REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

AMMEX I-SUPPORT CORPORATION, *Petitioner,*	**CTA Case No. 9906**
	Members:
-versus-	**DEL ROSARIO, *P.J.***, *Chairperson* *and* **MANAHAN**, *J.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 08 2021 8:41 am

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D E C I S I O N

MANAHAN, *J.:*

This is a *Petition for Review* filed by petitioner Ammex I-Support Corporation (AIC) against respondent Commissioner of Internal Revenue (CIR) on August 10, 2018 involving its claim for refund of value-added tax (VAT) from its alleged excess and unutilized input taxes for the 1st quarter of taxable year (TY) 2016 in the amount of ₱1,102,841.24.[1]

THE PARTIES

Petitioner AIC is a corporation organized and existing under the laws of the Republic of the Philippines with office address at 701-703 Pearlbank Centre, 146 Valero St., Salcedo Village, Makati City.[2] It is duly registered with the Securities and Exchange Commission (SEC) under SEC Company Registration No. CS200609999 dated June 26, 2006.[3] As stated in its Articles of Incorporation, petitioner is engaged in "business process outsourcing using computer-based, information technology (IT)-enabled system to service the

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[1] Docket, CTA Case No. 9906, Vol. II, Statement of the Case, Pre-Trial Order dated January 15, 2019, p. 1368.
[2] *Id.*, Vol. II, Par. A.1, Admitted Facts, Pre-Trial Order dated January 15, 2019, p. 1368.
[3] *Id.*, Vol. II, Par. A.4, Admitted Facts, Pre-Trial Order dated January 15, 2019, p. 1369; Docket, Vol. III, Exhibits "P-2" and "P-3", pp. 1606 to 1617.

needs of global clients."[4] Petitioner is likewise a VAT-registered entity with the Bureau of Internal Revenue (BIR) as evidenced by its Certificate of Registration No. OCN 9RC0000461726, with Tax Identification No. (TIN) 246-226-340-000.[5]

On the other hand, respondent CIR is being sued in his official capacity, having been duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund as provided by law.[6]

THE FACTS

On April 2, 2018, the BIR received petitioner's application for tax refund in the amount of ₱1,102,841.24, for the 1st quarter of TY 2016.[7]

In the letter dated June 19, 2018 signed by Ms. Erlinda A. Simple, Assistant Commissioner of Internal Revenue (ACIR), Assessment Service, the BIR denied petitioner's claim for VAT refund on the sole ground that allegedly, the same was filed beyond the two (2)-year prescriptive period. It reasoned that petitioner's application for VAT refund should have been filed on March 31, 2018, and not on April 2, 2018.[8]

Petitioner filed the instant *Petition for Review* on August 10, 2018.[9] The case was initially raffled to the Third Division of this Court. In the Order dated September 26, 2018,[10] the instant case was transferred to this Court's First Division.

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[4] Docket, Vol. I, Par. 3.02, *Petition for Review*, vis-à-vis Par. 1, *Answer*, pp. 12 and 297, respectively.
[5] *Id.*, Vol. II, Par. A.5, Admitted Facts, Pre-Trial Order dated January 15, 2019, p. 1369; Docket, Vol. I, Par. 3.03, *Petition for Review*, vis-à-vis Par. 1, *Answer*, pp. 12 and 297, respectively; Docket, Vol. III, Exhibit "P-50", p. 1898.
[6] *Id.*, Vol. II, Par. A.3, Admitted Facts, Pre-Trial Order dated January 15, 2019, p. 1369.
[7] *Id.*, Vol. II, Par. A.6, Admitted Facts, Pre-Trial Order dated January 15, 2019, p. 1369; Docket, Vol. III, Exhibit "P-1", p. 1605.
[8] *Id.*, Vol. I, Par. 4.05, *Petition for Review*, vis-à-vis Par. 1, *Answer*, pp. 16 and 297, respectively; Docket, Vol. III, Exhibit "P-49", p. 1897.
[9] *Id.*, Vol. I, pp. 10 to 29.
[10] *Id.*, Vol. I, p. 293.

On October 12, 2018, respondent filed his *Answer*,[11] interposing the following special and affirmative defenses, to wit:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

1) Respondent reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses.

2) Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;

3) Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable;

4) It is incumbent upon the Petitioner to show that it has complied with the provision of Section 204 (C) in relation to Section 229 of the 1997 Tax Code, as amended;

5) Petitioner's claim for refund or issuance of tax credit certificate in the amount of One Million One Hundred Two Thousand Eight Hundred Forty-One and 24/100 Pesos (Php1,102,841.24) as alleged excess and unutilized input VAT attributable to its zero-rated sales of service for the first quarter of taxable year 2016 was not fully substantiated by proper documents, such as sales invoices, official receipts and others;

6) In a claim for tax refund or tax credit, taxpayer must prove not only entitlement to the grant of the claim under substantive law, it must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit *(Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, 518 SCRA 425)*;

7) Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (*Commissioner* [o]*f Internal Revenue vs. Ledesma*, 31 SCRA 95) and as such, they are looked upon with disfavour *(Western Minolco Corp. vs. Commissioner of Internal Revenue,* 124 SCRA 121*).*"

The Pre-Trial Conference was set and held on December 6, 2018.[12] Prior thereto, *Respondent's Pre-Trial Brief* was filed

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[11] Docket, Vol. I, pp. 297 to 300. cm

on November 13, 2018,[13] while the *Pre-Trial Brief [For the Petitioner]* was submitted on November 29, 2018.[14]

Thereafter, on January 15, 2019, the Pre-Trial Order was issued.[15]

The trial of the case then proceeded.

During trial, petitioner presented documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals: (1) Ms. Lhyric C. Gomez,[16] petitioner's Accounting and Finance Manager; (2) Mr. Nerom N. Maceda,[17] petitioner's General Accountant II; and (3) Mr. Lorenz Samuel D. Gomez,[18] the Court-commissioned Independent Certified Public Accountant (ICPA).[19]

The *Report* of the ICPA was submitted to this Court on March 22, 2019.[20]

On July 3, 2019, the *Formal Offer of Documentary Exhibits [For the Petitioner]* was filed.[21] Respondent submitted his *Comment (To Petitioner's Formal Offer of Evidence)* on July 4, 2019.[22] In the Resolution dated August 30, 2019,[23] the Court admitted petitioner's Exhibits, *except* for Exhibit "P-4", for failure to present its original for comparison.

When the case was called for the initial presentation of evidence for respondent, his counsel manifested that respondent would no longer present evidence in support of his

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[12] Docket, Vol. I, *Notice of Pre-Trial Conference* dated October 26, 2018 pp. 301 to 302; Docket, Vol. II, Order dated December 6, 2018, p. 1353.
[13] *Id.*, Vol. I, pp. 303 to 305.
[14] *Id.*, Vol. 1, pp. 311 to 318.
[15] *Id.*, Vol. II, pp. 1368 to 1373.
[16] *Id.*, Vol. I, Exhibit "P-224", pp. 319 to 324; Docket, Vol. II, Order dated May 14, 2019, p. 1517.
[17] *Id.*, Vol. II, Exhibit "P-51", pp. 822 to 832; Minutes of the hearing held on, and Order dated, March 12, 2019, Docket – Vol. II, pp. 1454 to 1455, and 1452, respectively.
[18] *Id.*, Vol. II, Exhibit "P-225", pp. 1519 to 1532; Docket, Vol. II, Minutes of the hearing held on, and Order dated, February 21, 2019, pp. 1432 to 1434 and 1437 to 1438; Docket, Vol. II, Minutes of the hearing held on, and Order dated, May 23, 2019, pp. 1579 to 1583.
[19] *Id.*, Vol. II, *Judicial Affidavit (of Lorenz Samuel D. Gomez)*, pp. 1403 to 1409; *Oath of Commission* dated February 21, 2019, Docket – Vol. II, p. 1435; Minutes of the hearing held on, and Order dated, February 21, 2019, Docket – Vol. II, pp. 1432 to 1434, and 1437 to 1438, respectively.
[20] *Id.*, Vol. II, Exhibit "P-226", pp. 1461 to 1509.
[21] *Id.*, Vol. III, pp. 1597 to 1604.
[22] *Id.*, Vol. III, pp. 1899 to 1900.
[23] *Id.*, Vol. III, pp. 1905 to 1907. *an*

defense. Thus, the Court granted both parties a period of thirty (30) days to submit their respective memorandum.[24]

The *Memorandum (For Petitioner)* and the *Memorandum for Respondent* were separately filed on October 3, 2019.[25]

On January 30, 2020, the instant case was submitted for decision.[26]

ISSUES

The following constitutes the sole issue for the Court's resolution:

> "Whether Ammex I-Support Corporation is entitled to the claim for VAT refund in the amount of Php1,102,841.24, representing its alleged excess and unutilized input taxes for the First Quarter of taxable year 2016."[27]

Petitioner's Arguments

Petitioner argues that its administrative claim for VAT refund was filed within two (2) years after the close of the taxable quarter when the sales were made, pursuant to Section 112 of the 1997 National Internal Revenue Code (NIRC), as amended, and that it filed the instant *Petition for Review* within the thirty (30)-day period from receipt of the *Notice of Denial.*

Petitioner insists that it is entitled to the refund of its unutilized input taxes attributable to its zero-rated sales/receipts for the 1st quarter of TY 2016, and that it is a VAT-registered entity and engaged in zero-rated sales.

Petitioner further argues that the input taxes were due or paid, and have not been applied against output taxes during the 1st quarter of TY 2016 and in the succeeding quarters, and that the input taxes being claimed were attributable to zero-rated sales and were not transitional input taxes, and that the

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[24] Docket, Vol. III, Minutes of the hearing held on, and Order dated, September 3, 2019, pp. 1908 to 1909.
[25] *Id.*, Vol. III, pp. 1911 to 1929 and 1930 to 1934, respectively.
[26] *Id.*, Vol. III, Resolution dated January 30, 2020, p. 1950.
[27] *Id.*, Vol. II, Issue, Pre-Trial Order dated January 15, 2019, p. 1369.

services were paid with acceptable foreign currency and which have been duly accounted for in accordance with BSP rules and regulations.

Respondent's Arguments

Respondent counter-argues that petitioner failed to demonstrate that the tax, which is the subject of the instant case, was erroneously or illegally collected and that taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable.

Respondent further argues that it is incumbent upon petitioner to show that it has complied with the provision of Section 204(C) in relation to Section 229 of the 1997 NIRC, as amended.

Respondent insists that petitioner's claim for refund was not fully substantiated by proper documents and that it failed to prove that its clients/customers, to whom the services were rendered for the 1st quarter of TY 2016 were non-resident foreign corporations within the purview of Section 108(B)(2) of the 1997 NIRC, as amended.

Respondent further insists that petitioner only presented a Certificate of Non-Registration of its customers/clients issued by the SEC and that said certification does not prove that its customers are "nonresident foreign corporations."

Respondent avers that claims for refund are construed strictly against the claimant, that the same partake the nature of exemption from taxation and as such, they are looked upon with disfavor, and that tax refunds are in the nature of tax exemptions, and as such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption.

RULING OF THE COURT

The instant *Petition for Review* must be denied.

Requisites for the grant of input VAT refund.

Respondent contends that it is incumbent upon petitioner to show that it has complied with Section 204(C) in relation to Section 229 of the 1997 NIRC, as amended.

We disagree.

It is already well-settled that the provision which governs claims for refund of input VAT is Section 112 of the NIRC of 1997, as amended.

In *The Commissioner of Internal Revenue vs. Visayas Geothermal Company, Inc.*,[28] the Supreme Court held:

> "**The applicable provision of the NIRC is undoubtedly Section 112, which deals specifically with input tax**:
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> xxx xxx xxx
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> The Court, in earlier cases, had the opportunity to decide which provision of the NIRC was applicable to claims for refund or tax credit for creditable input VAT. In the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*,[29] it was held that **Section 229 of the NIRC, which provides for a two-year period, reckoned from the date of payment of the tax or penalty, for the filing of a claim of refund or tax credit, is only pertinent to the recovery of taxes erroneously or illegally assessed or collected; and that <u>the relevant provision of the NIRC for claiming a refund or tax credit for the unutilized creditable input VAT is Section 112(A)</u>**:
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>> To be sure, MPC cannot avail itself of the provisions of either Sec. 204(C) or 229 of the NIRC which, for the purpose of refund, prescribes a different starting point for the two-year prescriptive limit for the filing of a claim therefor. Secs. 204(C) and 229 respectively provide:
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>> x x x x
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>> Notably, the above provisions also set a two-year prescriptive period, reckoned from date of payment of the tax or penalty, for the filing of a claim of refund or tax credit. Notably too, both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes

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[28] G.R. No. 181276, November 11, 2013.
[29] G.R. No. 172129, September 12, 2008.

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> Considering the foregoing discussion, it is clear that Sec. 112(A) of the NIRC, providing a two-year prescriptive period reckoned from the close of the taxable quarter when the relevant sales or transactions were made pertaining to the creditable input VAT, applies to the instant case, and not to the other actions which refer to erroneous payment of taxes.

This ruling was later reiterated in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*,[30] where this Court upheld the ruling in *Mirant* that **the appropriate provision for determining the prescriptive period for claiming a refund or a tax credit for unutilized input VAT is Section 112(A), and not Section 229, of the NIRC.**

Finally, the recent pronouncement of the Court En Banc should put an end to any question as to whether Section 229 may apply to claims for refund of unutilized input VAT. In the case of *Commissioner of Internal Revenue v. San Roque Power Corporation*,[31] this Court categorically stated that **the 'input VAT is not 'excessively' collected as understood under Section 229 because at the time the input VAT is collected the amount paid is correct and proper.'**

As such, **it is <u>now clear and indisputable</u> that it is Section 112, and not 229, of the Tax Code which is applicable to <u>all cases involving an application for the issuance of a tax credit certificate or refund of unutilized input VAT</u>.**" *(Emphases and underscoring added)*

Thus, Section 112 of the 1997 NIRC, as last amended by Republic Act (RA) No. 10963,[32] provides, in part, as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
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> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable

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[30] G.R. No. 184823, October 6, 2010.

[31] G.R. No. 184823, October 6, 2010.

[32] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: ***Provided, however***, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): ***Provided, further***, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> xxx xxx xxx
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> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: ***Provided***, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
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> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: ***Provided, however***, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code."

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

As to the timeliness of the filing of the administrative and judicial claims:

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;[33]

2. in case of full or partial denial of the refund claim, the judicial claim is filed with this Court, within thirty (30) days from receipt of the decision;

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

3. the taxpayer is a VAT-registered person;[34]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[35]

5. for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[36]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[37]

7. the input taxes are due or paid;[38]

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

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[33] *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.
[34] *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.
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Id.*

sales volume;[39] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[40]

It must be noted that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[41] Thus, it behooves petitioner to show compliance with each of the foregoing requisites. Otherwise, the claim must be denied.

Petitioner's administrative and judicial claims were timely filed.

To repeat, the *first* requisite pertains to the filing of a claim for tax refund or tax credit of input VAT before the BIR, within two (2) years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the 1st quarter of TY 2016, which closed on March 31, 2016. Counting two (2) years from the said date, petitioner had until March 31, 2018 within which to file its administrative claim for refund. However, since March 31, 2018 fell on a Saturday, petitioner had until April 2, 2018, the next working day, Monday, to file its administrative claim, pursuant to Section 1, Rule 22 of the Rules of Court.[42] Thus, contrary to the position of respondent, the filing of its administrative claim on April 2, 2018 was

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

[40] *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.

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

[42] Section 1. *How to Compute Time.* — In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day or the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period as thus computed, **falls on a Saturday**, a Sunday, or a legal holiday in the place where the court sits, **the time shall not run until the next working day**." *(Emphases added)*

timely made. As such, there is no doubt that petitioner complied with the *first* requisite.

Moreover, as already stated, the *second* requisite is to the effect that the judicial claim must have been filed within thirty (30) days from the receipt of respondent's decision.

Respondent, through ACIR Erlinda A. Simple of the BIR's Assessment Service, denied petitioner's application for VAT refund, in her letter dated June 19, 2018, which was received by petitioner on July 11, 2018.[43] Thus, counting thirty (30) days from July 11, 2018, petitioner had until August 10, 2018 within which to file its judicial claim for refund. Considering that petitioner filed the instant *Petition for Review* on August 10, 2018,[44] the same was seasonably filed.

Such being the case, petitioner fulfilled the above-stated *first* and *second* requisites.

Petitioner is a VAT-registered taxpayer.

Petitioner likewise complied with the *third* requisite, *i.e.* that it is a VAT-registered taxpayer with TIN 246-226-340-000, as evidenced by BIR Certificate of Registration No. 9RC0000461726.[45]

Petitioner failed to establish that it was engaged in zero-rated or effectively zero-rated sales during the 1st quarter of 2016.

The *fourth* and *fifth* requisites respectively require that the taxpayer is engaged in zero-rated or effectively zero-rated sales, and that for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2), of the 1997 NIRC, as amended, the acceptable foreign currency exchange

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43 Docket, Vol. III, Exhibit "P-49", p. 1897; Docket, Vol. I, A11, Exhibit "P-224", p. 321; Docket, Vol. II, A28, Exhibit "P-51", p. 827.

44 *Id.*, Vol. I, pp. 10 to 29

45 *Id.*, Vol. II, Par. A.5, Admitted Facts, Pre-Trial Order dated January 15, 2019, p. 1369; Docket, Vol. I, Par. 3.03, *Petition for Review*, vis-à-vis Par. 1, *Answer*, pp. 12 and 297, respectively; Docket, Vol. III, Exhibit "P-50", p. 1898.

proceeds have been duly accounted for in accordance with the BSP rules and regulations.

Petitioner claims that during the 1st quarter of TY 2016, the services rendered to its non-resident foreign clients were subject to zero percent (0%) VAT pursuant to Section 108(B) of the NIRC of 1997, as amended, which provides, in part, as follows:

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

Based on the foregoing provision, certain *essential elements* must be present for a sale or supply of services to be subject to the VAT rate of zero percent (0%), to wit:

1) The services fall under any of the categories under Section 108(B)(2),[46] or simply, the services rendered should be other than *"processing, manufacturing or repacking goods"*;[47]

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[46] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.
[47] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007.

2) 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;[48]

3) The service must be performed in the Philippines[49] 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.[50]

As for the *first* essential element, as stated in its Articles of Incorporation, petitioner is engaged in "business process outsourcing using computer-based IT-enabled system to service the needs of global clients."[51] Relative thereto, pursuant to the Call Center Services Agreements between petitioner and its clients, it is required to provide "inbound and outbound customer service call center services" to its clients.[52] Likewise, Mr. Nerom N. Maceda explained, in effect, that, as back office of AIC in the United States, petitioner's call center agents sell industrial gloves to different countries in the world.[53]

Thus, the services rendered by petitioner are certainly not in the same category as *"processing, manufacturing or repacking of goods"*. Consequently, petitioner satisfied the *first* essential element.

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[48] *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.

[49] *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.

[50] *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.

[51] Par. 3.02, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket – Vol. I, pp. 12 and 297, respectively.

[52] Exhibits "P-32" to "P-45", Docket – Vol. III, pp. 1679 to 1891.

[53] Transcript of Stenographic Notes (TSN) at the hearing held on March 12, 2019, pp. 8 to 9.

Anent the *second* 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 Securities and Exchange Commission (SEC), **and** proof of incorporation/registration in a foreign country (*e.g.*, Articles/Certificate of Incorporation/Registration and/or Tax Residence Certificate). The Philippine SEC's *Certification of Non-Registration of Corporation* 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 *certificate/articles of incorporation/association* will prove 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 *second* essential element. In fact, in the very recent case of *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*,[54] the Supreme Court affirmed the necessity of presenting the said documents in this wise:

> "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[55] status. The Court shall not disturb its findings without any showing of grave abuse of discretion considering that the members of the tax court are in the best position to analyze the documents presented by the parties.
>
> In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court *a quo*'s findings. To the Court's mind, the SEC Certifications of Non-Registration show that these affiliates [clients] are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates [clients] 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."

In this case, in proving that it provided services to seventeen (17) foreign corporations doing business outside the Philippines, petitioner presented *Certificates of Non-Registration issued by the SEC* and *Contracts/Call Center*

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

Service Agreements between petitioner and its foreign clients[56], as summarized below:

Name of Client	Contract/ Service Agreement	SEC Certificate of Non-Registration
1. Ammex Corp.	"P-34"[57]	"P-13"[58]
2. Blue Jay Wireless	"P-32"[59]	"P-15"[60]
3. BenchMarket Medical	"P33"[61]	"P-14"[62]
4. Classic Accessories	None	"P-16"[63]
5. Cloudstaff HK Ltd.	"P-35"[64]	"P-17"[65]
6. Copiers Northwest Inc.	"P-36"[66]	"P-18"[67]
7. CSG Services Corp.	"P-37"[68]	"P-19"[69]
8. Depth Offshore	"P-38"[70]	"P-20"[71]
9. Echez Solutions Sdn Bhd	"P-39"[72]	"P-21"[73]
10. Fiberfix LLC	"P-40"[74]	"P-22"[75]
11. HWS Group (Shanghai) Co. Ltd.	None	"P-23"[76]
12. Costless Express Ltd. DBA LYKKI	"P-41"[77]	"P-24"[78]

56 Docket, Vol. II, A20 and A23, Exhibit "P-51", pp. 826 to 827.
57 *Id.*, Vol. III, pp. 1713 to 1730.
58 *Id.*, Vol. III, p. 1644.
59 *Id.*, Vol. III, pp. 1679 to 1694.
60 *Id.*, Vol. III, p. 1646.
61 *Id.*, Vol. III, pp. 1695 to 1712.
62 *Id.*, Vol. III, p. 1645.
63 *Id.*, Vol. III, p. 1647.
64 *Id.*, Vol. III, pp. 1731 to 1739.
65 *Id.*, Vol. III, p. 1648.
66 *Id.*, Vol. III, pp. 1740 to 1750.
67 *Id.*, Vol. III, p. 1649.
68 *Id.*, Vol. III, pp. 1751 to 1767.
69 *Id.*, Vol. III, p. 1650.
70 *Id.*, Vol. III, pp. 1768 to 1778.
71 *Id.*, Vol. III, p. 1651.
72 *Id.*, Vol. III, pp. 1779 to 1796.
73 *Id.*, Vol. III, p. 1652.
74 *Id.*, Vol. III, pp. 1797 to 1814
75 *Id.*, Vol. III, p. 1653.
76 *Id.*, Vol. III, p. 1654.
77 Docket, Vol. III, pp. 1815 to 1836.
78 *Id.*, Vol. III, p. 1655.

13. Total Benefit Solutions	"P-42"[79]	"P-27"[80]
14. Windhaven	"P-45"[81]	"P-29"[82]
15. Elk River Systems Inc. DBA Ticket Printing	"P-43"[83]	"P-25"[84]
16. UltraSource LLC	"P-44"[85]	"P-28"[86]
17. Tilson Hr. Inc.	None	P-26"[87]

However, during the cross-examination of petitioner's witness, Mr. Maceda, he admitted that petitioner failed to secure certificates of incorporation of the above-enumerated entities, to wit:

> "JUSTICE MANAHAN:
> Okay.
> Other than the Certificates from SEC that those non-resident clients of yours are not registered in the Philippines, did they submit their Certificate of Incorporations of their respective countries of residence?
>
> MR. MACEDA
> A. Actually, your Honors, we failed to secure Certificate of Registration of those clients, that's why we have attached Certificate of Non-Registration from SEC, Inward Remittances, and Foreign Currency Denominations and also we have attached the Service Travel Agreements between Ammex and those clients to support the non-zero-rating of our sales and to prove that our clients are indeed non-resident foreign corporations."[88]

Thus, in view of the non-submission of certificate/articles of incorporation/association of the above-enumerated entities, petitioner failed to discharge the burden of proving that its clients are foreign corporations doing business *outside* the Philippines or have a continuity of commercial dealings outside the Philippines, following the ruling in *Sitel Philippines*

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[79] *Id.*, Vol. III, pp. 1837 to 1850.
[80] *Id.*, Vol. III, p. 1658.
[81] *Id.*, Vol. III, pp. 1871 to 1891.
[82] *Id.*, Vol. III, p. 1660.
[83] *Id.*, Vol. III, pp. 1851 to 1859.
[84] *Id.*, Vol. III, p. 1656.
[85] *Id.*, Vol. III, pp. 1860 to 1870.
[86] *Id.*, Vol. III, p. 1659
[87] *Id.*, Vol. III, p. 1657.
[88] TSN dated March 12, 2019, pp. 10 to 11.

Corp. vs. Commissioner of Internal Revenue.[89] In the said case, the Supreme Court categorically ruled that "while Sitel's documentary evidence, which includes Certifications issued by the Securities and Exchange Commission and Agreements between Sitel and its foreign clients, may have established that Sitel rendered services to foreign corporations in 2004 and received payments therefor through inward remittances, said documents failed to specifically prove that such foreign clients were doing business outside the Philippines or have a continuity of commercial dealings outside the Philippines." Consequently, petitioner failed to satisfy the *second* essential element.

Furthermore, anent the *third* essential element, *i.e.*, that the subject services were performed in the Philippines, the same has likewise not been established. No evidence was presented by petitioner to prove that the said services were indeed performed in the Philippines. In fact, nowhere in its Call Center Service Agreements does it mention that the subject services should be performed in the Philippines.

As regards the *fourth* essential element, *i.e.*, that the payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules, petitioner presented its Certificates of Inward Remittances issued by BDO Unibank, Inc.[90] and Standard Chartered Bank[91] purportedly showing the remittances of its foreign clients, as well as the corresponding official receipts[92] supporting its zero-rated sales. However, due to petitioner's non-compliance with the *second* and *third* essential elements, it is futile to scrutinize one by one the details of the above-stated inward remittances and official receipts.

In sum, petitioner's sales of services to the alleged non-resident clients failed to qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

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

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[89] G.R. No. 201326, February 8, 2017.
[90] Docket, Vol. III, Exhibit "P-30", pp. 1662 to 1663.
[91] *Id.*, Vol. III, Exhibit "P-31", pp. 1664 to 1678.
[92] ICPA Exhibits "P-50.1" to "P-50.52".

It must be emphasized that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and not only the law is construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption are *strictissimi* scrutinized and must be duly proven.[93] Thus, the burden is on the taxpayer to show that he/she/it has strictly complied with the conditions for the grant of the tax refund or credit.[94]

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

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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
Presiding Justice

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[93] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.
[94] *Commissioner of Internal Revenue vs San Roque Power Corporation*, G.R. No. 187485, February 12, 2013.