21-000229-0047

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10545

AIR DRILLING ASSOCIATES PTE LTD.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo St., Legazpi Village
Makati City

ATTY. ALBERT C. ARPON
ATTY. CARL FITRI A. HUSSIN
ATTY. JOCELYN P. LUMBRES
Bureau of Internal Revenue
Legal Division, Revenue Region No. 8-A, Makati City
36th Floor, Export Bank Plaza Building
Sen. Gil Puyat Ave. corner Chino Roces Ave.
Makati City 1230

AGAN MONTENEGRO MALASAGA & CO.
7th Floor, Electra House Building
115-117 Esteban St., Legaspi Village
Makati City 1229

GREETINGS:

You are hereby notified by these presents that on **September 20, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **September 20, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

AIR DRILLING ASSOCIATES PTE. LTD., *Petitioner,*	**CTA CASE NO. 10545**
	Members:
- versus -	**DEL ROSARIO**, *P.J., Chairperson,* **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 20 2024 9:30AM

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DECISION

CUI-DAVID, J.:

Before the Court is the *Petition for Review*[1] filed by petitioner Air Drilling Associates Pte. Ltd. (petitioner) on June 4, 2021, praying for the Court to render judgment ordering respondent Commissioner of Internal Revenue (respondent) to refund or issue a tax credit certificate in the amount of ₱951,459.67, representing petitioner's alleged unutilized creditable input value-added tax (VAT) attributable to its zero-rated sales for the period October 1, 2018 to December 31, 2018 (4th quarter) of taxable year (TY) 2018.

THE PARTIES

Petitioner Air Drilling Associates Pte. Ltd. is a foreign company organized and existing under the laws of the Republic of Singapore and was duly licensed by the Philippine Securities and Exchange Commission to establish a branch office in the Philippines to pursue geothermal aerated drilling services and related opportunities therein.[2] It is VAT-registered with the

[1] Docket – Vol. I, pp. 6 to 14.
[2] Exhibits "P-2" and "P-2-1", Docket – Vol. II, pp. 429 to 481.

Bureau of Internal Revenue (BIR), under Tax Identification Number (TIN) 251-156-024-00000.[3]

Respondent is the duly appointed Commissioner of the BIR vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office, including *inter alia*, the power to decide disputed assessments, grant tax refunds, and issue tax credit certificates pursuant to the provisions of the National Internal Revenue Code (NIRC) and other tax laws, rules, and regulations.[4]

THE FACTS AND THE PROCEEDINGS

Petitioner avers that, in the course of its business as contractor of aerated drilling services, it incurred input VAT on its domestic purchases of goods and services, importation of goods, and services rendered by non-residents.[5]

During the 4th quarter of TY 2018, it entered into numerous transactions, which included, among others, rendering aerated drilling services to Energy Development Corporation (EDC), where it accumulated unutilized creditable input VAT attributable to its zero-rated sales amounting to ₱951,459.67.[6]

On January 25, 2019, petitioner filed its Quarterly VAT Return for the 4th quarter of TY 2018, and an Amended Quarterly VAT Return for the same period on February 20, 2019 and August 22, 2019.

On February 15, 2021, petitioner filed with the BIR a letter of even date, [7] requesting for the refund of the full amount of ₱951,459.67, allegedly representing the unutilized input VAT credits attributable to its zero-rated sale of service to EDC for the 4th quarter of TY 2018.

However, petitioner's administrative claim for a refund was denied through a letter dated April 27, 2021,[8] issued by the BIR through Regional Director Maridur V. Rosario, which petitioner received on May 6, 2021.

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[3] Exhibit "P-1", Docket – Vol. II, p. 428.
[4] Par. 1, Facts Admitted, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 340.
[5] Par. 8, Statement of Allegations, *Petition for Review*, Docket – Vol. I., p. 8.
[6] Pars. 9 and 11, Statement of Allegations, *Petition for Review*, Docket – Vol. I, p. 8.
[7] Exhibit "P-12", BIR Records, pp. 374 to 389.
[8] Exhibit "P-13", Docket – Vol. II, pp. 707 to 713.

Aggrieved, petitioner elevated its claim before the Court *via* the instant *Petition for Review* filed on June 4, 2021.

In his *Answer*[9] filed through registered mail on August 20, 2021, and received by the Court on September 29, 2021, respondent interposed, among others, that petitioner's sales to EDC for the 4th quarter of TY 2018 are not zero-rated; that petitioner failed to comply with the invoicing requirements under Section 113 of the NIRC of 1997, as amended, in relation to Revenue Regulations (RR) No. 16-2005; that petitioner's claim for tax credit/refund is not fully substantiated, thus, it must be denied; that there is a disparity between petitioner's claimed input taxes on domestic purchases of goods/services and the VAT sales invoices/official receipts; and that a claim for refund is strictly construed against the taxpayer for the same partakes the nature of tax exemption.

The *BIR Records* of the case were subsequently transmitted to this Court on October 21, 2021.[10]

After the *Pre-Trial Conference*, the parties filed their *Joint Stipulation of Fac*[t]*s and Issues*,[11] on May 23, 2022, based on which a *Pre-Trial Order*[12] was issued on June 22, 2022.

The trial then ensued, during which petitioner presented its witnesses, namely: (1) Ms. Rosebelle Liu,[13] petitioner's Office Manager; and (2) Mr. Adan T. Delamide,[14] the Court-commissioned Independent Certified Public Accountant (ICPA).[15]

On November 14, 2022, petitioner filed its *Formal Offer of Evidence*,[16] to which respondent filed his *Comment (on Petitioner's Formal Offer of Evidence)*[17] on November 22, 2022. In the Resolution[18] dated January 27, 2023, the Court admitted petitioner's offered exhibits, *except* for (1) Exhibit "P-90" for failure to state the description and purpose thereof; (2) Exhibits "P-6", "P-6-1", "P-6-2", "P-6-3", "P-6-4", "P-7", "P-7-1", "P-11",

[9] Docket – Vol. I, pp. 251 to 263.
[10] Respondent's *Compliance* dated October 21, 2021, Docket – Vol. I, pp. 314 to 315.
[11] Docket – Vol. I, pp. 340 to 344.
[12] Docket – Vol. I, pp. 363 to 369.
[13] Exhibit "P-14", Docket – Vol. I, pp. 36 to 43; Minutes of the hearing held on, and Order dated, August 31, 2022, Docket – Vol. II, pp. 371 to 373.
[14] Exhibit "P-99", Docket – Vol. II, pp. 398 to 406; Minutes of the hearing held on, and Order dated, October 19, 2022, Docket – Vol. II, pp. 407 to 409.
[15] *Oath of Commission* dated August 31, 2022, Docket – Vol. II, p. 374; Minutes of the hearing held on, and Order dated, August 31, 2022, Docket – Vol. II, pp. 371 to 373.
[16] Docket – Vol. II, pp. 416 to 427.
[17] Docket – Vol. II, pp. 756 to 758.
[18] Docket – Vol. II, pp. 761 to 762.

"P-12", "P-15-2", and "P-15-3", for failure to submit the originals for comparison; and (3) Exhibits "P-5" to "P-5-16" and "P-92 to "P-96", for failure to correspond with the description thereof.

Petitioner filed a *Motion for Reconsideration*[19] on January 31, 2022, which the Court partially granted in the Resolution[20] dated September 6, 2023, thereby admitting Exhibits "P-5" to "P-5-16", "P-6", "P-6-1", "P-6-2", "P-6-3", "P-6-4", "P-7", "P-7-1", "P-12", and "P-92" to "P-96", but still denying Exhibit "P-11", for failure to submit the original for comparison.

For his part, respondent offered the testimonies of Revenue Officers Roselyn M. Naron[21] and Jaeson Leigh A. Ulangkaya.[22]

After the presentation of his witnesses, respondent then filed his *Formal Offer of Evidence*[23] on February 9, 2023, *sans* petitioner's comment thereon despite the opportunity given. Hence, in the Resolution[24] dated June 14, 2023, the Court admitted all of respondent's offered exhibits. In the same Resolution, the parties were given thirty (30) days from notice to file their respective memoranda.

With the filing of respondent's *Memorandum*[25] through registered mail on October 5, 2023, and petitioner's *Memorandum*[26] on October 10, 2023, the instant case was submitted for decision on October 18, 2023.[27]

Hence, this Decision.

THE ISSUE

As stipulated by the parties, the lone issue[28] for this Court's resolution is:

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[19] Docket – Vol. II, pp. 763 to 768.
[20] Docket – Vol. II, pp. 876 to 878.
[21] Exhibit "R-4", Docket – Vol. I, pp. 264 to 271; Minutes of the hearing held on, and Order dated, February 1, 2023, Docket – Vol. II, pp. 813 to 815.
[22] Exhibit "R-8", Docket – Vol. I, pp. 284 to 293; Minutes of the hearing held on, and Order dated, February 1, 2023, Docket – Vol. II, pp. 813 to 815.
[23] Docket – Vol. II, pp. 817 to 823.
[24] Docket – Vol. II, pp. 838 to 840.
[25] Docket – Vol. II, pp. 894 to 904.
[26] Docket – Vol. II, pp. 879 to 893.
[27] Notice, Docket – Vol. II, p. 907.
[28] Issue, JSFI, Docket – Vol. I, p. 341.

> **"Whether petitioner is entitled to its claim for refund of its alleged unutilized Input VAT allegedly acquired during the 4th Quarter of Taxable Year 2018 amounting to PHP951,459.67."**

Petitioner's Arguments:

Petitioner argues that its administrative and judicial claims for refund were timely filed in accordance with Section 112 of the NIRC, as amended; that it is a VAT-registered entity; that it established rendering services subject to VAT zero-rate and substantiated the present claim with relevant supporting documents; that it substantiated its input VAT paid/incurred during the 4th quarter of TY 2018, which are all attributable to its VAT zero-rated sales; and that its input VAT acquired during the 4th quarter of TY 2018 were not applied against any output VAT in the succeeding periods.

Respondent's Arguments:

Respondent contends that petitioner's claim for tax credit/refund is not fully substantiated; thus, it must be denied; that there is no sale between EDC and petitioner for the 4th quarter of TY 2018; that its sales to EDC for the 4th quarter of TY 2018 are not zero-rated; that petitioner failed to comply with the invoicing requirements under Section 113 of the 1997 Tax Code, as amended, in relation to Revenue Regulations No. 16-2005; that there is disparity between petitioner's claimed input taxes on domestic purchases of goods/services and the VAT sales invoices/official receipts; and that a claim for refund is strictly construed against the taxpayer for the same partakes the nature of tax exemption.

THE COURT'S RULING

The present *Petition for Review* lacks merit.

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

Section 112 of the NIRC of 1997, as amended by Republic Act (RA) No. 10963[29], 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 Commissioner must state in writing the legal and factual basis for the denial.

[29] 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.

> 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 the taxpayer-applicant must comply with to obtain a credit/refund of input VAT successfully. Said requisites are classified into specific categories, to wit:

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

1. the refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[30]

2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of ninety (90) days, the judicial claim has been filed with this Court, within thirty (30) days from receipt of the decision or after the expiration of the said 90-day period;[31]

<u>Concerning the taxpayer's registration with the BIR</u>:

3. the taxpayer is a VAT-registered person;[32]

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

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[33]

5. for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been

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[30] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.
[31] Refer to *Energy Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 203367, March 17, 2021; *Commissioner of Internal Revenue v. CE Casecnan Water And Energy Company, Inc.*, G.R. No. 212727, February 1, 2023; and *Commissioner of Internal Revenue v. Vestas Services Philippines, Inc.*, G.R. No. 255085, March 29, 2023.
[32] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.
[33] *Id.*

duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[34]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional;[35]

7. the input taxes are due or paid;[36]

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;[37] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[38]

In addition, in VAT refund/credit claims, applicants must satisfy the substantiation and invoicing requirements under the NIRC and other implementing rules and regulations.[39] Thus, petitioner's compliance with all the VAT invoicing requirements is required to file a claim for input taxes attributable to zero-rated sales.[40] The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[41] Moreover, it must be pointed out that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[42]

Strict compliance with substantiation and invoicing requirements is necessary considering VAT's nature and VAT system's tax credit method, where tax payments are based on output and input taxes and where the seller's output tax

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[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra.
[38] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.
[39] *Team Energy Corporation v. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.
[40] *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.
[41] *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.
[42] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

becomes the buyer's input tax that is available as a tax credit or refund in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates the computation of tax credits, and provides an accurate audit trail or evidence for BIR monitoring purposes.[43]

Finally, it must be reiterated that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[44] 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 and requirements is already a valid ground to deny the refund claim.

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

The *first* requisite pertains to filing 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 4th quarter of TY 2018. Counting two (2) years from the close of the said quarter, the following table indicates the pertinent last day for the filing of an administrative claim, to wit:

2018	**Period**	**Close of the Taxable Quarter**	**Last Day to File Administrative Claim**
4th quarter	October 1, 2018 to December 31, 2018	December 31, 2018	December 31, 2020

On October 1, 2020, however, the BIR issued Revenue Regulations No. 27-2020,[45] extending the statutory deadline for filing applications for VAT credit/refund claims, among others. Thus, the period for filing claims for VAT refund for the calendar

[43] *Team Energy Corporation v. Commissioner of Internal Revenue, et seq.*, supra.
[44] *Edison (Bataan) Cogeneration Corporation v. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue v. 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 v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.
[45] SUBJECT: Regulations suspending the Filing and Ninety (90) – Day Processing of Value-Added Tax (VAT) Refund Claims Anchored Under Section 112 of the Tax Code of 1997, as Amended, in Relation to Section 4(tt) of Republic Act (R.A.) No - 11494, Otherwise Known as the "Bayanihan to Recover as One Act".

quarter ending December 31, 2018, was extended to February 15, 2021.

As petitioner's administrative claim covering the said period was filed with the BIR on February 15, 2021,[46] the same was timely made.

With regard to the *second* requisite, the same necessitates that the judicial claim must have been filed within thirty (30) days from receipt of respondent's decision or after the expiration of the ninety (90)-day period under Section 112(C) of the NIRC of 1997, as amended.

Notably, respondent is deemed to have acted on petitioner's administrative claim within the said ninety (90)-day period from February 15, 2021, considering that the BIR, through Regional Director Maridur V. Rosario, issued the letter dated April 27, 2021,[47] denying petitioner's administrative claim.

Furthermore, it is not disputed that petitioner received the letter dated April 27, 2021, denying petitioner's claim for refund, on May 6, 2021.[48] Counting thirty (30) days from May 6, 2021, petitioner had until June 5, 2021, to file its judicial claim for refund. Considering that the last day, *i.e.*, June 5, 2021., fell on a Saturday, petitioner had until the next working day — June 7, 2021, the following Monday, to file the judicial claim. Considering that petitioner filed the present *Petition for Review* on June 4, 2021,[49] the judicial claim was timely filed.

Correspondingly, 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 251-156-0254-000.[50] Thus, petitioner complied with the said requisite.

[46] Exhibit "P-12", BIR Records, pp. 374 to 389.
[47] Exhibit "P-13", Docket – Vol. II, pp. 707 to 713.
[48] Par. 6, Timeliness of Petition, *Petition for Review*, Docket – Vol. I, p. 7; Exhibit "P-13", Docket – Vol. II, pp. 707 to 713.
[49] Docket – Vol. I, pp. 6 to 17.
[50] Exhibit "P-1", Docket – Vol. II, p. 428.

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Petitioner failed to prove that it was engaged in zero-rated or effectively zero-rated sales during the 4th quarter of the taxable year 2018.

The *fourth* requisite requires the taxpayer to engage in zero-rated or effectively zero-rated sales.

To recall, petitioner claims in its letter application for a VAT refund,[51] that during the period October 1, 2018 to December 31, 2018, it has accumulated excess or unutilized input VAT in the amount of ₱951,459.67, arising from its local purchases of goods and services, purchases of services rendered by non-residents and importation of non-capital goods attributable to its zero-rated sale of service to the EDC, a Renewable Energy (RE) Developer, for the 4th quarter of taxable year 2018. *Thus*, its sales of services to the latter are considered zero-rated under Section 108 (B)(3) of the NIRC of 1997, as amended and Section 15 (G) of RA No. 9513.

Petitioner, however, failed to offer any evidence to establish the kind of services it rendered to EDC in the 4th quarter of taxable year 2018 that would qualify as zero-rated sales under Section 108 (B)(3) of the NIRC of 1997, as amended. Other than the bare allegation that during the 4th quarter of taxable year 2018 it rendered aerated drilling services to EDC pursuant to a contract entered into by the parties to provide the latter aerated drilling services on its RE projects, no proof of any contract or service agreement in full force and effect during the subject period was adduced by petitioner. The *Contract for Aerated Fluids Drilling Works*[52] dated January 14, 2014 entered by and between petitioner and EDC, states, in part, as follows:

> "1.32 **'Effective Date'** means <u>January 1, 2014</u>.
>
> xxx xxx xxx
>
> 4. TERM
>
> Unless sooner terminated in accordance with this Contract, **this Contract shall be effective from and after the Effective Date and shall continue to be in full force and effect <u>for a period of thirty (36) months</u>**

[51] Exhibit "P-12", BIR Records, pp. 374 to 389.
[52] Exhibits "P-9", "and "P-10", Docket – Vol. II, pp. 557 to 691.

> **<u>from the Effective Date</u> or <u>completion of the Geothermal Well(s) in progress at the end of the foregoing 36 month period</u>**, whichever is later (the '**Term**')."[53] *(Emphases and underscoring added)*

Based on the foregoing clauses or stipulations, petitioner's *Contract for Aerated Fluids Drilling Works with EDC was in full force and effect only until* ***January 1, 2017****, thirty-six (36) months from* ***January 1, 2014****, the Effective Date of the Contract.* Petitioner failed to adduce proof of the said Geothermal Well(s) completion date, if any, nor did it present any evidence of extension or amendment of the Term of the Contract. Clearly, the materiality and relevancy of the said *Contract for Aerated Fluids Drilling Works* is insufficient to prove entitlement to VAT zero-rating. Accordingly, the Court is unable to verify whether petitioner's local purchases of goods and services, purchases of services rendered by non-residents, and importation of non-capital goods are attributable to its zero-rated sale of service to EDC, *an RE Developer,* for the 4th quarter of taxable year 2018. Thus, petitioner's sales to EDC shall not be considered zero-rated sales.

At this juncture, it is plain that petitioner failed to establish the *fourth* requisite to obtain a credit/refund of input VAT successfully. Such being the case, it becomes unnecessary to address petitioner's compliance with the other requisites.

It must be emphasized that actions for tax refund or credit, as in the present case, are in the nature of tax exemptions. As such, they are regarded as a derogation of sovereign authority and construed *strictissimi juris* against the person or entity claiming the refund.[54] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[55] 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 documentary and evidentiary requirements.[56]

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[53] Exhibit "P-9", Docket – Vol. II, pp. 561 and 569, respectively.

[54] *Commissioner of Internal Revenue v. S.C. Johnson & Son, Inc.*, G.R. No. 127105, June 25, 1999.

[55] *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.

[56] *Eastern Telecommunications Philippines, Inc. v. 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.

In sum, given that one of the requisites for the grant of a credit/refund of input VAT under Section 112(A) of the NIRC of 1997, as amended, has **not** been complied with by petitioner, the present *Petition for Review* must already be denied.

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

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G.DEL ROSARIO
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate 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