REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

NOKIA (PHILIPPINES), INC., Petitioner,	**CTA Case No. 8405**
	Members:
- versus -	**DEL ROSARIO,** P.J., **UY,** and **MINDARO-GRULLA,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** NOV 07 2014 ; 2:01 p.m.

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DECISION

UY, J.:

In this *Petition for Review* filed on January 2, 2012, petitioner, Nokia (Philippines), Inc., prays that judgment be rendered ordering respondent, Commissioner of Internal Revenue, to refund or to issue a tax credit certificate (TCC) in favor of Nokia (Philippines), Inc. in the amount of ₱16,134,824.44, allegedly representing the latter's creditable input value-added tax (VAT) for the fourth quarter of 2009.

THE FACTS

Petitioner Nokia (Philippines), Inc. is a VAT-registered entity, under Certificate of Registration No. OCN 8RC0000019384, with address at the 40th Floor, Philamlife Tower, 8767 Paseo de Roxas Street, Salcedo Village, Makati City.[1]

Respondent Commissioner of Internal Revenue is the head of

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[1] Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), Docket, pp. 94 to 95; Exhibit "A", Docket, p. 169.

the Bureau of Internal Revenue (BIR), holding office at BIR National Office, Diliman, Quezon City.[2]

On January 21, 2010, petitioner filed its Quarterly VAT Return for the 4th Quarter of 2009 via E-filing, wherein it reported its input VAT for the said quarter in the total amount of ₱16,260,487.45.[3]

Subsequently, on September 2, 2011, petitioner filed an administrative claim with the BIR for the refund or issuance of TCC for its alleged unutilized input VAT for the 3rd and 4th quarters of 2009.[4]

Upon the belief that the two (2)-year prescriptive period to file a judicial action under Section 112(A) of the National Internal Revenue Code (NIRC) is about to expire, and considering that the claim for refund or tax credit is still pending with respondent, petitioner was allegedly constrained to file the instant Petition for Review on January 2, 2012 with regard to petitioner's creditable input VAT for the 4th quarter of 2009 in the amount of ₱16,134,824.44.[5] The case was raffled to the Former Second Division of this Court.

On February 8, 2012, respondent filed a *Motion to Admit Attached Answer*,[6] claiming, in a nutshell, that due to heavy workload of equal importance, she failed to submit her Answer on time, and praying that the attached *Answer* be admitted. Said motion was granted in the Resolution dated March 6, 2012 and the attached Answer was admitted by the Court[7].

In her *Answer*,[8] respondent raises the following special and affirmative defenses, to wit:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

10. Respondent hereby reiterates and repleads the

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[2] Par. 2, Petition for Review vis-à-vis Par. 1, Answer, Docket, pp. 2 and 55, respectively.
[3] Exhibit "B", Docket, pp. 170 to 171. The amount of ₱ 16,260,487.45 is broken down as follows: ₱4,996,827.19, representing Input VAT for Domestic Purchases of Goods Other than Capital Goods; ₱4,289,579.00, representing Input VAT for Importation of Goods Other than Capital Goods; and ₱6,974,081.26, representing Input VAT for Domestic Purchase of Services.
[4] Exhibit "G", Docket, pp. 180 to 181.
[5] Par. 8, Petition for Review, p. 4; Docket, p. 10.
[6] Docket, pp. 48 to 54.
[7] Docket, pp. 68-69
[8] Docket, pp. 55 to 63.

preceding paragraphs of this answer as part of her Special and Affirmative Defenses.

11. Taxes collected are presumed to be in accordance with laws and regulations.

12. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.

13. Taxes are essential to government's very existence; **(CIR v. Solidbank Corporation, G.R. No. 148191, November 3, 2003)** hence, the dictum that 'taxes are the lifeblood of the government.' For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority. (**CIR v. Fortune Tobacco Corporation, G.R. Nos. 167274-75, July 21, 2008)** Since tax refunds are regarded as tax exemptions and these are to be construed ***strictissimi juris*** against the person or entity claiming the exemption. **(Philippine Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue G.R 141973, June 28, 2005)**

14. In an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications **(BPI Leasing Corporation vs. Honorable Court of Appeals, G.R 127624, November 18, 2003)** The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund **(Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc. G.R. 163835 July 7, 2010).**

15. To support its claim, it is imperative for petitioner to prove the following, viz:

    a. The registration requirements of a value-added taxpayer in compliance with section 6 (a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the Tax Code, as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98, **otherwise there would be no sufficient compliance with the filing of an administrative application for refund which is a condition sine qua non prior to the filing of a judicial claim** in accordance with Section 112 of the Tax Code, as amended. This requires the **submission of complete documents in support of the application filed** with the Bureau of Internal Revenue before the 120-day audit period shall apply, and **before the taxpayer could avail of the judicial remedies as provided in the law**. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petitioner for review;

d. That the input taxes of P16,134,824.44 allegedly incurred by petitioner for the 4th quarter of taxable year 2009 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within the periods provided in Section 112(A) and (C) of the Tax Code, as amended;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and /or official receipts and other documents, such as subsidiary purchase Journal showing that it actually paid VAT in accordance with Sections 110 (A)(2) and 113 of the Tax Code, as amended, and pursuant to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits);

g. The requirements as enumerated under Section 4.104-5 of Revenue Regulations No. 7-95. (Re: Substantiation of Claims for Input Tax Credits)

10. The amount of Sixteen Million, One Hundred Thirty Four Thousand, Eight Hundred Twenty Four and 44/100 (16,134,824.44) claimed by petitioner arising from unutilized input VAT paid and incurred for the taxable year 2009 is not properly documented.

11. Following the premise above-mentioned, petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim."

This case was set for pre-trial on April 26, 2012[9]. Thereafter, as directed by the Court, both parties filed their Joint Stipulations of Facts and Issues on May 9, 2012,[10] and the same was approved in the Resolution dated May 15, 2012.[11] During trial, petitioner presented three (3) witnesses to prove its claim, namely: Jocelyn L. Lapira, the Court commissioned Independent Certified Public Account, Abbet R. Barce, and Bridgette C. Redolfin.

In the meantime, pursuant to the Order dated April 2, 2013 by the Chairperson of the Former Second Division of this Court, Associate Justice Juanito C. Castañeda, Jr., vis-à-vis CTA Administrative Circular No. 01-2013 dated March 26, 2013 entitled "Reorganization of the Three (3) Divisions of the Court of Tax Appeals", the instant case was transferred to the First Division of this Court.

On June 6, 2013, Presiding Justice Roman G. Del Rosario, as Chairperson of the First Division, voluntarily inhibited himself from

[9] Notice of Pre-trial Conference, Docket, p. 77.
[10] Docket pp. 94 to 95.
[11] Docket p. 96.

sitting in the proceedings or participating in the decision process in accordance with Section 1, Rule 137 of the Revised Rules of Court and Section 6 (a) and (b) of the RRCTA, because the instant case was being handled by his former division at the Office of the Solicitor General.[12]

During the hearing held on June 20, 2013 for the initial presentation of respondent's evidence, Atty. Felix Paul R. Velasco III, manifested that despite repeated follow-ups, there was no investigation report submitted to them, and thus, he will have to forego the presentation of respondent's evidence. Consequently, the parties were ordered to submit their respective memorandum within a period of thirty (30) days from the said date. Nevertheless, the Court took note of petitioner's manifestation that it will file a motion to re-open the case for the presentation of the ICPA anew.[13]

Thus, on June 25, 2013, petitioner filed a *Motion to Re-open Petitioner's Presentation of Evidence* praying for a reopening of the case for the identification by the ICPA of Exhibits "L-6" and "S-1" and for deferment of the submission of its memorandum pending resolution of said motion or until after the presentation and offer of said exhibits.[14] Subsequently, on July 9, 2013, petitioner filed a *Motion for Leave to Allow Conditional Recall of Independent CPA.*[15]

On the other hand, as directed by the Court, respondent filed her *Comment (On Petitioner's Motion to Re-Open Petitioner's Presentation of Evidence*)[16] on July 12, 2013, alleging vehement opposition thereto on the ground that the motion to re-open is akin to a second motion for reconsideration and stresses that the documents being attempted to be presented by petitioner after its presentation of evidence are not newly discovered evidence which warrants reconsideration by this Court.

In the Resolution dated August 14, 2013[17], this Court granted petitioner's Motion to Re-open Petitioner's Presentation of Evidence, in the interest of justice, as well as petitioner's Motion for Leave to Allow Conditional Recall of Independent CPA. Hence, the filing of the parties' respective memorandum was deferred by the Court.

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[12] Memorandum dated June 6, 2013, Docket, p. 286.
[13] Minutes of hearing held on June 20, 2013, Docket pp. 295 to 296.
[14] Docket pp. 299 to 304.
[15] Docket pp. 306 to 308.
[16] Docket pp. 310 to 316.
[17] Docket pp. 335 to 336.

During the hearing held on October 18, 2013[18], the Court commissioned ICPA, Abbet Barce, testified in court and identified his judicial affidavit, as well as Exhibits "L-6" and "S-1". Without objection from respondent, said documents were admitted. And considering that respondent had no evidence to present, both parties were given a period of thirty (30) days to submit their respective memorandum.

Petitioner submitted its Memorandum[19] on November 15, 2013, while respondent submitted her Memorandum[20] on January 10, 2014. With the filing of said memoranda, the instant case was submitted for decision on the January 21, 2014.[21]

Hence, this Decision.

THE ISSUES

As jointly stipulated by the parties, these are the issues submitted for the Court's consideration, to wit:

> "1. Whether petitioner has complied with the governing rules and regulations with regard to recovery of taxes collected/received within the periods provided in Sections 112 of the Tax Code, as amended.
>
> 2. Whether petitioner has complied with the submission of complete documents in support of its administrative claim for refund.
>
> 3. Whether petitioner's claim for tax refund of excise tax *(sic)*[22] was filed within the period prescribed by law.
>
> 4. Whether Petitioner is entitled to a tax refund or a tax credit certificate for its alleged input VAT payments allegedly allocated to its zero-rated sales for the 4th quarter of taxable year 2009 in the amount of Php 16,134,824.44."[23]

The foregoing issues, however, may be simplified as follows:

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[18] Minutes of the hearing held on October 18, 2014, Docket, pp. 356 to 357; Resolution dated October 18, 2014, Docket, p. 359.
[19] Docket pp. 364 to 374.
[20] Docket pp. 386 to 405.
[21] Resolution dated January 21, 2014, Docket p. 408.
[22] The words "excise tax" should have been referred to as "value-added tax".
[23] Docket, pp. 94 to 95.

> "Whether or not petitioner is entitled to refund or TCC for its alleged input VAT payments attributable to its zero-rated sales for the 4th quarter of taxable year 2009 in the amount of ₱16,134,824.44."

Petitioner's arguments:

Petitioner argues that it has complied with the governing rules and regulations with regard to recovery of taxes collected/received within the periods provided in Section 112 of the NIRC of 1997, as amended. According to petitioner, it has timely filed its administrative and judicial claims in accordance with the said provision.

Moreover, petitioner contends that it has established the rendering services as subject to zero-rated VAT; and that it has substantiated the present claim with relevant supporting documents. According to petitioner, the amount of its creditable input VAT incurred for the 4th quarter of 2009 is properly allocated.

Finally, petitioner avers that its input VAT acquired during the 4th quarter of 2009 was not applied against any output VAT in the succeeding periods.

Respondent's counter-arguments:

Respondent contends that it is incumbent upon petitioner to prove that it is entitled to the refund sought because a claim for refund is not *ipso facto* granted upon filing of the claim. According to respondent, petitioner failed: (1) to submit complete documents in support of its administrative claim for refund; and (2) to comply with the invoicing and accounting requirements laid down in Sections 113, 114 and 236 of the NIRC of 1997, as amended, and its implementing regulations under Revenue Regulations No. (RR) 16-2005.

Allegedly, petitioner miserably failed to comply with the provisions of Section 112(A) and (C) of the NIRC of 1997, as amended, on the prescriptive period for claims for VAT refund/tax credit, and the submission of the complete documentary requirements enumerated in Revenue Memorandum Order (RMO) No. 53-98, and Revenue Audit Memorandum Order (RAMO) No. 1-91 and RMO No. 40-94. Consequently, there is no basis to sustain petitioner's claim for refund.

Respondent also asserts that petitioner failed to establish that the recipient of its services do business outside the Philippines.

Lastly, respondent maintains that following the principle that claims for refund of taxes are construed strictly against claimants for they partake of the nature of tax exemptions, petitioner's judicial claim deserves no merit and should therefore fall for failure on their part to establish clearly and convincingly that it is entitled to the claim being sought for.

THE COURT'S RULING

We deny the instant petition.

The relevant portions of Section 112 of the NIRC of 1997, as amended by Republic Act No. (RA) 9337,[24] pertaining to refunds or tax credits of input tax pertinently read as follows:

> **"SEC. 112.** ***Refunds or Tax Credits of Input Tax.*** -
>
> **(A)** ***Zero-rated or Effectively Zero-rated Sales.*** – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: xxx xxx xxx
>
> xxx xxx xxx
>
> **(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 <u>within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) hereof.</u>
>
> In case of full or partial denial of the claim for tax refund or tax credit, or <u>the failure on the part of the Commissioner to act on the application within the period</u>

[24] 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.

> prescribed above, the taxpayer affected may, 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. *(Underscoring supplied)*

In a long line of decisions[25], the Supreme Court has delineated the requirements that must be satisfied by a taxpayer-claimant, the petitioner in the instant case, in order that its claim for a refund or issuance of tax credit certificate (or TCC) of unutilized input VAT under Section 112(A) may be allowed or granted, to wit:

1. the taxpayer is VAT-registered;
2. the claim must be filed within two years after the close of the taxable quarter when such sales were made;
3. the taxpayer is engaged in sales which are zero-rated or effectively zero-rated;
4. the creditable input VAT due or paid must be attributable to such sales, except the transitional input VAT, to the extent that such input VAT has not been applied against the output VAT; and
5. in case of zero-rated sales under Section 106(A)(2)(a)(1) and (2), Section 106(B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof have been duly accounted for in accordance with BSP rules and regulations.

To the foregoing, a sixth requisite may be added: in case of denial of the refund claim, whether full or partial, or inaction on the part of the Commissioner of Internal Revenue, the judicial action must be timely filed in accordance with the above-quoted Section 112(D) and pertinent jurisprudence. And for an orderly disposition of this case, the determination of the timeliness of the filing of administrative and judicial claims shall be jointly made.

Petitioner is VAT-registered.

The Court notes that in the Joint Stipulation of Facts and

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[25] *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010; *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011.

Issues[26] filed on May 9, 2012, the parties admitted that petitioner is VAT-registered entity under Certificate of Registration No. 8RC0000019384. Indubitably therefore, the first requisite is complied with.

Petitioner's administrative and judicial claims were timely filed.

On the basis of the aforequoted Section 112, it is clear that a VAT-registered taxpayer claiming for refund or tax credit of their excess and unutilized input VAT must file an administrative claim with the Bureau of Internal Revenue within two (2) years from the close of the taxable quarter when the sales were made. Thereafter, the taxpayer must await the decision or ruling of denial of its claim by the Commissioner of Internal Revenue, whether full or partial, or the expiration of the 120-day period from the submission of complete documents in support of such claim. Once the taxpayer receives the decision or ruling of denial, or upon expiration of the 120-day period, it may file its petition for review with this Court within thirty (30) days.[27]

Anent the 120+30-day periods, in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company, Inc.* (or the "*Aichi* case"),[28] the Supreme Court ruled that the said 120+30-day periods is mandatory and its non-observance is fatal to the filing of a judicial claim with this Court. In said case, the High Court explained that in case the Commissioner of Internal Revenue (CIR) fails to act on the application for tax refund or credit of creditable input VAT within the 120-day mandatory period reckoned from the date of submission of the complete documents in support of the application for tax refund or TCC, the remedy of the taxpayer is to appeal the inaction of the CIR to this Court within thirty (30) days thereafter.

As a corollary, in *Commissioner of Internal Revenue vs. San Roque Power Corporation, etc.* (or *San Roque* case)[29], the Supreme Court held:

> "Section 112(A) and (C) must be interpreted

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[26] Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), Docket, pp. 94 to 95.
[27] *Team Energy Corporation (Formerly Mirant Pagbilao Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 197760, January 13, 2014.
[28] G.R. No. 184823, October 6, 2010.
[29] *Commissioner of Internal Revenue v. San Roque Power Corporation; Taganito Mining Corporation v. Commissioner of Internal Revenue; Philex Mining Corporation v. Commissioner of Internal Revenue,* G.R. Nos. 187485, 196113, 197156, February 12, 2013

according to its clear, plain, and unequivocal language. The taxpayer can file his administrative claim for refund or credit at **anytime** within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner will have 120 days from such filing to decide the claim. If the Commissioner decides the claim on the 120th day, or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA. This is not only the plain meaning but also the only logical interpretation of Section 112(A) and (C).

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To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. <u>One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods</u>. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the *Atlas* doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional." *(Underscoring supplied)*

The pertinent dates in the instant case are summarized as follows:

Period	***2-year period from the close of the quarter***	***Date of filing of administrative claim***	***120-day period under Section 112(C) from date of filing of administrative claim in case of inaction***	***30-day period to judicially appeal said inaction before the Court of Tax Appeals***	***Filing date of Petition for Review***
Fourth Quarter 2009	January 1, 2010 to December 31, 2012	September 2, 2011	September 3, 2011 to December 31, 2011	January 1, 2012 to January 30, 2012	January 2, 2012

It is clear from the foregoing table that both administrative and judicial claims of petitioner were timely filed in accordance with law and jurisprudence. The filing of the administrative claim on September 2, 2011 is well within the two-year period prescribed by Section 112(A). On the other hand, considering the inaction of respondent on petitioner's administrative claim, the filing of the instant Petition for Review on January 2, 2012 is likewise within the 30-day period prescribed under Section 112(C) reckoned from the expiration of the 120-day period.

According to respondent however, petitioner failed to submit complete documents in support of its administrative claim and insists that petitioner was not able to prove strict compliance with RMO No. 53-98 dated June 1, 1998, RAMO No. 1-91 dated January 11, 1991, and RMO No. 40-94 dated May 6, 1994 as regards the submission of complete supporting and relevant documents. Allegedly, this Court cannot exercise its appellate power to review and therefore has no jurisdiction to entertain the instant petition for review because no valid administrative claim was filed with respondent on account of petitioner's failure to submit documents in its administrative claim for tax refund/credit.

We do not agree with respondent.

For easy reference, quoted hereunder are the pertinent provisions of the said administrative issuances, viz:

RMO No. 53-98 dated June 1, 1998:

"SUBJECT: *Checklist of Documents to be Submitted by a Taxpayer **upon Audit** of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket*

TO : *All Internal Revenue Officers, Employees and Others Concerned.*

I. BACKGROUND

It has been observed that for the same kind of tax audit case, Revenue Officers differ in their request for requirements from taxpayers as well as in the attachments to the dockets resulting to tremendous complaints from taxpayers and confusion among tax auditors and reviewers.

For equity and uniformity, this Bureau comes up with a prescribed list of requirements from taxpayers, per kind of tax, as well as of the internally prepared reporting requirements, all of which comprise a complete tax docket.

II. OBJECTIVE

This order is issued to:

a. Identify the documents to be required from a taxpayer **<u>during audit</u>**, according to particular kind of tax; and

b. Identify the different audit reporting requirements to be prepared, submitted and attached to a tax audit docket.

xxx xxx xxx."

<u>RAMO No. 1-91 dated January 11, 1991</u>:

"SUBJECT: ***<u>Audit</u>*** *of Claims for Refund of Tax Credit of Value-added Tax Arising from Zero-rated Transaction, as well as Purchase or Importation of Capital Goods*

I. SCOPE

This order shall govern **<u>the audit</u>** of claims for refund or tax credit of value-added tax arising from zero-rated transactions, as well as purchase or importation of capital goods.

II. ADMINISTRATIVE POLICIES:

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4. **That the 60-day period for the processing of claims for refund/tax credit shall start on the day of submission of the last of the documents specified in the checklist of requirements (Annex B)**.

xxx xxx xxx." *(Emphases and underscoring supplied)*

<u>RMO No. 40-94 dated May 6, 1994</u>:

"SUBJECT: *Prescribing the Modified Procedures on the Processing of Claims for Value-Added Tax Credit / Refund*

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III. Guidelines:

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C. **The Revenue District Office shall accept only applications with complete supporting documents as prescribed in the Checklist of Requirements under Annex "A" hereof. Value-added tax credit/refund shall be issued to the taxpayer/claimant within sixty (60) working days from the date the application was received.** Applications are considered duly received only on the day of submission of the last of the documents specified in the aforementioned checklist of requirements.

D. Claims for VAT credits/refunds shall be acted upon only after confirmation that no similar claims covering transactions for the same period have been filed by claimants/taxpayers with Board of Investments (BOI), Bureau of Customs (BOC), Center-DOF, and other agencies concerned.

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F. **All processing and audit investigation of claims for refund or tax credit of value-added tax arising from zero-rated transactions, as well as purchase or importation of capital goods must strictly adhere to the guidelines set forth under Revenue Audit Memorandum Order No. 1-91.**

xxx xxx xxx." *(Emphases supplied)*

A cursory reading of RMO No. 53-98 shows that nothing in the said issuance mandates that the list of documents stated therein must be submitted in connection with an application for refund or credit of input VAT under Section 112 of the NIRC of 1997. Furthermore, the subject and objectives of RMO is explicit, that it is a Checklist of documents to be submitted by a taxpayer *"upon Audit"* of his supposed Tax Liabilities, and that the objective for its issuance was to *"(i)dentify the documents* ***to be required from a taxpayer during audit***", respectively.

In *Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation)*,[30] the Supreme Court said:

"The CIR's reliance on RMO 53-98 is misplaced. There is nothing in Section 112 of the NIRC, RR 3-88 or RMO 53-98 itself that requires submission of complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT. The subject of RMO 53-98 states that it is a 'Checklist of Documents to be Submitted by a Taxpayer upon **Audit** of his Tax Liabilities x x x.' In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of any audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer 'if applicable.'"

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[30] G.R. No. 205055, July 18, 2014.

In the same vein, RAMO 1-91 and RMO 40-94 presupposes that an audit is being conducted or has been conducted by the BIR.

In this case, it was not shown that an audit was conducted by the BIR in connection with petitioner's application for refund or TCC. Furthermore, the Court notes that no BIR Records, if any, was transmitted to this Court as required under Section 5(b), Rule 6 of the Revised Rules of the Court of Tax Appeals[31]. In fact, respondent's counsel informed the Court during the hearing held on June 29, 2013 that there is no investigation report in this case[32] concerning petitioner's administrative claim for refund or TCC.

With respect to the reckoning of the commencement of the 60-day period enunciated by RAMO 1-91 and RMO 40-94, the same cannot be adhered to by this Court.

Clearly, Section 112(C) of the NIRC of 1997, as amended by RA 9337, does not provide a mere 60-day period, but rather, a 120-day period, jurisprudentially declared as mandatory and jurisdictional in the *San Roque* case. Thus, it is the considered view of this Court that RAMO 1-91 and RMO 40-94 are not applicable to the instant case. Nevertheless, We shall examine the law then prevailing when these issuances were promulgated.

RAMO 1-91 was issued by the BIR on January 11, 1991; while RMO 40-94 was issued on May 6, 1994. Thus, the said administrative issuances were made in the context of the pertinent provisions of the then NIRC of 1977 [Presidential Decree No. (PD) 1158], as amended by Executive Order No. (EO) 273[33] (the VAT law then in force), which took effect on January 1, 1988.[34]

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[31] Section 5(b), Rule 5 of the Revised Rules of the Court of Tax Appeals provide as follows: "SEC. 5. *Answer.*—xxx xxx xxx

(b) *Transmittal of records.*— The respondent Commissioner of Internal Revenue, xxx, within ten days after his answer, xxx, shall certify and forward to the Court all the records of the case in their possession, with the pages duly numbered, and, if the records are in separate folders, then the folders will also be numbered. If there are no records, such fact shall be manifested to the Court within the same period of ten days. The Court may, on motion, and for good cause shown, grant an extension of time within which to submit the aforesaid records of the case. **Failure to transmit the records within the time prescribed herein or within the time allowed by the Court may constitute indirect contempt of court.**" *(Emphasis supplied)*

[32] Transcript of Stenographic Notes at the hearing held on June 20, 2013, p. 3; Minutes of the hearing held on the same date, Docket, p. 295; and Resolution dated June 20, 2013, Docket, p. 298.

[33] ADOPTING A VALUE-ADDED TAX, AMENDING FOR THIS PURPOSE CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AND FOR OTHER PURPOSES.

[34] Section 30, Executive Order No. 273, series of 1987.

It must be emphasized, however, that the provision being applied in the instant case is Section 112(D) of the NIRC of 1997, which took effect on January 1, 1998.[35] Parenthetically, said Section 112(D) was later renumbered by RA 9337 to Section 112(C).

For a better understanding of the difference between the old law and the present law, a comparison of the provisions in question is in order, to wit:

NIRC of 1977, as amended by EO 273	*NIRC of 1997 (renumbered by RA 9337)*
SEC. 106. *Refunds or tax credits of input tax.* – x x x. (b) *Zero-rated or effectively zero-rated sales.* – Any person, except those covered by paragraph (a) above, whose sales are zero-rated may, within two years after the close of the quarter when such sales were made, apply for the issuance of a tax credit certificate or refund of the input taxes attributable to such sales to the extent that such input tax has not been applied against output tax. x x x x (e) *Period within which refund of input taxes may be made by the Commissioner.* – The Commissioner shall refund input taxes within 60 days from the date the application for refund was filed with him or his duly authorized representative. No refund of input taxes shall be allowed unless the VAT-registered person files an application for refund within the period prescribed in paragraphs (a), (b) and (c) as the case may be.	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: x x x (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 Subsections (A) and (B) 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, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one**

[35] Section 8, Republic Act No. 8424.

ny

	hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals. *(Emphasis supplied)*

From the foregoing comparison, it is clear that in the refund of input VAT attributable to zero-rated sales, unlike Section 106 of the NIRC of 1977, as amended by EO 273, Section 112 of the NIRC of 1997 provided a 120-day period, and more importantly, spelled out the judicial remedy, by specifying the court where appeal should be taken, and the period within which the same appeal should be made, in case of full or partial denial of the claim, or in case of inaction on the part of the Commissioner of Internal Revenue.

Apropos, the deliberate selection in a statute of language differing from that of earlier acts on the subject indicates that a change of law was intended.[36] In other words, the change in phraseology by amendment of a provision of law indicates a legislative intent to change the meaning of the provision from that it originally had.[37] Logically, a different meaning of the law entails a different interpretation. An amended act is ordinarily to be construed as if the original statute had been repealed, and a new and independent act in the amended form had been adopted in its stead.[38]

Thus, RAMO 1-91 and RMO 40-94 are clearly not applicable in determining the counting of 120-day period under the aforequoted Section 112(C), nor in deciding whether petitioner submitted the complete documents in support of its application for refund or TCC.

Conversely, under the present law, the submission of complete supporting documents is presumed. This is in accordance with the ruling of the Supreme Court in the case of *CBK Power Company Limited vs. Commissioner of Internal Revenue*[39], to wit:

> "Bearing in mind that the burden to prove entitlement to a tax refund is on the taxpayer, **it is presumed that in order to discharge its burden, petitioner had attached complete supporting documents necessary to prove**

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[36] *Portillo vs. Salvani*, G.R. No. L-32181, March 10, 1930, citing *Brewster vs. Gage* [1930], U.S. Sup. Ct. Advance Opinions, p. 183.
[37] *Commissioner of Customs vs. Court of Tax Appeals, et al.*, G.R. Nos. L-48886-88, July 21, 1993.
[38] *Estrada vs. Caseda*, No. L-1560, October 25, 1949, 84 Phil. 791.
[39] G.R. Nos. 198729-90, January 15, 2014.

its entitlement to a refund in its application, absent any evidence to the contrary."[40]

In this connection, it must be emphasized that petitioner's administrative claim filed on September 2, 2011,[41] petitioner manifested the supporting documents it has attached thereto, viz:

"**Documents Attached**

In support of the above, attached herewith are the following documents:

1. Application for Tax Credits/Refunds (BIR Form No. 1914);
2. Official receipts for services rendered to Nokia Corporation (Finland);
3. Monthly Value-Added Tax Declaration Return (BIR Form No. 2550M) for the Month of July 2009;
4. Monthly Value-Added Tax Declaration Return (BIR Form No. 2550M) for the month of August 2009;
5. Quarterly Value-Added Tax Return (BIR Form No. 2550Q) for the 3rd Quarter Ending September 2009;
6. Monthly Value-Added Tax Declaration Return (BIR Form No. 2550M) for the Month of October 2009;
7. Monthly Value-Added Tax Declaration Return (BIR Form No. 2550M) for the Month of November 2009:
8. Quarterly Value-Added Tax Return (BIR Form No. 2550Q) for the 3rd Quarter Ending December 2009;
9. Monthly Summary List of Purchases and the corresponding VAT Official Receipts/Invoices;
10. Monthly Summary List of Importations and the corresponding Import Entry and Internal Revenue Declaration/Official Receipts/Invoices; and
11. Bank Certification on payments for input VAT on importation."

Thus, the foregoing documents are presumed complete to support petitioner's application for refund or TCC. Such being the case, the reckoning of the 120-day period commenced from the filing of the said administrative claim.

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[40] Read also *Applied Food Ingredients Company, Inc. vs. Commissioner of Internal Revenue* (G.R. No. 184266, November 11, 2013), wherein the Supreme Court ruled as follows: "...**absent any evidence to the contrary and bearing in mind that the burden to prove entitlement to a tax refund is on the taxpayer, it is presumed that in order to discharge its burden, petitioner had attached complete supporting documents necessary to prove its entitlement to a refund** in its application filed on 26 March 2002 and 28 June 2002. Therefore, the CIR's 120-day period to decide on petitioner's administrative claim commenced to run on 26 March 2002 and 28 June 2002, respectively." *(Emphasis supplied)*

[41] Exhibit "G", Docket, pp. 180 to 182.

Furthermore, We cannot subscribe to respondent's contention that pending the closure of the supposed investigation of petitioner's claim, no grant of refund may be given to petitioner.

Without doubt, when a judicial claim is timely filed, respondent must still continue the investigation of the administrative claim. Thus, in the *San Roque* case, the Supreme Court said:

> "...if the taxpayer files its judicial claim before the expiration of the 120-day period, the BIR will nevertheless continue to act on the administrative claim because such premature filing cannot divest the Commissioner of his statutory power and jurisdiction to decide the administrative claim within the 120-day period.
>
> On the other hand, if the taxpayer files its judicial claim after the 120-day period, the Commissioner can still continue to evaluate the administrative claim. There is nothing new in this because even after the expiration of the 120-day period, the Commissioner should still evaluate internally the administrative claim for purposes of opposing the taxpayer's judicial claim, or even for purposes of determining if the BIR should actually concede to the taxpayer's judicial claim. The internal administrative evaluation of the taxpayer's claim must necessarily continue to enable the BIR to oppose intelligently the judicial claim or, if the facts and the law warrant otherwise, for the BIR to concede to the judicial claim, resulting in the termination of the judicial proceedings."

Nevertheless, the continuation of the investigation of the said administrative claim does not prevent this Court from deciding an appeal of a refund claim. In fact, under RMC 49-2003, which has the force and effect of a law,[42] recognizes the scenario where this Court is able to release a decision ahead of the BIR. Said BIR issuance provides:

> "In cases where the taxpayer has filed a 'Petition for Review' with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative agency (Bureau of Internal Revenue or OSS-DOF), **the administrative agency and the tax court may act on**

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[42] *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation*, G.R. No. 180042, February 8, 2010.

> **the case separately**. While the case is pending in the tax court and at the same time is still under process by the administrative agency, the litigation lawyer of the BIR, upon receipt of the summons from the tax court, shall request from the head of the investigating/processing office for the docket containing certified true copies of all the documents pertinent to the claim. The docket shall be presented to the court as evidence for the BIR in its defense on the tax credit/refund case filed by the taxpayer. In the meantime, the investigating/processing office of the administrative agency shall continue processing the refund/TCC case until such time that a final decision has been reached by either the CTA or the administrative agency.
>
> **If the CTA is able to release its decision ahead of the evaluation of the administrative agency, the latter shall cease from processing the claim.** On the other hand, if the administrative agency is able to process the claim of the taxpayer ahead of the CTA and the taxpayer is amenable to the findings thereof, the concerned taxpayer must file a motion to withdraw the claim with the CTA. A copy of the positive resolution or approval of the motion must be furnished the administrative agency as a prerequisite of the release of the tax credit certificate/tax refund processed administratively. However, if the taxpayer is not agreeable to the findings of the administrative agency or does not respond accordingly to the action of the agency, the agency shall not release the refund/TCC unless the taxpayer shows proof of withdrawal of the case filed with the tax court. If, despite the termination of the processing of the refund/TCC at the administrative level, the taxpayer decides to continue with the case filed at the tax court, the litigation lawyer of the BIR, upon initiative of either the Legal Office or the Processing Office of the Administrative Agency, shall present as evidence against the claim of the taxpayer the result of investigation of the investigating/processing office." *(Emphases supplied)*

Thus, respondent is in error to argue that the pendency of an administrative investigation of petitioner's claim prevents the granting of a refund by this Court.

It must be emphasized that this Court has exclusive appellate jurisdiction to review on appeal decisions of respondent in cases involving refunds of internal revenue taxes. Moreover, as already stated, if respondent fails to decide within the 120-day period provided by law, such inaction shall be deemed a denial of the application for tax refund which the taxpayer can elevate to this Court through a petition for review.[43]

Relative thereto, as a court vested with judicial power, which includes the duty *"to settle actual controversies involving rights which are legally demandable and enforceable"*,[44] this Court cannot be divested of its jurisdiction specifically conferred to it by law from deciding a properly and timely filed appeal, for the simple reason that the administrative claim is still pending investigation before the BIR.

Nonetheless, the timeliness of the filing of the administrative and judicial claims for tax refund or issuance of TCC vis-à-vis the power of this Court to decide cases brought forth before it is one thing; the question of whether the tax refund or credit is ought to be granted is quite another. It must still be shown that there is compliance with the other requisites for the refund claim to be allowed.

Petitioner is <u>not</u> engaged in zero-rated or effectively zero-rated sales.

Petitioner points to Section 108(B)(2) as its legal basis for treating its sales as subject to the zero percent (0%) VAT. Section 108(B) of the NIRC of 1997, as amended by RA 9337, which reads:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.-*
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.-* The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the

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[43] *Silicon Philippines, Inc. vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 184360 & 184361, and 184384, February 19, 2014.

[44] Section 1, Article VIII of the 1987 Constitution, in relation to Section 1 of RA 1125, as amended by RA 9282.

> 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);" *(Emphasis supplied)*

Based on the foregoing provisions, the following elements must be present for a transaction to be treated as subject to the zero percent (0%) VAT under Section 108(B)(2), to wit:

1) the services must be performed in the Philippines;
2) the recipient of such services is doing business outside the Philippines;
3) the services must be other than processing, manufacturing or repacking goods;[45] and
4) the consideration for the services is paid for in acceptable foreign currency accounted for in accordance with the BSP rules and regulations.

As regards the first element, there is no indication that the subject services were performed in the Philippines by petitioner. During trial, petitioner offered in evidence the following exhibits, *inter alia*, for the following purposes:[46]

Exhibit	Description	Purposes
"O"	VAT Zero-rated Official Receipts	To prove that the Petitioner performed marketing and support and other services **rendered in the Philippines** in favor of its parent company, Nokia Corporation (Finland). *(Emphasis supplied)*

[45] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007.
[46] Docket, pp. 164 and 166.01

"O-1"	VAT Zero-rated Sales Invoice	To prove that the Petitioner performed marketing and support and other services **rendered in the Philippines** in favor of its parent company, Nokia Corporation (Finland). *(Emphasis supplied)*
"X"[47]	Judicial Affidavit of Ms. Bridgette C. Redolfin	To prove that Petitioner rendered marketing support and other services in favor of Nokia Corporation (Finland), a non-resident foreign corporation not engaged in business in the Philippines. That the services by Petitioner in favor of Nokia Corporation (Finland), **were performed entirely in the Philippines** xxx. xxx xxx xxx. *(Emphasis supplied)*

Notwithstanding the said purposes for which the said exhibits were offered, the said exhibits do not bear any indication that the subject services were indeed performed in the Philippines.

But even if We assume that the subject services were indeed performed in the Philippines, We fail to see compliance with the second element in this case which requires that the recipient of subject services is doing business outside the Philippines.

Relative thereto, the Supreme Court held in the case of *Accenture, Inc. vs. Commissioner of Internal Revenue*,[48] that it is not enough that the recipient of the service be shown to be a foreign corporation, it must likewise be established that the said recipient is a *"nonresident foreign corporation"*. The High Court said:

> "The evidence presented by Accenture may have established that its clients are foreign. This fact does not automatically mean, however, that these clients were doing business outside the Philippines. After all, the Tax Code itself has provisions for a foreign corporation engaged in business within the Philippines and vice versa, to wit:

[47] Docket, pp. 246 to 249.
[48] G.R. No. 190102, July 11, 2012.

SEC. 22. *Definitions* – When used in this Title:

xxx xxx xxx

(H) The term *'resident foreign corporation'* applies to a foreign corporation engaged in trade or business within the Philippines.

(I) **The term *'nonresident foreign corporation'* applies to a foreign corporation not engaged in trade or business within the Philippines.** (Emphasis in the original)

Consequently, to come within the purview of Section 108(B)(2), it is not enough that the recipient of the service be proven to be a foreign corporation; rather, it must be specifically proven to be a nonresident foreign corporation.

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*:[49]

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."[50] *(Emphases and underscoring supplied)*

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[49] 233 Phil. 406 (1987).
[50] Id. at 420 citing *The Mentholatum Co., Inc. vs. Anacleto Mangaliman*, 72 Phil. 524 (1941); Section 1, R.A. No. 5455; and *Pacific Micronesian Line, Inc. v. Del Rosario and Pelingon*, 96 Phil. 23, 30 (1954), which in turn cited Thompson on Corporations, Vol. 8, 844-847 (3rd ed.); and Fisher, PHILIPPINE LAW OF STOCK CORPORATION, 415.

As a corollary to the above pronouncement, it is noteworthy that the Supreme Court, in *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*,[51] declared that **the service-recipient must also be not doing business in the Philippines**. Otherwise, the transaction will be subject to the VAT at the then rate of 10%,[52] and **not** at the 0% VAT rate. In said case, the Supreme Court found as follows:

> "In this case, the payer-recipient of respondent's services is the Consortium which is a joint-venture doing business in the Philippines. While the Consortium's principal members are non-resident foreign corporations, **the *Consortium* itself is doing business in the Philippines.** This is shown clearly in BIR Ruling No. 023-95 which states that the contract between the Consortium and NAPOCOR is for a **15-year term**, thus:
>
> > This refers to your letter dated January 14,1994 requesting for a clarification of the tax implications of a contract between a consortium composed of Burmeister & Wain Scandinavian Contractor A/S ('BWSC'), Mitsui Engineering & Shipbuilding, Ltd. (MES), and Mitsui & Co., Ltd. ('MITSUI'), all referred to hereinafter as the 'Consortium', and the National Power Corporation ('NAPOCOR') **for the operation and maintenance of two 100-Megawatt power barges ('Power Barges') acquired by NAPOCOR for a 15-year term.** (Emphasis supplied)
>
> Considering this length of time, the Consortium's operation and maintenance of NAPOCOR's power barges cannot be classified as a single or isolated transaction. The Consortium does not fall under Section 102(b)(2)[53] which requires that the recipient of the services must be a person doing business outside the Philippines. Therefore, respondent's services to the Consortium, not being supplied to a person doing business outside the Philippines, cannot legally qualify for 0% VAT.
>
> Respondent, as subcontractor of the Consortium, operates and maintains NAPOCOR's power barges in the Philippines. NAPOCOR pays the Consortium, through its non-resident partners, partly in foreign currency outwardly remitted. In turn, the Consortium pays respondent also in foreign currency inwardly remitted and accounted for in accordance with BSP rules. This payment scheme does

[51] G.R. No. 153205, January 22, 2007.
[52] Now the VAT rate is 12%. Refer to Revenue Memorandum Circular No. 7-2006 dated January 31, 2006.
[53] Now Section 102(B)(2) of the NIRC of 1997, as amended by RA 9337.

not entitle respondent to 0% VAT. As the Court held in *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*,[54] the place of payment is immaterial, much less is the place where the output of the service is ultimately used. An essential condition for entitlement to 0% VAT under Section 102(b)(1) and (2) is that the recipient of the services is a person doing business outside the Philippines. **In this case, the recipient of the services is the Consortium, which is doing business not outside, but within the Philippines because it has a 15-year contract to operate and maintain NAPOCOR's two 100-megawatt power barges in Mindanao.**

The Court recognizes the rule that the VAT system generally follows the 'destination principle' (exports are zero-rated whereas imports are taxed). However, as the Court stated in *American Express*, there is an exception to this rule. This exception refers to the 0% VAT on services enumerated in Section 102 and performed in the Philippines. For services covered by Section 102(b)(1) and (2), the recipient of the services must be a person doing business outside the Philippines. Thus, to be exempt from the destination principle under Section 102(b)(1) and (2), the services must be (a) performed in the Philippines; (b) for a person doing business outside the Philippines; and (c) paid in acceptable foreign currency accounted for in accordance with BSP rules.

Respondent's reliance on the ruling in *American Express* is misplaced. That case involved a recipient of services, specifically American Express International, Inc. (Hongkong Branch), doing business outside the Philippines. There, the Court stated:

> Respondent [American Express International, Inc. (Philippine Branch)] is a VAT-registered person that facilitates the collection and payment of receivables belonging to its **non-resident foreign client** [American Express International, Inc. (Hongkong Branch)], for which it gets paid in acceptable foreign currency inwardly remitted and accounted for in accordance with BSP rules and regulations. x x x x (Emphasis supplied)

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[54] G.R. No. 152609, June 29, 2005.

> <u>In contrast, this case involves a recipient of services – the Consortium – which is doing business in the Philippines. Hence, American Express' services were subject to 0% VAT, while respondent's services should be subject to 10% VAT.</u>" *(Underscoring supplied)*

In this case, it was clearly established that the recipient of the service, Nokia Corporation, is a foreign corporation, by virtue of the following documents, *viz*: (1) Certificate of Non-Registration of Company dated May 17, 2011[55] issued by the Philippine Securities and Exchange Commission, stating that the latter's record do not show the registration of Nokia OYJ (Nokia Corporation); (2) Extract from the Trade Register of Finland;[56] and (3) Certificate of Fiscal Residence dated May 10, 2010 issued by the tax authority of Finland, indicating that Nokia OYJ is a resident of Finland for the whole tax year 2009.[57]

However, We cannot say that Nokia Corporation is a *"nonresident foreign corporation"* or *"a foreign corporation not engaged in trade or business within the Philippines".* In fact, petitioner's evidence discloses that Nokia Corporation is doing or engaging in business in the Philippines.

Note 1 of the Notes to Financial Statements as of and for the years ended December 31, 2009 and 2008 of petitioner,[58] provides as follows:

> "The Company's parent company is Nokia Corporation (Nokia), incorporated in Finland and which shares of stock are listed in the Stock Exchanges of Helsinki, Frankfurt and New York.
>
> xxx xxx xxx
>
> With the change of business structure, the Company's business operations are now focused in providing support services to Nokia and other affiliates. **The Company has an existing agreement with Nokia which states that Company shall provide services to Nokia in handling any specific or general business matter that may**

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[55] Exhibit "H", Docket, p. 210.
[56] Exhibit "J", Docket, pp. 217 to 239.
[57] Exhibit "K", Docket, pp. 240 to 241.
[58] Exhibit "R-08".

> **arise <u>with respect to Nokia's business in the Philippines</u> and other territories defined in the agreement.** These services include marketing support service related to Nokia products and solutions, market research in the Philippines and other support services as defined in the service agreement.
>
> xxx xxx xxx." *(Emphasis and underscoring supplied)*

Based on the foregoing, the services rendered or to be rendered by petitioner primarily consists of *"handling any specific or general business matter that may arise with respect to Nokia's business in the Philippines"*. Thus, petitioner's services to Nokia Corporation is anticipatory and is premised on the fact that the latter has an existing business in the Philippines. Such being the case, Nokia Corporation cannot be treated as a *"nonresident foreign corporation"* or *"a foreign corporation not engaged in trade or business within the Philippines"*.

Correspondingly, considering that it was not established that the subject services were performed in the Philippines and that the recipient of the service is not a nonresident foreign corporation, it must already be stated, at this juncture, that the transaction between petitioner and Nokia Corporation cannot be treated as subject to zero-rated VAT under Section 108(B)(2) of the NIRC of 1997, as amended by RA 9337. Therefore, the instant claim for refund or TCC of input VAT must perforce be denied.

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.[59]

WHEREFORE, all the foregoing considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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

WE CONCUR:

(Inhibited)
ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Chairperson
Presiding Justice