REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

STEFANINI PHILIPPINES, INC., *Petitioner,*	**CTA CASE NO. 10595**
	Members:
- versus -	**BACORRO-VILLENA**, *Acting Chairperson,* **CUI-DAVID**, *and* **FERRER-FLORES**, *JJ.*[*]
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated:
	JUN 24 2024 11:28 a.m.

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DECISION

CUI-DAVID, J.:

Before the Court is the *Petition for Review*[1] filed by petitioner on July 22, 2021, praying for the Court to render judgment ordering respondent to refund or issue a tax credit certificate (TCC) in the amount of ₱3,480,202.21, representing petitioner's alleged unutilized input value-added tax (VAT) attributable to its zero-rated sales for the fourth (4th) quarter of calendar year (CY) 2018.

THE PARTIES

Petitioner Stefanini Philippines, Inc. is a corporation duly organized and existing under and by virtue of Philippine laws, with registered office address at 3, 5 & 6/F iMET BPO Metrobank Ave., Metropolitan Park, Roxas Blvd., Pasay City 1300.[2] It is registered with the Bureau of Internal Revenue (BIR) as VAT taxpayer under Tax Identification Number 006-

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[*] Additional Member per Memorandum dated May 21, 2024.
[1] Docket – Vol. I, pp. 7 to 30.
[2] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), incorporated in the parties' *Compliance* dated March 22, 2022, Docket – Vol. I, p. 533.

960-314-000;[3] and is engaged in the Philippines in providing business process outsourcing solutions and allied contact or call center services, both as principal and agent.[4]

Respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of his office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law, with office address at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

THE FACTS AND THE PROCEEDINGS

Petitioner avers that during the 4th quarter of CY 2018, it rendered business process outsource solutions and contact or call center services in the Philippines in favor of its non-resident affiliate entities, which are engaged in business conducted outside the Philippines. It added that the payments for such services rendered were made in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral and Pilipinas* (BSP).[6]

During the same period, petitioner allegedly incurred and/or paid input VAT from domestic purchases of goods and services attributable to the above-described sale of services to its non-resident affiliates.[7]

Petitioner further avers that on March 21, 2019, it filed its amended Quarterly VAT Return for the 4th quarter of CY 2018 with the BIR, reporting accumulated excess input tax attributable to zero-rated sales in the amount of ₱62,526,639.68.[8] Said 4th Quarterly VAT Return was further amended on January 25, 2021, wherein petitioner deducted the amount of ₱3,480,202.21 from its accumulated and unutilized input VAT as the amount claimed for refund or issuance of TCC.[9]

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[3] Exhibits "P-4" and "P-5", Docket – Vol. II, pp. 687 to 688.
[4] Par. 1.1, Stipulation of Facts, JSFI, incorporated in the parties' *Compliance* dated March 22, 2022, Docket – Vol. I, p. 533.
[5] Par. 2, Stipulation of Facts, JSFI, incorporated in the parties' *Compliance* dated March 22, 2022, Docket – Vol. I, pp. 533 to 534.
[6] Par. 3, Petition for Review, Docket – Vol. I, p. 8.
[7] Par. 4, Petition for Review, Docket – Vol. I, p. 9.
[8] Exhibit P-60, Docket – Vol. II, pp. 1044 to 1045.
[9] Exhibit P-64, Docket – Vol. II, pp. 1055 to 1056.

Petitioner claims that its accumulated excess input tax attributable to zero-rated sales for the 4th quarter of CY 2018 in the total amount of ₱3,480,202.21 has remained unutilized and/or unapplied against its output tax liability.

Hence, on February 15, 2021, petitioner filed with the BIR its *Application for Tax Credits/Refunds* (BIR Form No. 1914),[10] applying for a VAT refund amounting to ₱3,480,202.21, representing its excess and unutilized input VAT for the 4th quarter of CY 2018.

On June 21, 2021, however, petitioner received a letter dated May 20, 2021 issued by the BIR through Ms. Maria Luisa I. Belen, *Assistant Commissioner (ACIR) – Assessment Service*, denying its administrative claim.[11]

Aggrieved, petitioner elevated its claim before the Court *via* the instant *Petition for Review* filed on July 22, 2021.

In his *Answer (Re: Petition for Review dated 19, July 2021)*[12] filed on December 15, 2021, respondent submits that the denial of petitioner's claim for refund be upheld. According to respondent, petitioner failed to substantiate its claim for refund in the administrative level. Hence, the denial thereof. And since a decision has been rendered in this case denying petitioner's administrative claim for failure to substantiate the same, petitioner cannot submit documents it did not submit at the administrative level. Moreover, given the evidence submitted at the administrative level, the Court is confined to a more limited issue of whether the denial was proper.

After the *Pre-Trial Conference* on March 3, 2022, the parties filed their *Joint Stipulation of Facts and Issues*[13] on March 30, 2022, based on which a *Pre-Trial Order*[14] was issued on April 18, 2022.

The trial then ensued, during which petitioner presented its witnesses, namely: (1) Ms. Jeanina B. Pepito, its *Finance Manager*, and (2) Mr. Joseph Cedric V. Calica, the Court-commissioned *Independent Certified Public Accountant* (ICPA).

[10] Exhibit "P-66", BIR Records (Exhibit "R-4"), p. 158.
[11] Exhibit "P-69" and "P-69-A", Docket – Vol. I, pp. 51 to 52; Exhibit "R-3", BIR Records, pp. 198 to 199.
[12] Docket – Vol. I, pp. 449 to 460.
[13] Incorporated in the parties' *Compliance* dated March 22, 2022, Docket – Vol. I, pp. 533 to 547.
[14] Docket – Vol. I, pp. 552 to 561.

By way of *Judicial Affidavit*,[15] **Ms. Jeanina B. Pepito (Ms. Pepito)** testified that she is petitioner's Finance Manager, tasked to: (a) Develop and maintain budgetary system and procedures of petitioner; (b) Organize the finance department and staff of petitioner for maximum efficiency, staffing key positions, and establishing reporting requirements for key elements of operating activities; (c) Ensure compliance of petitioner with existing tax laws and regulations; (d) Prepare, review and monitor day-to-day financial transactions of petitioner, such as purchases, sales, payroll, and other transactions; (e) Take custody of petitioner's corporate and financial documents including tax returns, financial statements, Articles of Incorporation, BIR Certificate of Registration, Securities and Exchange Commission (SEC) registration and contracts; (f) Produce financial reports of petitioner related to account payables, account receivables, revenue and expenses; and (g) Coordinate and consult with petitioner's external auditors and counsels regarding tax matters affecting petitioner, including claims for refund.

She declared that petitioner is engaged in the business of providing business process outsourcing solutions and allied contact or call center services, both as principal and agent, in the Philippines, as evidenced by petitioner's Certificate of Filing of Amended Articles of Incorporation. In line with its business in the Philippines, petitioner is also registered with the BIR as a VAT Taxpayer as stated in its Certificates of Registration with OCN 9RC0000389362 dated February 14, 2008 and OCN 9RC0001383163E dated January 18, 2018.

She further declared that petitioner renders services in the Philippines to the following non-resident affiliate entities which are engaged in business outside the Philippines, to wit: (a) Stefanini, Inc.; (b) Stefanini UK Ltd; (c) Stefanini Sarl; (d) Stefanini Australia Pty Ltd; and (e) Stefanini NV/SA. To prove that petitioner renders said services in the Philippines in favor of the said non-resident affiliate entities, Ms. Pepito identified the following documents:

1. Notarized Agreements for Services and Addendum (Exhibits P-6 to P-10 inclusive of sub-markings);

2. Official Receipts (ORs) (Exhibits P-11 to P-30);

[15] Exhibit "P-71", Docket – Vol. I, pp. 57 to 78.

3. Petitioner's Authority to Print (BIR Form No. 1921) No. 9AU0001384902E (Exhibit P-31);

4. Petitioner's Schedule of Zero-Rated Sale of Services for the period October 1, 2018 to December 31, 2018 (Exhibit P-32);

5. Petitioner's Employee Time and Attendance Summaries for the payroll periods relevant to the ORs issued during the 4th quarter of 2018 (Exhibits P-33 to P-43); and

6. Petitioner's Employee Handbook, 3rd Edition (Exhibit P-44).

According to Ms. Pepito, petitioner's sale of services to the aforesaid affiliates is subject to zero percent (0%) VAT because it renders said services in the Philippines to its affiliate entities, which are non-resident foreign corporations or entities engaged in business conducted outside the Philippines. Further, the services rendered are paid in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.

To prove that the affiliate entities are non-resident corporations or entities engaged in business conducted outside the Philippines, she identified the following documents:

1. For Stefanini, Inc. –

   a. SEC Certificate of Non-registration;
   b. Apostilled Certificate of Incorporation and Good Standing; and
   c. Apostilled Certification on Stefanini, Inc.'s Amended and Restated Certificate of Incorporation, with Amended and Restated Certificate of Incorporation.

2. For Stefanini UK Ltd –

   a. SEC Certificate of Non-registration; and
   b. Apostilled Certificate of Incorporation and Good Standing.

3. For Stefanini Sarl –

   a. SEC Certificate of Non-registration;
   b. Apostilled Certificate of Incorporation; and
   c. Apostilled Registration Statements/Extracts.

4. For Stefanini Australia Pty Ltd –

   a. SEC Certificate of Non-registration; and

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b. Apostilled Certificate of Incorporation

5. For Stefanini NV/SA –

a. SEC Certificate of Non-registration; and
b. Apostilled Certificate of Incorporation.

Ms. Pepito likewise identified the *Certificate of Inward Remittance* (Exhibit P-57) issued by the Bank of America covering foreign currency inward remittances from October 5, 2018 to December 28, 2018 and *Reconciliation of Export Sales and Foreign Currency Remittances on Zero-Rated Sales* (Exhibit P-58) for the period October 1, 2018 to December 31, 2018.

Ms. Pepito continued that petitioner is claiming a refund or issuance of a TCC in the amount of ₱3,480,202.21 because it was not able to utilize or apply input VAT incurred and/or paid on its purchases of goods and services in the Philippines for the 4th quarter of CY 2018, which are attributable to its zero-rated sales of services, against the output VAT. According to her, on February 15, 2021, petitioner filed the Application for Tax Credits/Refunds (BIR Form No. 1914) for the 4th quarter of CY 2018 with letter-claim for refund dated and received by the BIR VAT Credit Audit Division on even date. However, petitioner's administrative claim for refund was denied through a letter issued by the BIR dated May 20, 2021, which petitioner received on June 21, 2021.

ICPA Joseph Cedric V. Calica (ICPA Calica), on the other hand, testified[16] that after he was commissioned by the Court as ICPA for this case, he immediately commenced and conducted the audit, investigation, and verification of the original documents supporting petitioner's claim for refund of excess and unutilized input VAT attributable to its zero-rated sales for the 4th quarter of CY 2018 amounting to ₱3,480,202.21.

ICPA Calica declared that after performing the procedures outlined in his Report[17] dated June 17, 2022, he concluded that petitioner is entitled to a refund of ₱2,780,930.83 out of the total claim for refund of ₱3,480,202.21.

[16] Exhibit "P-111", Docket – Vol. II, pp. 605 to 624; Minutes of the hearing held on, and Order dated, August 17, 2022, Docket – Vol. II, pp. 627 to 629.
[17] Exhibits "P-112" and "P-114", Docket – Vol. I, pp. 579 to 600.

There being no more witness to present, and upon the instance of petitioner's counsel, petitioner was granted thirty (30) days from August 17, 2022, or until September 16, 2022 to file its Formal Offer of Evidence (FOE). Respondent, on the other hand, was given fifteen (15) days from receipt of petitioner's FOE to file his comment thereto.[18]

On September 15, 2022, petitioner filed its *Formal Offer of Evidence*,[19] to which respondent filed his *Comment (Re: Formal Offer of Evidence dated 15 September 2022)*[20] on September 16, 2022.

In the Resolution dated November 8, 2022,[21] the Court resolved to admit petitioner's exhibits, *except* for Exhibits "P-72-A-84" and "P-72-C-29", for failure of the said exhibits to correspond with the documents actually marked.

When it was his turn to present evidence, respondent presented Revenue Officer (RO) Daniel Carlo C. Perez, as his lone witness.

RO **Daniel Carlo C. Perez** testified[22] that he is familiar with the instant case because he was tasked to review and evaluate petitioner's claim for refund of its alleged unutilized input VAT covering the period from October 1, 2018 to December 31, 2018 in the aggregate amount of ₱3,480,202.21.

He declared that after he was authorized to review petitioner's claim for refund, he conducted his review based on the documents that petitioner submitted pursuant to the Revised Checklist of Mandatory Requirements. According to him, he recommended, through a Memorandum, that petitioner's claim for a refund be denied.

Thereafter, or on May 20, 2021, a *VAT Refund Notice* was issued informing petitioner of the denial of its claim for refund due to a lack of factual basis.

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[18] Order dated August 17, 2022, Docket – Vol. II, pp. 628 to 629.
[19] Docket – Vol. II, pp. 633 to 673.
[20] Docket – Vol. II, pp. 1129 to 1131.
[21] Docket – Vol. II, pp. 1136 to 1138.
[22] Exhibit "R-5", Docket – Vol. I, pp. 476 to 482; Minutes of the hearing held on, and Order dated, February 22, 2023, Docket – Vol. II, pp. 1141 to 1143.

On February 23, 2023, respondent filed his *Formal Offer of Evidence*,[23] to which petitioner filed its *Comment/Opposition (to Respondent's Formal Offer of Evidence)*[24] on March 13, 2023.

In the Resolution[25] dated March 27, 2023, the Court admitted all of respondent's offered evidence. In the same Resolution, the parties were given thirty (30) days from notice to file their respective memoranda.

On May 23, 2023, the case was submitted for decision considering respondent's *Memorandum*[26] filed on May 2, 2023 and petitioner's *Memorandum*[27] filed through registered mail on May 12, 2023.[28]

Hence, this Decision.

THE ISSUE

The lone issue[29] submitted by the parties for this Court's resolution is as follows:

> "WHETHER OR NOT PETITIONER IS ENTITLED TO REFUND OR TO THE ISSUANCE OF TAX CREDIT CERTIFICATE IN THE AMOUNT OF P3,480,202.21 REPRESENTING ITS EXCESS AND UNUTILIZED INPUT VAT ATTRIBUTABLE ZERO-RATED SALES FOR THE 4TH QUARTER OF CY 2018."

Petitioner's Arguments:

Petitioner argues that it is entitled to the claim for refund or issuance of TCC on its input VAT; that both administrative and judicial claims for refund were timely filed; that petitioner is VAT-registered; that it had zero-rated sales during the 4th quarter of CY 2018 which were paid for in accordance with the rules of the BSP; that it incurred input VAT in the 4th quarter of CY 2018 that were attributable to its zero-rated sale of services; that the claimed input taxes for the 4th quarter of CY 2018 were not applied against any output VAT liability; that petitioner's input taxes are not transitional; that input taxes claimed for

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[23] Docket – Vol. II, pp. 1144 to 1146.
[24] Docket – Vol. II, pp. 1148 to 1151.
[25] Docket – Vol. II, pp. 1155 to 1156.
[26] Docket – Vol. II, pp. 1157 to 1168.
[27] Docket – Vol. II, pp. 1170 to 1209.
[28] Resolution dated May 23, 2022, Docket – Vol. II, p. 1210.
[29] Par. 3, Stipulation of Issues, JSFI, incorporated in the *Compliance* dated March 22, 2022, Docket – Vol. I, p. 534.

refund have been proportionately allocated based on sales volume; and that cases filed before this Court are litigated *de novo.*

Respondent's Arguments:

Respondent contends that the instant claim should be denied for petitioner's failure to substantiate its claim for refund at the administrative level; that it is incumbent upon petitioner to prove that it is entitled to the refund sought because a claim for refund is not *ipso facto* granted upon the filing of the claim; that tax refunds are subject to administrative routinary investigation; and that tax refunds are strictly construed against the taxpayer and in favor of the government.

THE COURT'S RULING

Pertinent to the resolution of the instant case are paragraphs (A) and (C) of Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 10963 [30] [otherwise known as the Tax Reform for Acceleration and Inclusion Act (TRAIN law)], which read as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *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

[30] 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.

> transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> xxx xxx xxx
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> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
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> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code."

Following Section 112 of the NIRC of 1997, as amended, and prevailing jurisprudence, certain requisites must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT. Said requisites are classified into certain categories, to wit:

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

1. the claim is filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made;[31]
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.[32]

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[31] *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; and *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.

[32] 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.

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

3. the taxpayer is a VAT-registered person;[33]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[34]
5. for 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 have been duly accounted for in accordance with BSP rules and regulations;[35]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[36]
7. the input taxes are due or paid;[37]
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;[38] and
9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[39]

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[40] to determine the veracity of the taxpayer's claims.[41] Moreover, compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[42]

Furthermore, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[43] Thus, it

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[33] *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. v. Commissioner of Internal Revenue, supra.*
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, supra*; and *San Roque Power Corporation v. Commissioner of Internal Revenue, supra.*
[39] *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. v. Commissioner of Internal Revenue, supra.*
[40] *Team Energy Corporation v. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.
[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.
[43] *Edison (Bataan) Cogeneration Corporation v. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290,

behooves petitioner to show compliance with each of the foregoing requisites and invoicing requirements. The absence of *any* of the said requisites is already a valid ground to deny the refund claim.

***First and second requisites:* Petitioner's administrative and judicial claims were timely filed.**

The *first* requisite pertains to the filing of a claim for tax refund or 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 October 1 to December 31, 2018, or the 4th quarter of CY 2018, Counting two (2) years from the close of the said quarter, petitioner had until December 31, 2020 to file its administrative claim for tax credit certificate/refund, to wit:

Period (CY 2018)	Close of the Taxable Quarter	Last Day to File Administrative Claim	Date of Filing
4th quarter	December 31, 2018	December 31, 2020	February 15, 2021

The BIR issued Revenue Regulations No. 27-2020 dated October 6, 2020,[44] extending, among others, the deadline for the filing of VAT refund claims for the calendar quarter ending December 31, 2018 to February 15, 2021. Considering that petitioner's administrative claim covering the subject quarter was filed with the BIR on February 15, 2021,[45] the last day prescribed to file the claim, the same is deemed timely filed with respondent within the 2-year prescriptive period.

The *second* requisite is to the effect that the judicial claim must be filed within thirty (30) days from receipt of respondent's decision denying the claim under Section 112(C) of the NIRC of 1997, as amended.

September 29, 2014; *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon v. 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.

[44] 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".

[45] Exhibits "P-66" and "P-68", BIR Records, pp. 158 and 159, respectively.

Thus, from the filing of petitioner's administrative claim on February 15, 2021, respondent had ninety (90) days, or until May 16, 2021, to act on the claim.

It is undisputed that petitioner received the letter dated May 20, 2021 denying petitioner's claim for refund, on June 21, 2021.[46] Counting thirty (30) days from June 21, 2021, petitioner had until July 21, 2021 to file its judicial claim for refund.

On July 21, 2021, the Supreme Court suspended work in all courts in Metro Manila starting at 12 noon of July 21, 2021 due to bad weather.[47] Thus, petitioner filed the present *Petition for Review* via e-mail at 3:58 p.m. on an even date and *via* courier on July 22, 2021. Accordingly, the judicial claim was timely filed.

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

Third requisite*: *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 006-960-314-00000.[48] Thus, there is no question that petitioner showed compliance with the said requisite.

Fourth and fifth requisites: Petitioner was able to establish that it was engaged in zero-rated or effectively zero-rated sales during the 4th quarter of CY 2018.

The *fourth* and *fifth* requisites require that the taxpayer is engaged in zero-rated or effectively zero-rated sales, and that for zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2) of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds must have been duly accounted for in accordance with BSP rules and regulations.

[46] Exhibit "P-69-A", Docket – Vol. I, p. 51.
[47] < https://newsinfo.inquirer.net/1462336/supreme-court-suspends-work-in-all-ncr-courts-starting-at-12-noon>
[48] Exhibits "P-5" and "P-5-A", Docket – Vol. II, p. 688.

In its amended Quarterly VAT Return for the 4th quarter of CY 2018,[49] petitioner declared total sales of ₱187,076,902.56, out of which the amount of ₱186,184,195.18 pertain to zero-rated sales, as shown below:

Vatable Sales	₱ 892,707.38
Zero-Rated Sales	**186,184,195.18**
Total Sales	₱ 187,076,902.56

Petitioner claims that its sales of services to its non-resident foreign clients (*i.e.*, ₱186,184,195.18) are subject to zero percent (0%) VAT, pursuant to Section 108(B)(2) of the NIRC of 1997, as amended, which 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 of goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
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> (2) **Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)**;" *(Emphases supplied)*

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

[49] Exhibit "P-60", Docket – Vol. II, p. 1044.

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;[50]

2. The services fall under any of the categories under Section 108(B)(2),[51] or simply, the services rendered should be other than "*processing, manufacturing or repacking goods*";[52]

3. The services must be performed in the Philippines[53] 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.[54]

To satisfy the *first* essential element, the non-resident foreign entity must be supported, at the very least, by **both** a *Certificate of Non-Registration of Corporation/Partnership* issued by the Philippine Securities and Exchange Commission (SEC), **and** proof of incorporation/registration in a foreign country (*e.g.*, Articles/ Certificate of Incorporation/Registration and/or Tax Residence Certificate).

The former establishes that the recipient of the service has no registered business in the Philippines, and is not engaged in trade or business in the Philippines; while the latter proves that the recipient of the service has been 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.

The ruling of the Supreme Court in *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[55] is instructive, to wit:

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[50] *Sitel Philippines Corporation (Formerly Clientlogic Phils. Inc.) v. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017; *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007; *Accenture, Inc. v. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012.
[51] *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.
[52] *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007.
[53] *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., supra*; *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.
[54] *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., supra*; *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch), supra.*
[55] G.R. No. 234445, July 15, 2020.

"For purposes of zero-rating under Section 108(B)(2) of the Tax Code, **the claimant must establish** the two components of a client's NRFC[56] status, *viz.*: (1) **that their client was established under the laws of a country not the Philippines** or, simply, **is not a domestic corporation**; and (2) that **it is not engaged in trade or business in the Philippines**. To be sure, there must be sufficient proof of ***both*** of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines.

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To recall, the CTA found that the SEC Certification of Non-Registration of Company and Authenticated Articles of Association and/or Certificates of Registration/Good Standing/Incorporation sufficiently established the NRFC status of 11 of DKS's affiliates clients

The Court upholds these findings.

The Court accords the CTA's factual findings with utmost respect, if not finality, because the Court recognizes that it has necessarily developed an expertise on tax matters. Significantly, both the CTA Division and CTA *En Banc* gave credence to the aforementioned documents as sufficient proof of NRFC status. The Court shall not disturb its findings without any showing of grave abuse of discretion considering that the members of the tax court are in the best position to analyze the documents presented by the parties.

In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court *a quo*'s findings. **To the Court's mind, the SEC Certifications of Non-Registration show that these affiliates are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines.**" *(Boldfacing supplied)*

In the present case, petitioner presented the following documents to satisfy the *first* essential element, *viz.*:

[56] That is, "Nonresident foreign corporation".

Company Name	Certification of Non-Registration of Company issued by the SEC (*Exhibit reference*)	Proof of incorporation/registration in a foreign country (*Exhibit reference*)
Stefanini, Inc.	"P-45"[57]	"P-50",[58] "P-50-A",[59] "P-51",[60] "P-51-A",[61] "P-51-B"[62]
Stefanini UK Ltd.	"P-46"[63]	"P-52",[64] "P-52-A",[65]
Stefanini Sàrl	"P-47"[66]	"P-53",[67] "P-53-A",[68] "P-54",[69] "P-54-A"[70]
Stefanini Australia Pty Ltd.	"P-48"[71]	"P-55",[72] "P-55-A"[73]
Stefanini NV SA	"P-49"[74]	"P-56",[75] "P-56-A"[76]

Regarding the *second* essential element, petitioner submitted the following agreements indicating the services to be provided, *i.e.*, "*outsourced processing services to support [its clients'] internal operations and external customer contracts*":

1. Agreement for Services between Stefanini, Inc. and petitioner made on May 1, 2018 and shall remain in force until April 30, 2020;[77]
2. Addendum to Agreement for Services between Stefanini, Inc. and petitioner made on January 3, 2019;[78]
3. Agreement for Services between Stefanini UK Ltd. and petitioner made on September 1, 2017 and shall remain in force until August 31, 2019;[79]
4. Addendum to Agreement for Services between Stefanini UK Ltd. and petitioner made on January 3, 2019;[80]
5. Agreement for Services between Stefanini Sàrl, à Lausanne and petitioner made on May 1, 2018 and shall remain in force until April 30, 2020;[81]

[57] Docket – Vol. II, p. 1015.
[58] Docket – Vol. II, p. 1020.
[59] Docket – Vol. II, p. 1021.
[60] Docket – Vol. II, p. 1022.
[61] Docket – Vol. II, p. 1023.
[62] Docket – Vol. II, p. 1024.
[63] Docket – Vol. II, p. 1016.
[64] Docket – Vol. II, p. 1026
[65] Docket – Vol. II, p. 1027.
[66] Docket – Vol. II, p. 1017.
[67] Docket – Vol. II, p. 1028.
[68] Docket – Vol. II, p. 1029.
[69] Docket – Vol. II, pp. 1030 to 1031.
[70] Docket – Vol. II, p. 1032.
[71] Docket – Vol. II, p. 1018.
[72] Docket – Vol. II, p. 1033.
[73] Docket – Vol. II, p. 1034.
[74] Docket – Vol. II, p. 1019.
[75] Docket – Vol. II, pp. 1035 to 1037.
[76] Docket – Vol. II, p. 1038.
[77] Exhibit "P-6", Docket – Vol. II, pp. 689 to 694.
[78] Exhibit "P-6-1", Docket – Vol. II, pp. 695 to 697.
[79] Exhibit "P-7", Docket – Vol. II, pp. 698 to 703.
[80] Exhibit "P-7-1", Docket – Vol. II, pp. 704 to 706.
[81] Exhibit "P-8", Docket – Vol. II, pp. 707 to 712.

6. Addendum to Agreement for Services between Stefanini Sàrl and petitioner made on January 3, 2019;[82]
7. Agreement for Services between Stefanini Australia Pty Ltd and petitioner made on May 1, 2018 and shall remain in force until April 30, 2020;[83]
8. Addendum to Agreement for Services between Stefanini Sàrl and petitioner made on January 3, 2019;[84]
9. Agreement for Services between Stefanini NV/SA and petitioner made on May 1, 2018 and shall remain in force until April 30, 2020;[85]
10. Addendum to Agreement for Services between Stefanini NV/SA and petitioner made on January 3, 2019;[86]

The services provided by petitioner clearly fall within the scope of *"services other than processing, manufacturing or repacking goods"*, hence, petitioner satisfactorily complied with the *second* essential element.

As regards the *third* essential element, the Court finds the unrebutted testimony of petitioner's witness, Ms. Jeanina B. Pepito,[87] sufficient to prove that the services were performed in the Philippines:

"**13. Q: To whom, if any, does Petitioner render its services?**

A: <u>Petitioner renders services in the Philippines to the following non-resident affiliate entities</u> which are engaged in business conducted outside the Philippines:

a. Stefanini, Inc;
b. Stefanini UK Ltd;
c. Stefanini Sarl;
d. Stefanini Australia Pty Ltd; and
e. Stefanini NV/SA;

14. Q: Specifically, what services does the Petitioner provide to said affiliate entities?

A: <u>Petitioner renders in the Philippines outsourced processing services to said affiliate entities</u>. xxx.

15. Q: What is your proof, if any, in saying that the Petitioner renders said services in the Philippines in favor of the above-mentioned non-resident affiliate entities?

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[82] Exhibit "P-8-1", Docket – Vol. II, pp. 713 to 715.
[83] Exhibit "P-9", Docket – Vol. II, pp. 716 to 721.
[84] Exhibit "P-9-1", Docket – Vol. II, pp. 722 to 724.
[85] Exhibit "P-10", Docket – Vol. II, pp. 725 to 730.
[86] Exhibit "P-10-1", Docket – Vol. II, pp. 731 to 733.
[87] Exhibit "P-11", Docket – Vol. I, pp. 61 to 63, 66 and 67.

A: I have the following documents:

1. Notarized Agreements for Services and Addendums thereto –

xxx xxx xxx

5. Petitioner's Employee Time and Attendance Summaries for the payroll periods relevant to the ORs issued during the 4th quarter of 2018, to wit:

xxx xxx xxx

6. Petitioner's Employee Handbook, 3rd Edition (Exhibit "P-44").

xxx xxx xxx

26. Q: Ms. Witness, could you explain to us the significance and relevance of these Employee Time and Attendance Summaries to the instant case?

A: The Employee Time and Attendance Summaries account for and show the hours and days which all employess reported for work at our office located at 3,5 & 6/F iMET BPO Metrobank Ave., Metropolitan Park, Roxas Blvd., Pasay City 1300 during the relevant payroll periods in line with Petitioner's policy on work attendance.

Since all employees have reported for work at said office, except for rare cases of absences and tardiness, all services rendered in favor of and billed to the affiliate entities were rendered in the Philippines.

xxx xxx xxx

28. Q: Based on page 35 of the handbook, it appears that employees may occasionally be assigned to work at the workplace of its clients. During the payroll period covered by the summaries, were any of Petitioner's employees assigned to work at the workplace of its nonresident affiliates?

A: None, as those arrangements are extremely rare.

In fact, from the time I joined Petitioner in April, 2016, there has never been an instance where it sent an employee to render services at the client's workplace abroad." *(Underscoring supplied)*

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The foregoing testimony was also corroborated by petitioner's Amended Articles of Incorporation[88] providing that its principal place of business is in the Philippines; BIR Certificates of Registration,[89] indicating its line of business as "other call centers activities (voice), n.e.c. [not elsewhere classified]; Agreements for Services[90] between petitioner and its clients, defining the services to be performed as "outsourced processing services to support the client's internal operations and external customer contracts"; and Employee Time and Attendance Summaries,[91] showing that all employees reported to work at petitioner's office in Pasay City during the relevant period. Hence, the services performed by petitioner did not involve the provision of operating staff but rather the performance of outsourced processing services through voice within the Philippines.

With respect to the *fourth* essential element, and in relation to the *fifth* requisite, petitioner presented the Certificate of Inward Remittances[92] issued by Bank of America, which shows the remittances of its NRFC clients for the 4th quarter of CY 2018 and attests to payment in acceptable foreign currency accounted for in accordance with the BSP's rules and regulations.

However, the said foreign currency remittances must be duly supported by the VAT zero-rated official receipts (ORs) containing all the required information pursuant to Section 113(A) and (B) of the NIRC of 1997, as amended, to wit:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> (A) *Invoicing Requirements.* — A VAT-registered person shall issue:
>
> (1) A **VAT invoice for every sale, barter or exchange of goods or properties; and**
>
> (2) A <u>VAT official receipt</u> for every lease of goods or properties, and <u>for every sale</u>, barter or exchange <u>of services</u>.
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:

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[88] Exhibit "P-3", Docket – Vol. II, p. 677.
[89] Exhibits "P-4" and "P-5", Docket – Vol. II, pp. 687 to 688.
[90] Exhibits "P-6" to "P-10" (inclusive of submarkings), Docket – Vol. II, pp. 689 to 733.
[91] Exhibits "P-33" to "P-43", Docket – Vol. II, pp. 756 to 943.
[92] Exhibit "P-57", Docket – Vol II, p. 1039.

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

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:

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

(b) If the sale is exempt from value-added tax, 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%) value-added tax, the term '<u>**zero-rated sale**</u>' 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 break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

(4) In the case of sales in the amount of One thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client." *(Underscoring supplied)*

The foregoing provisions are further implemented by Section 4.113-1(A) and (B) of Revenue Regulations (RR) No. 16-2005, which states:

"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 <u>VAT official receipt</u> for every lease of goods or properties, and <u>for every sale</u>, barter or exchange <u>of services</u>.

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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 the 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 break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) In the case of sales in the amount of one thousand peso (₱1,000.00) 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." *(Underscoring supplied)*

In addition to the above requirements, the required ORs must be duly registered with the BIR as prescribed under Section 237, in relation to Section 238, of the NIRC of 1997, as amended, to wit:

> "SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: xxx
>
> xxx xxx xxx
>
> SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

To support its zero-rated sales for the 4th quarter of CY 2018, petitioner submitted its Schedule of Zero-Rated Sale of Services,[93] Summary of Zero-Rated Sales with Cross Reference to Amount Inwardly Remitted[94] and the corresponding VAT zero-rated ORs.[95]

A scrutiny of the aforementioned documents reveals that the reported zero-rated sales of ₱186,184,195.18 were duly supported by VAT zero-rated ORs compliant with the invoicing requirements and that the said sales were entirely traced to the inward remittances per the bank certificate, in satisfaction of the *fourth* essential element.

[93] Exhibit "P-32", Docket – Vol. II, p. 755.
[94] Exhibit "P-74", USB marked as Exhibit "P-113".
[95] Exhibits "P-11" to "P-30", Docket – Vol. II, pp. 734 to 753.

Thus, petitioner was able to establish that its sales of services to NRFCs not engaged in business in the Philippines for the 4th quarter of CY 2018, in the amount of ₱186,184,195.18, qualify as valid zero-rated sales pursuant to Section 108(B)(2) of the NIRC of 1997, as amended, in compliance with the *fourth* and *fifth* requisites.

Sixth requisite: The input taxes being claimed are not transitional.

In its Quarterly VAT Return for the 4th quarter of CY 2018,[96] petitioner declared a total input VAT of ₱3,587,327.10, out of which the amount of ₱3,480,202.21 is the subject of the present claim for refund, as shown below:

Input Tax Deferred on Capital Goods Exceeding ₱1Million from Previous Quarter	₱ 2,590,651.07
Add: Input Tax on Purchase of Capital Goods exceeding ₱1Million	-
Less: Input Tax on Purchases of Capital Goods exceeding ₱1Million deferred for the succeeding period	2,364,782.21
Amortized Input Tax for the period	₱ 225,868.86
Current Input Taxes:	
On Purchase of Capital Goods not exceeding ₱1Million	₱ 40,921.20
On Domestic Purchases of Goods Other than Capital Goods	847,105.47
On Domestic Purchase of Services	2,473,431.57
Total Current Input Taxes	₱ 3,361,458.24
Total Input Taxes for the period	**₱ 3,587,327.10**
Less: Output Tax	107,124.89
Excess Input Taxes for the period	**₱ 3,480,202.21**

The above input taxes do not appear to be transitional, as understood under Section 111(A) of the NIRC of 1997, as amended, to wit:

> "SEC. 111. *Transitional/Presumptive Input Tax Credits.* –
>
> (A) *Transitional Input Tax Credits.* – A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of any inventory according to the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be allowed input tax on her beginning inventory of goods, materials and supplies equivalent to two percent (2%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies,

[96] Exhibit "P60", Docket – Vol. II, pp. 1044 to 1045.

whichever is higher, which shall be creditable against the output tax."

Transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes on the acquisitions of their beginning inventory of goods, materials, and supplies. During the period of transition from non-VAT to VAT status, the transitional input tax credit alleviates the impact of the VAT on the taxpayer.[97]

Since there is no showing that the above-stated input VAT is transitional input VAT, petitioner has complied with the *sixth* requisite for the grant of an input VAT refund.

<u>Seventh requisite</u>: A portion of the input taxes being claimed was due or paid.

Anent the *seventh* requisite, it is crucial for petitioner to prove that the claimed input taxes for the 4th quarter of CY 2018 were actually due or paid. Section 110 (A) of the NIRC of 1997, as amended, provides:

"SEC. 110. *Tax Credits.* –

(A) *Creditable input Tax.* –

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against output tax:

(a) Purchase or importation of goods:

(i) For sale; or

(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or

(iii) For use as supplies in the course of business; or

(iv) For use as materials supplied in the sale of service; or

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[97] *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 158885 and 170680, April 2, 2009.

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

(b) Purchase of services on which a value-added tax has actually been paid.

(2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

xxx xxx xxx

Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months of the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (₱1,000,000.00): *Provided, however,* That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, finally,* That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee, or licensee upon payment of the compensation, rental, royalty or fee."

Relatedly, Sections 4.110-1 to 4.110-3 of RR No. 16-2005, stated:

"SECTION. 4.110-1. *Credits for Input Tax.* – 'Input tax' means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the Tax Code.

It includes input taxes which can be directly attributed to transactions subject to the VAT plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.

Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Secs. 113 and 237 of the Tax Code shall be creditable against the output tax:

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(a) Purchase or importation of goods

(1) For sale;

(2) For conversion into or intended to form part of a finished product for sale, including packaging materials; or

(3) For use as supplies in the course of business; or

(4) For use as raw materials supplied in the sale of services; or

(5) For use in trade or business for which deduction or depreciation or amortization is allowed under the Tax Code,

(b) Purchase of real properties for which a VAT has actually been paid;

(c) Purchases of services in which a VAT has actually been paid;

xxx xxx xxx

SECTION 4.110-2. *Persons Who Can Avail of the Input Tax Credit.* – The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:

xxx xxx xxx

(b) To the purchaser of the domestic goods or properties upon consummation of the sale; or

(c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee.

SECTION 4.110-3. *Claim for Input Tax on Depreciable Goods.* – Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million Pesos (P1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:

(a) If the estimated useful life of a capital good is five (5) years or more – The input tax shall be spread evenly over a period of sixty (60) months and the claim for input tax credit will commence in the calendar month when the capital good is acquired. The total input taxes on purchases or importations of this type of capital goods shall be divided by 60 and the quotient will be the amount to be claimed monthly.

(b) If the estimated useful life of a capital good is less than five (5) years – The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of the capital good. The claim for input tax credit shall commence in the calendar month that the capital goods were acquired.

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed One million pesos (₱1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition.

Capital goods or properties refers to goods or properties with estimated useful life greater than one (1) year and which are treated as depreciable assets under Sec. 34(F) of the Tax Code, used directly or indirectly in the production or sale of taxable goods or services.

The aggregate acquisition cost of a depreciable asset in any calendar month refers to the total price, excluding the VAT, agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired in installment for an acquisition cost of more than ₱1,000,000.00, excluding the VAT, will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed ₱1,000,000.00.

xxx xxx xxx

If the depreciable capital good is sold/transferred within a period of five (5) years or prior to the exhaustion of the amortization input tax thereon, the entire unamortized input tax on the capital goods sold/transferred can be claimed as input tax credit during the month/quarter when the sale or transfer was made but subject to the limitation prescribed under Sec. 4.110-7 of these Regulations."

Further, Section 4.110-8 of RR No. 16-2005 provides for the substantiation requirements of input tax credits, as follows:

"SEC. 4.110-8. *Substantiation of Input Tax Credits.* –

(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 sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

xxx xxx xxx

(2) For the domestic purchase of goods and properties – invoice showing the information required under Secs. 113 and 237 of the Tax Code.

xxx xxx xxx

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

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code."

Indeed, to be entitled to input tax credits, the transaction must be evidenced by VAT invoices (for domestic purchases of goods) or ORs (for domestic purchases of services) issued in accordance with Sections 113, 237 and 238 of the NIRC of 1997, as amended.

In support of its reported input VAT of ₱3,587,327.10, petitioner submitted various invoices and ORs,[98] which were examined by the Court-commissioned ICPA.

Based on the findings of the ICPA, the total input VAT of ₱702,624.22[99] shall be disallowed for petitioner's failure to meet the substantiation and invoicing requirements prescribed under the VAT law and regulations, as follows:[100]

Particulars	Exhibit No.	Input Tax
Local purchases of goods other than capital goods and services		
Company name not properly indicated in the supporting documents	P-75-A	₱ 70,133.35
No valid supporting documents	P-75-B	75,328.96
Incorrect or incomplete address indicated in the supporting documents	P-75-C	600.00
Not in the period covered by the claim	P-75-D	175,532.01

[98] Exhibits "P-72-A-1" to "P-72-A-329", "P-72-B-1"to "P-72-B-2" and "P-72-C-1" to "P-72-C-36".
[99] The ₱702,624.21 total amount per ICPA's summary is adjusted to actual computed total amount.
[100] Exhibit "P-75", USB marked as Exhibit "P-113".

VAT amount not separately shown in the supporting documents	P-75-E	234,806.14
No, wrong or incomplete TIN of the petitioner	P-75-F	6,283.18
With discrepancy in the amount filed	P-75-G	312.09
No sales invoices/official receipts submitted by the petitioner	P-75-H	122,450.03
Amortization on purchases of capital goods exceeding ₱1million		
Company name not properly indicated in the supporting documents	P-75-A	11,965.22
No valid supporting documents	P-75-B	647.66
With discrepancy in the amount filed	P-75-G	4,565.58
TOTAL		**₱702,624.22**

Upon further verification, the Court finds that the input VAT on domestic purchases of goods other than capital goods and services aggregating to ₱1,326,195.47 shall likewise be disallowed for reasons stated herein:

Name of Supplier	Exhibit No.	Input VAT
Input VAT on purchases of goods supported by VAT invoices but with unreadable details (date, description or VAT amount)		
Brothers Venture Trading Corp.	"P-72-A-14"	₱ 6,913.71
Brothers Venture Trading Corp.	"P-72-A-15"	883.03
Brothers Venture Trading Corp.	"P-72-A-17"	6,378.21
Input VAT on purchases of service supported by VAT ORs but the nature of service is not indicated therein or the reference indicated is not attached to the OR		
Analytics and Data Integirty, Inc.	"P-72-A-7"	16,561.07
Analytics and Data Integirty, Inc.	"P-72-A-8"	17,244.64
Analytics and Data Integirty, Inc.	"P-72-A-9"	16,794.11
Buan & Temprosa Law Offices	"P-72-A-27"	144.00
Buan & Temprosa Law Offices	"P-72-A-31"	144.00
Buan & Temprosa Law Offices	"P-72-A-33"	15,720.00
Input VAT on purchases of service supported by VAT ORs but with alteration on address and the countersignature differs from that of the authorized representative therein		
Corpnet Global Corporation	"P-72-A-44"	2,220.00
Corpnet Global Corporation	"P-72-A-46"	1,320.00
Corpnet Global Corporation	"P-72-A-48"	2,760.00
Corpnet Global Corporation	"P-72-A-52"	4,410.00
Corpnet Global Corporation	"P-72-A-54"	3,120.00
Input VAT on purchases of service supported by VAT ORs but without the phrase "THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE PERMIT TO USE" as required under RR 10-2015, as amended by RR 16-2018		
Federal Land Inc	"P-72-A-62"	98,742.27
Federal Land Inc	"P-72-A-63"	401,757.84

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Federal Land Inc	"P-72-A-64"	109,570.32
Federal Land Inc	"P-72-A-65"	104,721.95
Federal Land Inc	"P-72-A-66"	401,757.84
Federal Land Inc	"P-72-A-67"	109,570.32
Input VAT on purchases of service supported by document other than VAT OR		
Glocal Manpower Supply and Services	"P-72-A-84"	5,462.16
Total		**₱1,326,195.47**

Hence, for purposes of compliance with the *seventh* requisite, out of the total reported input VAT of ₱3,587,327.10, only the amount of ₱1,558,507.41, represents petitioner's valid input VAT due or paid for the 4th quarter of CY 2018, *viz.*:

Total Input VAT per Quarterly VAT Return		₱ 3,587,327.10
Less: Disallowances		
Per ICPA findings	₱ 702,624.22	
Per Court's further verification	1,326,195.47	2,028,819.69
Valid Input VAT		**₱1,558,507.41**

<u>Eighth requisite:</u> Since there are both zero-rated or effectively zero-rated sales and taxable sales, the valid input VAT of ₱1,558,507.41 shall be proportionately allocated on the basis of sales volume.

The *eighth* requisite is to the effect that 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.

As earlier mentioned, petitioner reported zero-rated and VATable sales for the 4th quarter of CY 2018 in the following amounts:

Vatable Sales	₱ 892,707.38
Zero-Rated Sales	186,184,195.18
Total Sales	₱ 187,076,902.56

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Since petitioner's input VAT cannot be directly or entirely attributed to any of the transactions, the valid input VAT of ₱1,558,507.41 shall be allocated proportionately on the basis of sales volume, thus:

Total Vatable Sales for the period	₱ 892,707.38
Divided by the Total Sales for the period	187,076,902.56
Multiplied by Total Valid Input VAT for the period	1,558,507.41
Valid Input VAT Allocated to Total Vatable Sales	**₱ 7,437.00**

Total Zero-Rated Sales for the period	₱186,184,195.18
Divided by the Total Sales for the period	187,076,902.56
Multiplied by Total Valid Input VAT for the period	1,558,507.41
Valid Input VAT Allocated to Total Zero-Rated Sales	**₱1,551,070.41**

In fine, as regards petitioner's compliance with the *eighth* requisite, only the amount of ₱1,551,070.41 represents its valid input VAT attributable to total zero-rated sales for the 4th quarter of CY 2018.

<u>Ninth requisite</u>: The subject input taxes have not been applied against output taxes during and in the succeeding quarters.

Having determined that petitioner had valid input VAT attributable to its zero-rated sales, We now determine whether the same was not applied against its output VAT liability during and in the succeeding quarters, relative to the *ninth* requisite for the successful prosecution of an input VAT refund claim.

In the recent case of *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*,[101] the Supreme Court held that the input tax attributable to zero-rated sales, may at the option of the VAT-registered taxpayer, be: (1) charged against output tax from regular 12% VATable sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety, and such option is vested with the taxpayer-claimant, to wit:

[101] G.R. No. 215159. July 5, 2022.

> "Thus, the input tax attributable to zero-rated sales may, **at the option of the VAT-registered taxpayer**, be: (1) charged against output tax from regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund of the issuance of tax credit certificate; **or** (2) claimed for refund or tax credit in its entirety. It must be stressed that the **remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative.** Furthermore, **the option is vested with the taxpayer-claimant**. xxx" *(Emphases supplied.)*

Applying the foregoing, records show that petitioner chose the *first* option, *i.e.,* its total input VAT incurred for the 4th quarter of CY 2018 was applied against its output VAT for the same period and the remaining unutilized input VAT is the subject of the present claim for refund.[102] Hence, the refundable input VAT shall be computed net of output tax liability.

Since petitioner's valid input VAT allocated to total vatable sales, in the amount of ₱7,437.00, is not enough to cover the output VAT liability for the said sales, in the amount of ₱107,124.89,[103] the valid input VAT allocated to total zero-rated sales, in the amount of ₱1,551,070.41, shall then be utilized against the remaining output VAT due of ₱99,687.89, resulting to an excess unutilized input VAT allocated to total zero-rated sales in the amount of ₱1,451,382.52, as computed below:

Output VAT due per Quarterly VAT Return	₱ 107,124.89
Less: Valid Input VAT allocated to Vatable Sales	7,437.00
Output VAT still due	**₱ 99,687.89**

Valid Input VAT allocated to Total Zero-Rated Sales	₱ 1,551,070.41
Less: Output VAT still due	99,687.89
Excess Input VAT Allocated to Total Zero-Rated Sales	**₱1,451,382.52**

Thus, considering that the total declared zero-rated sales of ₱186,184,195.18 qualified as valid zero-rated sales for the 4th quarter of CY 2018, the excess input VAT of ₱1,451,382.52 is entirely attributable to said valid zero-rated sales of ₱186,184,195.18.

[102] See Petitioner's *Memorandum*, par. 80 to 80.2, Docket – Vol. II, pp. 1204 to 1205.
[103] Exhibit "P-60", Line 15B, Docket – Vol. II, p. 1044.

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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 2nd Division Acting 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

Moreover, although the input VAT claim of ₱3,480,202.21, which includes the excess valid input VAT of ₱1,451,382.52, was carried-over by petitioner in its succeeding Quarterly VAT Returns,[104] the same remained unutilized until it was deducted as "VAT Refund/TCC claimed"[105] in its amended Quarterly VAT Return for the 4th quarter of CY 2020. Accordingly, the subject claim no longer formed part of the excess input VAT of ₱57,120,869.75[106] as of the end of the 4th quarter of CY 2020, to be carried over to the succeeding quarters. Such being the case, it eliminates the possibility that the excess valid input VAT of ₱1,451,382.52 would be applied to any future output tax liability.

In fine, petitioner was able to satisfy the *ninth* requisite and has sufficiently proven its entitlement to the refund or issuance of TCC in the amount of ₱1,451,382.52, representing its unutilized input VAT attributable to its zero-rated sales for the 4th quarter of CY 2018.

WHEREFORE, premises considered, the *Petition for Review* filed by petitioner is **PARTIALLY GRANTED**. Accordingly, the respondent is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **₱1,451,382.52**, representing the latter's unutilized input value-added tax attributable to its zero-rated sales for the 4th quarter of calendar year 2018.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

(With Concurring & Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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[104] Exhibits "P-84", "P-88" to "P-90", "P-94", "P-96" and "P-98", USB marked as Exhibit "P-113"; Exhibit "P-64", Docket – Vol. II, pp. 1055 to 1056.
[105] Exhibit "P-64" (Line 23D), Docket – Vol. II, p. 1056.
[106] *Ibid.*, (Line 29).

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

STEFANINI PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10595

Members:

BACORRO-VILLENA, *Acting Chairperson,*
CUI-DAVID, *and*
FERRER-FLORES, ***JJ.***

Promulgated: JUN 24 2024

11:28 a.m.

x - x

CONCURRING AND DISSENTING OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* of my esteemed colleague Associate Justice Lanee S. Cui-David in ruling that petitioner Stefanini Philippines, Inc. (**petitioner/SPI**) has complied with all the requisites to justify the partial grant of its refund claim for excess and unutilized input value-added tax (**VAT**) attributable to valid zero-rated sales for the 4th quarter of the calendar year (**CY**) 2018 under Section 112(A)[1] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

However, following a recomputation of the refundable amount based on the Supreme Court decision in *Chevron Holdings, Inc. (formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*[2] (**Chevron**), it is my opinion that petitioner is entitled to a **slightly higher amount** of refundable

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[1] 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[.]

[2] G.R. No. 215159, 05 July 2022.

excess and unutilized input VAT attributable to valid zero-rated sales for the subject period of claim, hereby recomputed to be **₱1,461,063.79**.

As the basis for this recomputation, and as explained in my previous Dissenting Opinion in the Court *En Banc* case of *Commissioner of Internal Revenue v. Orica Philippines, Inc.*[3], I hereby outline what I deem to be the correct steps for computing the refundable amount of excess and unutilized input VAT attributable to zero-rated sales when the taxpayer-claimant is engaged in mixed transactions, as held in *Chevron*:

1. Determine the amount of substantiated or valid input VAT;

2. Deduct from the substantiated or valid input VAT any input VAT directly attributable to a specific activity to arrive at the substantiated or valid input VAT not attributable to any activity;

3. Multiply the substantiated or valid input VAT not attributable to any activity by the ratio of Valid Zero-Rated Sales over Total Sales to determine the amount of substantiated or valid input VAT attributable to valid zero-rated sales;

4. Add to the amount computed in no. 3 any substantiated or valid input VAT directly attributable to zero-rated sales to arrive at the total substantiated or valid input VAT attributable to zero-rated sales;

5. Determine the output VAT still due, which is computed by deducting against output VAT due on VATable sales the portion of the total declared input VAT (as distinguished from the substantiated or valid input VAT, which is what the Court typically uses in apportioning input VAT based on sales volume) allocated to VATable sales;

6. If the taxpayer-claimant opts to charge the input VAT attributable to zero-rated sales against output VAT, the entire amount of output VAT still due may be deemed applied against substantiated or valid input VAT directly attributable to zero-rated sales; otherwise, or if the taxpayer-claimant opts to claim for refund or tax credit in its entirety, deduct from the output VAT still due any input VAT carried over from previous period to arrive at the amount that may be deemed applied as aforesaid;

3 CTA EB No. 2635 (CTA Case No. 9974), 12 February 2024.

7. Determine the amount of input VAT carried-over instead; and,

8. Deduct from the total substantiated or valid input VAT attributable to zero-rated sales the amount computed in nos. 6 and 7.

Applying the foregoing steps to this case, the amount of excess and unutilized input VAT attributable to valid zero-rated sales (or the refundable amount) for the 4th quarter of the calendar year (**CY**) 2018 should be **₱1,461,063.79**, as computed below:

Step 1. As correctly noted in the *ponencia*, out of the total reported input VAT of ₱3,587,327.10, only the amount of **₱1,558,507.41** represents petitioner's substantiated or valid input VAT due or paid for the 4th quarter of CY 2018.

Step 2. No input VAT is directly attributable to a specific activity.

Step 3. The amount of substantiated or valid input VAT attributable to valid zero-rated sales is computed as follows:

Total Valid Zero-Rated Sales	₱186,184,195.18
Divided by Reported Total Sales *per* 4th Quarterly VAT Return for CY 2018	187,076,902.56
Multiplied by Total Valid Input VAT	1,558,507.41
Valid Input VAT Allocated to Total Valid Zero-Rated Sales	**₱1,551,070.41**

Step 4. No input VAT is directly attributable to a specific activity.

Step 5. Output VAT still due is:

Output VAT		₱107,124.89
Total VATable Sales	₱892,707.38	
Divided by Reported Total Sales	187,076,902.56	
Multiplied by Total Input VAT Declared[4]	3,587,327.10	
Less: Declared Input VAT Allocated to VATable sales		17,118.27
Output VAT Still Due		**₱90,006.62**

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Input Tax During the Period of Claim	Amount
Amortized Input Tax on Capital Goods exceeding ₱1 million	₱225,868.86
Input Tax on Purchases of Capital Goods not exceeding ₱1 million	40,921.20
Input Tax on Domestic Purchases of Goods other than Capital Goods	847,105.47
Input Tax on Domestic Purchases of Services	2,473,431.57
Total	**₱3,587,327.10**

Step 6. The output VAT still due of ₱90,006.62 may be deemed applied against substantiated or valid input VAT attributable to valid zero-rated sales since petitioner itself opted to charge the input VAT attributable to zero-rated sales against output VAT in arriving at its refund claim of ₱3,480,202.21[5] (notwithstanding that it has "Input VAT Carried Over from Previous Period" of ₱70,903,810.97[6] sufficient to pay or "cover" the same), as shown below:

Output VAT Still Due		₱90,006.62
Less:		
Option 1 (Charge the Input VAT attributable to Zero-Rated Sales against Output VAT)	₱-	
Option 2 (Claim for Refund or Tax Credit in its entirety)	70,903,810.97	-
Net Output VAT Still Due [a]		₱90,006.62
Valid Input VAT Allocated to Total Valid Zero-Rated Sales [b]		1,551,070.41
Amount Effectively Applied Against Output VAT Still Due (whichever is lower between [a] and [b])		**₱90,006.62**

Step 7. No input VAT deemed carried-over.

Step 8. The excess input VAT attributable to valid zero-rated sales is:

Valid Input VAT allocated to Total Valid Zero-Rated Sales	₱1,551,070.41
Less: Valid Input VAT Allocated to Total Valid Zero-Rated Sales Effectively Applied Against Output VAT Still Due	90,006.62
Less: Input VAT Deemed Carried-Over	-
Refundable Excess Input VAT attributable to Valid Zero-Rated Sales	**₱1,461,063.79**

In contrast, the *ponencia* computed an excess input VAT attributable to valid zero-rated sales of **₱1,451,382.52** in the following manner:

Output VAT	₱107,124.89
Less: Valid Input VAT allocated to Sales subject to 12% VAT	7,437.00
Output VAT Still Due	**₱99,687.89**
Valid Input VAT allocated to Total *Declared* Zero-Rated Sales	₱1,551,070.41
Less: Output VAT Still Due	99,687.89
Excess Input VAT allocated to Total *Declared* Zero-Rated Sales	**₱1,451,382.52**

5 VAT Refund/TCC Claimed *per* 4th Quarter VAT Return for CY 2020 (Line Item 23D), Exhibit "P-64", Division Docket, Volume II, p. 1056.

6 Input VAT Carried Over from Previous Period *per* 4th Quarter VAT Return for CY 2018 (Line Item 20A), Exhibit "P-60", id., p. 1044.

Excess Input VAT allocated to Total *Declared* Zero-Rated Sales	₱1,451,382.52
Divided by Total *Declared* Zero-Rated Sales	186,184,195.18
Multiplied by Total *Valid* Zero-Rated Sales[7]	186,184,195.18
Excess Input VAT attributable to Total *Valid* Zero-Rated Sales	**₱1,451,382.52**

The key difference between the foregoing computations is the determination of the input VAT allocated to VATable sales. In the *ponencia*, the amount used in apportioning input VAT based on sales volume is the **"Substantiated or Valid Input VAT"** of **₱1,558,507.41**, resulting in the allocated input VAT of **₱7,437.00**. Whereas, in the recomputation, the amount used is the **"Total Declared Input VAT"** of **₱3,587,327.10**, resulting in the allocated input VAT of **₱17,118.27**.

Applying *Chevron*, I humbly submit that the **"Total Declared Input VAT"** (and *not* the **"Substantiated or Valid Input VAT"**) should be used in apportioning input VAT based on sales volume and determining the portion allocated to VATable sales. Notably, the Supreme Court categorically held in *Chevron* that "**the substantiation of input taxes that can be credited against the output tax is an issue relevant to the assessment for potential deficiency output VAT liability.**" Thus, "**it is not for the CTA ... to determine and rule in a judicial claim for refund under Section 112(A)[8] of the [NIRC of 1997, as amended] that the taxpayer had insufficient or unsubstantiated input taxes to cover its output tax liability. This is for the [Bureau of Internal Revenue (BIR)] to determine in an administrative proceeding for assessment of deficiency taxes.**"

To my mind, the Supreme Court's clear declaration in *Chevron* aims to correct this Court's practice concerning the use of "**Substantiated or Valid Input VAT**" in the apportionment of input VAT and in calculating the portion thereof allocable to VATable sales, which is deductible from "Output VAT." The High Court explained that this practice is akin to the CTA itself making an assessment for deficiency output VAT liability without prior determination from the BIR. This situation arises because the "Substantiated or Valid Input VAT" is usually lower than the "Total Declared Input VAT" (after the removal of any unsubstantiated portion). Consequently, the amount of creditable input VAT is reduced by the difference between these two (2) figures. In effect, the Court is making an assessment for output VAT to the extent of the

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7 As correctly noted in the *ponencia*, petitioner was able to establish that its sales of services to nonresident foreign corporations (NRFCs) not engaged in business in the Philippines for the 4th quarter of CY 2018, in the aggregate amount of ₱186,184,195.18, qualify as valid zero-rated sales pursuant to Section 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended.

8 Supra at note 1.

remaining "Output VAT Still Due," against which the "Substantiated or Valid Input VAT" attributable to valid zero-rated sales will be offset.

Accordingly, I once again take this opportunity to take a firm stance towards changing this Court's formula for calculating the "Output VAT Still Due" to the end that this Court veers away from reducing the amount of creditable input VAT that unwittingly sanctions a judicial assessment of output VAT.

Simply put, the *ponencia* would have arrived at the recomputed refundable amount had it used the "**Total Declared Input VAT**" amounting to **₱3,587,327.10** in apportioning input VAT based on sales volume, as illustrated below.

Table 1. Input VAT Allocation	**Amount (a)**		**Allocation Factor (c) = (a) / (b)**	**Allocated Input VAT (e) = (c) x (d)**	
Valid Zero-Rated Sales	₱186,184,195.18		99.52%	₱1,551,070.41	
VATable Sales	892,707.38		0.48%	7,437.00	
Total Declared Sales[9]	**₱187,076,902.56**	**(b)**	100.00%	**₱1,558,507.41**	**(d)**

Table 2. Computation of Output VAT Still Due

Output VAT	₱107,124.89
Less: Declared Input VAT allocated to VATable Sales[10]	17,118.27
Output VAT Still Due	**₱90,006.62**

Table 3. Refundable Excess Input VAT Attributable to *Valid* Zero-Rated Sales

Valid Input VAT allocated to *Valid* Zero-Rated Sales	₱1,551,070.41
Less: Valid Input VAT attributable to Valid Zero-Rated Sales Effectively Applied Against Output VAT Still Due	90,006.62
Less: Input VAT Deemed Carried-Over	-
Refundable Excess Input VAT attributable to Valid Zero-Rated Sales	**₱1,461,063.79**

The principle of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established), as ordained in Article 8[11] of the Civil Code, enjoins adherence by this Court to doctrinal rules established by the Supreme Court in its final decisions, such as the recent pronouncement in *Chevron* regarding the proper formula for computing the refundable input tax.[12] This principle is based on the notion that once a question of law has been examined and decided, it should be considered

9 Total Sales/Receipts (Line Item 19A), Exhibit "P-60", supra at note 6.
10 Computed as: (₱892,707.38/₱187,076,902.56) x ₱3,587,327.10.
11 ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines.
12 See *Benjamin G. Ting v. Carmen M. Velez-Ting*, G.R. No. 166562, 31 March 2009.

settled and closed to further argument.[13] The High Court's interpretation of a statute becomes part of the law as of the date it was originally passed because such interpretation simply establishes the contemporaneous legislative intent that the interpreted law carries into effect.[14]

Having recomputed a slightly higher amount of refundable excess input VAT attributable to valid zero-rated sales following the pronouncements in *Chevron*, petitioner is entitled to a refund or issuance of a tax credit certificate (**TCC**) in the increased amount of ₱1,461,063.79, which is higher by ₱9,681.27 compared to the *ponencia*'s refundable amount of ₱1,451,382.52.

All told, I vote to **PARTIALLY GRANT** the instant Petition for Review and thereby, **ORDER** respondent to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **₱1,461,063.79**, representing the latter's excess and unutilized input VAT attributable to valid zero-rated sales for the 4th quarter of CY 2018.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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13 Id.

14 *Philippine Long Distance Telephone Company v. Abigail R. Razon, et al.*, G.R. No. 179408, 05 March 2014.