTime Employee [Booking] Guidelines*[93] being referred to in the testimony of Ms. Mangaring.

[90] Exhibit "P-33-2", Docket – Vol. I, pp. 292 to 339.
[91] Exhibit "P-34", Docket – Vol. I, pp. 340 to 346.
[92] Exhibit "P-33", Docket – Vol. I, pp. 292 to 339.
[93] Exhibit "P-34", Docket – Vol. I, pp. 340 to 346.

Considering the foregoing explanation of petitioner's witness, coupled with the documentary evidence presented, petitioner was able to prove that the subject services were actually performed in the Philippines. Accordingly, the said *third* essential element was fulfilled by petitioner.

However, before going into the *fourth* essential element, which corresponds to the *fifth* requisite requiring acceptable foreign currency exchange proceeds from zero-rated sales under Section 108(B)(2) of the Tax Code, as amended, to be duly accounted for in accordance with BSP rules and regulations, it is equally important to consider that the VAT zero-rated sales, to which the foreign currency remittances correspond, must be duly supported by VAT zero-rated ORs in accordance with the pertinent invoicing requirements. Further, the sales invoices (SIs) and ORs must be duly registered with the BIR as prescribed under Section 237, in relation to Section 238 of the Tax Code, as amended.

Since petitioner's reported sales are in the nature of sales of services under Section 108(B)(2) of the Tax Code, petitioner is required to issue BIR-registered VAT ORs for the foreign currency proceeds of each sales transaction, and the information contained therein must be in compliance with Section 113(A) and (B) of the Tax Code, as amended, and as implemented by Section 4.113-1(A) and (B) of Revenue Regulations No. 16-2005, as amended.

To support its zero-rated sales for the 3rd and 4th quarters of CY 2019, petitioner submitted the ORs[94] issued to its clients. Upon examination, the reported zero-rated sales of **₱233,327,213.59** are duly substantiated with valid ORs, as detailed below:

Exhibit No.	OR Number	OR Date	Name of Customers	Sales in USD	Amount of Sales in PhP
"P-54"	0000077	July 1, 2019	Avaloq Sourcing (Europe) AG	59,187.57	3,112,139.78
"P-55"	0000078	July 1, 2019	Avaloq Sourcing (Europe) AG	66,517.08	3,497,532.52
"P-56"	0000079	July 24, 2019	Avaloq Asia Pacific Pte Ltd	51,410.31	2,635,193.60
"P-57"	0000080	July 24, 2019	Avaloq Australia Pty Ltd	16,436.94	842,525.93
"P-58"	0000081	July 24, 2019	Avaloq Evolution AG	1,961.89	100,562.71
"P-59"	0000082	July 24, 2019	Avaloq Evolution AG	2,905.70	148,940.59

[94] Exhibits "P-54" to "P-76", USB (Exhibit "P-41-1").

"P-60"	0000083	July 24, 2019	Avaloq Sourcing (Switzerland & Liechtenstein) SA	82,131.89	4,209,922.69
"P-61"	0000084	July 24, 2019	Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd.	26,457.95	1,356,183.62
"P-62"	0000085	July 24, 2019	Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd.	74,646.65	3,826,243.69
"P-63"	0000086	July 24, 2019	Avaloq UK Limited	3,442.78	176,470.28
"P-64"	0000087	July 29, 2019	Avaloq Licence AG	1,810,572.40	92,806,458.37
"P-65"	0000088	Sept. 1, 2019	Avaloq Sourcing (Europe) AG	54,498.87	2,793,507.24
"P-66"	0000089	Sept. 1, 2019	Avaloq Sourcing (Europe) AG	55,004.17	2,819,407.95
"P-67"	0000092	Oct. 22, 2019	Avaloq Asia Pacific Pte Ltd	52,144.26	2,708,075.98
"P-68"	0000093	Oct. 22, 2019	Avaloq Australia Pty Ltd	9,800.72	508,993.60
"P-69"	0000094	Oct. 22, 2019	Avaloq Evolution AG	377.89	19,625.46
"P-70"	0000095	Oct. 22, 2019	Avaloq Licence AG	1,815,603.33	94,292,099.95
"P-71"	0000096	Oct. 22, 2019	Avaloq Sourcing (Switzerland & Liechtenstein) SA	98,123.62	5,095,982.16
"P-72"	0000097	Oct. 22, 2019	Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd.	67,292.08	3,494,767.51
"P-73"	0000098	Oct. 22, 2019	Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd.	40,537.04	2,105,263.06
"P-74"	0000099	Oct. 22, 2019	Avaloq UK Limited	5,398.04	280,343.46
"P-75"	0000100	Dec. 1, 2019	Avaloq Sourcing (Europe) AG	55,522.03	2,883,498.13
"P-76"	0000101	Dec. 1, 2019	Avaloq Sourcing (Europe) AG	69,577.81	3,613,475.31
			TOTAL	**4,519,551.02**	**233,327,213.59**

According to petitioner, its total receipts of ₱233,327,213.59 were treated as sales subject to VAT at zero percent (0%) since these represent fees collected for services rendered by petitioner in the Philippines to its non-resident foreign affiliates, **which were billed and paid for in acceptable foreign currencies through intercompany offsetting arrangements.**[95]

Notably, offsetting arrangements are recognized by the BIR as an alternative to actual inward remittance of foreign currency proceeds in

[95] Par. 6, Statements of Facts, *Memorandum (of Avaloq Philippines Operating Headquarters)*, Docket – Vol. III, p. 1024.

export sales, as acknowledged in RMC No. 42-2003 dated July 15, 2003,[96] *viz*:

> Q-8 With the full liberalization of the BSP rules on foreign exchange and trade transactions (CB Circular NO. 1389 dated April 13, 1993 enunciated in RMC No. 57-97), the BIR requirement for full documentation of proofs of inward remittances of export proceeds should no longer be enforced. Accordingly, what should be the acceptable documentary requirements in the processing of claims for TCC/refund, specifically on offsetting arrangements?
>
> A-8: In the case of offsetting arrangements, the following documents should be required:
>
> a. Import documents which created liability accounts in favor of the foreign parent or affiliated company;
> b. Other contracts with the foreign or affiliated company that brought about the liabilities which were offset against receivables from export sales;
> c. Evidence of proceeds of loans, in case the claimant has received loans or advances from the foreign company;
> d. Documents or correspondence regarding offsetting arrangements;
> e. Confirmation of the offsetting arrangements by the heads of the business organizations involved;
> f. Documents to prove actual export of goods;
> g. Documents to prove that the sales are zero-rated sales.

As can be discerned from RMC No. 42-2003, the submission of proof of inward remittances of foreign currency payments for export sales are relaxed where there are offsetting arrangements. In such cases, the above-enumerated documents are acceptable pieces of documentary evidence that prove payment in foreign currency accounted for in accordance with BSP rules and regulations.

To prove petitioner's intercompany offsetting arrangement with its non-resident affiliates to whom it rendered the subject services, Ms. Mangaring testified on the matter and explained how the intercompany offsetting arrangement was being implemented, to wit:[97]

> 31. Q: Ms. Mangaring, do you know how Petitioner bills its foreign affiliates for the services rendered?
>
> A: Yes. The 'General Framework Services Agreement' that shows the guidelines for the provision of services between the affiliates of Avaloq Group AG, and the 'Short

[96] SUBJECT: Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters.

[97] Exhibit "P-37", Docket – Vol. I, pp. 78 to 80.

> Term Credit Facility Agreement' would explain how Avaloq PH bills its foreign affiliates.
>
> The invoices billed by Petitioner are collected/offset against the loan payable to Avaloq Group AG. Based on the General Framework Services Agreement, the offsetting process of the receivables and payables of the Petitioner are as follows:
>
> > a. Avaloq PH maintains a 'centralized' current account, in which the funding of Avaloq Group AG is being remitted pursuant to a Short-Term Credit Facility Agreement;
> >
> > b. For the collection of intercompany invoices billed by Avaloq PH to its affiliates, these are collected/offset through this account.
>
> To illustrate, whenever we obtain a 'loan' from our head office – Avaloq Group AG, which is basically the funding we receive monthly, the funding/cash remitted is credited to Avaloq Group AG current account. The amount receivable from the invoices billed for the services rendered to the affiliates of Avaloq PH will be debited or offset against this same account.
>
> xxx xxx xxx

34. Q: Ms. Mangaring, how did Petitioner collect/offset the intercompany services billed against the loan payable to Avaloq Group AG pursuant to the Short-Term Credit Facility?

    A: Under the Short-Term Credit Facility, Petitioner is entitled to request for a loan in the form of advance and/or overdraft from Avaloq Group AG. The loan amount, which varies depending on the financial necessity of the Petitioner to support its operations, are remitted by Avaloq Group AG in foreign currency denominated. The remitted amount forms part of the loan payable of Petitioner which are then offset against the intercompany invoices billed to the foreign affiliates of Avaloq PH.

35. Q: What proof, if any, do you have to support your statement that the funds remitted were in foreign currency?

    A: The Bank Statements issued by the Bank of the Philippine Islands *[pre-marked as **Exhibit P-28**]* showing the credit of foreign currency to our current account.

xxx xxx xxx

40. Q: Ms. Mangaring, in your Answer to Question No. 31, what proof do you have to show that the intercompany services billed by Petitioner to its foreign affiliates are collected/offset against the loan payable to Avaloq Group AG?

A: The transactions that can be identified in the Schedule of Offsetting of Receivables [*pre-marked as **Exhibit P-30***]

Essentially, petitioner receives foreign currency funding from its parent company, Avaloq Group AG, which is recorded and treated in its books as loan payable to Avaloq Group AG. From this loan, petitioner offsets all of the receivables earned from services rendered to the affiliates of Avaloq Group AG.

To further support these assertions, petitioner presented the following documentary evidence:

1. Short Term Credit Facility Agreement (Offsetting Agreement);[98]
2. E-mails relating to drawdown requests;[99]
3. Apostilled English-translated debit advice issued by Credit Suisse (Schweiz) AG;[100]
4. Bank Statements issued by the Bank of the Philippine Islands;[101] and
5. Schedule of Offsetting of Receivables.[102]

Note 11 of petitioner's Audited Financial Statements (AFS) for CY ending December 31, 2019 (Related Party Transactions)[103] also discloses relevant details on petitioner's service income, thus:

> **Transactions with other affiliates include consulting activities derived solely from a Transfer Pricing Agreement. Under the agreement, the Headquarters shall perform certain functions for and in behalf of the affiliates** including, but not limited to the following: preparation of analyses; making of status quo analyses; consulting; preparation of concepts; documentation; promotion of products and services; sub-project management; training and support in training services; support in parametrization services; support in maintenance services; coordination; audits; and support in acceptance. **In consideration, the Head Office, in behalf of the affiliates, shall pay the**

---

[98] Exhibit "P-27", Docket – Vol. II, pp. 889 to 905.
[99] Exhibits "P-29" to "P-29-8", Docket – Vol. II, pp. 907 to 915.
[100] Exhibits "P-77" to "P-85", USB (Exhibit "P-41-1").
[101] Exhibit "P-28", BIR Records (Exhibit "R-6"), pp. 176 to 178.
[102] Exhibit "P-30", BIR Records (Exhibit "R-6"), pp. 197 to 209.
[103] Exhibit "P-36", Docket – Vol. I, p. 400.

> **<u>Headquarters an amount equivalent to all the necessary and reasonable operating costs and expenses incurred by the Headquarters in the performance of the services plus a certain mark-up.</u>** *(Emphasis added)*

Furthermore, during the hearing held on February 9, 2023, in response to the Court's clarificatory question on the identity of the parties who signed the Short Term Credit Facility Agreement (Offsetting Agreement), Ms. Mangaring clarified that all Avaloq entities within the Avaloq group were parties to the said agreement.[104] This is confirmed by the said agreement itself.[105]

It is also worth mentioning that Section 12 of the said agreement[106] provides a set-off mechanism between and among the signatories of the same, to wit:

> **12. Set-Off Balances**
>
> Both parties authorize each other to set-off any credit balance in any currency to which it is entitled on any account in satisfaction of any sum due and payable under this Agreement but unpaid. For this purpose, both parties are authorized to purchase with the monies standing to the credit of any such account such other currencies as may be necessary to effect such application.

In addition to proving a valid offsetting arrangement between petitioner and Avaloq Group AG's affiliates, petitioner also establishes the actual details of the offsetting that occurred between petitioner's receivables from its sales of service to Avaloq Group AG's affiliates and the advances made by Avaloq Group AG. It presented a *Schedule of Offsetting of Receivables*,[107] pertinent details of which are excerpted below:

Exhibit No.	Transaction Date	Name of Foreign Affiliates	Amount in Foreign Currency	Amount Collectible by Avaloq PH in PhP	Withdrawal from Group Account Transfer to Avaloq PH BPI USD Account	Interest Income from Receivable from Foreign Affiliates	Interest and Other Payables to Foreign Affiliates	Group Account Balance (PhP)
				(-)	(+)	(-)	(+)	
OUTSTANDING RECEIVABLE FROM / (PAYABLE TO) AVALOQ GROUP AG as of 30 JUNE 2019								**43,016,251.21**
"P-54"	July 1, 2019	Avaloq Sourcing (Europe) AG	59,187.57	3,033,840.98				39,982,410.23

---

[104] Transcript of Stenographic Notes (TSN) during the hearing held on February 9, 2023, p. 37.
[105] *Supra*, note 98.
[106] *Ibid.*
[107] *Supra*, note 102.

"P-55"	July 1, 2019	Avaloq Sourcing (Europe) AG	66,517.08	3,409,537.57				36,572,872.66
	July 12, 2019	Withdrawal from Group Account Transfer to Avaloq PH BPI USD Account	500,000.00		25,629,038.19			62,201,910.85
"P-56"	July 24, 2019	Avaloq Asia Pacific Pte Ltd	51,410.31	2,635,193.60				59,566,717.25
"P-57"	July 24, 2019	Avaloq Australia Pty Ltd	16,436.94	842,525.93				58,724,191.32
"P-58"	July 24, 2019	Avaloq Evolution AG	1,961.89	100,562.71				58,623,628.61
"P-59"	July 24, 2019	Avaloq Evolution AG	2,905.70	148,940.59				58,474,688.02
"P-60"	July 24, 2019	Avaloq Sourcing (Switzerland & Liechtenstein) SA	82,131.89	4,209,922.69				54,264,765.33
"P-61"	July 29, 2019	Avaloq Licence AG	1,810,572.40	92,806,458.37				- 38,541,693.04
"P-62"	July 24, 2019	Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd	26,457.95	1,356,183.62				- 39,897,876.66
"P-63"	July 24, 2019	Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd	74,646.65	3,826,243.69				- 43,724,120.35
"P-64"	July 24, 2019	Avaloq UK Limited	3,442.78	176,470.28				- 43,900,590.63
	Aug. 9, 2019	Withdrawal from Group Account Transfer to Avaloq PH BPI USD Account	600,000.00		30,499,024.54			- 13,401,566.09
"P-65"	Sept. 1, 2019	Avaloq Sourcing (Europe) AG	54,498.87	2,837,615.64				- 16,239,181.73
"P-66"	Sept. 1, 2019	Avaloq Sourcing (Europe) AG	55,004.17	2,863,925.31				- 19,103,107.04
	Sept. 4, 2019	Withdrawal from Group Account Transfer to Avaloq PH BPI USD Account	500,000.00		26,033,710.83			6,930,603.79
	Sept. 26, 2019	Avaloq Evolution AG	5,696.26	296,589.57				6,634,014.22
	Sept. 27, 2019	Avaloq Asia Pacific Pte Ltd	15,882.62	826,967.07				5,807,047.15
	Sept. 30, 2019	Interest Income on Receivable from Avaloq Group AG	14,602.78			760,329.10		5,046,718.05
	Sept. 30, 2019	Avaloq Evolution AG					4,333,976.82	9,380,694.87

	Sept. 30, 2019	Avaloq Asia Pacific Pte Ltd					2,824,400.14	12,205,095.01
	Sept. 30, 2019	Interest Expense on advances received from Avaloq Group AG, net of withholding tax remitted to BIR					980,606.73	13,185,701.74
	Oct. 22, 2019	Withdrawal from Group Account Transfer to Avaloq PH BPI USD Account	600,000.00		31,160,583.95			44,346,285.69
	Oct. 22, 2019	Withdrawal from Group Account Transfer to Avaloq PH BPI USD Account	150,000.00		7,790,145.99			52,136,431.68
"P-67"	Oct. 22, 2019	Avaloq Asia Pacific Pte Ltd	52,144.26	2,708,075.98				49,428,355.70
"P-68"	Oct. 22, 2019	Avaloq Australia Pty Ltd	9,800.72	508,993.60				48,919,362.10
"P-69"	Oct. 22, 2019	Avaloq Evolution AG	377.89	19,625.46				48,899,736.64
"P-70"	Oct. 22, 2019	Avaloq Licence AG	1,815,603.33	94,292,099.95				45,392,363.31
"P-71"	Oct. 22, 2019	Avaloq Sourcing (Switzerland & Liechtenstein) SA	98,123.62	5,095,982.16				50,488,345.47
"P-72"	Oct. 22, 2019	Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd	67,292.08	3,494,767.51				53,983,112.98
"P-73"	Oct. 22, 2019	Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd	40,537.04	2,105,263.06				56,088,376.04
"P-74"	Oct. 22, 2019	Avaloq UK Limited	5,398.04	280,343.46				56,368,719.50
	Oct. 29, 2019	Withdrawal from Group Account Transfer to Avaloq PH BPI USD Account	450,000.00		23,370,437.96			32,998,281.54
	Nov. 15, 2019	Withdrawal from Group Account Transfer to Avaloq PH BPI USD Account	700,000.00		35,586,007.93			2,587,726.39
"P-75"	Dec. 1, 2019	Avaloq Sourcing (Europe) AG	55,522.03	2,823,177.96				235,451.57
"P-76"	Dec. 1, 2019	Avaloq Sourcing (Europe) AG	69,577.81	3,537,884.68				3,773,336.25

u

	Dec. 6, 2019	Withdrawal from Group Account Transfer to Avaloq PH BPI USD Account	500,000.00		25,423,943.95			21,650,607.70
	Dec. 18, 2019	Withdrawal from Group Account Transfer to Avaloq PH BPI USD Account	500,000.00		25,423,943.95			47,074,551.65
	Dec. 19, 2019	Avaloq Evolution AG					5,374,118.60	52,448,670.25
	Dec. 31, 2019	Avaloq Asia Pacific Pte Ltd	15,691.37	797,873.02				51,650,797.23
	Dec. 31, 2019	Avaloq Evolution AG	7,693.34	391,190.09				51,259,607.14
	Dec. 31, 2019	Interest Income on Receivable from Avaloq Group AG	14,418.25			733,137.56		50,526,469.58
	Dec. 31, 2019	Avaloq Asia Pacific Pte Ltd					2,543,831.28	53,070,300.86
	Dec. 31, 2019	Avaloq Evolution AG					4,612,320.78	57,682,621.64
	Dec. 31, 2019	Interest Expense on advances received from Avaloq Group AG, net of withholding tax remitted to BIR					916,299.26	58,598,920.90
	Dec. 31, 2019	Foreign Exchange Revaluations					1,793,134.23	60,392,055.13

Meanwhile, respondent did not present any sufficient evidence particularly disputing or challenging the alleged offsetting arrangement between petitioner and Avaloq Group AG's affiliates, in relation to the zero-rated sales of services subject of the present refund claim.

Considering the foregoing disquisition, We find petitioner to have sufficiently proved by preponderance of evidence that there existed a valid offsetting arrangement between petitioner and Avaloq Group AG's affiliates, in relation to the zero-rated sales of services subject of the present refund claim. We also find the details of offsetting as duly substantiated by the *Schedule of Offsetting of Receivables* and the BPI *Bank Statements*, as verified by the Court-commissioned ICPA.

With this, petitioner was able to satisfy the *fourth* essential element (*i.e*, its zero-rated sales of services were paid for in acceptable foreign currency accounted for in accordance with BSP rules).

Additionally, in the BIR examiners' *Memorandum Report* dated December 6, 2021,[108] it was disclosed that petitioner's zero-rated sales, the basis for the claim of tax refund, were verified to be in accordance with the provisions of Section 108(B)(2) of the Tax Code, as amended, and that the remittances on the billings made by the company were done thru offsetting, under the Shot-Term Facility (Offsetting Agreement).

Petitioner was thus able to establish that its sales of services to NRFCs not engaged in business in the Philippines for the 3rd and 4th quarters of CY 2019, in the amount of **₱233,327,213.59**, qualify as valid zero-rated sales pursuant to Section 108(B)(2) of the Tax Code, as amended, in compliance with the *fourth* and *fifth* requisites.

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

In its *Quarterly VAT Returns* for the 3rd and 4th quarters of CY 2019, petitioner declared total input VAT of ₱7,093,146.68 from its domestic purchases of goods and services, which is the subject of the present claim for refund,[109] as shown below:

CY 2019		**3rd Quarter** (Exhibits "P-6"[110]; and "P-52"[111])	**4th Quarter** (Exhibits "P-7"[112]; "P-53"[113])	**TOTAL**
Input Tax Due on Capital Goods exceeding ₱1M				
	Deferred from previous quarter	₱ 2,108,093.80	₱ 2,121,205.33	₱ 4,229,299.13
	Purchase of Capital Goods Exceeding P1M	623,554.29	676,854.75	1,300,409.04
	Total	2,731,648.09	2,798,060.08	5,529,708.17
	Less: Deferred for the succeeding period	2,121,205.33	2,369,001.51	4,490,206.84

[108] Exhibit "R-3", BIR Records (Exhibit "R-5"), p. 243.
[109] With a difference of ₱.01.
[110] Docket – Vol. II, pp. 544 to 548.
[111] USB, Exhibit "P-41-1"
[112] Docket – Vol. II, pp. 549 to 553.
[113] USB, Exhibit "P-41-1"

Amortized input tax on capital goods exceeding ₱1M	₱ 610,442.76	₱ 429,058.57	₱ 1,039,501.33
Input Tax Due on Current Purchases of Goods other than Capital Goods			-
Input tax on purchase of capital goods not exceeding ₱1M	112,463.53	99,944.34	212,407.87
Input tax on domestic purchases of goods other than capital goods	31,525.27	474,054.06	505,579.33
Sub-total	143,988.80	573,998.40	717,987.20
Input Tax Paid on:			-
Input tax on domestic purchases of services	1,788,257.78	3,547,400.37	5,335,658.15
Total input tax during the period	**₱2,542,689.34**	**₱4,550,457.34**	**₱7,093,146.68**

The above amounts do not appear to be transitional input taxes, as understood under Section 111(A) of the Tax Code, as amended.

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.[114]

Since there is no showing that the claimed input VAT are transitional input taxes, petitioner has complied with the *sixth* requisite for the grant of an input VAT refund.

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

Anent the *seventh* requisite in claiming VAT refund, it is of fatal importance for petitioner to provide supporting documents to prove that the input taxes claimed during the 3rd and 4th quarters of CY 2019 were actually due or paid in accordance with Section 110(A) of the Tax Code, as amended, and as implemented by Sections 4.110-1 to 4.110-3 and 4.110-8 of RR No. 16-2005, as amended.

[114] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, et al., et seq.*, G.R. Nos. 158885 and 170680, April 2, 2009.

Thus, in order to prove entitlement to credits for input taxes due or paid, the same must be evidenced by VAT invoices (for domestic purchases of goods) or ORs (for domestic purchases of services) issued in accordance with Section 113 of the NIRC of 1997, as amended.

As mentioned earlier, petitioner reported total input VAT of ₱7,093,146.68 from its domestic purchases of goods and services. In support thereto, petitioner presented, among others, the suppliers' ORs and invoices,[115] which were all examined by the ICPA, Mr. Christian Gene A. Rasos.

Based on the findings of the ICPA,[116] the total input VAT of ₱1,426,207.87 shall be disallowed for petitioner's failure to meet the substantiation and invoicing requirements prescribed under the VAT law and regulations, summarized as follows:

Particulars	Reference	Input VAT
Documents with countersigned alterations. Nature of Service not indicated (Exhibit "P-180 to P-183")	Annex 4	₱ 19,994.42
Document not dated within 3rd and 4th Quarter of 2019 (Exhibit "P-184")	Annex 4	4,026.00
Documents with alterations not countersigned. Incomplete Address of Petitioner (Exhibit "P-185")	Annex 4	3,600.00
Documents with alterations not countersigned. Nature of Service not indicated (Exhibit "P-186 to P-187")	Annex 4	407.34
Documents with countersigned alterations. Incomplete Address. Nature of Service not indicated (Exhibit "P-188 to P-189")	Annex 4	7,535.70
Incorrect Name of Petitioner (Exhibit "P-190")	Annex 4	3,600.00
TIN of Petitioner not indicated (Exhibit "P-191 to P-193")	Annex 4	19,838.04
Incorrect TIN of Petitioner (Exhibit "P-194")	Annex 4	3,600.00
Incorrect TIN of Petitioner. Nature of Service not indicated (Exhibit "P-195")	Annex 4	24,000.00
TIN of Petitioner not indicated. Nature of Service not indicated (Exhibit "P-196")	Annex 4	7,200.00
Address of Petitioner not indicated (Exhibit "P-197")	Annex 4	3,600.00
Incomplete Address of Petitioner. Nature of Service not indicated (Exhibit "P-208 to P-236")	Annex 4	21,412.34
Incorrect Address of Petitioner (Exhibit "P-237")	Annex 4	749.46
Incorrect Address of Petitioner. Nature of Service not indicated (Exhibit "P-238")	Annex 4	125.09
Nature of Service not indicated (Exhibit "P-239 to P-364")	Annex 4	441,713.51

[115] Exhibits "P-92" to "P-157"; "P-159" to "P-173" and "P-175" to "P-403", USB (Exhibit "P-41-1").
[116] Exhbit "P-41", Docket – Vol. I, pp. 430 to 431.

VATable amount not indicated (Exhibit "P-365 to P-366")	Annex 4	23,718.43
Document not valid for Input Tax Claim (Exhibit "P-367")	Annex 4	6,146.76
Unsupported Input VAT on Purchase of Goods and Services	Annex 4	125,052.86
Unsupported Input VAT on Purchase of Capital Goods not exceeding P1M	Annex 4	212,407.87
Duplicate transaction claimed	Annex 5	137,456.30
Unsupported Input VAT on Purchase of Capital Goods exceeding P1M on prior period purchases	Annex 5	360,023.53
Unaccounted Difference		0.22
Total Disallowed - ICPA Report		**₱1,426,207.87**

Upon further review of the findings of the ICPA and petitioner's supporting documents, the input VAT of ₱3,166,764.28 must also be disallowed due to the following reasons:

Exhibit No. Reference	Customer Name	Input VAT
1. Input VAT on purchases of services supported by VAT ORs but without the phrase "THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE PERMIT TO USE" as required under RR No. 10-2015, as amended by RR No. 16-2018		
"P-93"	SGV & Co.	₱ 1,542.86
"P-101"	SGV & Co.	1,080.00
"P-117"	SGV & Co.	84,000.00
"P-148"	Robinsons Land Corporation	303,103.24
"P-149"	Robinsons Land Corporation	303,103.24
"P-159"	Robinsons Land Corporation	3,307.50
"P-160"	Robinsons Land Corporation	6,615.00
"P-161"	Robinsons Land Corporation	6,615.00
"P-162"	Robinsons Land Corporation	303,103.24
"P-163"	Robinsons Land Corporation	3,307.50
"P-164"	Robinsons Land Corporation	6,615.00
"P-165"	Robinsons Land Corporation	3,307.50
"P-166"	Robinsons Land Corporation	302,636.12
"P-167"	Robinsons Land Corporation	3,159.84
"P-168"	Robinsons Land Corporation	6,615.00
"P-169"	Robinsons Land Corporation	6,615.00
"P-170"	Robinsons Land Corporation	3,307.50
"P-171"	Robinsons Land Corporation	305,152.27
"P-172"	Robinsons Land Corporation	310,157.87
"P-173"	Robinsons Land Corporation	3,472.88
"P-175"	Kapatiran Realty Corporation	115,580.16
"P-176"	Kapatiran Realty Corporation	421,465.22
"P-177"	Kapatiran Realty Corporation	61,642.75
"P-178"	Kapatiran Realty Corporation	115,580.16

4

	Sub-total	***₱ 2,681,084.85***
2. Input VAT on domestic purchases of services supported by VAT ORs where the nature of the service rendered is not duly indicated therein		
"P-94"	Robinsons Summit Center Condominium	₱ 1,384.93
"P-95"	Robinsons Summit Center Condominium	1,805.57
"P-96"	Robinsons Summit Center Condominium	6,461.14
"P-97"	Robinsons Summit Center Condominium	6,569.12
"P-102"	Robinsons Summit Center Condominium	7,425.55
"P-103"	Robinsons Summit Center Condominium	1,602.78
"P-141"	Signrays Advertising, Inc.	5,625.00
"P-142"	Robinsons Summit Center Condominium	6,460.48
"P-143"	Robinsons Summit Center Condominium	7,474.63
"P-144"	Robinsons Summit Center Condominium	1,351.30
"P-145"	Robinsons Summit Center Condominium	1,351.44
"P-146"	Robinsons Summit Center Condominium	6,945.31
"P-147"	Robinsons Summit Center Condominium	1,538.81
"P-179"	Swire Travel Philippines, Inc.	336.02
	Sub-total	***₱ 56,332.08***
3. Input VAT on domestic purchases of goods supported by sales invoice where the TIN of petitioner was not indicated therein		
"P-133"	Icon Interiors, Inc.	₱ 103,610.43
"P-140"	Icon Interiors, Inc.	10,857.60
	Sub-total	***₱ 114,468.03***
4. Amortized input VAT on purchases of goods supported by VAT invoices but without the phrase "THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE PERMIT TO USE" as required under RR No. 10-2015, as amended by RR No. 16-2018 (not duly registered with the BIR as well) (see Annex 5 of the ICPA Report for the amount of claimed amortized input VAT)		
"P-385"	Figari Solutions, Inc.	₱ 17,322.38
"P-386"	Figari Solutions, Inc.	17,322.38
"P-387"	Figari Solutions, Inc.	7,051.50
"P-388"	Figari Solutions, Inc.	17,322.38
"P-389"	Figari Solutions, Inc.	17,322.38
	Sub-total	***₱ 76,341.02***
5. Amortized input VAT supported by VAT OR where the nature of the service rendered is not duly indicated therein (see Annex 5 of the ICPA Report for the amount of claimed amortized input VAT)		
"P-395"	Figari Solutions, Inc.	₱ 8,000.00
"P-396"	Figari Solutions, Inc.	1,666.67
"P-397"	Figari Solutions, Inc.	128,333.33
"P-398"	Figari Solutions, Inc.	24,000.00
"P-399"	Figari Solutions, Inc.	36,468.00
"P-400"	Figari Solutions, Inc.	5,595.59
"P-401"	Figari Solutions, Inc.	29,753.91
"P-402"	Figari Solutions, Inc.	414.60
"P-403"	Figari Solutions, Inc.	4,306.20
	Sub-total	***₱ 238,538.30***

TOTAL	**₱ 3,166,764.28**

Hence, for purposes of compliance with the *seventh* requisite, out of the total reported input VAT on current purchases of ₱7,093,146.68, only the amount of **₱2,500,174.53** represents petitioner's valid input VAT for the CY 2019, as computed below:

Input VAT per VAT Return		₱ 7,093,146.68
Less: Disallowances		
Per ICPA findings	₱ 1,426,207.87	
Per Court's further verification	3,166,764.28	4,592,972.15
Substantiated valid input VAT		**₱ 2,500,174.53**

Petitioner's valid input VAT of ₱2,500,174.53 is attributable to its zero-rated sales

The *eighth* requisite is to the effect that 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.

Here, considering that petitioner had no other type of sales except zero-rated sales, the entire substantiated input VAT of **₱2,500,174.53** is attributable thereto.

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

Having determined that petitioner had valid input VAT attributable to its zero-rated sales, We now determine whether the same was not applied against its output VAT liability during and in the succeeding quarters, relative to the *ninth* requisite for the successful prosecution of an input VAT refund claim.

Since petitioner had no VATable sales subject to 12% for the 3rd and 4th quarters of CY 2019, it had no output VAT against which the substantiated valid input VAT of **₱2,500,174.53** may be applied or credited.

Finally, to ensure that the present input VAT claim for refund will no longer be available for application to future output VAT liabilities, it was ascertained that the input VAT for the subject period 3rd and 4th quarters of CY 2019 in the amounts of ₱2,542,689.34 and ₱4,550,457.33, respectively, were deducted as VAT Refund/TCC Claimed (Line 23D) in its respective 3rd and 4th *Quarterly VAT Returns* for CY 2019.[117] Moreover, as can be gleaned from petitioner's succeeding *Quarterly VAT Returns* for the 1st quarter of CY 2020, the amount of input tax carried over from previous period is "0.00".[118] Hence, petitioner is deemed to have fulfilled the *ninth* requisite for the refund of input VAT under Section 112(A) of the NIRC of 1997, as amended.

In sum, petitioner has sufficiently proven its entitlement to the refund in the amount of **₱2,500,174.53**, representing unutilized and/or excess input VAT attributable to its zero-rated sales for the 3rd and 4th quarters of CY 2019, or the period July 1, 2019 to December 31, 2019.

WHEREFORE, premises considered, the present *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED** to refund the amount of **₱2,500,174.53** in favor of petitioner representing its unutilized and/or excess input VAT attributable to its zero-rated sales for the 3rd and 4th quarters of CY 2019.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

I CONCUR:

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

---

[117] Exhibits "P-6" and "P-7", Docket – Vol. II, pp. 546 and 551.
[118] Line 20A, Exhibit "P-404", USB (Exhibit "P-41-1").

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.

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice
Special Third Division Chairperson

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice