REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

AVALOQ PHILIPPINES OPERATING HEADQUARTERS, *Petitioner,*	**CTA CASE NO. 10397**
	Members:
-versus-	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: DEC 07 2023 4:20 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

The instant case involves a claim for refund of petitioner's alleged excess and/or unutilized input value-added tax ("VAT") arising from its zero-rated sales during the 1st and 2nd quarters of the calendar year ("CY") 2018 (*i.e.,* 1 January to 30 June 2018) in the total amount of Three Million Eight Hundred Eighty Thousand Seven Hundred Ninety Six and 01/100 Pesos (Php3,880,796.01).[1]

The Parties

Petitioner is the regional operating headquarters ("ROHQ") of Avaloq Group AG, a company organized and existing under the laws of Switzerland. It has a license to do business as an ROHQ in the Philippines, as issued by the Securities and Exchange Commission ("SEC"), to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; sales promotion; training and personnel management;

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[1] See Statement of the Case, Pre-Trial Order, Records, Vol. 1, p. 594.

logistics services; research and development services; product development; technical support and maintenance; data processing and communication; and business development. It is registered with the Bureau of Internal Revenue ("BIR"), Revenue District Office No. ("RDO") 50 under Taxpayer's Identification Number ("TIN") 008-637-771-000.[2]

Meanwhile, respondent is the duly appointed Commissioner of Internal Revenue ("CIR") empowered to perform the duties of the said office, including, among others, the power to decide, approve, and grant claims for refund or tax credit of erroneously paid or overpaid taxes, as provided by law, particularly the ***National Internal Revenue Code, as amended ("NIRC")***. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

<u>The Facts</u>

As provided above, petitioner is an ROHQ. It is registered as a VAT taxpayer with the BIR under Certificate of Registration No. OCN 9RC0000461791 and was assigned Tax Identification Number ("TIN") 008-637-771-000.[4]

Petitioner filed its amended VAT returns for the 1st and 2nd quarters of CY 2018 on 30 September 2019.[5]

On 12 July 2020, petitioner filed its administrative claim for VAT refund before the BIR-VAT Credit Audit Division. In said VAT refund claim, petitioner alleged that it incurred excess and/or unutilized input VAT arising from its zero-rated sales during the 1st and 2nd quarters of CY 2018 in the total amount of Three Million Eight Hundred Eighty Thousand Seven Hundred Ninety Six and 01/100 Pesos (Php3,880,796.01) and that it is seeking the refund of the same.[6]

On 8 October 2020, petitioner received a Letter, dated 16 September 2020, which effectively denied its administrative VAT refund claim.[7]

Following such denial of its administrative claim, petitioner filed the instant Petition for Review ("Petition") before this Court on 9 November.[8] Respondent filed his Answer on 28 January 2021.[9]

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[2] See Admitted Facts, Pre-Trial Order, *id.*, p. 595.
[3] See Parties, Memorandum, *id.*, Vol. 2, p. 730.
[4] Exhibit "P-3", *id.*, Vol. 1, p. 622.
[5] Exhibits "P-4" and "P-5", *id.*, pp. 623-624.
[6] Exhibit "P-26", *id.*, p. 643; See Admitted Facts, Pre-Trial Order, *id.*, p. 595.
[7] Exhibit "P-27", *id.*, p. 644; See Admitted Facts, Pre-Trial Order, *id.*, p. 595.
[8] Records, Vol. 1, pp. 1-410.
[9] *Id.*, pp. 420-429.

On 2 February 2021, a Notice of Pre-Trial Conference was issued setting the Pre-Trial Conference on 10 June 2021.[10] Respondent, on 3 June 2021, filed his Pre-Trial Brief.[11] On same date, respondent submitted the Judicial Affidavit of Revenue Officer ("RO") Eufema Mylene N. Mabingnay.[12] On 4 June 2021, petitioner filed its Pre-Trial Brief.[13]

The Pre-Trial Conference ensued on 10 June 2021.[14]

On 8 July 2021, the parties filed a Joint Stipulation of Facts and Issues,[15] and a Hearing was conducted for the commissioning of the Independent Certified Public Accountant ("ICPA"), Ms. Krista V. Bambao.[16] She was then issued a Commission by this Court to act as the ICPA for the instant proceedings.[17]

On 20 October 2021, Ms. Bambao submitted her ICPA Report summarizing her findings for the instant judicial claim for VAT refund.[18] Petitioner then submitted her Judicial Affidavit in relation to said Report on 25 October 2021.[19]

This Court issued a Pre-Trial Order on 2 December 2021.[20]

On 7 December 2021, petitioner presented its witnesses, Mary Lalaine V. Munar, who was cross-examined based on her testimony contained in her Judicial Affidavit attached to the Petition,[21] and Ms. Bambao, who was cross-examined based on her testimony in relation to the ICPA Report.[22]

Petitioner filed its Formal Offer of Evidence on 21 December 2021,[23] to which respondent interposed no objections.[24] In a Resolution, dated 26 May 2022, this Court admitted all of petitioner's Exhibits.[25]

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[10] *Id.*, pp. 430-431.
[11] *Id.*, pp. 440-443.
[12] *Id.*, pp. 444-452.
[13] *Id.*, pp. 455-467.
[14] *Id.*, pp. 474-477.
[15] *Id.*, pp. 479-485.
[16] Exhibit E, Petition, *id.*, pp. 112-122.
[17] *Id.*, pp. 486-495.
[18] Exhibit "P-41", *id.*, pp. 500-538.
[19] Exhibit "P-239", *Id.*, pp. 547-588.
[20] *Id.*, pp. 593-602.
[21] Exhibit "P-238", *id.*, pp. 123-410.
[22] *Id.*, pp. 603-605.
[23] *Id.*, pp. 606-660..
[24] *Id.*, pp. 662-670.
[25] *Id.*, pp. 700-703.

During the Hearing conducted on 15 September 2022, respondent presented his lone witness, RO Mabingay,[26] before filing his Formal Offer of Evidence on 20 September 2022.[27] Petitioner interposed no objections to the same.[28]

On 10 November 2022, respondent filed his Memorandum.[29] Meanwhile, petitioner filed its Memorandum on 25 November 2022.[30] Thus, in a Resolution, dated 7 December 2022, the instant case was submitted for Decision.[31]

Hence, this Decision.

The Issue[32]

> Whether or not petitioner is entitled to the claim for refund of its alleged excess and/or unutilized input VAT in the amount of Three Million Eight Hundred Eighty Thousand Seven Hundred Ninety Six and 01/100 Pesos (Php3,880,796.01).

Arguments of the Parties

Petitioner's Arguments[33]

Petitioner avers that it is entitled to a refund of excess and unutilized input VAT. Petitioner posits the following arguments:

Petitioner's claim for refund of its accumulated (excess) input VAT finds legal support in ***Section 108 (B) (2) in relation to Sections 110 (B) and 112 (A) of the NIRC***;

Based on the aforesaid provisions of the ***NIRC***, in order to be entitled to a refund of excess and/or unutilized input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

a) That the taxpayer is VAT-registered;

26 Records, Vol. 2, pp. 704-708.
27 *Id.*, pp. 709-713.
28 *Id.*, pp. 714-717.
29 *Id.*, pp. 719-727.
30 *Id.*, pp. 729-778.
31 *Id.*, p. 1708.
32 See Issue, Pre-Trial Order, Records, Vol. 1, p. 596.
33 Records, Vol. 2, pp. 734-772.

b) That the administrative and judicial claim for refund was filed within the prescriptive period provided under the pertinent provisions of the ***NIRC;***

c) That the taxpayer is engaged in zero-rated or effectively zero-rated sales and that the sales were paid for in acceptable foreign currency exchange through intercompany offsetting agreements and the proceeds have been duly accounted for in accordance with rules and regulations of the Bangko Sentral ng Pilipinas ("BSP");

d) That the input taxes attributable to zero-rated sales were duly supported with purchase documents issued in accordance with ***Section 113 and 237 of the NIRC;*** and

e) That the input VAT credits applied for refund were not used as credits against any output tax liabilities of the taxpayer-claimant for the succeeding periods.

Petitioner is a VAT-registered entity;

The administrative and judicial claim for refund were filed within the prescriptive period provided under the ***NIRC***, and its implementing rules and regulations;

Petitioner is engaged in zero-rated transactions as required under the ***NIRC***, the sales were paid for in acceptable foreign currency exchange via intercompany offsetting agreements, and the proceeds have been duly accounted for in accordance with rules and regulations of the BSP;

The input taxes due from the purchases of goods and services directly attributable to zero-rated sales of petitioner were duly supported by VAT invoices or official receipts ("ORs");

The claimed input VAT payments were not applied against any output tax in the succeeding periods.

Respondent's Arguments[34]

In refutation, respondent alleges that the instant Petition must be dismissed for failure of petitioner to substantiate its administrative claim for refund. Petitioner failed to prove before this Court that it is indeed entitled to a VAT refund amounting to Three Million Eight Hundred Eighty Thousand Seven Hundred Ninety Six and 01/100 Pesos (Php3,880,796.01).

The Ruling of the Court

The instant Petition is **DENIED** for lack of merit.

Requisites for claiming unutilized input VAT attributable to zero-rated sales.

The provision that governs the present claim for refund of excess and/or unutilized input VAT attributable to zero-rated sales is ***Section 112 (A) and (C) of the NIRC***, which reads:

> "**SEC. 112. Refunds or Tax Credits of Input Tax.** –
>
> (A) Zero-rated or Effectively Zero-rated Sales. - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales,** except transitional input tax, **to the extent that such input tax has not been applied against output tax**: Provided, however, That **in the case of zero-rated sales under** Section 106(A)(2)(a)(1), (2) and (b) and **Section 108 (B)**(1) and **(2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)**: Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods 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.
>
> (B)...
>
> (C) Period within which Refund or Tax Credit 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**

[34] *Id.*, pp. 720-725.

> **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 ninety (90) days period shall be punishable under Section 269 of this Code."
> (Emphasis, Ours.)

Based on the foregoing provisions, jurisprudence has laid down the following requisites that must be complied with by the taxpayer-applicant to successfully obtain a tax refund/credit:

<u>As to the timeliness of the filing of the administrative and judicial claims:</u>

1. the refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[35]

2. the judicial claim is filed with this Court within thirty (30) days from receipt of an adverse decision (*i.e.*, partial or full denial of the administrative claim),[36] or upon the lapse of the period given to the CIR to act on an administrative claim (*i.e.*, ninety (90) days from the filing of such claim) wherein the CIR failed to act on the same within such period (in which case, the claim for refund is deemed denied by the CIR), whichever comes first;[37]

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

3. the taxpayer is a VAT-registered person;[38]

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

[36] Steag State Power, Inc. vs. Commissioner of Internal Revenue, G.R. No. 205282, 14 January 2019; Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue, G.R. No. 168950, 14 January 2015.

[37] Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue, G.R. No. 182737, 2 March 2016.

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

<u>In relation to the taxpayer's output VAT:</u>

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[39]

5. for zero-rated sales under ***Section 106(A)(2)(1) and (2), 106(B), and 108(B)(1) and (2) of the NIRC,*** the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[40]

<u>As regards the taxpayer's input VAT being refunded:</u>

6. the input taxes are not transitional input taxes; [41]

7. the input taxes are due or paid;[42]

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; [43] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[44]

At this juncture, it must be emphasized that cases filed before the Court of Tax Appeals ("CTA") are litigated *de novo*.[45] Parties are thus expected to litigate and prove every minute aspect of their case anew by presenting, formally offering, and submitting to the CTA all evidence required for the successful prosecution of its claim.[46] Consequently, petitioner must competently establish its claim for refund or tax credit following the foregoing requisites.

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[39] *Ibid.*
[40] *Ibid.*
[41] *Ibid.*
[42] *Ibid.*
[43] Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 155732, 27 April 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, 25 November 2009.
[44] Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 155732, 27 April 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, 25 November 2009; AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182364, 3 August 2010.
[45] Commissioner of Internal Revenue v. Univation Motor Philippines, Inc., G.R. No. 231581, 10 April 2019.
[46] *Id.*; Philippine Airlines, Inc. v. Commissioner of Internal Revenue, G.R. No. 206079-80 and 206309, 17 January 2018.

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

Pursuant to ***Sections 112 (A) and (C) of the NIRC***, the refund of unutilized input VAT attributable to zero-rated or effectively zero-rated sales must be administratively filed with the BIR within two (2) years counted from the close of the taxable quarter when the relevant sales were made. Meanwhile, the judicial claim for refund must be filed in Court within 30 days from either: (1) receipt of respondent's decision but such decision must be rendered within the 90-day period to resolve; or (2) after the expiration of the 90-day period, in which case there is deemed denial of the claim.

Applying the foregoing, the table below summarizes the relevant dates pertaining to the filing of the administrative and judicial claims for refund:

Period of claim	Close of the taxable quarter	Last day for filing of the administrative claim	Date of filing of the administrative claim	Last day of the CIR to act on the administrative claim (90 days)	Date of receipt of the CIR's denial of the administrative claim	Last day for filing of the judicial claim (30 days)	Date of filing of judicial claim
1st Quarter of CY 2018	31 March 2018	31 March 2018	12 July 2020[47]	10 October 2020	8 October 2020[48]	7 November 2020 (Saturday)	9 November 2020[49]
2nd Quarter of CY 2018	30 June 2018	30 June 2020	12 July 2020[50]	10 October 2020	8 October 2020[51]	7 November 2020 (Saturday)	9 November 2020[52]

The present case covers the 1st and 2nd quarters of CY 2018. Counting two (2) years from close of the 1st quarter and 2nd quarter of CY 2018 on 31 March 2018 and 30 June 2008, respectively, petitioner had until 31 March 2020 and 30 June 2020 to file its administrative claim for VAT refund for the 1st quarter and 2nd quarter of CY 2018, respectively. However, pursuant to ***Revenue Regulation No. 16-2020***, the due date for all administrative VAT refund claims for the calendar quarter ending on 31 March 2018 shall be extended until 15 July 2020 while the due date for all administrative VAT refund claims for the calendar quarter ending on 30 June 2018 shall be extended until 31 August 2020. Thus, the administrative claim filed on 12 July 2020 was timely made.

47 Exhibit "P-26", Records, Vol. 1, p. 643; See Admitted Facts, Pre-Trial Order, *id.*, p. 595.
48 Exhibit "P-27", *id.*, p. 644; See Admitted Facts, Pre-Trial Order, *id.*, p. 595.
49 *Id.*, pp. 1-410.
50 Exhibit "P-26", *id.*,, p. 643; See Admitted Facts, Pre-Trial Order, *id.*, p. 595.
51 Exhibit "P-27", *id.*, p. 644; See Admitted Facts, Pre-Trial Order, *id.*, p. 595.
52 *Id.*, pp. 1-410.

Meanwhile, as to the timeliness of the judicial claim, counting ninety (90) days from the filing of the administrative claim on 12 July 2020, respondent had until 10 October 2020. Respondent was able to meet this deadline when it issued a Denial Letter, dated 16 September 2020, and which was actually received by petitioner on 8 October 2020.

Counting thirty (30) days from 8 October 2020, petitioner had until 7 November 2020 within which to file its judicial claim for refund. But since the said date fell on a Saturday, the deadline to file the judicial claim is moved to the next working day which is 9 November 2020, a Monday. Thus, when petitioner filed the instant Petition on 9 November 2020, the same was timely instituted.

Given the foregoing, petitioner complied with the *first and second requirements* that the administrative and judicial claims should be timely filed.

Petitioner is a VAT-registered taxpayer.

It is undisputed that petitioner is duly registered with the BIR as a VAT taxpayer under Certificate of Registration No. OCN 9RC0000461791 and TIN 008-637-771-000.[53] Hence, petitioner complied with the *third requisite* that the claimant must be a VAT-registered taxpayer.

Petitioner failed to prove that it is engaged in zero-rated or effectively zero-rated sales.

Petitioner claims that it is engaged in zero-rated sales of services under ***Section 108 (B) (2) of the NIRC.***

Zero-rated sales of services, other than processing, manufacturing or repacking of goods, to non-resident persons or entities not engaged in business in the Philippines under ***Section 108 (B) (2) of the NIRC*** is delineated, as follows:

[53] Exhibit "P-3", *id.*, Vol. 1, p. 622.

> "(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":
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> xxx
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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);"

In applying the above provision, ***Section 4.108-5 (b)(2) of Revenue Regulations No. ("RR") 16-05, as amended,*** provides that:

> "(b) Transactions Subject to Zero Percent (0%) VAT Rate. — The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate:
>
> xxx
>
> (2) Services other than processing, manufacturing or repacking rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP;"

For a sale of service to qualify for VAT zero-rating under these provisions, it must be proven that: a) the services rendered were other than processing, manufacturing or repacking of goods; b) the services were rendered to Non-Resident Foreign Corporations ("NRFCs") doing business outside the Philippines; and c) the services were paid for in acceptable foreign currency accounted for in accordance with BSP rules and regulations.[54]

Petitioner rendered services other than processing, manufacturing or repacking of goods to NRFCs doing business outside of the Philippines.

To verify whether petitioner is authorized to provide services other than processing, manufacturing, or repacking of goods, petitioner's License to Do Business in the Philippines as issued by the SEC was examined by this Court.[55] As duly found, petitioner is a Philippine branch of a multinational company, Avaloq Group AG, which was organized and existing under of the

[54] Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 153205, 22 January 2007.
[55] Exhibit "P-2", BIR Records, p. 233.

laws of Switzerland. It is also licensed to carry out its business as an ROHQ in the Philippines by the SEC on 23 October 2013 with SEC Registration No. FS201319797. Petitioner is primarily engaged in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; sales promotion; training and personnel management; logistics services; research and development services; product development; technical support and maintenance; data processing and communication; and business development.[56] Thus, petitioner is only allowed to render services as provided which do not take the form of processing, manufacturing, or repacking of goods.

Moreover, to determine if petitioner indeed rendered services other than processing, manufacturing, or repacking of goods, and if such services were actually rendered to NRFCs, this Court perused the Contract Software Research & Development Agreement[57] entered into between Avaloq Licence AG and petitioner, and the General Framework Services Agreement[58] entered by and among petitioner, Avaloq Group AG, and the latter's affiliates.

Under the Contract Software Research & Development Agreement, petitioner is simply required to perform research and development activities based on the instructions and guidance of Avaloq Licence AG.[59]

On the other hand, under the General Framework Services Agreement, petitioner is duty bound to render service to Avaloq Group AG and its affiliates whenever there is a request for such through a Service Order.[60]

Petitioner is thus actually providing services other than processing, manufacturing, or repacking of goods to NRFCs, as shown by the forgoing.

In addition, petitioner presented the various foreign registration documents,[61] and SEC negative certifications[62] of its various clients. Altogether, these documents prove that petitioner's clients are NRFCs who are not doing business in the Philippines but only outside of it.

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[56] *Ibid.*
[57] Exhibit "P-21", *id.*, pp. 52-59.
[58] Exhibit "P-20", *id.*, pp. 35-51.
[59] Par. 3, Part III Covenants, Contract Software Research & Development Agreement, Exhibit "P-21", *id.*, pp. 55-56.
[60] Par. 2, General Framework Services Agreement, Exhibit "P-20", *id.*, p. 49.
[61] Exhibits "P-1" and "P-14" to P-19", BIR Records.
[62] Exhibits "P-14-1", P-15-1", P-16-1", P-17-1", P-18-1", and "P-19-1", BIR Records.

Petitioner failed to prove that it was paid in foreign currency for the services it rendered to its NRFC clients.

Petitioner alleges that its zero-rated sales of services were paid for in acceptable foreign currency exchange through intercompany offsetting agreements. It further alleges that the fees for petitioner's services were settled through a centralized clearing/netting system or group current account under Avaloq Group AG.

An offsetting arrangement is recognized as an alternative to actual inward remittance of foreign currency proceeds in export sales. Under ***Q8 and A8 of Revenue Memorandum Circular No. 42-2003***, offsetting arrangements are acknowledged by the BIR as an alternative to proofs of foreign currency inward remittances, *viz.*:

> "Q-8: With the full liberalization of the BSP rules on foreign exchange and trade transactions (CB Circular No. 1389 dated April13, 1993 enunciated in RMC No. 57-97), the BIR requirement for full documentation of proofs of inward remittances of export proceeds should no longer be enforced. Accordingly, what should be the acceptable documentary requirements in the processing of claims for TCC/refund, specifically on offsetting arrangements?
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> A-8: In the case of offsetting arrangements, the following documents should be required:
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> a. Import documents which created liability accounts in favor of the foreign parent or affiliated company;
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> b. Other contracts with the foreign or affiliated company that brought about the liabilities which were offset against receivables from export sales;
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> c. Evidence of proceeds of loans, in case the claimant has received loans or advances from the foreign company;
>
> d. Documents or correspondence regarding offsetting arrangements;
>
> e. Confirmation of the offsetting arrangements by the heads of the business organizations involved;
>
> f. Documents to prove actual export of goods; [and,]
>
> g. Documents to prove that the sales are zero-rated sales."

Moreover, under ***BIR Ruling No. [DA-(VAT-009) 075-08]***,[63] which cites ***BSP Circular No. 1353, Series of 1992***, the BIR ruled that an intercompany offsetting arrangement is considered acceptable foreign currency payment in accordance with BSP rules and regulations, for VAT zero-rating purposes, *viz.*:

> "2. Under the BSP Circular No. 1353, Series of 1992, payment for exports may be made through the following:
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> - Letter of Credit
> - Documents Against Payment
> - Documents Against Acceptance
> - Open Account
> - Cash Against Document
> - Prepayment/Export Advance
> - <u>Intercompany Open Account Offset Arrangement</u>
> - Exports on Consignment"
>
> (Underscoring, Ours)

The manner by which the offsetting arrangement is effected in the present case was detailed through the testimony of Ms. Munar during the Hearing, dated 7 December 2021, *viz.*:[64]

> "ATTY. MANALO
>
> Ms. Witness, in your answer to Question No. 31, you mentioned among others that under the short term credit facility, petitioner is entitled to request for loan in the form of advance and or overdraft from Avaloq Group AG. The loan amount which varies depending on the financial necessity of the petitioner to support its operation are remitted by Avaloq Group AG in the foreign currency denominated.
>
> Q Can you please elaborate on how petitioner requested the advance and or overdraft from Avaloq Group AG which in turn have been the subject of the offsetting arrangement against petitioner receivables?
>
> A Yes. So we sent our draw down request via e-mail based on the needs of the company to our head office, Avaloq Group AG. And the amounts that we received forms part of our loans payable where we offset our receivables from our other affiliates."

Simply put, petitioner alleges that it initially obtains foreign currency funding from its head office, Avaloq Group AG, depending on their financial needs. Upon receiving such foreign currency funding, the same is then recorded and treated by petitioner as a loan payable to Avaloq Group AG. On

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[63] 24 July 2008.
[64] TSN, Hearing, dated 7 December 2021, pp. 7-8.

this loan payable, petitioner offsets all subsequent receivables it earns and becomes entitled to from its sale of services to the affiliates of Avaloq Group AG.

An examination of the Short Term Credit Facility Agreement entered between Avaloq Group AG and its various affiliates, which include herein petitioner,[65] indeed confirms petitioner's allegations that it is being loaned amounts in US Dollars by its head office, Avaloq Group AG, to pay-off its financial needs. This finding is further bolstered by the fact that e-mail requests for funding sent by petitioner to Avaloq Group AG up until 26 June 2018, which were attached as Exhibits "P-28" to "P-34", can be traced, albeit not entirely, to the apostilled english-translated Debit Advice issued by Credit Suisse (Schweiz) AG in favor of petitioner's Bank of the Philippine Islands ("BPI") account[66] and to petitioner's BPI Foreign Currency Denominated Unit Bank Statements.[67]

However, while the fact that Avaloq Group AG loans petitioner foreign currency depending on the latter's needs is duly proven, it remains that petitioner has failed to adduce evidence that such amount advanced by Avaloq Group AG can be the subject of set-off with respect to the receivables earned by petitioner from its sales of services to Avaloq Group AG's other affiliates. Avaloq Group AG is an entity different from its affiliates. Hence, it cannot be presumed that such affiliates can use the amounts advanced by Avaloq Group AG to petitioner to pay-off petitioner's receivables which arose from the latter's sales of service to such affiliates.

Documentary proof on this matter should have been adduced by petitioner. The Short Term Credit Facility Agreement entered between Avaloq Group AG and its various affiliates, which include herein petitioner,[68] did not provide an offsetting arrangement between Avaloq Group AG's advances to petitioner and the latter's receivables from Avaloq Group AG's affiliates. Petitioner was mistaken when it construed par. 12. Set Off Balances of such agreement as authorizing such offsetting arrangement.[69] When said provision provided that "[b]oth parties authorize each other to set-off any credit balance in any currency to which it is entitled on any account in satisfaction of any sum due and payable under this Agreement but unpaid", it did not pertain to a set-off of balances between an affiliate, such as petitioner, and another affiliate: it refers only to a set-off of credits between Avaloq Group AG and an affiliate. It must be emphasized that the Short Term Credit Facility Agreement is not an agreement among Avaloq Group AG and its affiliates but solely an undertaking between Avaloq Group AG, as the primary party and lender, and each affiliate, as a borrower. It did not include loan

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[65] Exhibit "P-22", BIR Records, pp. 27-34.
[66] Exhibit "P-72" to "P-78".
[67] Exhibit "P-23", BIR Records, pp. 21-24.
[68] Exhibit "P-22", *id.*, pp. 27-34.
[69] Exhibit "P-22", *id.*, p. 30.

agreements between one affiliate and another affiliate. Hence, offsetting among the accounts of affiliates, which include petitioner, cannot be derived from such agreement.

If there is indeed an offsetting arrangement between and among Avaloq Group AG's affiliates, the same must be covered by a separate agreement between and among such affiliates. This interpretation is duly supported by par. 7.3 Invoice and Payment Terms of the General Framework Services Agreement, which provides: "[t]he contracting entity and each service provider may agree on alternative methods for the payment of the Service Fees due to the Service Provider, including by way of centralized clearing/netting system or group current accounts."[70] Thus, a separate agreement between or among Avaloq Group AG's affiliates is necessary before an offsetting arrangement can take effect between and/or among Avaloq Group AG's affiliates.

Unfortunately, petitioner failed to adduce evidence of this separate agreement. Petitioner thus failed to prove before this Court that there exists a valid offsetting arrangement in the present case that may serve as an alternative to actual inward remittance of foreign currency in consideration for the services it rendered to NRFCs not doing business in the Philippines. Consequently, petitioner failed to prove that is engaged in zero-rated sales of services under ***Section 108 (B) (2) of the NIRC***.

Assuming for the sake of argument that the pieces of evidence adduced by petitioner are sufficient to prove that a valid offsetting arrangement is authorized in the case at bar between petitioner and Avaloq Group AG's affiliates, petitioner must still establish the actual details of offsetting that occurred between petitioner's receivables from its sales of service to Avaloq Group AG's affiliates and the advances made by Avaloq Group AG. Petitioner alleged that it accomplished this feat by offering in evidence the Schedule of Offsetting of Receivables.[71]

A perusal of such Schedule would show that it is in another language. Hence, this Court cannot understand what it purports to present. Moreover, it is a schedule which petitioner itself prepared, unaccompanied by other sets of evidence. This Court accordingly finds this piece of evidence self-serving and undeserving of evidentiary weight.

It does not escape the attention of the Court that the Schedule was admitted in evidence and was not even objected to by respondent. Such admission, however, did not automatically equate to its being accorded weight as evidence. As clarified in ***Mancol, Jr. v. Development Bank of the***

[70] Exhibit "P-20", *id.*, p. 48.
[71] Exhibit "P-24", Records, Vol. 1, pp. 641-642.

***Philippines*:**[72]

> "The admissibility of evidence depends on its relevance and competence, while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade." The admissibility of a particular item of evidence has to do with whether it meets various tests by which its reliability is to be determined, so as to be considered with other evidence admitted in the case in arriving at a decision as to the truth. The weight of evidence is not determined mathematically by the numerical superiority of the witnesses testifying to a given fact, but depends upon its practical effect in inducing belief on the part of the judge trying the case. "Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue." "Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence."

Having been written in another language foreign to the Court, the probative value of said admitted evidence is nil.

For failing to prove that its sales of services to NRFCs doing business outside the Philippines were paid for in acceptable foreign currency in accordance with BSP rules and regulations, the said sales of services do not qualify for VAT zero-rating under ***Section 108 (B) (2) of the NIRC***. Thus, petitioner's VAT refund claim cannot prosper.

This Court deems it unnecessary to discuss the remaining requisites, considering the above.

WHEREFORE, the Petition for Review filed by petitioner **AVALOQ PHILIPPINES OPERATING HEADQUARTERS** is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[72] G.R. No. 204289, 22 November 2017.

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice