REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ATLASSIAN PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10011

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

Promulgated:
OCT 06 2021 3:15 p.m.

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Atlassian Philippines, Inc. (**petitioner/Atlassian**) pursuant to Rule 8, Section 3(a)[2], in relation to Rule 4, Section 3(a)(1)[3] of the Revised Rules of the Court of Tax Appeals[4] (**RRCTA**).

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1 Filed on 18 January 2019, Division Docket, pp. 12-26.

2 **SEC. 3.** *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

3 **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

The instant petition is an appeal from the adverse decision of respondent Commissioner of Internal Revenue (**respondent/CIR**), partially denying petitioner's claim for refund of its alleged unutilized input value-added tax (**VAT**) paid and incurred during the period 01 July 2016 to 30 June 2017 (**FY ending 30 June 2017**), in the amount of ₱11,376,078.36.[5]

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office at 2nd Floor Building 3, Bonifacio High Street Central East, Fort Bonifacio Global City, Taguig City, Metro Manila.[6]

Respondent is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund of tax credit certificates as provided by law.[7]

FACTS OF THE CASE

Petitioner is registered with the Bureau of Internal Revenue (**BIR**) as a VAT taxpayer since 31 October 2013, as evidenced by its latest Certificate of Registration issued by Revenue District Office No. 44-Taguig City (**RDO 44**) under registration number OCN 9RC0000460963.[8]

For the FY ending 30 June 2017, petitioner filed with the BIR its quarterly VAT returns as follows:

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(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

...

4 A.M. No. 05-11-07-CTA dated 22 November 2005.

5 Joint Stipulation of Facts and Issues (JSFI), Division Docket, p. 284.

6 Id., p. 283.

7 Id.

8 Exhibit "P-4", BIR Records, Folder 7, pp. 1426-1428.

Period Covered	Inclusive Months	Date Filed
1st quarter[9]	July to September 2016	25 October 2016
2nd quarter[10]	October to December 2016	24 January 2017
3rd quarter[11]	January to March 2017	25 April 2017
4th quarter[12]	April to June 2017	25 July 2017

On 21 November 2016, petitioner filed with the BIR its Amended Quarterly VAT Return (BIR Form No. 2550-Q) for the 1st quarter of FY ending on 30 June 2017.[13]

During the said period, petitioner generated zero-rated sales from its services rendered solely to Atlassian Pty Ltd (**APL**), a non-resident foreign corporation (**NRFC**) established under the laws of Australia. At the same time, petitioner paid input VAT on its purchases of goods and services and amortized deferred input VAT on capital goods exceeding ₱1 Million in the aggregate amount of ₱14,212,395.13.

On 28 September 2018, petitioner filed with the BIR RDO 44 its administrative claim[14] for refund of input VAT amounting to ₱14,212,395.13, together with its supporting documents.

A VAT Refund Notice dated 12 December 2018[15] (**VAT Refund Notice**) was issued to petitioner informing the latter that out of its total claim for VAT refund amounting to ₱14,212,395.13, only the amount of ₱2,836,316.77 has been approved.[16]

PROCEEDINGS BEFORE THIS COURT

On 18 January 2019, following the partial denial of its claim for refund, petitioner filed the instant Petition for Review.[17]

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9 Exhibit "P-16-7", USB (Exhibit "P-22").
10 Exhibit "P-16-8", id.
11 Exhibit "P-16-9", id.
12 Exhibit "P-16-10", id.
13 Supra at note 9.
14 Exhibit "P-3", BIR Records, Folder 8, p. 1455.
15 Exhibit "P-16-3", USB (Exhibit "P-22").
16 JSFI, Division Docket, p. 284.
17 Supra at note 1.

On 26 March 2019, respondent filed his Answer[18] interposing the following special and affirmative defenses:

1. Petitioner is not entitled to refund because it failed to strictly comply with the invoicing requirements for VAT refund;

2. A portion of the excess input VAT should be disallowed because it was not supported by proper sales invoices or official receipts (**ORs**);

3. Petitioner failed to prove that the recipient of its services are foreign corporations doing business outside the Philippines; and,

4. The burden of proof to establish entitlement to refund is on the claimant-taxpayer and being in the nature of a claim for exemption, refund is construed *strictissimi juris* against it and in favor of the taxing power.

After the parties filed their respective pre-trial briefs[19] as well as their Joint Stipulation of Facts and Issues[20] (**JSFI**), the Court issued the Pre-Trial Order[21] on 15 July 2019.

On 22 July 2019, petitioner presented two (2) of its witnesses, namely: (1) Doris Mabini (**Mabini**); and, (2) Atty. Estela Joy Intig-Mari (**Atty. Mari**).

On the witness stand, Mabini testified[22] that: (1) she is petitioner's Tax Program Manager of its Tax Department; (2) petitioner is engaged in business of providing outsourcing services and support solutions in all aspects of the business and operations of its affiliates and related companies; (3) majority of the process involving the preparation and filing of VAT returns of petitioner are handled by their external service provider, Reyes Tacandong & Co. (**RT&Co.**); (4) she

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18 Received on 01 April 2019; Division Docket, pp. 121-129.
19 Pre-Trial Brief for Petitioner, id., pp. 237-250; Respondent's Pre-Trial Brief, id., pp. 254-259.
20 Filed on 21 June 2019, id., pp. 283-289.
21 Id., pp. 298-302.
22 See Judicial Affidavit, Exhibit "P-13", id., pp. 163-176.

oversees, reviews and finalizes the work of RT&Co. for both the preparation and filing of the VAT returns as well as the preparation of the documents for the VAT claim; (5) petitioner's administrative claim was filed with the BIR on 28 September 2018; (6) they received on 19 December 2018, through RT&Co., the VAT Refund Notice; (7) based on the VAT Refund Notice, the administrative claim was denied by the BIR supposedly on the ground that the same is "unsupported, in violation of the invoicing requirements, 'big-ticket purchases', insufficient export proceeds, and attributable to services rendered in the Philippines, among others"; (8) the BIR failed to provide sufficient explanation and specific legal bases of the denial as well as the details on which portions of the claim were covered by the disallowed input VAT; (9) petitioner complied with the presentation of documents required by RDO 44 where the application was filed; (10) when the BIR elevated the refund claim to the National Office, they were surprised about the portion that was denied since the same was allegedly due to failure to submit document when in fact, such documents were not required by RDO 44; (11) its BIR Certificate of Registration would show that it is a VAT-registered taxpayer; (12) upon filing the Application for Tax Credits/Refunds (BIR Form No. 1914)[23] on 28 September 2018, they also submitted a Revised Checklist of Mandatory Requirements for Claims for VAT Refund[24] which was acknowledged and received by the revenue office to which the application was submitted; (13) the input VAT claimed relate to services solely rendered to APL, an NRFC established under the laws of Australia; and, (14) the foregoing is fully substantiated by numerous ORs, billing statements, service contracts for the four (4) quarters of FY ending 30 June 2017, a Certification of Non-Registration of Company[25] from the Securities and Exchange Commission (**SEC**) stating that APL is not a registered corporation in the Philippines and a Certificate of Registration of a Company[26] and a Certificate of Registration on Change of Name of Atlassian Pty Ltd[27] issued by the Australian authorities.

On cross examination, Mabini further testified that: (1) the VAT Refund Notice was provided to RT&Co. and they were informed by the former as to the receipt of such notice[28]; (2) the service contract

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23 Exhibit "P-3", Supra at note 14.
24 Exhibit "P-5", Division Docket, p. 1590.
25 Exhibit "P-16-2", USB (Exhibit "P-22").
26 Exhibit "P-19", Division Docket, pp. 372-374.
27 Exhibit "P-6", BIR Records, Folder 6, pp. 1347-1349.
28 TSN of 22 July 2019, p. 11.

between petitioner and APL became effective in October 2014 without any date of termination[29]; (3) petitioner and APL are related companies[30] and that they have one ultimate holding company, which is Atlassian Corporation PLC[31]; (4) petitioner's services were solely rendered to APL (which means that petitioner has no other clients) and the former was created for the purpose of rendering services to the latter[32]; (5) petitioner has 175,000 subscribed capital stock with 174,900 shares being subscribed by APL[33]; and, (6) petitioner is not a subsidiary of APL.[34]

On re-direct examination, Mabini merely mentioned that, although she had a meeting on 20 December 2019, she was unsure of the exact date of receipt of notice from RT&Co. (of the VAT Refund Notice).[35] Respondent did not conduct any re-cross examination.[36]

Later, Atty. Mari testified that: (1) she is an Associate Manager of the Tax Advisory Group of RT&Co.; (2) petitioner is a client of RT&Co. and they are handling the preparation and filing of VAT refund claims of petitioner; (3) she is the person in charge of petitioner's VAT refund claim for FY ending 30 June 2017; (4) upon a follow-up with the Tax Audit Review Division (**TARD**) of the BIR National Office, she was given a copy of the VAT Refund Notice on 19 December 2018; and, (5) petitioner received the decision denying its administrative claim on 19 December 2018.[37]

On cross examination, Atty. Mari declared that: (1) the signatory of the VAT Refund Notice is Erlinda A. Simple, Assistant Commissioner of the Assessment Service (**ACIR Simple**)[38]; and, (2) the document does not contain any marking which states the date of receipt of petitioner.[39]

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29 Id., p. 17.
30 Id., p. 18.
31 Id., p. 19.
32 Id., p. 20.
33 Id., p. 22.
34 Id., p. 23.
35 Id., p. 25.
36 Id.
37 See Judicial Affidavit, Exhibit "P-14", Division Docket, pp. 143-148.
38 TSN of 22 July 2019, p. 30.
39 Id., p. 32.

On re-direct examination, Atty. Mari confirmed that the VAT Refund Notice was received on 19 December 2018.[40]

On re-cross examination, when asked of proof that petitioner received the VAT Refund Notice on 19 December 2018, Atty. Mari explained that her receipt of the VAT Refund Notice means that petitioner had likewise received it since she represents the latter.[41]

On 09 October 2019, petitioner presented its third witness in the person of the Court-commissioned Independent Certified Public Accountant[42] (**ICPA**), Mae Cristina M. Galanza (**Galanza**). On the witness stand, she testified that: (1) she conducted an examination, prepared a report[43], including supporting annexes and schedules, and submitted the same to the Court on 08 July 2019; (2) the documents she reviewed showed that petitioner is entitled to an additional amount of ₱7,160,650.10 on top of what the BIR granted (in the amount of ₱2,836,316.77); and, (3) her findings and conclusions were based on the results of her review of the supporting documents provided to her and taking into account the substantiation rules and regulations on claims for tax refund.[44]

On cross examination, ICPA Galanza also stated that: (1) based on the letter issued by the BIR, it disallowed the other portions of the refund claimed[45]; (2) a big portion thereof pertains to petitioner's input VAT on its big ticket purchases[46]; (3) she was able to verify that petitioner submitted supporting documents but it was still denied because of its big ticket purchases[47]; (4) petitioner declared in the instant Petition for Review that all its services were rendered in favor of only one company which is APL[48]; (5) in her report, the sales subject to 12% VAT pertain to finance income of petitioner from its loan to employees[49]; and, (6) based on the Articles of Incorporation (**AOI**) of

40 Id., pp. 32-33.
41 Id., p. 33.
42 See Order dated 06 June 2019, Division Docket, pp. 279-280.
43 Exhibit "P-16", ICPA Report.
44 See Judicial Affidavit, Exhibit "P-21", Division Docket, pp. 313-321.
45 TSN of 09 October 2019, p. 8.
46 Id.
47 Id., p. 9.
48 Id.
49 Id., p. 10.

petitioner, APL subscribed for ninety-nine (99%) of the former's capital stock.[50] Petitioner did not conduct cross examination.[51]

On 14 October 2019, petitioner filed its Formal Offer of Evidence[52] (**FOE**) with respondent's Comment/Objection[53] filed on 22 October 2019. On 13 November 2019, the Court resolved[54] to admit all of petitioner's documentary evidence, except Exhibits "P-2"[55], "P-3-1"[56] and "P-11"[57] for failure to have the said exhibits identified.

On 21 November 2019, respondent filed a Motion for Leave of Court (To File Demurrer to Evidence)[58] with the attached Demurrer to Evidence.[59]

On 09 December 2019, petitioner filed a Motion for Partial Reconsideration with Manifestation[60] (**MPR**) seeking reconsideration insofar as Exhibits "P-2" and "P-3-1" are concerned and manifesting that the other document denied admission, Exhibit "P-11"[61], is the same as Exhibit "P-16-46" which was already admitted by the Court.

On 10 December 2019, petitioner filed its Comment/Opposition (to the Motion for Leave of Court to File Demurrer to Evidence)[62], to which respondent filed a Reply[63] on 10 January 2020.

On 31 January 2020, the Court issued a Resolution[64] denying respondent's Demurrer to Evidence and partially granting petitioner's MPR but only with respect to Exhibit "P-11".

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[50] Id., p. 10.
[51] Id., p. 11.
[52] Division Docket, pp. 339-350.
[53] Id., pp. 378-379. It merely states that respondent has no objection to the admission of petitioner's exhibits without necessarily admitting its probative value, materiality and relevance for the proposes for which said exhibits are offered.
[54] See Resolution dated 13 November 2019, id., pp. 382-383.
[55] Letter of Reyes Tacandong dated 25 September 2018.
[56] Signature on Letter of Reyes Tacandong.
[57] Amended Quarterly VAT Return for the fourth (4th) quarter of 2018.
[58] Division Docket, pp. 384-387.
[59] Id., pp. 388-402.
[60] Id., pp. 405-411.
[61] Supra at note 57.
[62] Division Docket, pp. 412-416.
[63] Id., pp. 429-433.
[64] Id., pp. 437-442.

On 24 February 2020, respondent presented his only witness, Revenue Officer (**RO**) Jelly Anne T. Mateo (**Mateo**), who testified[65] that: (1) she is an RO presently assigned at TARD of the BIR's National Office; (2) in accordance with Revenue Administrative Order (**RAO**) No. 2-2014[66], the main functions of TARD include, among others, reviewing and evaluating tax audit reports on claims for tax credit/refund and excess input tax credits, preparing reports on the results of such review and recommending appropriate action for the approval of the Assistance Commissioner of Internal Revenue (**ACIR**), Assessment Service; (3) the said functions are further discussed in Revenue Memorandum Circular (**RMC**) No. 17-2018[67]; (4) petitioner's claim was endorsed to their division for final review; (5) she reviewed petitioner's application together with the reports submitted by RDO 44 to come up with her own findings; (6) afterwards, she prepared a Memorandum Report[68] indicating her recommendation for the issuance of VAT refund in favor of petitioner in the reduced amount of ₱2,836,316.77; (7) she found out that there are invoices and ORs submitted by petitioner that do not comply with the invoicing requirements as provided in Section 110[69] in relation to Sections 112[70] and 113[71] of the National Internal Revenue Code (**NIRC**) of 1997, as amended; (8) she likewise verified that the purchases from big ticket suppliers should be disallowed for failure to comply with the documentary requirements as no proof of payment was submitted; and, (9) some of the input VAT attributable to export sales have no proof of foreign currency remittances due to insufficient documents to warrant offsetting arrangement under Q8/A8[72] of RMC 42-2003.[73]

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65 See Judicial Affidavit, Exhibit "R-2", id., pp. 445-452. Although the document does not contain an official marking, it is noted that respondent sought the marking thereof during the hearing on 24 February 2020.

66 ORGANIZATION AND FUNCTIONS OF OFFICES UNDER THE NATIONAL OFFICE PER EO 366.

67 Amending Revenue Memorandum Circular (RMC) No. 89-2017 and Certain Provisions of RMC No. 54-2014 Regarding the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) in Relation to Amendments Made in the National Internal Revenue Code of 1997, as Amended by Republic Act No. 10963, Known as the Tax Reform for Acceleration and Inclusion (TRAIN).

68 Exhibit "R-1", Division Docket, pp. 453-457.

69 **SEC. 110.** *Tax Credits.* - ...

70 **SEC. 112.** *Refunds or Tax Credits of Input Tax* - ...

71 **SEC. 113.** *Invoicing and Accounting Requirements for VAT-Registered Persons.* - ...

72 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:

On cross examination, RO Mateo further testified that: (1) VAT OR is one of the requirements under Section 113[74] of the NIRC of 1997, as amended, to substantiate the purchase of services[75]; (2) Under RMC No. 29-2009[76], the OR needs further substantiations such as delivery receipts, cancelled checks and certified bank statements[77]; (3) the BIR disallowed input VAT on big ticket purchases as it is not compliant, under RMC No. 17-2018[78], with the required documents[79]; (4) under Revenue Memorandum Order (**RMO**) No. 16-2007[80], a big-ticket purchase refers to the purchase made from suppliers whose individual gross annual [cumulative] sales to a particular taxpayer-[purchaser] accounts to more than 5% of the said taxpayer's annual gross purchases[81]; (5) she performed a procedure to verify whether certain suppliers qualify for the said definition and that is by multiplying the total purchases by 5% and those suppliers who exceed such threshold is considered as big ticket suppliers[82]; (6) she performed the said procedure for every supplier that she found in the application for refund[83]; (7) petitioner filed the administrative claim within the reglementary period[84]; (8) in explaining why on page two (2) of her Memorandum Report she mentioned that petitioner failed to present proof of remittances but in page three (3) thereof, she mentioned that

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1. Import documents which created liability accounts in favor of the foreign parent or affiliated company;
2. Other contracts with the foreign or affiliated company that brought about the liabilities which were offset against receivables from export sales;
3. Evidence of proceeds of loans, in case the claimant has received loans or advances from the foreign company;
4. Documents or correspondence regarding offsetting arrangements;
5. Confirmation of the offsetting arrangements by the heads of the business organizations involved;
6. Documents to prove actual export of goods;
7. Documents to prove that the sales are zero-rated sales.

73 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.
74 Supra at note 71.
75 TSN of 24 February 2020, p. 8.
76 Clarifying Certain Issues Relative to the Processing of Claims For Tax Credit/Refund.
77 TSN of 24 February 2020, p. 8.
78 Supra at note 67.
79 TSN of 24 February 2020, p. 10.
80 Prescribing Additional Procedures in the Audit of Input Taxes Claimed in the VAT Returns By Revenue Officers and Amending "Annex B" of Revenue Memorandum Order (RMO) No. 53-98 With Respect to the Checklist of Documents to be Submitted by a Taxpayer Upon Audit of His/Its VAT Liabilities As Well As the Mandatory Reporting Requirements to be Prepared by the Assigned Revenue Officer/s Relative Thereto, All of Which Shall Form an Integral Part of the Tax Docket.
81 TSN of 24 February 2020, p. 11.
82 Id., pp. 11-12.
83 Id., p. 12.
84 Id.

all sales complied with the documentary requirements for zero-rated sales, she insisted that even though it is remitted in acceptable foreign currency, the documents are insufficient to warrant the offsetting arrangement[85]; (9) under RMC No. 42-2003[86], an example of lacking document is the contract with foreign or affiliated company[87]; (10) the RDO and the Regional Office actually approved and recommended the issuance of VAT refund in the amount of ₱10,884,671.22[88]; and, (11) she considers the Regional Office negligent or incompetent to recommend or approve such higher amount with respect to big ticket purchases.[89] Respondent did not conduct any re-direct examination.[90]

On 02 March 2020, respondent filed his FOE[91], without petitioner's comment.[92] In its Resolution dated 16 June 2020[93], the Court resolved to admit all of respondent's documentary evidence.

On 19 August 2020, respondent filed its Memorandum[94] while petitioner filed its own Memorandum[95] on 14 September 2020. On 06 October 2020, the Court submitted the case for decision.[96]

ISSUES

As the parties so stipulated, the issues for this Court's determination are the following:[97]

I.

WHETHER PETITIONER ATLASSIAN PHILIPPINES, INC. RENDERED SERVICES IN THE PHILIPPINES TO PERSON/S ENGAGED IN BUSINESS CONDUCTED OUTSIDE OF THE PHILIPPINES FOR THE FIRST (1ST), SECOND (2ND), THIRD (3RD) AND FOURTH (4TH) QUARTERS OF TAXABLE YEAR (TY) STARTING 01 JULY 2016 AND ENDING 30 JUNE 2017;

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85 Id., pp. 12-13.
86 Supra at note 73.
87 TSN of 24 February 2020, pp. 13-14.
88 Id., pp. 15-16.
89 Id., p. 16.
90 Id., p. 19.
91 Division Docket, pp. 460-462.
92 *Per* Records Verification dated 04 June 2020, id., p. 481.
93 Id., pp. 483-484.
94 Id., pp. 485-506.
95 Id., pp. 508-525.
96 See Resolution dated 06 October 2020, id., p. 527.
97 JSFI, id., p. 284.

II.
WHETHER PETITIONER ATLASSIAN PHILIPPINES, INC. IS ENTITLED TO A TAX REFUND IN THE AGGREGATE AMOUNT OF ₱11,376,078.36 REPRESENTING EXCESS INPUT VALUE-ADDED TAX (VAT) INCURRED FOR THE TAXABLE YEAR (TY) 01 JULY 2016 TO 30 JUNE 2016; AND,

III.
WHETHER RESPONDENT COMMISSIONER OF INTERNAL REVENUE, IN PARTIALLY DENYING A CLAIM FOR TAX REFUND, IS REQUIRED BY LAW AND CONSTITUTION TO PROVIDE SUFFICIENT EXPLANATION AND SPECIFIC LEGAL BASES OF THE DENIAL IN COMPLIANCE WITH THE DUE PROCESS REQUIREMENT OF THE CONSTITUTION.

RULING OF THE COURT

Petitioner anchors its claim for refund on Section 110(B), in relation to Section 112(A) and (C) of the NIRC of 1997, as amended by Republic Act (**RA**) No. 10963[98], otherwise known as Tax Reform for Acceleration and Inclusion (TRAIN). The said provisions read as follows:

...

Sec. 110. *Tax Credits.* —

...

(B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however,* that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

...

[98] 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.

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

In *Luzon Hydro Corporation v. Commissioner of Internal Revenue*[99], the Supreme Court laid down the requisites that must

[99] G.R. No. 188260, 13 November 2013; Citation omitted.

concur in order to allow a claim for refund or tax credit for unutilized input VAT, to wit:

> ...
>
> A claim for refund or tax credit for unutilized input VAT may be allowed only if the following requisites concur, namely: (a) the taxpayer is VAT-registered; (b) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (c) the input taxes are due or paid; (d) the input taxes are not transitional input taxes; (e) the input taxes have not been applied against output taxes during and in the succeeding quarters; (f) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (g) for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas; (h) 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; and (i) the claim is filed within two years after the close of the taxable quarter when such sales were made.
>
> ...

We shall now proceed to the determination of petitioner's compliance with aforementioned requisites. For an orderly discussion, We shall start with the first (1^{st}) and ninth (9^{th}) requisites, followed by the second (2^{nd}) and seventh (7^{th}) requisites, then third (3^{rd}), fourth (4^{th}), fifth (5^{th}) and eighth (8^{th}) requisites.

<u>FIRST (1^{ST}) REQUISITE:</u>
PETITIONER IS A VALUE-ADDED TAX (VAT)-REGISTERED ENTITY

Petitioner complied with the first requisite considering that it is VAT-registered entity with Tax Identification Number (**TIN**) 008-614-557-000 as evidenced by its Certificate of Registration OCN 9RC0000442242 with registration date of 31 October 2013.[100]

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100 Exhibit "P-4", Supra at note 8.

NINTH (9TH) REQUISITE:
PETITIONER'S ADMINISTRATIVE AND JUDICIAL CLAIMS WERE FILED WITHIN THE PRESCRIPTIVE PERIOD.

In accordance with the above-cited Section 112(A) and (C)[101] of the NIRC of 1997, as amended, the administrative claim for refund of excess input VAT must be 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.

The instant administrative claim covers the four (4) quarters of FY ending 30 June 2017. Thus, petitioner's last day for filing of its administrative claim and the actual filing of administrative claim for the four (4) quarters of FY 2017 fell on the following dates:

Period Covered	**Last Day to File Administrative Claim**	**Actual Date of Filing of Administrative Claim**
July to September 2016 (1st Quarter)	September 30, 2018	September 28, 2018[102]
October to December 2016 (2nd Quarter)	December 31, 2018	
January to March 2017 (3rd Quarter)	March 31, 2019	
April to June 2017 (4th Quarter)	June 30, 2019	

Clearly, petitioner's administrative claim for refund was seasonably filed within the prescriptive period.

As to the timeliness of petitioner's judicial claim, respondent had ninety (90) days to decide on petitioner's claim or until 27 December 2018. Considering that respondent, through ACIR Simple, issued a letter dated 12 December 2018[103] partially denying ₱11,376,078.36 out of the total claim for VAT refund amounting to ₱14,212,395.13 and the same was received by petitioner on 19 December 2018[104], the latter had thirty (30) days therefrom or until 18 January 2019, within which to file

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[101] Supra at p. 13.
[102] Exhibit "P-3", Supra at note 14.
[103] Exhibit "P-16-3", Supra at note 15.
[104] Question & Answer No. 14, Judicial Affidavit of Ms. Estela Joy Intig-Mari Dated 3 May 2019, Division Docket, p. 146; TSN of 22 July 2019, pp. 32-33.

a judicial claim before this Court. Thus, the instant Petition for Review was also seasonably filed on 18 January 2019.

SECOND (2ND) AND SEVENTH (7TH) REQUISITES:
PETITIONER IS ENGAGED IN ZERO-RATED OR EFFECTIVELY ZERO-RATED SALES AND FOR WHICH, THE ACCEPTABLE FOREIGN CURRENCY EXCHANGE PROCEEDS HAVE BEEN DULY ACCOUNTED FOR IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE BANGKO SENTRAL NG PILIPINAS (BSP).

The 2nd and 7th requisites, respectively, require that the taxpayer is engaged in zero-rated or effectively zero-rated sales and, for zero-rated sales under Sections 106(A)(2)(a)(1), (2)[105] and (B)[106], and 108(B)(1) and (2)[107] of the NIRC of 1997, as amended, the acceptable

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105 **Sec. 106.** *Value-Added Tax on Sale of Goods or Properties.* –

(A) *Rate and Base of Tax.* – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to twelve percent (12%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

...

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* - The term 'export sales' means:

1. The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
2. Sale and delivery of goods to:
   (i) Registered enterprises within a separate customs territory as provided under special laws; and
   (ii) Registered enterprises within tourism enterprise zones as declared by the Tourism Infrastructure and Enterprise Zone Authority (TIEZA) subject to the provisions under Republic Act No. 9593 or the Tourism Act of 2009.

...

106 **Sec. 106.** *Value-Added Tax on Sale of Goods or Properties.* –

(B) *Transactions Deemed Sale.* – The following transactions shall be deemed sale:

...

107 **Sec. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties.* –

...

(B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in

foreign currency exchange proceeds must have been duly accounted for in accordance with the Bangko Sentral ng Pilipinas (**BSP**) rules and regulations.

In this case, petitioner claims that its sale of outsourcing services and support solutions to its related party, APL, an NRFC established under the laws of Australia, is a transaction subject to 0% VAT pursuant to Section 108(B)(2) of the NIRC of 1997, as amended, which states:

> ...
>
> **SEC. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —
>
> ...
>
> (B) *Transactions Subject to Zero Percent (0%) Rate* — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate.
>
> > (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
> >
> > (2) **Services other than those mentioned in the preceding paragraph**, rendered to **a** person engaged in business conducted outside the Philippines or to a **nonresident person not engaged in business who is outside the Philippines when the services are performed the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).**[108]
>
> ...

---

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 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* (BSP);

...

[108] Emphasis supplied.

In *Accenture, Inc. v. Commissioner of Internal Revenue*[109] (**Accenture**), citing *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[110], the Supreme Court held that in order for the supply of services to be considered VAT zero-rated under the above-mentioned provision, the taxpayer-claimant must prove the following:

1. services other than processing, manufacturing or repacking of goods rendered by VAT registered persons in the Philippines;

2. the transaction paid for in acceptable foreign currency duly accounted for in accordance with BSP rules and regulations; and,

3. the recipient of such services must be performing business outside the Philippines.

As to the 1st requirement, it is evident from its Amended AOI[111] that petitioner is primarily engaged in the "business of providing outsourcing services and support solutions, including but not limited to back office technology support, call or contact center activities, data entry and encoding, data management, general human resource functions (without engaging in the business of recruitment and placement), business planning, accounts receivable management, general legal support services, customer support services and customer relationship management, sale support and other industry specific purposes and other similar services, and to provide support to all aspects of the business of affiliates and related companies and operations, without engaging as an internet service provider".

Clearly, the nature of services being rendered by petitioner falls within the scope of services other than "processing, manufacturing or repacking of goods" contemplated under Section 108(B)(2) of the NIRC of 1997, as amended.

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109 G.R. No. 190102, 11 July 2012.
110 G.R. No. 153205, 22 January 2007.
111 Exhibit "P-1", BIR Records, Folder 7, pp. 1416-1425.

Before proceeding with the discussion of the 2nd requirement, the Court deems it more appropriate to first discuss petitioner's compliance with the 3rd requirement (as laid down in *Accenture*) which requires that the recipient of such services must be performing business outside the Philippines.

In *Commissioner of Internal Revenue v. Deutsche Knowledge Services, Pte. Ltd.*[112], the Supreme Court discussed the two components that the claimant must establish to prove its clients' status as an NRFC, to wit:

> ...
>
> 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.**
>
> ...
>
> 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.
>
> ...
>
> 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 their affiliates are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines.**

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112 G.R. No. 234445, 15 July 2020; Citations omitted, italics in the original text and emphasis supplied.

> Proof of the above-mentioned second component sets the present case apart from *Accenture, Inc. v. Commissioner of Internal Revenue* and *Sitel Philippines Corp. v. Commissioner of Internal Revenue*. In these cases, the claimants similarly presented SEC Certifications and client service agreements. However, the Court consistently ruled that documents of this nature only establish the *first* component (*i.e.*, that the affiliate is foreign). The absence of any other competent evidence (*e.g.*, articles of association/ certificates of incorporation) proving the *second* component (*i.e.*, that the affiliate is not doing business here in the Philippines) shall be fatal to a claim for credit or refund of excess input VAT attributable to zero-rated sales.
>
> ...

As held in the said case, there must be sufficient proof of both components – (1) that the clients are **foreign corporation** (which can be proven by the SEC Certifications of Non-Registration); and, (2) also **not doing business in the Philippines** (the *prima facie* proof of which is the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines).

In the instant case, to prove that petitioner rendered services to an NRFC, it presented APL's SEC Certification of Non-Registration[113], Authenticated Certificate of the Registration[114], Certificate of Residency issued by the Australian Taxation Office[115], and the Services Agreement.[116]

Respondent, however, argues that petitioner appears to have been established only for the purpose of rendering services to a sole client or APL. He further claims that petitioner is an extension of APL's personality to do business in the Philippines hence, the same cannot be considered as not doing business in the Philippines.

We disagree.

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113 Exhibit "P-16-2", Supra at note 25.
114 Exhibit "P-19", Division Docket, pp. 372-374.
115 Exhibit "P-20", id., pp. 375-376.
116 Exhibit "P-18", id., pp. 364-371.

In *Agilent Technologies Singapore (Pte) Ltd. v. Integrated Silicon Technology Philippines Corporation, et al.*[117], the Supreme Court reiterated the rule laid down in *The Mentholatum Co., Inc., et al. v. Anacleto Mangaliman, et al.*[118], with respect to the two general tests to determine whether or not a foreign corporation can be considered as "doing business" in the Philippines, *viz*:

> ...
>
> The challenge to Agilent's legal capacity to file suit hinges on whether or not it is doing business in the Philippines. However, there is no definitive rule on what constitutes "doing", "engaging in", or "transacting" business in the Philippines, as this Court observed in the case of *Mentholatum v. Mangaliman*. The Corporation Code itself is silent as to what acts constitute doing or transacting business in the Philippines.
>
> Jurisprudence has it, however, that the term "implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to or in progressive prosecution of the purpose and subject of its organization."
>
> In *Mentholatum*, this Court discoursed on the two general tests to determine whether or not a foreign corporation can be considered as "doing business" in the Philippines. The first of these is the <u>substance</u> test, thus:
>
> > The true test [for doing business], however, seems to be whether the foreign corporation is continuing the body of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another.
>
> The second test is the <u>continuity</u> test, expressed thus:
>
> > The term [doing business] implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in the progressive prosecution of, the purpose and object of its organization.
>
> ...

117 G.R. No. 154618, 14 April 2004; Citations omitted and underscoring in the original text.
118 G.R. No. L-47701, 27 June 1941.

The said rulings are echoed in the case of *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue*[119], citing *Commissioner of Internal Revenue v. British Overseas Airways Corporation, et al.*[120], to wit:

> ...
>
> There is no specific criterion as to what constitutes "doing" or "engaging in" or "transacting" business. We ruled thus in *Commissioner of Internal Revenue v. British Overseas Airways Corporation*:
>
> > x x x. There is no specific criterion as to what constitutes "doing" or "engaging in" or "transacting" business. Each case must be judged in the light of its peculiar environmental circumstances. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization. "**In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character.**"
>
> ...

Upon perusal of the Services Agreement[121] entered into by petitioner with APL, the services rendered by petitioner are limited to the following administrative and support services:

a) accounting, treasury and related financial services, legal services, human resources services, marketing services, administrative services;
b) technical support to customers;
c) information technology support including office networking;
d) research, development, product strategy and engineering services;

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119 G.R. No. 201326, 08 February 2017; Emphasis in the original text.
120 G.R. Nos. L-65773-74, 30 April 1987.
121 Supra at note 116.

e) professional and consultancy services, e.g. the implementation/installation of software, related professional consulting services and training;
f) management services; and
g) such other functions as may be agreed between the Parties from time to time.

Applying the two general tests above, the Services Agreement shows no indication that petitioner is continuing the body or substance of APL's software development activities and that the latter performs acts or exercises of some of the functions normally incident to, and in the progressive prosecution of, the purpose and object of its organization.

In insisting that APL is doing business in the Philippines through petitioner, respondent also cited *Institutional Shareholder Services, Inc.-Philippine ROHQ v. Commissioner of Internal Revenue*, (**ISSI-ROHQ**)[122], where this Court ruled that an ROHQ's sale of services in favor of its mother company is not subject to VAT zero-rating considering that the mother company and the ROHQ are one and the same person. Unfortunately, a review on the said case could only reveal that it is clearly not on all fours with the instant case.

In *ISSI-ROHQ*, the taxpayer-applicant is a regional operating headquarter (**ROHQ**) by virtue of RA 8756.[123] Owing to its nature as an ROHQ as defined in the law, for purposes of determining compliance with Section 108(B)(2) of the NIRC of 1997, as amended, the mother foreign company of the ROHQ cannot be treated as a separate entity. However, petitioner in the instant case is not an ROHQ but a duly registered domestic corporation as evinced by its Amended AOI[124] that is authorized to provide **outsourcing services and support solutions to all aspects of the business of affiliates and related companies**. Furthermore, the foreign company in the instant case is not the parent company of petitioner but **just a related party under common control** as disclosed in petitioner's Audited Financial

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[122] CTA Case No. 7662, 03 June 2010.
[123] AN ACT PROVIDING FOR THE TERMS, CONDITIONS AND LICENSING REQUIREMENTS OF REGIONAL OR AREA HEADQUARTERS, REGIONAL OPERATING HEADQUARTERS, AND REGIONAL WAREHOUSES OF MULTINATIONAL COMPANIES, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF EXECUTIVE ORDER NO. 226, OTHERWISE KNOWN AS THE OMNIBUS INVESTMENTS CODE OF 1987.
[124] Supra at note 111.

Statements.[125] Thus, petitioner's client, APL, cannot be considered as doing business in the Philippines.

With respect to the 3rd requirement that payment for such services must be in acceptable foreign currency duly accounted for in accordance with the rules and regulations of the BSP, petitioner presented documents such as: (1) Certificate of Inward Remittance[126] issued by Bank of America Merrill Lynch (BA); (2) ORs[127]; (3) Schedule of Offsetting[128]; (4) Debit and Credit Memos[129]; and, (5) Intercompany Journal Entries for Offsetting.[130]

As noted by the ICPA, only ₱152,601,562.11 out of ₱156,585,229.48[131] was traced to the Certificate of Inward Remittance, broken down as follows:

Date	Certificate of Inward Remittance	
	Amount in USD	Amount in PHP
11 August 2016	313,880.50	14,651,941.74
19 September 2016	253,862.95	12,132,110.38
19 October 2016	213,220.49	10,260,169.98
17 November 2016	249,368.04	12,273,894.93
15 December 2016	251,663.79	12,544,181.61
13 January 2017	307,471.25	15,235,200.44
13 February 2017	295,721.22	14,743,181.42
13 March 2017	328,568.39	16,510,561.60
12 April 2017	255,397.17	12,670,253.60
11 May 2017	298,061.07	14,871,757.09
15 June 2017	338,019.61	16,708,309.32
Total	**3,105,234.48**	**152,601,562.11**

It was found out that the amounts reflected in the Certificate of Inward Remittance were net of certain expenses of petitioner that were paid using a corporate credit card registered under the name of APL and were recorded in petitioner's books as payables to the said foreign company.

125 Exhibit "P-16-30", Note 10 – Related Party Transactions, p. 18.
126 Exhibit "P-16-27", USB (Exhibit "P-22").
127 Exhibit "P-16-19", id.
128 Exhibit "P-16-28", id.
129 Exhibits "P-16-25" and "P-16-26", id.
130 Exhibit "P-16-29", id.
131 Computed by deducting the ₱23,898,731.57 (out-of-period OR No. 1023, as would be discussed below) from ₱180,483,961.05.

Q-8 & A-8 of RMC No. 42-2003[132] enumerates the documents required in an offsetting arrangement, as follows:

> ...
>
> 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; [and,]
> g. Documents to prove that the sales are zero-rated sales.[133]
>
> ...

To support its claim, petitioner presented its Schedule of Offsetting[134] and Intercompany Journal Entries for Offsetting.[135] However, We find these two pieces of evidence to be self-serving> Aside from the fact that it was petitioner itself that prepared and recorded them, there were also no not accompanied by any other supporting documents. We also take note that source documents such as credit card slips with third-party invoices or ORs bearing the details of APL, among others, were not adduced as evidence.

132 Supra at note 73.
133 Emphasis supplied.
134 Exhibit "P-16-28", USB (Exhibit "P-22").
135 Exhibit "P-16-29", id.

It bears stressing that these advances were not provided nor mentioned in the Services Agreement between petitioner and APL. The Services Agreement only provides for the calculation of petitioner's service fee wherein the latter would bill APL of the cost incurred in rendering services plus margin. Corollary, there was no disclosure on the movement in related party trade payable in petitioner's Audited Financial Statements.

Given the foregoing disquisition, petitioner did not sufficiently establish its offsetting arrangement with APL in accordance with RMC No. 42-2003.[136] Hence, the zero-rated sales that were not traced to the Certificate of Inward Remittance totalling ₱3,983,667.37 shall be disallowed and deducted from the amount of valid and substantiated zero-rated sales, as determined below.

As indicated in petitioner's quarterly VAT returns for the FY ending 30 June 2017, petitioner declared zero-rated sales to APL in the total amount of ₱180,483,961.05, detailed as follows:

Period	Zero-Rated Sales	BIR Records Page No.
July to September 2016 (1st Quarter)	₱38,404,320.22	1464-1465
October to December 2016 (2nd Quarter)	40,745,087.12	1475-1477
January to March 2017 (3rd Quarter)	44,969,839.83	1484-1486
April to June 2017 (4th Quarter)	56,364,713.88	1493-1494
Total	**₱180,483,961.05**	

In examining the above, the ICPA determined that OR No. 1023[137], which supports the zero-rated sale reported for the month of June 2017 amounting to $480,164.18 (equivalent to ₱23,898,731.57) shall be disallowed since it is dated **13 July 2017** or outside the period of claim (01 July 2016 to 30 June 2017).

Moreover, the ICPA also found that there is an unreported zero-rated gross receipt from APL amounting to ₱27,525,053.87[138] as evidenced by OR No. 1011[139] dated 21 July 2016. However, the ICPA

[136] Supra at note 73.
[137] Exhibit "P-16-19", USB (Exhibit "P-22"), p. 12.
[138] Exhibit "P-16", Supra at note 43, p. 12.
[139] Exhibit "P-16-21", USB (Exhibit "P-22"), p. 1.

nevertheless included the same in the total zero-rated sales supported by VAT zero-rated sale ORs dated within FY ending June 2017.[140]

We do not agree.

As held by this Court in *Commissioner of Internal Revenue v. Northwind Power Dev't. Corporation*[141], unreported zero-rated sales must be disallowed pursuant to Section 114(A)[142] in relation to Section 108[143] of the NIRC of 1997, as amended, to wit:

> ...
>
> In the similarly assailed Resolution of June 26, 2013, which effectively affirmed the Decision of March 12, 2013, the Court in Division further explained, thus:
>
> > "As regards the first ground, We reiterate our findings/ruling in the Assailed Decision that only the amount of P34,352,340.07 was reflected as zero-rated receipts in petitioner's Quarterly VAT Return for the 2nd quarter of 2008.
> >
> > The difference of P22,456,725.94 was allegedly recognized in the 3rd and 4th quarters of 2008. Petitioner, however, failed to substantiate the said allegations even if the difference of P22,456,725.94 was indeed reported in the said quarters.
> >
> > Pursuant to Section 114(A) in relation to Section 108 of the NIRC of 1997, as amended, petitioner should have reported the zero-rated sales of P22,456,725.94 in its Quarterly VAT Returns for the period the payments were received, i.e., on June 2008 which is covered by the 2nd quarter of 2008.

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140 Exhibit "P-16", Supra at note 43, p. 12.

141 CTA EB Case Nos. 1037 & 1042, 16 December 2014; Emphasis supplied.

142 **SEC. 114.** *Return and Payment of Value-added Tax.* —
(A) In General. — Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.
...

143 **SEC. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties.* –
...

> Since the input VAT sought to be refunded in the amount of P51,936,956.05 is attributable to petitioner's gross receipts from sale of electricity to Ilocos Norte Electric Cooperative (INEC), **in the amount of P56,809,066.01, and, inasmuch as only the amount of P34,352,340.07 was declared in its 2nd Quarterly VAT Return**, it is but proper to apportion the substantiated input VAT over the volume of zero-rated sales per official receipts and **only the amount attributable to the zero-rated sales of P34,352,340.07 may be claimed for refund.**
>
> Thus, **there is no plausible reason why petitioner should be entitled to a refund of the substantiated input VAT without allocating its reported zero-rated sales to sales per official receipts because the substantiated input VAT covers the entire zero-rated sales, both reported and unreported sales for the quarter**. In disallowing a portion of petitioner's zero-rated sales, it essentially follows that a portion of the claim for refund of input VAT attributable to such zero-rated sales should also be disallowed by the Court. Otherwise, We will be disregarding the substantiation of petitioner's zero-rated sales thereby negating its effect on the amount of unutilized input VAT claimed for refund.
>
> In the instant case, since some of the zero-rated sales were not reported in the appropriate period when such sales were made, it is apt for the Court to apportion the input VAT because it is impossible to specifically pinpoint what input VAT is directly attributable to such reported zero-rated sales."

...

Clearly, the unreported gross receipt amounting to ₱27,525,053.87 must likewise be disallowed for purposes of determining the amount of substantiated input VAT to be refunded to petitioner.

To summarize, petitioner's duly substantiated zero-rated sales for the FY ending 30 June 2017 amounted to ₱152,601,562.11, computed as follows:

Particulars	FY 2017
Zero-Rated Sales	₱180,483,961.05
Add: Unreported zero-rated sales	27,525,053.87
Total zero-rated sales	**208,009,014.92**
Less: *Disallowance by the ICPA*	
1) Zero-rated sale supported by VAT Zero-Rated OR dated outside FY ending 30 June 2017	23,898,731.57
Disallowances by the Court	
1) Zero-rated sales that were not traced to the Certificate of Inward Remittance	3,983,667.37
2) Unreported zero-rated sales	27,525,053.87
Total valid and substantiated zero-rated sales	**₱152,601,562.11**

<u>THIRD (3RD), FOURTH (4TH), FIFTH (5TH), and EIGHTH (8TH) REQUISITES:</u>
PETITIONER INCURRED UNUTILIZED INPUT VALUE-ADDED TAX (VAT) ATTRIBUTABLE TO ITS ZERO-RATED SALES.

The Court shall jointly determine whether petitioner complied with the following remaining requisites:

a. 3rd requisite: the input taxes are due or paid;

b. 4th requisite: the input taxes are not transitional input taxes;

c. 5th requisite: the input taxes have not been applied against output taxes during and in the succeeding quarters; and,

d. 8th requisite: 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.

In its quarterly VAT returns for FY ending 30 June 2017[144], petitioner declared excess and unutilized input VAT of ₱14,212,395.13 on its domestic purchases of capital goods exceeding and not exceeding ₱1 Million, purchases of goods other than capital goods and services as well as the amortization of capital goods, as shown below:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Input Tax Deferred on Capital Goods Exceeding 1Million from Previous Quarter	₱1,836,745.35	₱1,854,817.05	₱1,419,983.95	₱985,150.85	₱6,096,697.20
Input tax on purchase of Capital Goods not exceeding P1Million				107,142.86	107,142.86
Input tax on purchase of Capital Goods exceeding P1Million	418,065.96				418,065.96
Input tax on domestic purchase of goods other than capital goods	264,980.65	319,140.98	442,601.73	434,692.64	1,461,416.00
Input tax on domestic purchase of services	2,456,866.23	567,981.45	2,055,666.45	5,168,327.98	10,248,842.11
Input tax on services rendered by non-residents	132,400.59	106,305.45	119,555.41	332,239.15	690,500.60
Total Input Tax	5,109,058.78	2,848,244.93	4,037,807.54	7,027,553.48	19,022,664.73
Less: Input tax on purchases of capital goods exceeding ₱1 million deferred for succeeding period	1,854,817.05	1,419,983.95	985,150.85	550,317.75	550,317.75
Total Allowable Input VAT Refund	**₱3,254,241.73**	**₱1,428,260.98**	**₱3,052,656.69**	**₱6,477,235.73**	**₱14,212,395.13**

As regards the 4th requisite, in one case it has been stated that "transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisition of their beginning inventory of goods, materials and supplies."[145] Additionally, during that 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.

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144 Exhibits "P-16-7", "P-16-8", "P-16-9" and "P-16-10", USB (Exhibit "P-22").

145 *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, et al.*, G.R. No. 158885, 02 April 2009.

In herein case, since there is no showing that the claimed input VAT is transitional input tax, petitioner is deemed to have complied with the 4th requisite.

With respect to the 3rd requisite, petitioner provided supporting documents to prove that the input VAT claimed during the subject periods are actually due or paid, such as invoices or ORs from its suppliers. However, as stated in the ICPA Report, petitioner's input VAT claim in the amount of ₱2,892,764.23 must be disallowed for not being properly substantiated by VAT zero-rated ORs as prescribed under Sections 110(A)[146] and 113(A) and (B),[147] of the NIRC of 1997, as

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146 **SEC. 110.** *Tax Credits.* —

(A) *Creditable input Tax.* —

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods:

(i) For sale; or

(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or

(iii) For use as supplies in the course of business; or

(iv) For use as materials supplied in the sale of service; or

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

(b) Purchase of services on which a value-added tax has actually been paid.

(2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000): *Provided, however*, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, finally*, That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

(3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows:

(a) Total input tax which can be directly attributed to transactions subject to value-added tax; and

(b) A ratable portion of any input tax which cannot be directly attributed to either activity.

The term 'input tax' means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.

The term 'output tax' means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code.

147 **SEC. 113.** *Invoicing and Accounting Requirements for VAT-Registered Persons.* -

amended, in relation to Sections 4.110-2[148], 4.110-3[149], 4.110-8[150] and 4.113-1[151] of Revenue Regulations (RR) No. 16-2005[152], as amended. The ICPA's findings[153] are as follows:

(A) *Invoicing Requirements.* - A VAT-registered person shall issue:
(1) A VAT invoice for every sale, barter or exchange of goods or properties; and
(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* - The following information shall be indicated in the VAT invoice or VAT official receipt:
(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax. *Provided, That*:
(a) The amount of the tax shall be known as a separate item in the invoice or receipt;
(b) If the sale is exempt from value-added tax, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;
(c) If the sale is subject to zero percent (0%) value-added tax, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt.
(d) If the sale involved goods, properties or services some of which are subject to and some of which are VAT zero-rated or Vat exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be known on the invoice or receipt: *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.
(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and
(4) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.

...

148 **SEC. 4.110-2.** *Persons Who Can Avail of the Input Tax Credit.* - The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:
(a) To the importer upon payment of VAT prior to the release of goods from customs custody;
(b) To the purchaser of the domestic goods or properties upon consummation of the sale; or
(c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee.

149 **SEC. 4.110-3.** *Claim for Input Tax on Depreciable Goods.* - Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million pesos (P1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:

(a) If the estimated useful life of a capital good is five (5) years or more – The input tax shall be spread evenly over a period of sixty (60) months and the claim for input tax credit will commence in the calendar month when the capital good is acquired. The total input taxes on purchases or importations of this type of capital goods shall be divided by 60 and the quotient will be the amount to be claimed monthly.

(b) If the estimated useful life of a capital good is less than five (5) years – The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of the capital good. The claim for input tax credit shall commence in the calendar month that the capital goods were acquired.

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed One million pesos (P1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition; Provided, however, that the total amount of input taxes (input tax on depreciable capital goods plus other allowable input taxes) allowed to be claimed against the output tax in the quarterly VAT Returns shall be subject to the limitation prescribed under Sec. 4.110-7 of these Regulations.

The aggregate acquisition cost of a depreciable asset in any calendar month refers to the total price agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired in instalment for an acquisition cost of more than P1,000,000.00 will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed P1,000,000.00.

...

[150] **SEC. 4.110-8.** *Substantiation of Input Tax Credits.* -
(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:
(1) For the importation of goods - import entry or other equivalent document showing actual payment of VAT on the imported goods.
(2) For the domestic purchase of goods and properties – invoice showing the information required under Secs. 113 and 237 of the Tax Code.
(3) For the purchase of real property – public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.
(4) For the purchase of services – official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code.

[151] **SEC. 4.113-1.** *Invoicing Requirements.* -
(A) A VAT-registered person shall issue: -
(1) A VAT invoice for every sale, barter or exchange of goods or properties; and
(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or official receipts. Said documents shall be considered as a "VAT Invoice" or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice /official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) Information contained in VAT invoice or VAT official receipt. – The following information shall be indicated in VAT invoice or VAT official receipt:
(1) A statement that the seller is a VAT-registered person, followed by his TIN;
(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided,* That:

> (a) The amount of tax shall be shown as a separate item in the invoice or receipt;
> (b) If the sale is exempt from VAT, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;
> (c) If the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;
> (d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) In the case of sales in the amount of one thousand pesos (P1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of

	Nature	Reference	Amount
1.	Input VAT on domestic purchases of goods and services supported by VAT invoices and ORs, respectively, dated within the period July 1, 2016 to June 30, 2017, but with incorrect petitioner's registered name	Annex Q of the ICPA Report	₱16,586.48
2.	Input VAT on domestic purchases of goods and services supported by VAT invoices and ORs, respectively, dated within the period July 1, 2016 to June 30, 2017, but with incomplete petitioner's address (i.e., without floor and building number)	Annex R of the ICPA Report	11,815.44
3.	Input VAT on domestic purchases of goods supported by VAT invoices dated within the period July 1, 2016 to June 30, 2017, but with incorrect petitioner's TIN	Annex S of the ICPA Report	14,450.56
4.	Input VAT on domestic purchases of goods supported by VAT invoices dated within the period July 1, 2016 to June 30, 2017, but petitioner's TIN and/or address not indicated	Annex T of the ICPA Report	1,783.13
5.	Input VAT on domestic purchases of goods and services supported by VAT invoices and ORs dated within the period July 1, 2016 to June 30, 2017, with countersigned alterations but the countersignature is not the same with that of the signatory appearing on the invoice/OR	Annex U of the ICPA Report	3,048.75
6.	Input VAT on domestic purchase of goods supported by VAT invoice, but with no date indicated	Annex V of the ICPA Report	6,192.60
7.	Input VAT on domestic purchases of goods and services supported by VAT invoices and ORs, respectively, dated within the period July 1, 2016 to June 30, 2017, but the amount of VAT is not separately indicated	Annex W of the ICPA Report	97,991.78
8.	Input VAT on domestic purchases of services supported by VAT ORs dated within the period July 1, 2016 to June 30, 2017, with countersigned insertions/alterations supported by certification authorizing representative of supplier to make adjustments on the invoices/ORs and photocopies of the company/government IDs of the approving officer and the authorized representative, but the certification is not signed by the authorized representative and/or the approving officer	Annex X of the ICPA Report	79,776.39
9.	Input VAT on domestic purchases of goods and services supported by VAT invoices and ORs, respectively, dated within the period July 1, 2016 to June 30, 2017,with countersigned insertions/alterations supported by certification authorizing representative of supplier to make adjustments on the invoices/ORs and photocopies of the IDs of the approving officer and the authorized representative, but the IDs indicate a different company	Annex Y of the ICPA Report	113,169.79
10.	Input VAT on domestic purchases of goods and services	Annex Z of	33,204.29

the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section.

152 Consolidated Value-Added Tax Regulations of 2005.

153 Exhibit "P-16", Supra at note 43, pp. 17-20.

	Nature	Reference	Amount
	supported by VAT invoices and ORs, respectively, dated within the period July 1, 2016 to June 30, 2017, issued in the shortened name petitioner (i.e., Atlassian Phils. Inc./ Atlassian Phil. Inc), but with issues on the other required information (e.g., TIN not indicated, incomplete address, incorrect TIN, VAT not separately indicated, incorrect VAT amount)	the ICPA Report	
11.	Input VAT on domestic purchases of goods and services supported by VAT invoices and ORs, respectively, dated within the period July 1, 2016 to June 30, 2017, issued in the shortened name of petitioner (i.e., Atlassian Phils. Inc./ Atlassian Phil. Inc), but with alterations not countersigned or the countersignature is not the same with that of the signatory appearing on the invoice/OR	Annex AA of the ICPA Report	22,864.36
12.	Input VAT on domestic purchases of goods supported by VAT invoices with no BIR accreditation/permit number	Annex AB of the ICPA Report	335.27
13.	Input VAT on domestic purchases of goods and services supported by ONLY by certified true copy VAT invoices and VAT ORs, respectively, dated within the period July 1, 2016 to June 30, 2017, without proof that the certifier named is the actual and authorized custodian of the said documents	Annex AC of the ICPA Report	174,341.45
14.	Input VAT on domestic purchase of service supported by VAT OR dated within the period July 1, 2016 to June 30, 2017, but not in petitioner's name	Annex AD of the ICPA Report	698.40
15.	Amortization of input VAT on purchase of services from nonresident which should have been claimed at the time the VAT was remitted to the BIR as supported by the filed Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld (BIR Form No. 1600) and related proof of remittance to the BIR	Annex AE of the ICPA Report	174,194.20
16.	Amortization of input VAT on prior FYs' domestic purchases of services related to construction-in-progress (CIP) which should have been claimed in the periods when the payments were made, as supported by the related VAT ORs	Annex AF of the ICPA Report	1,422,150.80
17.	Input VAT on domestic purchases of goods and services supported by VAT invoices and ORs, respectively, but dated outside FY 2017	Annex AG of the ICPA Report	14,133.59
18.	Input VAT on domestic purchases of goods and services not supported by VAT invoices and ORs, respectively	Annex AH of the ICPA Report	438,171.40
19.	Input VAT on duplicate domestic purchase of goods supported by VAT invoice dated within the period July 1, 2016 to June 30, 2017 effectively claimed twice (the duplicate is disallowed)	Annex AI of the ICPA Report	271.28
20.	Input VAT on domestic purchases of goods and services where supporting documents were not available for verification	Annex AJ of the ICPA Report	259,747.54
21.	Input VAT on domestic purchases of goods and services	Annexes G,	3,811.79

	Nature	Reference	Amount
	supported by VAT invoices or VAT ORs, respectively, dated within the period July 1, 2016 to June 30, 2017, but the input VAT claimed is higher than the VAT per supporting document (overclaimed input VAT is disallowed)	J, K, M, and N of the ICPA Report	
22.	Disallowed portions of the input VAT on domestic purchases of goods supported by VAT invoices dated within the period July 1, 2016 to June 30, 2017, issued in the shortened name of the Company (i.e., Atlassian Phils. Inc./ Atlassian Phil. Inc.) where the input VAT claimed is higher than the recomputed VAT on the VATable sale per invoice (overclaimed input VAT is disallowed)	Annex P of the ICPA Report	4,024.94
Total			**₱2,892,764.23**

Upon further examination of the ICPA Report and the other submitted documentary evidence, the Court finds that an additional amount of ₱326,081.03 shall likewise be disallowed for failure to meet the substantiation requirements, as listed below:

Exhibit	Supplier	Amount	Reason
a. Input Taxes on Services rendered by Nonresidents			
"P-16-42" page nos. 34-36	NORTHLAND CONTROL SYSTEMS INC	₱55,725.33	WVAT Return was filed and remitted outside the period of claim
	NTT AUSTRALIA PTY LTD	173,927.18	
	Subtotal	***₱229,652.51***	
b. Amortization of deferred input VAT on purchases of capital goods exceeding ₱1 Million			
"P-16-40" page nos. 583-584	RAINNOVATE SOLUTIONS, INC.	₱96,428.52	VAT invoices do not contain petitioner's TIN
	Total	**₱326,081.03**	

Anent the input taxes on services rendered by non-residents, it must be noted that Sections 4.110-8(a) and (c) and 4.114-2(b) of RR No. 16-2005[154], as amended, provide:

...

SEC. 4.110-8. *Substantiation of Input Tax Credits.* —

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against

[154] Supra at note 152.

zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

...

(d) Input tax from payments made to non-residents (such as for services, rentals and royalties) **shall be supported by a copy of the Monthly Remittance Return of Value Added Tax Withheld (BIR Form 1600) filed by the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor.**

...

SEC. 4.114-2. *Withholding of VAT on Government Money Payments and Payments to Non-Residents.* —

...

(b) The government or any of its political subdivisions, instrumentalities or agencies, including GOCCs, as well as private corporations, individuals, estates and trusts, whether large or non-large taxpayers, shall withhold twelve percent (12%) VAT, starting February 1, 2006, with respect to the following payments:

(1) Lease or use of properties or property rights owned by non-residents;

(2) Other services rendered in the Philippines by non-residents.

In remitting VAT withheld, the withholding agent shall use BIR Form No. 1600 - Remittance Return of VAT and Other Percentage Taxes Withheld.

VAT withheld and paid for the non-resident recipient (remitted using BIR Form No. 1600), which VAT is passed on to the resident withholding agent by the non-resident recipient of the income, **may be claimed as input tax by said VAT-registered withholding agent upon filing his own VAT Return**, subject to the rule on allocation of input tax among taxable sales, zero-rated sales and exempt sales. **The duly filed BIR Form No. 1600 is the proof or documentary substantiation for the claimed input tax or input VAT.**[155]

...

[155] Emphasis and underscoring supplied.

As can be gleaned from the afore-quoted provisions, the withholding VAT (**WVAT**) may be claimed as input tax credit **in the month such WVAT is withheld and remitted to the BIR** supported by BIR Form No. 1600. However, in the instant case, the June 2017 WVAT Return[156] was remitted to the BIR on **11 July 2017**[157], which is outside the period of claim of 01 July 2016 to 30 June 2017.

Thus, out of petitioner's claimed input VAT of ₱14,212,395.13 for FY ending 30 June 2017, only the amount of ₱10,993,549.87 represents the substantiated input VAT, computed as follows:

Claimed Input VAT Less: Disallowances		₱14,212,395.13
Per ICPA *Per* Court's Verification	₱2,892,764.23 326,081.03	3,218,845.26
Substantiated/Valid Input VAT		**₱10,993,549.87**

Consequently, only the substantiated unutilized input VAT of ₱10,993,549.87 can be attributed to the total zero-rated sales in the amount of ₱208,009,014.92, and only the input VAT of ₱8,064,868.19 is attributable to the valid zero-rated sales of ₱152,601,562.11, as determined below:

	FY ending 30 June 2017
Total Zero-Rated Sales [A] Valid Zero-Rated Sales [B]	₱208,009,014.92 152,601,562.11
Percentage of Valid Zero-Rated Sales [C=B/A] Substantiated/Valid Input VAT [D]	73.36% 10,993,549.87
Excess Input VAT attributable to Valid Zero-Rated Sales [D x C]	**₱8,064,868.18**

Due to the BIR's previous partial approval of petitioner's claim up to the amount of ₱2,836,316.77,[158] the excess input VAT attributable to valid zero-rated sales of ₱8,064,868.18 should be further reduced by the said amount. Hence, petitioner is entitled to a lesser input VAT claim of ₱5,228,551.41 after taking into consideration the BIR's partial grant of its claim, as shown below:

---

156 Exhibit "P-16-42", USB (Exhibit "P-22"), pp. 34-36.
157 Id., p. 36.
158 Exhibit "P-16-2", USB (Exhibit "P-22).

Excess Input VAT attributable to Valid Zero-Rated Sales	₱8,064,868.18
Less: Input VAT partially granted by BIR	2,836,316.77
Input VAT for Refund	**₱5,228,551.41**

Furthermore, the claimed input VAT of ₱14,212,395.13 was carried-over by petitioner up to its original 4th quarter VAT return for FY ending 30 June 2018.[159] Nevertheless, the same remained unutilized and was eventually deducted as "VAT Refund/TCC Claimed" in its amended 4th quarter VAT return for FY ending 30 June 2018[160]; thus, preventing the carry-over or application of the claimed input VAT in the next taxable periods.

Verily, petitioner likewise complied with the 5th requisite stating that the input VAT have not been applied against output VAT during and in the succeeding quarters.

Lastly, considering that petitioner is only engaged in zero-rated sales and it has no taxable or exempt sales, petitioner is likewise deemed to have complied with the 8th requisite.

In sum, petitioner has sufficiently proven its entitlement to the refund in the additional amount of ₱5,228,551.41, representing the unutilized input VAT attributable to its zero-rated sales for the four (4) quarters of FY ending 30 June 2017.

Having disposed of the first two (2) issues, the Court shall now proceed to tackle the third issue raised by the parties: whether or not respondent, in partially denying a claim for refund, is required by law and the Constitution to provide sufficient explanation and specific legal bases of the denial, in compliance with the due process requirement of the Constitution.

Pertinent to the resolution of the said issue is Section 112(C) of the NIRC of 1997, as amended by TRAIN, which reads as follows:

159 Exhibit "P-16-46", id., pp. 7-12.
160 Id., pp. 1-6.

> ...
>
> **Sec. 112.** *Refunds or Tax Credits of Input Tax.* —
>
> ...
>
> (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.**[161]

As introduced by TRAIN, respondent is now statutorily required to state in writing the legal and factual basis of the denial of the claim for refund. *However,* while We agree with petitioner that respondent is required by law to state in writing the legal and factual basis of the denial, We herein find that respondent substantially complied therewith and did not violate petitioner's right to due process.

In *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[162], the Supreme Court citing *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*[163], ruled that the mandate of giving the taxpayer a notice of the facts and laws on which the assessments are based should not be mechanically applied, to wit:

> ...
>
> However, the mandate of giving the taxpayer a notice of the facts and laws on which the assessments are based should not be mechanically applied. To emphasize, the purpose of this requirement is to sufficiently inform the taxpayer of the bases for the assessment to enable him or her to make an intelligent protest.
>
> In *Samar-I Electric Cooperative v. Commissioner of Internal Revenue,* **substantial compliance** with Section 228 of the National Internal Revenue Code **is allowed**, provided that the taxpayer would be later apprised in writing of the factual and legal bases of the assessment **to enable him or her to prepare for an effective protest**. Thus:

161 Emphasis supplied.
162 G.R. No. 215957, 09 November 2016; Citations omitted, italics in the original text and emphasis supplied.
163 G.R. No. 193100, 10 December 2014.

> Although the [Final Assessment Notice] and demand letter issued to petitioner were not accompanied by a written explanation of the legal and factual bases of the deficiency taxes assessed against the petitioner, the records showed that respondent in its letter dated April 10, 2003 responded to petitioner's October 14, 2002 letter-protest, explaining at length the factual and legal bases of the deficiency tax assessments and denying the protest.
>
> Considering the foregoing exchange of correspondence and documents between the parties, we find that the requirement of Section 228 was substantially complied with. Respondent had fully informed petitioner *in writing* of the factual and legal bases of the deficiency taxes assessment, **which enabled the latter to file an "effective" protest**, much unlike the taxpayer's situation in *Enron*. **Petitioner's right to due process was thus not violated**.

...

While the aforementioned cases involve assessment and not a claim for refund, the Court rules that the same are equally applicable herein considering that the provisions of Section 228 of the NIRC of 1997, as amended, is similarly worded as the present Section 112(C) of the same law in that both provisions require respondent to state in writing the legal and factual basis of his action.

Applying above jurisprudence in herein case, the Court holds that since petitioner was able to intelligently file this instant Petition for Review and this Court was even convinced to partially grant the same, respondent is deemed to have substantially complied with the aforementioned requirement.

On the other hand, anent the supposed violation of the Constitution, We find the same unmeritorious.

Section 14, Article VIII of the 1987 Constitution provides:

> ...
>
> **SECTION** 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.
>
> No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.
>
> ...

However, in *Mangacop Mangca v. The Commission on Elections, et al.*[164], the Supreme Court held that the said constitutional requirement (then Section 9, Article X of the then 1973 Constitution) only applies to courts of justice, to wit:

> ...
>
> Petitioner's contention that the March 31, 1981, resolution is null and void for being violative of Sec. 9, Art. X of the Constitution and Sec 26, Rule XV of COMELEC Resolution No. 1450 is untenable. Firstly, both cited provisions are inapplicable to the case at bar since the constitutional requirement applies only to courts of justice which the COMELEC is not (Lucman vs. Dimaporo, L-31558, May 29, 1970, 33 SCRA 387)...
>
> ...

Neither respondent nor the BIR is a court of justice hence, petitioner was not denied due process.

WHEREFORE, premises considered, the present Petition for Review filed by petitioner Atlassian Philippines, Inc. on 18 January 2019 is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue, is hereby **ORDERED TO REFUND** in favor of petitioner the reduced amount of ₱5,228,551.41, representing unutilized input VAT attributable to its zero-rated sales for the first, second, third and fourth quarters of fiscal year ending 30 June 2017.

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164 G.R. No. L-58309-10, 25 February 1982.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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.

ROMAN G. DEL ROSARIO
Presiding Justice