REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

BSM CREW SERVICE CENTRE PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10135

Members:

UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

MAR 29 2023
2:06 p.m.

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DECISION

RINGPIS-LIBAN, J.:

The *Petition for Review* prays that judgment be rendered:

1. Declaring petitioner entitled to claim refund in the total amount of ₱4,788,317.31, covering the period from January 1 until December 31, 2017, representing value-added tax (VAT) input taxes attributable to its zero-rated sales, for which no tax refund was granted or no tax credit was issued;

2. Ordering respondent to refund or issue tax credit certificate in favor of petitioner in the total amount of ₱4,788,317.31; and

3. Granting petitioner such other reliefs as may be just and equitable.[1]

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[1] Statement of the Case, Pre-Trial Order dated March 11, 2020, Docket – Vol. 1, p. 467 to 468.

THE PARTIES

Petitioner BSM Crew Service Centre Philippines, Inc. is a corporation duly organized and existing under the laws of the Philippines.[2] It is registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer, with address at 1965 BSM House, Leon Guinto Street, Brgy. 692, Zone 075, Malate, Manila 1004, under Taxpayer Identification Number (TIN) 000-139-083-000.[3]

Respondent Commissioner of Internal Revenue is vested with authority to exercise the functions of said office, including *inter alia*, the power to refund any internal revenue tax erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, or of VAT input taxes attributable to zero-rated revenue, and holding office at the BIR National Office Building, Diliman, Quezon City, Metro Manila.[4]

THE FACTS

On March 29, 2019, petitioner filed with the BIR's VAT Credit Audit Division an *Application for Tax Credits / Refunds (BIR Form No. 1914)* for VAT refund in the amount of ₱4,788,317.31, for the period from January 1, 2017 to December 31, 2017, with the *Revised Checklist of Mandatory Requirements for Claims for VAT Refund*.[5]

Respondent rendered a decision denying petitioner's claim for refund as per letter dated June 7, 2019, which was received by petitioner on June 26, 2019.[6]

On July 25, 2019, petitioner filed the present *Petition of Review*.[7]

Respondent filed his *Answer* on September 24, 2019,[8] interposing the following special and affirmative defenses, to wit:

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[2] Exhibit "P-12", Docket – Vol. 2, pp. 682 to 722.
[3] Exhibit "P-7", Docket – Vol. 2, p. 678.
[4] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Simplification of Issues* (JSFSI), Docket – Vol. 1, p. 416.
[5] Exhibits "P-9" and "P-10", Docket – Vol. 2, pp. 680 to 681.
[6] Par. 2, Stipulation of Facts, JSFSI, Docket – Vol. 1, p. 417; Exhibit "P-6", Docket – Vol. 2, pp. 675 to 677.
[7] Docket – Vol. 1, pp. 10 to 20.
[8] Docket – Vol. 1, pp. 142 to 150.

"SPECIAL AND AFFIRMATIVE DEFENSES

4. Respondent submits that petitioner is not entitled to a refund the amount of Php4,788,317.31, representing excess unutilized VAT allegedly paid.

5. Respondent repleads and adopts the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses.

PETITIONER FAILED TO SUBSTANTIATE ITS CLAIM FOR REFUND AT THE ADMINISTRATIVE LEVEL.

6. As submitted by the parties, a decision has been rendered denying the claim for refund for failure to substantiate its claim.

7. As held by the Honorable Supreme Court, a distinction must be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince to CTA that the CIR had no reason to deny its claim.

8. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund to tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.

9. In sum, since a decision has been rendered in this case denying the claim for refund for failure to substantiate its claim, petitioner cannot present here, documents it did not submit at the administrative level. In short, the Honorable Court is

confined to a more limited issue of whether the substantiation was enough and relatively, was the denial proper.

10. Petitioner claims that it is entitled to a tax refund under Sections 108(B)(2) of the Tax Code in relation to Section 112(A) of the Tax code. However, after the investigation of the petitioner's claim for tax refund, factual evidence showed that petitioner failed to substantiate its claim.

11. Thus, in a letter dated 7 June 2019, the BIR denied petitioner's application for tax refund for the taxable period from 1 January 2017 to 31 December 2017 for lack of legal and factual basis, and finding petitioner liable for deficiency VAT amounting to Php2,575,979.10, computed as follows:

Amount of Claim	**Php4,788,317.31**
Deductions from Claim	
Disallowed input VAT due to non-compliance with invoicing requirements pursuant to Sec. 113 of the Tax Code	Php (463,094.62)
Non-compliance with RMO No. 16-2007 (big-tickets purchases)	(947,534.04)
Per ITS verification – Q&A No. 14 of RMC No. 42-2003	(26,448.00)
Disallowed input tax on out of period purchases	(2,845.93)
Output tax on other income	(1,004,551.44)
Output tax on reimbursement from domestic related parties	(2,979,494.40)
Input tax attributable to zero-rated sales with insufficient support	(1,940,327.98)
Total Deductions	**Php(7,364,296.41)**
Input Tax for Refund (Payable)	**Php(2,575,979.10)**

PETITIONER'S VAT CREDIT CLAIMS WERE DISALLOWED FOR FAILURE TO SUBSTANTIATE ITS CLAIMS.

11. As a matter of course, a claim for refund is subject to investigation as it involves removal of accrued revenue from the coffers of the Government. It has been held by the Honorable Supreme Court that a claim for refund is not ipso facto granted because the **Commissioner of Internal Revenue still has to investigate and ascertain the veracity of the claim.**

12. In order to be entitled to a refund or issuance of a TCC of input VAT due or paid attributable to zero-rated or

effectively zero-rated sales, petitioner must prove compliance with the following requisites:

a) that there must be zero-rated or effectively zero-rated sales;
b) that input taxes were incurred or paid;
c) that such input taxes are directly attributable to zero-rated or effectively zero-rated sales;
d) that input taxes were not applied against any output VAT liability; and

e) that the claim for refund was filed within the two-year prescriptive period.

Note that in order to prove compliance with the above requisites, it is essential for petitioner substantiate its VAT claim for refund/tax credit in accordance with law and regulations.

13. It can be gleaned that petitioner's VAT credit claims for the first to fourth quarters of taxable year 2017 were disallowed for failure to substantiate its claims.

14. Section 4.110-8 of Revenue Regulations (RR) No. 16-2005 provides:

> '**Sec. 1.110-8. <u>Substantiation of Input Tax Credits. –</u>**
>
> (a.) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made, in the course of trade or business, whether such input taxes shall be credited against zero-rated sales, non-zero-rated sales, or subject to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in information returns required to be submitted to the Bureau:
>
> (1.) For the importation of goods - import entry or other equivalent document showing actual payment of VAT on the imported goods.
>
> (2.) For the domestic purchase of goods and properties - invoice showing the information required under Secs. 113 and 237 of the Tax Code.
>
> (3.) For the purchase of real property – public instrument i.e., deed of absolute sale, deed of

conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.

(4.) For the purchase of services - official receipt showing the information required under Secs. 113 and 237 of the Tax Code.'

15. Meanwhile, Section 4.113-1 of RR 16-2005 provides the invoicing requirements for VAT-registered person, to wit:

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

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

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

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

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

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

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

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

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

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

> (b) If the sale is exempt from VAT, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;
>
> (c) If the sale is subject to zero percent (0%) VAT, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;
>
> (d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between taxable, exempt and zero-rated components, and the calculation of the VAT on each of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for taxable, exempt, and zero-rated components of the sale.
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> (3) In the case of sales in the amount of one thousand pesos (P1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section.'

16. Petitioner's allegation that it is entitled to refund/tax credit was clearly not proved by sufficient evidence.

17. 'The basic rule is that he who alleges must prove his case." (FRANCISCO LIM vs. EQUITABLE PCI BANK, G.R. No. 183918, January 15, 2014.) Thus, petitioner has the burden of proving its allegations.

18. '[W]e reiterate our consistent ruling that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in strictissimi juris against the taxpayer, but also the **pieces of evidence presented entitling a taxpayer to an exemption is strictissimi scrutinized and must be duly proven.'** (ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION, G.R. No. 159490, February 18, 2008.) (Emphasis supplied)

CLAIMS FOR REFUND ARE CONSTRUED STRICTLY AGAINST THE

TAXPAYER AND IN FAVOR OF THE GOVERNMENT.

19. It is said that taxes are essential to government's very existence hence, the dictum that 'taxes are the lifeblood of the government.' And because taxes are the lifeblood of the nation, the court has always applied the doctrine of strict interpretation in construing tax exemptions. A claim for exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Else wise stated, taxation is the rule, exemption therefrom is the exception.

20. For this reason, the right of taxation cannot easily be surrendered, statutes granting tax exemptions are considered as a derogation of the sovereign authority. Since tax refunds are regarded as tax exemptions, therefore, these are to be construed strictissimi juris against the person or entity claiming the exemption.

21. To reiterate, claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and as such, they are looked upon with disfavor. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted."

On October 3, 2019, respondent transmitted the *BIR Records* for this case, consisting of one (1) folder, with pages 1 to 275.[9]

The Pre-Trial Conference was set and held on February 4, 2020.[10] Prior thereto, the *Pre-Trial Brief (for the petitioner)* was filed on January 28, 2020,[11] while respondent's *Pre-Trial Brief* was submitted on January 31, 2020.[12]

On February 19, 2020, the parties filed their *Joint Stipulation of Facts and Simplification of Issues*,[13] which the Court admitted and approved in its Resolution

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[9] Docket – Vol. 1, pp. 159 to 161.
[10] Notice of Pre-Trial Conference dated October 7, 2019, Docket – Vol. 1, pp. 163 to 164; Minutes of the hearing held on, and Order dated, February 4, 2020, Docket – Vol. 1, pp. 412 to 415.
[11] Docket – Vol. 1, pp. 168 to 172.
[12] Docket – Vol. 1, pp. 406 to 409.
[13] Docket – Vol. 1, pp. 416 to 418.

dated February 21, 2020,[14] thereby deeming the termination of the Pre-Trial. Thereafter, the Pre-Trial Order dated March 11, 2020 was issued by the Court.[15]

Trial then ensued.

During trial, the parties presented their respective documentary and testimonial evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Jennifer Mendoza,[16] petitioner's Senior Accounts Officer; and (2) Mr. Gerardo S. Teofilo, Jr.,[17] the Court-commissioned independent certified public accountant (ICPA).[18]

The ICPA *Report* was submitted on November 6, 2020.[19]

The *Formal Offer of Documentary Evidence (for the Petitioner)* was filed on December 22, 2020.[20] Respondent then filed his *Comment (Re: Formal Offer of Evidence for the Petitioner)* on January 11, 2021.[21] In the Resolution dated February 9, 2021,[22] the Court admitted petitioner's offered exhibits, *except* Exhibits "ICPA-P2-740" and "ICPA-P2-741", for being illegible.

Consequently, on December 23, 2020, petitioner filed its *Motion for Partial Reconsideration (of the Resolution dated February 09, 2021)*,[23] praying for the admission of Exhibits "ICPA-P2-740" and "ICPA-P2-741". Respondent failed to file a comment to the said *Motion*.[24]

In the Resolution dated November 15, 2021,[25] the Court granted petitioner's *Motion for Partial Reconsideration (of the Resolution dated February 09, 2021)*, and admitted Exhibits "ICPA-P2-740" and "ICPA-P2-741".

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[14] Docket – Vol. 1, p. 420.
[15] Docket – Vol. 1, pp. 467 to 475.
[16] Exhibit "P-31", Docket – Vol. 1, pp. 173 to 183; Minutes of the hearing held on, and Order dated, October 27, 2020, Docket – Vol. 2, pp. 508 to 510.
[17] Exhibit "P-34", Docket – Vol. II, pp. 524 to 541; Minutes of the hearing held on, and Order dated, November 26, 2020, Docket – Vol. 2, pp. 543 to 545.
[18] *Oath of Commission* dated September 24, 2020, Docket – Vol. 2, p. 505; Minutes of the hearing held on, and Order dated, September 24, 2020, Docket – Vol. 2, pp. 504, and 506 to 507, respectively.
[19] Exhibits "P-33" and "P-32", Docket – Vol. 2, pp. 511 to 522.
[20] Docket – Vol. 2, pp. 546 to 567.
[21] Docket – Vol. 2, pp. 853 to 855.
[22] Docket – Vol. 2, pp. 860 to 861.
[23] Docket – Vol. 2, pp. 862 to 864.
[24] Records Verification Report dated June 12, 2021 issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. 871
[25] Docket – Vol. 2, pp. 875 to 876.

For his part, respondent offered the testimony of Revenue Officer Jan Kevin S. Bautista.[26]

On March 22, 2022, respondent filed his *Formal Offer of Evidence.*[27] Petitioner then filed its *Comment (To Respondent's Formal Offer of Evidence dated March 22, 2022)* on March 28, 2022.[28] In the Resolution dated April 28, 2022,[29] the Court admitted all of respondent's offered evidence.

Subsequently, on June 7, 2022, respondent filed his *Memorandum*,[30] while petitioner filed its *Memorandum* on June 16, 2022.[31]

The present case was deemed submitted for decision on June 21, 2022.[32]

THE ISSUES

The parties stipulated the following issues for this Court's resolution, *viz.*:

> "3. Whether the denial of the claim for refund is proper based on the documents submitted by the petitioner to the respondent.
>
> 4. Whether petitioner is entitled for unutilized input VAT refund in the amount of Four Million Seven Hundred Eighty-Eight Thousand Three Hundred Seventeen and 31/100 Peso (Php4,788,317.31) covering the period from January 01, 2017 to December 31, 2017."[33]

Petitioner's arguments:

Petitioner argues that its claim for refund was timely filed; that its sales of service were zero-rated or effectively zero-rated; and that petitioner incurred input VAT attributable to its sales of services and the excess were unutilized.

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[26] Exhibit "R-7", Docket – Vol. 1, pp. 445 to 450; Minutes of the hearing held on, and Order dated, March 3, 2020, Docket – Vol. 2, pp. 877 to 879.
[27] Docket – Vol. 2, pp. 880 to 883.
[28] Docket – Vol. 2, pp. 884 to 885.
[29] Docket – Vol. 2, pp. 888 to 889.
[30] Docket – Vol. 2, pp. 890 to 896.
[31] Docket – Vol. 2, pp. 898 to 906.
[32] Resolution dated June 21, 2022, Docket – Vol. 2, p. 908.
[33] Issues, JSFSI, Docket – Vol. 1, p. 417.

Respondent's counter-arguments:

Respondent contends that the petition must be dismissed for failure of petitioner to substantiate its administrative claim for refund; and that petitioner is not entitled to refund in the amount of ₱4,788,317.31.

THE COURT'S RULING

The present *Petition for Review* must be denied for lack of merit.

Petitioner has not shown that respondent should not have denied its administrative claim in the first place.

In *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* ("*Pilipinas Total Gas* case"),[34] the Supreme Court ruled as follows:

> "At this stage, a review of **the nature of a judicial claim before the CTA** is in order. In *Atlas Consolidated Mining and Development Corporation v. CIR*,[35] it was ruled –
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> > x x x **First, a judicial claim for refund or tax credit in the CTA is <u>by no means an original action</u> but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, <u>as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claim</u>. In this case, <u>it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit</u>. Second, cases filed in the CTA are litigated *de novo*. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. <u>Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.</u>**
>
> A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit

[34] G.R. No. 207112, December 8, 2015.
[35] G.R. No. 145526, March 16, 2007.

supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but of the taxpayer's failure to substantiate the claim at the administrative level. **When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim**. **It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirement for an administrative claim**. **It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place**. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA." *(Emphases and underscoring added)*

Based on the foregoing jurisprudential pronouncements, when a judicial claim for refund or tax credit in this Court is an appeal of an unsuccessful administrative claim, **the taxpayer has to convince this Court that respondent had no reason to deny its claim.** Thus, it becomes imperative for the taxpayer to show this Court that not only is it entitled under substantive law to its claim for refund or tax credit, but also that it satisfied all the documentary and evidentiary requirement for an administrative claim. As a corollary, it is crucial for the taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place.

Logically, for the Court to determine whether an administrative claim should have been granted in the first place, this entails a review of the very same documents which were submitted to the BIR in support of the said administrative claim, especially when the denial of the administrative claim was clearly based thereon.

Notably, the first issue raised in this case entails this Court's review of the documents submitted by petitioner before the BIR or at the administrative level; while the second issue herein raised necessitates the determination of whether petitioner was able to prove before this Court its refund entitlement under the law vis-à-vis the evidence presented by petitioner during the proceedings.

Interestingly, however, despite of the said first issue raised, there is no indication that petitioner presented before this Court the very same documents it submitted to the BIR in support of its administrative claim. To emphasize, the first stipulated issue for this Court's resolution is whether the denial of the said claim is proper *"based on documents submitted by petitioner to respondent."*

A cursory examination of petitioner's *Formal Offer of Evidence* would disclose that no evidence was specifically offered to prove which documents were submitted by it to respondent or the BIR.[36] Correspondingly, there is no way for this Court to determine the above-stated first issue.

To the Court's mind, the failure of petitioner to show the documents it submitted to the BIR for its administrative claim is fatal to its case. This is simply because the Court will not be able to review or determine with certainty whether respondent has indeed the factual bases in denying petitioner's administrative claim. To stress, as enunciated in the *Pilipinas Total Gas* case, petitioner has to convince this Court that respondent had no reason to deny its administrative claim, and that it satisfied all the documentary and evidentiary requirements therefor. Without the said documents (which must be shown to be the same documents submitted to respondent or the BIR), this Court cannot determine whether the said administrative claim should have been granted in the first place.

We cannot simply assume that the documents submitted before this Court are the very same documents presented at the administrative level. This is so because no value is given to documentary evidence submitted in the BIR unless it is formally offered in this Court.[37] Moreover, no evidence shall be considered unless formally offered with a statement of the purpose why it is being offered.[38] The rule on formal offer of evidence is intertwined with the constitutional guarantee of due process. Parties must be given the opportunity to review the evidence submitted against them and take the necessary actions to secure their case.[39] Formal offer means that the offering party shall inform the court of the purpose of introducing its exhibits into evidence, to assist the court in ruling on their admissibility in case the adverse party objects.[40]

In sum, petitioner failed to prove that its administrative claim should have been granted in the first place. On this score alone, the present *Petition for Review* must already fail.

Nevertheless, even granting that respondent or the BIR should have granted its administrative claim, petitioner still failed to prove before this Court that it is entitled to the claim for refund or tax credit under the substantive law, as enunciated in the *Pilipinas Total Gas* case.

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[36] Docket – Vol. 2, pp. 546 to 567.

[37] *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue,* G.R. Nos. 206079-80 and 206309, January 17, 2018.

[38] Section 34, Rule 132 of the Rules of Court; *M.E. Holding Corporation vs. Court of Appeals, et al.*, G.R. No. 160193, March 3, 2008.

[39] *Republic of the Philippines vs. Gimenez, et al.*, G.R. No. 174673, January 11, 2016.

[40] *Sabay vs. People of the Philippines,* G.R. No. 192150, October 1, 2014.

Requisites under the law for the refund or issuance of tax credit certificate of input VAT.

Section 112 of the National Internal Revenue Code (NIRC) of 1997, as last amended by Republic Act No. 10963[41], provides, in part, 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: *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.
>
> xxx xxx xxx
>
> (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

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[41] 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.

> Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however*, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code."

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 certain categories as follows:

<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;[42]
2. in case of full or partial denial of the refund claim rendered within a period of ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision;

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

3. the taxpayer is a VAT-registered person;[43]

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

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[44]
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;[45]

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[42] *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.

[43] *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.*

[44] *Ibid.*

[45] *Ibid.*

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

6. the input taxes are not transitional input taxes;[46]
7. the input taxes are due or paid;[47]
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;[48] and
9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[49]

In addition, in claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the NIRC and other implementing rules and regulations.[50] Thus, petitioner's compliance with all the VAT invoicing requirements is required to be able to file a claim for refund of input taxes attributable to zero-rated sales.[51] The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[52] Moreover, it must be pointed out that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[53]

Furthermore, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[54] Thus, it behooves petitioner to show compliance with each of the foregoing requisites and invoicing requirements. As a corollary, the absence of *any* of the said requisites is already a valid ground to deny the refund claim.

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[46] *Ibid.*
[47] *Ibid.*
[48] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue, supra.*
[49] *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.*
[50] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.
[51] *JRA Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.
[52] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.
[53] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[54] *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.

Petitioner's administrative and judicial claims were timely filed.

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 period January 1, 2017 to December 31, 2017. Counting two (2) years from the close of the said taxable year, the following table indicates the pertinent last day for the filing of an administrative claim per quarter for the said year, to wit:

2017	Period	Close of the Taxable Quarter	Last Day to File Administrative Claim
1st quarter	January 1, 2017 to March 31, 2017	March 31, 2017	March 31, 2019
2nd quarter	April 1, 2017 to June 30, 2017	June 30, 2017	June 30, 2019
3rd quarter	July 1, 2017 to September 30, 2017	September 30, 2017	September 30, 2019
4th quarter	October 1, 2017 to December 31, 2017	December 31, 2017	December 31, 2019

Considering that petitioner's administrative claim covering the 1st, 2nd, 3rd and 4th quarters of calendar year 2017 were filed on March 29, 2019,[55] the same were timely made within the two (2)-year prescriptive period.

The *second* requisite is to the effect that in case of full or partial denial of the refund claim rendered within a period of ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision.

Notably, respondent is deemed to have acted on petitioner's administrative claim within the said ninety (90)-day period from March 29, 2019, since the BIR, through OIC- Assistant Commissioner Ma. Luisa I. Belen, issued the letter dated June 7, 2019,[56] denying petitioner's administrative claim.

Considering that petitioner received the said letter dated June 7, 2019 on June 26, 2019,[57] the former had until July 26, 2019—the last day of the thirty (30)-day period, within which to appeal the same before this Court. Since the present judicial claim was filed on July 25, 2019,[58] the same is likewise timely made.

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[55] Exhibits "P-9" and "P-10", Docket – Vol. 2, pp. 680 to 681.
[56] The 90th day from March 29, 2019 is June 27, 2019; Exhibit "P-6", Docket – Vol. 2, pp. 675 to 677.
[57] Exhibit "P-6", Docket – Vol. 2, pp. 675 to 677.
[58] Docket – Vol. 1, p. 10.

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

Petitioner is a VAT-registered person/entity.

Anent the *third* requisite, it is also undisputed that petitioner is a VAT-registered person/entity, with TIN 000-139-083-000.[59] Thus, there is no question that petitioner showed compliance with the said requisite.

In any event, petitioner failed to establish that it was engaged in zero-rated sales or effectively zero-rated sales for calendar year 2017.

The *fourth* and *fifth* requisites require that the taxpayer be engaged in zero-rated or effectively zero-rated sales and for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2), and that the acceptable foreign currency exchange proceeds thereof have been duly accounted for in accordance with BSP rules and regulations.

In its 1st to 4th Quarterly VAT Returns for calendar year 2017,[60] petitioner reported total sales amounting to ₱145,610,581.02 which comprised entirely of zero-rated sales, broken down as follows:

Exhibit	Period Covered	Amount
"P-1"	1st Quarter	₱ 35,284,604.10
"P-2"	2nd Quarter	35,944,228.46
"P-3"	3rd Quarter	38,074,089.03
"P-4"	4th Quarter	36,307,659.43
	Total zero-rated sales	**₱ 145,610,581.02**

Petitioner claims that the foregoing zero-rated sales are derived from the sale of services to the following non-resident foreign corporations (NRFC),[61] the consideration for which were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of BSP, to wit:

1. BERNHARD SCHULTE SHIPMGT BERMUDA LTD PTE
2. BERNHARD SCHULTE SHIPMGT CHINA CO LTD
3. BERNHARD SCHULTE SHIPMGT CYPRUS (GREECE) LTD
4. BERNHARD SCHULTE SHIPMGT CYPRUS (SINGAPORE) LTD
5. BERNHARD SCHULTE SHIPMGT CYPRUS SINGAPORE LTD

[59] Exhibit "P-7", Docket – Vol. 2, p. 678.
[60] Exhibit "P-1" to "P-4", Docket – Vol. 2, pp. 568 to 569, 595 to 596, 620 to 621, and 645 to 646.
[61] Exhibit "P-32", ICPA Report (Annex G – List of Customers).

6. BERNHARD SCHULTE SHIPMGT CYPRUS (UK) LTD
7. BERNHARD SCHULTE SHIPMGT CYPRUS LTD
8. BERNHARD SCHULTE SHIPMGT DEUTSCHLAND GMBH
9. BERNHARD SCHULTE SHIPMGT HONGKONG LTD PTE
10. BERNHARD SCHULTE SHIPMGT INDIA PRIVATE LTD
11. BERNHARD SCHULTE SHIPMGT ISLE OF MAN LTD
12. BERNHARD SCHULTE SHIPMGT ISLE OF MAN LTD BP
13. BERNHARD SCHULTE SHIPMGT SINGAPORE PTE LTD
14. BERNHARD SCHULTE SHIPMGT SINGAPORE PTE LTD - TRAFIGURA
15. BERNHARD SCHULTE SHIPMGT CYPRUS LTD (HAMMONIA)

Relative thereto, Section 108(B)(2) of the NIRC of 1997, as amended, reads 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 goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);
>
> **(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);"** *(Emphases 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%) under Section 108(B)(2) of the NIRC of 1997, as amended, to wit:

1. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a

nonresident person not engaged in business who is outside the Philippines when the services were performed;[62]

2. The services fall under any of the categories under Section 108(B)(2),[63] or simply, the services rendered should be other than *"processing, manufacturing or repacking goods"*;[64]
3. The services must be performed in the Philippines[65] 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.[66]

Relative to the ***first*** essential element, to prove that its clients are NRFCs for purposes of VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended, petitioner must prove that: (1) the client was established under the laws of a foreign country; and, (2) it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of both of these requirements to establish that the clients are foreign corporations AND are not doing business in the Philippines.[67]

Thus, petitioner must submit for its NRFC clients, at the very least, **both**: (1) the SEC Certificate of Non-Registration of Corporation/Partnership; **and** (2) Proof of Certificate/Articles of Foreign Incorporation/Association showing the state/province/country where the entity was organized.[68]

The SEC Certificate of Non-Registration shows that the foreign client is not engaged in trade or business in the Philippines. On the other hand, the Certificate/Articles of Foreign Incorporation/Association proves that the client was established under the laws of a foreign country. Together, these two (2) documents prove the two (2) requisites necessary to establish the NRFC status of a client.

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[62] *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.

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

[64] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra.

[65] *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.

[66] *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.

[67] *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*, G.R. No. 234445, July 15, 2020.

[68] *Commissioner of Internal Revenue vs. CITCO International Support Services Limited-Philippine ROHQ*, CTA EB No. 2015, November 29, 2019.

In this case, the following table shows whether petitioner complied with the ***first*** essential element as it presented evidence of the said SEC Certificate of Non-Registration and Certificates of Registration/ Foreign Incorporation/ Association for each of the recipients of the services rendered by petitioner:

	CLIENTS/CUSTOMERS	SEC Certification (Exhibit Nos.)	Foreign Incorporation/ Registration/ Association (Exhibit Nos.)
1	BERNHARD SCHULTE SHIPMGT BERMUDA LTD PTE	"ICPA-P3-10"	"ICPA-P3-181" to "ICPA-P3-230"; "ICPA P8-67" to "ICPA-P8-77"
2	BERNHARD SCHULTE SHIPMGT CHINA CO LTD	"ICPA-P3-1"	"P3-12"
3	BERNHARD SCHULTE SHIPMGT CYPRUS (GREECE) LTD	"ICPA-P3-3"	"ICPA-P3-13" to "ICPA-P3-24"; "ICPA-P3-231"; "ICPA-P8-6" to "ICPA-P8-11"
4	BERNHARD SCHULTE SHIPMGT CYPRUS LTD		
5	BERNHARD SCHULTE SHIPMGT CYPRUS (SINGAPORE) LTD	"ICPA-P3-8"	"ICPA-P3-123" to "ICPA-P3-158"; "ICPA-P3-232"
6	BERNHARD SCHULTE SHIPMGT SINGAPORE PTE LTD		
7	BERNHARD SCHULTE SHIPMGT SINGAPORE PTE LTD - TRAFIGURA		
8	BERNHARD SCHULTE SHIPMGT CYPRUS SINGAPORE LTD		
9	BERNHARD SCHULTE SHIPMGT CYPRUS (UK) LTD	"ICPA-P3-4"	"ICPA-P3-172" to "ICPA-P3-180"; "ICPA-P3-237" to "ICPA-P3-239"; "ICPA-P3-233"
10	BERNHARD SCHULTE SHIPMGT DEUTSCHLAND GMBH	"ICPA-P3-5"	"ICPA-P3-31" to "ICPA-P3-34"
11	BERNHARD SCHULTE SHIPMGT HONGKONG LTD PTE	"ICPA-P3-6"	**(NONE)**
12	BERNHARD SCHULTE SHIPMGT INDIA PRIVATE LTD	"ICPA-P3-7"	"ICPA-P3-61" to "ICPA-P3-122"
13	BERNHARD SCHULTE SHIPMGT ISLE OF MAN LTD	"ICPA-P3-9"	"ICPA-P3-160" to "ICPA-P3-171"; ICPA-"P3-234" to "ICPA-P3-236"; "ICPA-P3-233"
14	BERNHARD SCHULTE SHIPMGT ISLE OF MAN LTD BP		
15	BERNHARD SCHULTE SHIPMGT CYPRUS LTD (HAMMONIA)	**(NONE)**	**(NONE)**

Correspondingly, only the sales of services by petitioner to entities which have the said two (2) required documents may be treated as subject to the 0% VAT rate, pursuant to Section 108(B)(2) of the NIRC of 1997, as amended.

As regards the ***second*** essential element, petitioner entered into various service agreements[69] with the foregoing clients whereby, in general, petitioner, acting as an agent, shall furnish manning and crew management services to the

[69] Exhibits "ICPA-P8-1" to "ICPA-P8-100".

client, as the principal, in connection with the employment of crew on vessels owned, operated and/or managed by the principal. These services clearly fall within the scope of *"services other than processing, manufacturing or repacking of goods"* contemplated by the afore-mentioned provision, hence, petitioner satisfactorily complied with the ***second*** essential element.

However, with regard to the ***third*** essential element, petitioner failed to establish its compliance thereto. The same service agreements [70] between petitioner and its NRFC clients, do not bear any indication that the subject services were to be performed by petitioner in the Philippines. A scrutiny of the articles/clauses of the services agreements revealed that it does not categorically state that the contracted services thereof shall be performed by the petitioner in the Philippines. Furthermore, no evidence was offered to show that the subject services were performed in the Philippines.

As such, for petitioner's failure to establish that the subject services were performed in the Philippines, it is clear that it failed to comply with the *third* essential requisite.

Verily, petitioner fell short in establishing that its sales of services qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended. Needless to state, it is only when the sales of a VAT-registered person are zero-rated or effectively zero-rated that he/she/it may have the option of applying for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. [71] Considering petitioner's failure to establish its zero-rated or effectively zero-rated sales for the subject period, the subject refund cannot be granted.

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

It must be emphasized that actions for tax refund or credit, as in the instant case, are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund. [72] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[73] Hence, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the

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[70] *Id.*
[71] *Coca-Cola Bottlers Philippines, Inc. vs Commissioner of Internal Revenue*, G.R. No. 222428, July 19, 2018.
[72] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc.*, G.R. No. 127105, June 25, 1999.
[73] *Kepco Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011 citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

documentary and evidentiary requirements.[74] Unfortunately for petitioner, it has failed to prove such entitlement.

In sum, in this case, petitioner not only failed to establish that its administrative claim should have been granted by respondent in the first place, it also failed to show that it has zero-rated sales or effectively zero-rated sales for calendar year 2017. Correspondingly, the present *Petition for Review* must perforce fail.

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

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[74] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015 citing *J.R.A. Philippines, Inc. v. CIR*, G.R. No. 171307, August 28, 2013.

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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice