REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL THIRD DIVISION

ZUELLIG PHARMA ASIA PACIFIC LTD. PHILS. ROHQ, Petitioner,	**CTA CASE NO. 9025**
	Present:
vs.	**RINGPIS-LIBAN**, *Chairperson*, **MODESTO-SAN PEDRO**, and **FERRER-FLORES**, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 19 2024 9:00 a.m.

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DECISION

FERRER-FLORES, J.:

STATEMENT OF THE CASE

This is a remanded case for the determination of the refundable/creditable amount due to **petitioner Zuellig Pharma Asia Pacific Ltd. Phils. ROHQ**, pursuant to this Court *En Banc's* Amended Decision dated February 10, 2021 rendered in CTA EB No. 1915[1] and Resolution dated October 14, 2021.[2]

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1 Docket – Vol. III, pp. 1188 to 1200.
2 *Id.* at 1201 to 1205.

ANTECEDENTS

On April 8, 2015, petitioner filed a *Petition for Review* before this Court,[3] praying that the Court render judgment ordering respondent to refund or issue in favor of petitioner a tax credit certificate in the amount of **₱59,809,336.79**, representing its excess and unutilized input VAT on domestic purchases of goods and services attributable to petitioner's zero-rated sales for the four (4) quarters of calendar year (CY) 2011.

On May 23, 2018, this Court, through its Former Second Division, promulgated its Decision[4] dismissing petitioner's *Petition for Review*, the dispositive portion of which reads:

> **WHEREFORE**, the present Petition for Review is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**

Petitioner then filed a *Motion for Reconsideration (Re: Decision dated May 23, 2018)* on June 8, 2018[5] *sans* respondent's comment.[6]

In the Resolution dated August 3, 2018, this Court denied petitioner's *Motion for Partial Reconsideration.*[7]

Consequently, petitioner filed with the Court *En Banc* its *Petition for Review* on September 5, 2018.[8]

On July 1, 2020, the Court *En Banc* rendered its Decision,[9] the dispositive portion of which reads:

> **WHEREFORE,** in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated May 23, 2018 and Resolution dated August 3,

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3 Docket – Vol. I, pp. 10 to 20.
4 Docket – Vol. III, pp. 1013 to 1036 [Penned by Associate Justice Juanito C. Castañeda (now retired), and concurred by Associate Justice Caesar A. Casanova (now retired) and Associate Justice Catherine T. Manahan].
5 *Id.* at 1050 to 1064.
6 *Id.* at 1067.
7 *Id.* at 1069 to 1074.
8 *Id.* at 1082 to 1103.
9 *Id.* at 1210 to 1224.

> 2018, both rendered by the Court in Division in CTA Case No. 9025 are **AFFIRMED**.
>
> **SO ORDERED.**

Petitioner then filed its *Motion for Reconsideration* with the Court *En Banc* on July 24, 2020, which the Court *En Banc* later partially granted per its Amended Decision dated February 10, 2021, the dispositive portion of which states:

> **WHEREFORE**, in light of the foregoing considerations, petitioner's *Motion for Reconsideration* is **PARTIALLY GRANTED**. Let CTA Case No. 9025 be **REMANDED** to the CTA Second Division for the proper determination of the refundable or creditable amount due to petitioner, if any.
>
> **SO ORDERED.**[10]

Respondent later moved for the reconsideration of the said Amended Decision, but this was denied in the Resolution issued on October 14, 2021,[11] the dispositive portion of which reads:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Motion for Reconsideration* is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

The Court *En Banc* then issued the Entry of Judgment dated November 10, 2021,[12] which states that the Amended Decision rendered on February 10, 2021 has already become final and executory and has been recorded in the Books of Entries of Judgment on November 10, 2021.

On May 18, 2022, the Office of the Second Division Clerk of Court received Entry of Judgment of the Court *En Banc*, remanding the present case to the Court's Former Second Division for the determination of the refundable or creditable amount due to petitioner, if any. Thus, the Former Second Division of this Court issued the Resolution dated June 1, 2022,[13] giving both parties a period of fifteen (15) days from receipt thereof, to file a written *Manifestation*, alleging any supervening event that may have

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[10] Per the Resolution dated June 1, 2022, Docket – Vol. III, pp. 1227.
[11] Docket – Vol. III, p. 1201 to 1205.
[12] Docket – Vol. III, p. 1207.
[13] Docket – Vol. III, pp. 1226 to 1228.

transpired in this case which the parties would want to present before this Court for its consideration.

Thereafter, on June 29, 2022, an Order was issued by the Former Second Division, transferring the case to the Former Third Division, chaired by the Hon. Ma. Belen M. Ringpis-Liban.[14] Accordingly, in the Resolution dated April 14, 2023,[15] the Court's Former Third Division considered the case submitted for decision, in view of the parties' failure to file their respective written *Manifestations*.

THE COURT'S RULING

The *Petition for Review* is denied.

As previously mentioned, on February 10, 2021, the Court *En Banc* rendered an Amended Decision,[16] partially granting petitioner's *Motion for Reconsideration*, the pertinent portions of which state:

> Applying the jurisprudential pronouncement in the 2020 Zuellig case to the instant case, the 120-day period for the CIR to act on petitioner's administrative claim should be reckoned from the November 11, 2014 Letter, the last letter of petitioner indicating that it had already submitted the complete documents in support of its refund claim. Thus, counting 120 days from November 11, 2014, respondent had until March 11, 2015 to act on the administrative claim. In view of respondent's inaction on the subject claim, petitioner then had thirty (30) days from March 11, 2015 or until April 10, 2015 within which to file its judicial claim before this Court.
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> Thus, considering that petitioner's judicial claim through its Petition for Review docketed as CTA Case No. 9025 was filed before the Court in Division on April 8, 20152, the same was filed on time.
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> xxx
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> **WHEREFORE**, in light of the foregoing considerations, petitioner's *Motion for Reconsideration* is **PARTIALLY GRANTED**. Let CTA Case No. 9025 be **REMANDED** to the CTA Second Division for the proper determination of the refundable or creditable amount due to petitioner, if any.
>
> **SO ORDERED.**

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[14] Docket – Vol. III, p. 1229.
[15] Docket – Vol. III, pp. 1233 to 1235.
[16] Docket – Vol. III, pp. 1188 to 1200.

Clearly, the remand of the case is for the determination of the refundable or creditable amount due to petitioner, if any.

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

Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 9337,[17] reads:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and nonzero-rated sales.
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> xxx xxx xxx
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> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may,

17 AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

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

> <u>As to the timeliness of the filing of the administrative and judicial claims</u>:
>
> 1. the refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[18]
> 2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of one hundred twenty (120) days, the judicial claim has been filed with this Court, within thirty (30) days from receipt of the decision or after the expiration of the said 120-day period;[19]
>
> <u>With reference to the taxpayer's registration with the BIR</u>:
> 3. the taxpayer is a VAT-registered person;[20]
>
> <u>In relation to the taxpayer's output VAT</u>:
> 4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[21]
> 5. for zero-rated sales under Sections 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP)

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

19 *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

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

21 *Ibid.*

rules and regulations;[22]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[23]
7. the input taxes are due or paid;[24]
8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[25] and,
9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[26]

In addition, in claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the NIRC of 1997, as amended, and other implementing rules and regulations.[27] Thus, petitioner's compliance with all the VAT invoicing requirements is required to be able to file a claim for input taxes attributable to zero-rated sales.[28] The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[29] Moreover, it must be pointed out that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[30]

Furthermore, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute

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22 *Ibid.*

23 *Ibid.*

24 *Ibid.*

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

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

27 *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.,* G.R. Nos. 197663 and 197770, March 14, 2018.

28 *JRA Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.

29 *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.

30 *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

aspect of their case.[31] Thus, it behooves petitioner to show compliance with each of the foregoing requisites and invoicing requirements. Corollary thereto, the absence of *any* of the said requisites is already a valid ground to deny the refund claim.

Petitioner's administrative and judicial claims were timely filed.

As already ruled by this Court's *En Banc* in CTA EB No. 1915, the 120-day period for respondent to act on petitioner's administrative claim should be reckoned from the November 11, 2014 Letter—the last letter of petitioner indicating that it had already submitted the complete documents in support of its refund claim. Thus, counting 120 days from November 11, 2014, respondent had until March 11, 2015 to act on the administrative claim. In view of respondent's inaction on the subject claim, petitioner then had thirty (30) days from March 11, 2015 or until April 10, 2015 within which to file its judicial claim before this Court.[32]

Thus, considering that petitioner's judicial claim through its *Petition for Review* docketed as CTA Case No. 9025 was filed before the Court in Division on April 8, 2015, the same was filed on time.[33]

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

Petitioner is a VAT-registered person/entity.

Anent the *third* requisite, petitioner is a VAT-registered person/entity, with Tax Identification Number (TIN) 215-025-090-000 as evidenced by the Certificate of Registration No. OCN 9RC00002147359 dated January 03,

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

[32] Docket – Vol. III, pp. 1197 to 1198.

[33] Per Amended Decision, Docket – Vol. 3, p. 1198.

2002 bearing the said TIN submitted by petitioner.[34] Thus, petitioner showed compliance with the said requisite.

Petitioner failed to establish that its reported sales for the four quarters of CY 2011 qualify for VAT zero-rating.

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

In its Quarterly VAT Returns (BIR Form No. 2550-Q) for the 1st, 2nd, 3rd and 4th quarters of CY 2011,[35] petitioner reported a total amount of ₱457,570,398.82 as zero-rated sales, broken down as follows:

Taxable Quarters (2011)	Exhibit No.	Zero-Rated Sales
1st Quarter	"P-4"	₱ 104,662,984.18
2nd Quarter	"P-5"	100,488,880.94
3rd Quarter	"P-6"	115,665,718.90
4th Quarter	"P-7"	136,752,814.80
	Total	**₱457,570,398.82**

Petitioner avers that, during the four (4) quarters of CY 2011, it rendered services in the Philippines for its foreign affiliate, Zuellig Pharma Holdings Ltd., a nonresident foreign corporation engaged in business conducted outside the Philippines. As consideration for such services, petitioner was paid in acceptable foreign currency which was accounted for in accordance with rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP).

Relevant thereto, Section 108(B)(2) of the NIRC of 1997, as amended, states:

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

[34] Exhibit "P3", Docket – Vol. I, p. 433.
[35] Exhibits "P-4" to "P-7", Docket – Vol I, pp. 434 to 451.

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

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

1) The recipient of the services is a foreign corporation, and the said corporation is doing business *outside* the Philippines, or is a nonresident person not engaged in business who is *outside* the Philippines when the services were performed;[36]

2) The services fall under any of the categories under Section 108(B)(2),[37] or simply, the services rendered should be other than "*processing, manufacturing or repacking goods*";[38]

3) The services must be performed in the Philippines[39] by a VAT-registered person; and,

4) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[40]

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

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

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

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

Anent the *first* essential element, in order to be considered as a non-resident foreign corporation doing business *outside* the Philippines, each entity must be supported, at the very least, by **both** a *Certification of Non-Registration of Corporation/Partnership* issued by the Philippine SEC, **and** proof of incorporation/registration in a foreign country (*e.g.*, Articles/Certificate of Incorporation/Registration and/or Tax Residence Certificate). The former establishes that the recipient of the service has no registered business in the Philippines, and that it is not engaged in trade or business within the Philippines; while the latter proves that the said recipient of the service is indeed foreign. The said documents have been consistently required by this Court, for purposes of the said *first* essential element. In fact, in *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*,[41] the Supreme Court affirmed the necessity of presenting the said documents in this wise:

> **For purposes of zero-rating under Section 108(B)(2) of the Tax Code, the claimant must establish the two components of a client's NRFC[42] 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.**
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> xxx xxx xxx
>
> To recall, the CTA found that the SEC Certification of Non-Registration of Company and Authenticated Articles of Association and/or Certificates of Registration/Good Standing/Incorporation sufficiently established the NRFC status of 11 of DKS's affiliates clients.
>
> The Court upholds these findings.
>
> The Court accords the CTA's factual findings with utmost respect, if not finality, because the Court recognizes that it has necessarily developed an expertise on tax matters. Significantly, both the CTA Division and CTA *En Banc* gave credence to the aforementioned documents as sufficient proof of NRFC status. The Court shall not disturb its findings without any showing of grave abuse of discretion considering that the members of the tax court are in the best position to analyze the documents presented by the parties.

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

41 G.R. No. 234445, July 15, 2020.

42 That is, "Nonresident foreign corporation".

> In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court *a quo*'s findings. **To the Court's mind, the SEC Certifications of Non-Registration show that these affiliates are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines.** *(Emphasis and underscoring added)*

In this case, petitioner complied with the *first* essential element because it was able to present the *Certification of Non-Registration of Company* issued by the SEC,[43] and *Memorandum and Articles of Association* as proof of incorporation/registration in a foreign country, particularly in Malaysia,[44] for its foreign affiliate, Zuellig Pharma Holdings Ltd., thus, showing that its client is a non-resident foreign corporation doing business outside the Philippines.

As to the *second* essential element, petitioner presented *IT Services Subcontracting Agreement* dated April 2003[45] entered into between Zuellig Pharma Holdings Limited, and Interpharma (Asia Pacific) Limited, for and on behalf of Interpharma (Asia Pacific) Limited Phils. ROHQ, petitioner's former name before it was amended to Zuellig Pharma Asia Pacific Ltd. Phils. ROHQ.[46] The agreement states that petitioner will provide the following Subcontracting Services in relation to IT-based management systems in particular:[47]

1. Assistance in Project Management Procedures;
2. Recruitment of Technical Expertise from within the Interpharma Group, or from outside the Interpharma Group;
3. System Specifications;
4. Programming;
5. Installation and Training;
6. Hardware and Software Procurement;
7. Systems Debugging;
8. Data Security and Integrity;
9. IT Policy Initiatives, including Standards; and
10. Monitoring or Compliance with Policies.

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43 Exhibit "P-8", Docket, Vol. I, p. 452.
44 Exhibit "P-10", *Id.* at 466-494.
45 Exhibit "P-9", *Id.* at 453 to 465.
46 Exhibit "P-2", *Id.* at 423 to 432.
47 Exhibit "P-9", Schedule of Subcontracting Services, *Id.* at 465.

Clearly, the foregoing services performed by petitioner fall within the scope of *"services other than processing, manufacturing or repacking of goods"* contemplated by the aforementioned provision.

The *third* essential element requires that the services must be performed in the Philippines by a VAT-registered person. Here, the *IT Services Subcontracting Agreement* dated April 2003[48] does not bear any indication that the subject services were to be performed by petitioner in the Philippines. Petitioner's Senior Accounting Manager, Ms. Carolina Zenaida A. Magat, nevertheless, testified through her sworn statement that, for the subject period of claim, petitioner rendered services in the Philippines for Zuellig Pharma Holdings Ltd., its foreign client, *to wit*:

> Q17: **How did the Company derive its zero-rated sales in CY 2011?**
>
> A: During the four quarters of CY 2011, the Company rendered services in the Philippines for its foreign affiliate, Zuellig Pharma Holdings Ltd. (ZPHL). ZPHL is a nonresident foreign corporation engaged in business conducted outside the Philippines. *(Underscoring added)*

In view thereof, petitioner has shown compliance with the *third* essential element.

Anent the *fourth* essential element and in relation to the *fifth* requisite for the granting of the input VAT refund, petitioner presented its *Schedule of Inward Remittances*[49] and the related *Certificates of Inward Remittances*[50] issued by The Hongkong and Shanghai Banking Corporation Limited (HSBC), purportedly showing the remittances of its foreign client, Zuellig Pharma Holdings Ltd. It is noteworthy that the Certifications of Inward Remittances attest to the fact of payment *"in acceptable foreign currency ...and accounted for in accordance with the rules and regulations of the BSP"*.[51]

In any event, the foreign currency remittances referred to under Section 108(B)(2) must not only be duly accounted for in accordance with the rules and regulations of the BSP, but must also comply with the pertinent

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48 Exhibit "P-9", Docket - Vol. I, pp. 453 to 465.

49 Exhibit "P-1053".

50 Exhibit "P-44", pp. 1 to 16.

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

invoicing requirements, containing all the required information under Section 113(A) and (B) of the NIRC of 1997, as amended, *to wit*:

> SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> (A) *Invoicing Requirements.* — A VAT-registered person shall issue:
>
> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
>
> (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:
>
>> (a) The amount of the tax shall be shown as a separate item in the invoice or receipt;
>>
>> (b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;
>>
>> (c) If the sale is subject to zero percent (0%) value-added tax, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;
>>
>> (d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.
>
> (3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and
>
> (4) In the case of sales in the amount of One thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered

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person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.

These provisions are further implemented by Section 4.113-1(A) and (B) of Revenue Regulations (RR) No. 16-2005, as amended, *viz*:

SEC. 4.113-1. *Invoicing Requirements.* —

(A) A VAT-registered person shall issue: —

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

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

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

(B) *Information contained in VAT invoice or VAT official receipt.* — The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:

(a) The amount of tax shall be shown as a separate item in the invoice or receipt;

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

(c) If the sale is subject to zero percent (0%) VAT, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) In the case of sales in the amount of one thousand pesos (₱1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section.

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

SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, **issue duly registered receipts or sales or commercial invoices**, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service xxx." *(Emphasis added)*

"SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an **authority to print receipts or sales or commercial invoices before a printer can print the same.**

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner. *(Emphasis added)*

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

In the present claim, aside from the said *Schedule and Certificates of Inward Remittances*, petitioner also presented its *Summary of Zero-Rated*

Sales[52] and the related service invoices[53] and ORs[54], supporting the aggregate amount of ₱457,570,398.82 zero-rated sales declared in its 2011 Quarterly VAT Returns.

However, a comparison of petitioner's zero-rated sales as reflected in its ORs in the total amount of $10,579,927.15, and as shown in the *Certificates of Inward Remittances* in the total amount of $10,514,262.71, revealed a discrepancy of $66,664.44:

2011	Details of Official Receipt	Amount in US Dollars	Amount in Philippine Pesos[55]	Inward Remittances in USD[56]		Exhibit
Quarter						
Zuellig Pharma Holding s, Ltd.	OR No. 264 Date: 12 January 2011 (Exhibit "P-31")	741,928.95	32,877,097.55	741,928.95		
				345,021.88	1,086,950.83	"P-44", page 1/16
Zuellig Pharma Holdings, Ltd.	OR No. 265 Date: 27 January 2011 (Exhibit "P-32")	686,049.43	29,901,464.11	341,027.55		
				750,923.30	1,091,950.85	"P-44", page 2/16
Zuellig Pharma Holdings, Ltd.	OR No. 266 Date: 1 February 2011 (Exhibit "P-33")	966,013.70	41,884,422.52	215,090.40		
	Subtotal	*2,393,992.08*	*104,662,984.18*		409,950.87	"P-44", page 3/16
2nd Quarter						
				194,860.47		
				363,950.85	363,950.85	"P-44", page 4/16
Zuellig Pharma Holdings, Ltd.	OR No. 267 Date: 1 April 2011 (Exhibit "P-34")	775,786.17	33,153,221.59	216,974.85		
				169,975.99	386,950.84	"P-44", page 5/16
Zuellig Pharma Holdings, Ltd.	OR No. 268 Date: 1 June 2011 (Exhibit "P-35")	823,591.92	35,624,468.62	653,615.93		
				429,334.91	1,082,950.84	"P-44", page 6/16
Zuellig Pharma Holdings, Ltd.	OR No. 269 Date: 30 June 2011 (Exhibit "P-36")	730,925.22	31,711,190.73	301,590.31		
	Subtotal	*2,330,303.31*	*100,488,880.94*		485,950.84	"P-44", page 7/16
3rd Quarter						
				184,360.53		
				118,950.86	118,950.86	"P-44", page 8/16
				462,950.86	462,950.86	"P-44", page 9/16
Zuellig Pharma Holdings, Ltd.	OR No. 270 Date: 4 August 2011 (Exhibit "P-37")	874,196.24	36,836,880.97	107,933.99		
Zuellig Pharma Holdings, Ltd.	OR No. 271 Date: 4 August 2011 (Exhibit "P-38")	879,414.02	37,155,242.24	879,414.02		
Zuellig Pharma Holdings, Ltd.	OR No. 272 Date: 4 August 2011 (Exhibit "P-39")	952,017.08	41,673,595.69	952,017.08	2,284,950.87	"P-44", page 10/16

[52] Exhibit "P-1052".
[53] Exhibits "P-31-a" to "P-42-a".
[54] Exhibits "P-31" to "P-42".
[55] Exhibit "P-30-2", Annex 2, Docket – Vol. II, pp. 801 to 802.
[56] *Id.*

2011	Details of Official Receipt	Amount in US Dollars	Amount in Philippine Pesos[55]	Inward Remittances in USD[56]		Exhibit
Zuellig Pharma Holdings, Ltd.	OR No. 273 Date: 31 August 2011 (Exhibit "P-40")	934,855.27	39,878,121.21	345,585.78		
				589,269.49		
	Subtotal	*3,640,482.61*	*155,543,840.11*		825,950.86	"P-44", page 11/16
4th Quarter						
Zuellig Pharma Holdings, Ltd.	OR No. 274 Date: 11 October 2011 (Exhibit "P-41")	927,577.40	40,427,548.18	236,681.37		
				118,950.86	118,950.86	"P-44", page 12/16
				571,945.17		
Zuellig Pharma Holdings, Ltd.	OR No. 275 Date: 1-December 2011 (Exhibit "P-42")	1,287,571.75	56,447,145.41	48,005.67	619,950.84	"P-44", page 13/16
				554,950.82	554,950.82	"P-44", page 15/16
				618,950.82	618,950.82	"P-44", page 16/16
	Subtotal	*2,215,149.15*	*96,874,693.59*			
	Total	**10,579,927.15**	**457,570,398.82**		**10,514,262.71**	

From the foregoing table, the amount of US$66,664.44 which does not have the corresponding *Certificates of Inward Remittance* can be traced as forming part of the US$1,287,571.75 zero-rated sales reflected per OR no. 275 dated December 1, 2011. Thus, the peso equivalent of the amount of US$66,664.44 as declared in petitioner's 2011 4th Quarterly VAT Return is ₱2,878,729.05, computed as follows:

Declared Zero-Rated Sales in PHP for OR No. 275	$ 56,447,145.41
Divided by: Zero-Rated Sales in US$ per OR No. 275	$ 1,287,571.75
Average PHP to US$ Rate	43.84
Multiplied by: Zero-Rated Sales in US$ per OR No. 275 Without Certificates of Inward Remittance	65,664.44
Declared Zero-Rated Sales in PHP for OR No. 275 Without Certificates of Inward Remittance	₱ 2,878,729.05

While the remaining reported zero-rated sales of ₱454,691,669.77 (₱457,570,398.82 less ₱2,878,729.05) were proven to have been paid for in acceptable foreign currency and duly accounted for in accordance with BSP rules and regulations, the supporting ORs, however, are not compliant with the invoicing requirements under the VAT law and regulations. Particularly, the nature of the services performed by petitioner was not indicated in the supporting ORs, in clear violation of Section 113(B)(3) of the NIRC of 1997, as amended, cited earlier.

Petitioner's compliance with all the VAT invoicing requirements is required to be able to file a claim for input taxes attributable to zero-rated sales.[57] The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[58] More importantly, it must be emphasized that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[59]

Considering petitioner's failure to properly substantiate its reported zero-rated sales for the subject period of claim, the present *Petition for Review* must necessarily fail.

As a corollary, it becomes unnecessary to look into petitioner's compliance with the other remaining requisites.

Statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to the VAT are in the nature of such exemptions.[60] It is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[61]

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

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57 *JRA Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.

58 *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.

59 *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

60 *Panasonic Communication Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010.

61 *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice