REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL, REVENUE, Petitioner, - versus - **MSCI HONG KONG LIMITED,** Respondent.	**CTA EB NO. 2759** (CTA Case No. 10131) Members: **DEL ROSARIO**, *P.J.* **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, **FERRER-FLORES**, *and* **ANGELES**, *JJ.* Promulgated: SEP 06 2024 1:59 pm

x - - -

THE PARTIES

Petitioner is the duly appointed CIR, vested under the appropriate laws with the authority to carry out functions, duties, and responsibilities for his Office, including, *inter alia*, the duty to act upon and approve claims for refund, pursuant to the provisions of the National Internal Revenue Code of 1997 (NIRC), as amended, and other tax laws, rules, and regulations. He may be served with summons, pleadings, and other processes at the Legal Division of Revenue Region 8A- Makati City, located at the 36th Floor Export Bank Plaza Building, Sen. Gil Puyat Avenue, Makati City, pursuant to Executive Order No. 175 dated November 3, 1999, as implemented by Revenue Administrative Order No. 10-2000 dated August 7, 2000.[3]

Respondent is the Philippine branch of MSCI Hong Kong Limited, with office address at the 29th Floor, Zuellig Building, Makati Avenue corner Paseo de Roxas, Makati City. It is licensed by the Securities and Exchange Commission (SEC) to establish a regional operating headquarters (ROHQ) in the Philippines to engage in index bench marking, portfolio risk and performance analytics, and research support services. It is also registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer and was issued a Certificate of Registration with Taxpayer Identification Number (TIN) 008-724-942.[4]

THE FACTS

The facts, as narrated by the CTA Special Third Division, are as follows:

> On March 28, 2019, petitioner **(respondent herein)** filed with the BIR its Application for Tax Credits/Refunds (BIR Form No. 1914), and the letter dated March 27, 2019, requesting the refund of its excess and unutilized input VAT incurred on its purchases of goods and services for the period from January 1, 2017 to December 31, 2017 (CY 2017) which are attributable to its zero-rated sales of services to nonresident foreign corporations (NRFC) engaged in business conducted outside the Philippines, amounting to ₱10,948,361.63. The letter was accompanied by a *Revised Checklist of Mandatory Requirements for Claims for VAT Refund.*
>
> Thereafter, the BIR issued a Tax Verification Notice (TVN) dated March 28, 2019 against petitioner, directing Revenue Officer (RO) Jonathan Ray Colobong to verify the supporting documents and/ or pertinent records relative to petitioner's claim.
>
> On July 2, 2019, petitioner received the letter from respondent **(petitioner herein)** dated May 28, 2019, which denied its request for the

---

[3] Paragraph 10, The Parties, Petition for Review, *Rollo*, p. 8.
[4] *Ibid.*

refund of its excess and unutilized input VAT attributable (to) it(s) zero-rated sales of service for CY 2017 for lack of legal and factual basis.

xxx xxx xxx

Accordingly, on July 24, 2019, Petitioner filed the present *Petition for Review*.

Respondent posted his *Answer* on September 20, 2019, interposing the following special and affirmative defenses, to wit:

xxx xxx xxx

Respondent's *Pre-Trial Brief* and *Petitioner's Pre-Trial Brief* were filed on January 17, 2020. The Pre-trial Conference was set and held on January 23, 2020.

On February 12, 2020, the parties submitted their *Joint Stipulation of Facts and Issues (JSFI).* In the February 26, 2020 Resolution, the Court approved the JSFI and terminated the Pre-Trial. Subsequently, the Pre-Trial Order dated July 23, 2020 was issued.

Trial ensued and petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely:

- Ms. Nerissa Tolentino, petitioner's Vice President for Finance; and,
- Mr. Glenn Ian D. Villanueva, the Court-commissioned Independent Certified Public Accountant (ICPA).

On September 11, 2020, the ICPA submitted his *Report*.

Petitioner filed its *Formal Offer of Exhibits* on December 23, 2020. Respondent then filed his *Comment (To Petitioner's Formal Offer of Evidence)* on September 18, 2019. In the Resolution dated January 31, 2020, the Court admitted petitioner's offered exhibits, except for Exhibit "P-2", for failure of the document offered and identified to correspond with the document marked.

Thereafter, on March 5, 2021, petitioner filed a *Motion for Reconsideration (Re: Resolution dated February 23, 2021)*, praying, *inter alia*, for the admission of the Authenticated Memorandum of Association of petitioner as Exhibit "P-2", which was attached to the motion. Respondent then posted a *Comment (Re: Motion for Reconsideration dated 05 March 2021)* on March 5, 2021.

Respondent, likewise, presented her testimonial and documentary evidence. She offered the testimony of RO Jonathan Ray Colobong.

Subsequently, respondent posted her Formal Offer of Evidence on March 12, 2021. Petitioner filed its *Comment (Re: Respondent's Formal Offer of Evidence)* on May 18, 2021.

In the Resolution dated July 8, 2021, the Court admitted respondent's offered exhibits, and granted petitioner's *Motion for Reconsideration (Re: Resolution dated February 23, 2021).*

> Petitioner posted its *Memorandum* on August 26, 2021, while the *Memorandum (for the Respondent)* was posted on October 27, 2021.[5]

On November 2, 2022, the CTA Special Third Division rendered its decision partially granting respondent's claim for refund, the dipositive portion of which reads as follows:

> **WHEREFORE**, premises considered, the *Petition for Review* 1s **PARTIALLY GRANTED**.
>
> Respondent [petitioner herein] is **ORDERED** to refund/issue a Tax Credit Certificate in the total amount of **Nine Million Eight Hundred Eighty Eight Thousand Two Hundred Sixty Four and 95/100 (₱9,888,264.95)**, representing petitioner's [respondent herein] excess and unutilized input VAT, attributable to its zero-rated sales of services for the four quarters of CY 2017.
>
> **SO ORDERED.**

Unsatisfied, petitioner filed his *Motion for Partial Reconsideration (Re: Decision dated 02 November 2022)*. The CTA Special Third Division, however, denied the same in the now assailed Resolution dated April 5, 2023, the *fallo* of which reads:

> **WHEREFORE**, premises considered, respondent's [petitioner herein] *Motion for Partial Reconsideration (Re: Decision dated 02 November 2022)* is **DENIED** for lack of merit.
>
> **SO ORDERED.**

Still unconvinced, petitioner posted the instant *Petition for Review*[6] before the Court *En Banc* on June 13, 2023, praying that the *Petition for Review* be given due course and that the *Decision* dated November 2, 2022 and the *Resolution* dated April 5, 2023 be partially reconsidered and/or set aside to fully deny respondent's application for tax refund or issuance of tax credit certificate.[7]

On the other hand, respondent, in its *Comment (Re: Petition for Review dated June 9, 2023)*, prays that this Court render judgment to deny the *Petition for Review* for lack of merit and to affirm the assailed Decision and assailed Resolution.[8]

---

5 Footnotes omitted.
6 *Rollo*, pp. 6-25.
7 *Rollo*, p. 24.
8 *Rollo*, p. 90.

This case was submitted for decision on August 7, 2023.[9]

THE ISSUE

The lone issue raised by petitioner for the Court *En Banc's* resolution is:

> Whether the Honorable Court in Division committed a reversible error in partially granting the respondent's *Petition for Review* and ordering the refund or issuance of tax credit certificate in favor of the respondent in the total amount of ₱9,888,264.95, representing its alleged excess and unutilized input VAT attributable to its zero-rated sales for the four (4) quarters of CY 2017.

Petitioner's arguments:

Petitioner posits that respondent failed to show that petitioner committed an error in denying its administrative claim for refund citing the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue (PTG case)*.[10] Assuming that the said case is not applicable, respondent's claim should still be denied for failure to comply with all the legal requisites of a claim for refund because respondent failed to prove that it is engaged in zero-rated or effectively zero-rated sales of services during the period involved. He likewise asserts that respondent failed to comply with the invoicing requirements under the NIRC of 1997, as amended.

Respondent's counter-arguments:

Respondent argues that it is not duty-bound to prove that the BIR committed an error in denying its administrative claim in order to be entitled to a judicial claim for refund. Respondent believes that it has proven its entitlement to the claim for refund with substantial and convincing evidence. It also maintains that it was able to establish that it was engaged in zero-rated or effectively zero-rated sales and has faithfully complied with the invoicing requirements provided by law and rules and regulations.

THE RULING OF THE COURT *EN BANC*

A perusal of the arguments in the *Petition for Review* shows that the same are mere reiterations of petitioner's arguments in his pleadings and in his *Motion for Reconsideration* raised in CTA Case No. 10131 which were

---

[9] *Rollo*, p. 92.
[10] G.R. No. 207112, December 8, 2015.

already discussed and passed upon by the Court in Division in its assailed Decision and assailed Resolution; thus, at the outset, the instant petition is without merit.

Nevertheless, the Court *En Banc* shall address the issues raised by petitioner before this Court.

Timeliness of the Petition for Review

Before proceeding to the merits of the arguments of the parties, the Court *En Banc* deems it necessary to delve on the timeliness of the instant *Petition for Review*.

Records show that, on April 5, 2023, the CTA Special Third Division issued the assailed Resolution denying petitioner's *Motion for Partial Reconsideration (Re: Decision dated 02 November 2022),* which was received by the latter on May 11, 2023. Consequently, petitioner had fifteen (15) days from such receipt, or until May 26, 2023, within which to file a petition for review before the CTA *En Banc,* pursuant to Section 2(a)(1), Rule 4[11] in relation to Section 3(b), Rule 8[12] of the Revised Rules of the CTA (RRCTA).

On May 18, 2023, petitioner filed a *Motion for Extension of Time to File Petition for Review* seeking an additional period of fifteen (15) days, or until June 10, 2023, within which to file the petition.[13] The Court *En Banc* granted the same in the Minute Resolution dated June 5, 2023.[14]

On June 13, 2023, petitioner timely filed the instant *Petition for Review*.[15]

---

[11] SEC. *2. Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) **Decisions or resolutions on motions for reconsideration** or new trial **of the Court in Division in the exercise of its exclusive appellate jurisdiction over**:

(1) **Cases arising from** administrative agencies — **Bureau of Internal Revenue**, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; (Boldfacing supplied)

[12] SEC. 3. *Who may appeal; period to file petition.* —

(a) xxx

(b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration** or new **trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution.** Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Boldfacing supplied)

[13] *Rollo*, pp. 1-3.

[14] *Rollo*, p. 5.

[15] June 10, 2023 is a Saturday and June 12, 2023 (Monday) is a legal holiday.

We shall now proceed to the merits of the case.

Petitioner misapplied the Pilipinas Total Gas case.

Citing the *PTG case*, petitioner opines that it is incumbent upon the respondent to convince the Court that the BIR had no reason to deny its claim for refund and must satisfy all the documentary and evidentiary requirements for an administrative claim for refund or tax credit. Petitioner likewise argues that respondent presented its case before the Court *a quo* as if it was an original action, despite the fact that the BIR had explicitly denied its administrative claim. Petitioner thus believes that, for respondent's failure to show that he should not have denied its administrative claim in the first place, the instant judicial claim must also be denied.

The Court is not convinced.

Quoted below are the pertinent portions of the *PTG case*:

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

Based on the above pronouncement, a distinction must be made between administrative cases appealed to this Court in Division *"due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents"*. These two (2) instances require different courses of action in presenting a refund case.

In the first instance, wherein the inaction of the CIR is tantamount to a denial of the claim for refund; or denial *other than* due to taxpayer's failure to submit complete documents, despite notice or request, the taxpayer-claimant may present all evidence to prove its entitlement thereto and the Court will then consider all the evidence offered, even those not presented before the BIR. On the other hand, in the second instance, the dismissal of an administrative claim for VAT refund for failure of the taxpayer to submit complete documents, despite the BIR's notice or request, the claimant must show to the Court that it is entitled thereto under substantive law and the submission of complete supporting documents at administrative level requested by the BIR.[16]

In the instant *Petition for Review*, petitioner anchors its argument that the appeal before the Court in Division was based on the respondent's failure to submit supporting documents. However, the Court does not agree. A revisit of the allegation in the original petition revealed that the same was filed based on the inaction of the CIR.

It is a settled ruled that a judicial claim for refund must be filed within a period of thirty (30) days after the receipt of CIR's decision or ruling; or, after the expiration of the ninety (90)-day period for him to render decision, **whichever is sooner**.[17] This is pursuant to Section 112(C) of the NIRC of 1997, as amended,[18] which provides:

> SEC. 112. Refunds or Tax Credits of Input Tax. -
>
> (A) xxx
> (B) xxx
> (C) Period within which Refund or Tax Credit of Input Taxes shall be Made. - In proper cases, the **Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of 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."
>
> **In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim**, appeal the decision with the Court of Tax Appeals: Provided, however, That failure on the part of any official, agent, or employee of the BIR to act on the application within ninety (90) days period shall be punishable under Section 269 of this Code. (Boldfacing supplied)

---

[16] *Commissioner of Internal Revenue vs. Axelum Resources Corporation*, CTA EB No. 2561 (CTA Case No. 9969), June 13, 2023.

[17] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016. See also *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*, G.R. No. 191498, January 15, 2014.

[18] Amended by Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion Law.

In *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*,[19] the Supreme Court pronounced that a taxpayer need not wait for the decision of the CIR after the lapse of the ninety (90)-day period to file a judicial claim, to wit:

> A final note, the taxpayers are reminded that when the 120-day [now 90-day] period lapses and there is inaction on the part of the CIR, they must no longer wait for it to come up with a decision thereafter. The CIR's inaction is the decision itself. It is already a denial of the refund claim. Thus, the taxpayer must file an appeal within 30 days from the lapse of the 120-day [now 90-day] waiting period.

A perusal of the original *Petition for Review* filed before the Court *a quo* reveals that the appeal was indeed filed by the respondent due to inaction of the petitioner.[20]

Records show that respondent's administrative application for refund with the BIR was filed on March 28, 2019. The CIR had ninety (90) days, or until June 26, 2019 to act on the claim. Since no decision was received by respondent during the ninety (90) day period, it had thirty (30) days from such expiration to file its judicial claim, or until July 26, 2019. Hence, respondent's action of filing the judicial claim after the lapse of the ninety (90)-day period on July 24, 2019 was in accordance with the law and jurisprudence.

While it is true that petitioner rendered a decision denying respondent's administrative claim on May 28, 2019, which was within the ninety (90)-day period; however, the same was only received by the respondent on July 2, 2019, which was already beyond the ninety (90)-day period. It must be stressed that the decision rendered by the BIR, denying the claim, must also be communicated to the taxpayer-claimant within the ninety (90)-day period pursuant to Revenue Memorandum Circular (RMC) No. 17-2018,[21] to wit:

> I. Claims for value-added tax (VAT) refund:
>
> A. General Policies
>
> 1. xxx
> 2. xxx
> 3. xxx
> 4. xxx

[19] G.R. No. 168950, January 14, 2015, see also *Lapanday Foods Corporation vs. Commissioner of Internal Revenue*, G.R. No. 252821, September 2, 2020.

[20] Paragraphs 17-24, Docket – Vol. 1, pp. 15-19.

[21] SUBJECT: Amending Revenue Memorandum Circular (RMC) No. 89-2017 and Certain Provisions of RMC No. 54-2014 Regarding the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) in Relation to Amendments Made in the National Internal Revenue Code of 1997, as Amended by Republic Act No. 10963, Known as the Tax Reform for Acceleration and Inclusion (TRAIN).

> 5. Any findings in the course of the verification/review of the VAT claims that may lead to a deficiency in internal revenue taxes, other than VAT, shall be communicated by the processing/reviewing office to the concerned investigating office having jurisdiction over the taxpayer-claimant. However, if the findings involve VAT, these may result to disallowance or denial of the claim, or if the case warrants, for possible assessment of VAT liability.
>
> **Should the claim be for denial, such fact <u>should be communicated in writing to the taxpayer within the 90-day period</u>**. The denial letter shall be signed by the Commissioner (CIR)/Deputy Commissioner-Operations Group (DCIR-OG)/Assistant Commissioner (ACIR)/ Regional Director, as the case may be. (Boldfacing and underlining supplied)

Inasmuch as the petitioner's denial was received by the respondent beyond the ninety (90)-day period, the Court holds that there was inaction on the part of CIR; hence, contrary to petitioner's stand, this case falls within the first instance of the *PTC case* wherein respondent may present all its evidence to the Court in Division, even those not presented before the BIR, and the Court is not precluded from considering those evidence.[22]

Respondent's sales of services are subject to VAT at zero percent.

It is undisputed that respondent is an ROHQ engaged to provide the qualifying services of index bench marking, portfolio risk and performance analytics and research support services as evidenced by the Certificate of Registration and License issued by the SEC.[23]

Petitioner, however, insists that as an ROHQ, respondent must also prove that its sales of services were rendered to either of its affiliates, subsidiaries, or branch in order to qualify as VAT zero-rated sales citing the case of *Institutional Shareholder Services, Inc. Philippine ROHQ vs. Commissioner of Internal Revenue*[24] decided by the CTA Special First Division. Petitioner posits that respondent failed to present evidence which will prove that its clients, Investment Property Databank Limited (IPDL), MSCI Inc., MSCI Limited, and MSCI Barra (Suisse) Sarl, were either its affiliate, subsidiary, or branch. It further argues that the

---

[22] *Commissioner of Internal Revenue vs. Univation Motor Philippines Inc. (formerly Nissan Motor Philippines, Inc.),* G.R. No. 231581, April 10, 2019. See also *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

[23] Exhibit. "P-1", Docket – Vol. 2, p. 660.

[24] CTA Case No. 7662, June 3, 2010. Note this case was eventually dismissed by the CTA *En Banc* for being prematurely filed in the case of *Institutional Shareholder Services, Inc. – Philippine ROHQ vs. Commissioner of Internal Revenue,* CTA EB No. 700, July 8, 2011 with *Entry of Judgment* dated May 8, 2012.

Memorandum/Articles of Incorporation and By-laws, adduced by respondent to prove that its clients were non-resident foreign corporations, fail to establish the places of the actual conduct of the said clients' respective businesses. As such, petitioner opines that the services of respondent, being an ROHQ, are subject to VAT pursuant to Article 65 of Republic Act No. 8756,[25] to quote:

> Art. 65. *Value-Added Tax.* - The regional or area headquarters established in the Philippines by multinational companies shall be exempted from the value-added tax. In addition, the sale or lease of goods and property and the rendition of services to regional or area headquarters shall be subject to zero percent (0%) VAT rate as provided for in the National Internal Revenue Code, as amended.
>
> **Regional operating headquarters shall be subject to the ten percent (10%) value-added tax as provided for under the National Internal Revenue Code, as amended.**

We are not swayed.

A scrutiny of Annex "A" of the Application of Multinational Company for Registration and License to Establish a Regional Operating Headquarters in the Philippines, attached to Exhibit "P-1",[26] shows that IPDL, MSCI Inc., MSCI Limited, and MSCI Barra (Suisse) Sarl are listed by respondent as subsidiaries. The said evidence also shows that the actual places of business of the said clients are outside of the Philippines. Moreover, respondent submitted Certifications of Non-Registration[27] issued by the SEC to prove that IPDL, MSCI Inc., MSCI Limited, and MSCI Barra (Suisse) Sarl do not have registered business in the Philippines and are not engaged in trade or business within the Philippines. Therefore, Exhibits "P-1", "P-6-a", "P-6-b", "P-6-c", and "P-6-d", which were formally offered by respondent and admitted by the Court *a quo*, negate petitioner's argument.

The Court in Division therefore did not err in concluding that the sales of services of the respondent in the sum of ₱372,952,466.69 are subject to VAT at zero percent based on the evidence presented.[28]

---

[25] *AN ACT PROVIDING FOR THE TERMS, CONDITIONS AND LICENSING REQUIREMENTS OF REGIONAL OR AREA HEADQUARTERS, REGIONAL OPERATING HEADQUARTERS, AND REGIONAL WAREHOUSES OF MULTINATIONAL COMPANIES, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF EXECUTIVE ORDER NO. 226, OTHERWISE KNOWN AS THE OMNIBUS INVESTMENTS CODE OF 1987.* November 23, 1999.

[26] Docket – Vol. 2, pp. 666-669.

[27] Exhibits"P-6-a" to "P-6-d", BIR Records, pp. 112-115.

[28] Decision, pp. 12-23, *Rollo*, pp. 43-54.

Respondent complied with the invoicing requirements under the NIRC of 1997, as amended.

Petitioner contends that all the official receipts (ORs) issued by respondent indicate that the corresponding payments were for "transfer pricing" and there was no indication that the payments were for the services mentioned in the Service Agreements entered into by respondent and its non-resident foreign clients; thus, it cannot be determined with certainty that the payments as shown by the said ORs were for the sales of services qualified as zero-rated transactions under Section 108(B)(2) of the NIRC of 1997, as amended. Further, petitioner contends that respondent failed to comply with the invoicing requirement under Section 113(B)(2)(c) of the NIRC of 1997, as amended, where the term "zero-rated sale" must be written or printed prominently on the invoice or receipt.

Petitioner's position is untenable.

Contrary to petitioner's assertion, the Court in Division had painstakingly scrutinized the ORs offered by respondent. The Court *a quo* even confirmed the evaluation of the commissioned independent Certified Public Accountant (ICPA) with respect to the compliance of the submitted receipts with regard to the invoicing requirements provided under Section 113(A) and (B) of the NIRC of 1997, as amended, and its implementing regulations. Pertinent portions of the assailed Decision[29] disposing of this issue read as follows:

> Finally, the *fourth* essential element requires that petitioner's sales must be paid in acceptable foreign currency accounted for in accordance with the BSP rules and regulations, by clients who are not doing business in the Philippines.
>
> Furthermore, the foreign currency remittances referred to under Section 108(B)(2) must not only be duly accounted for in accordance with the rules and regulations of the BSP but must also be supported by official receipts that comply with the pertinent invoicing requirements, containing all the required information under Section 113(A) and (B) of the NIRC of 1997, as amended, to wit:
>
> xxx xxx xxx
>
> These provisions of the 1997 NIRC, as amended, are further implemented by Section 4.113-1(A) and (B) of Revenue Regulations (RR) No. 16-05, as amended, to wit –
>
> xxx xxx xxx

[29] *Rollo*, pp. 48-52. Citations omitted.

> In addition to these requirements, the sales invoices (SIs) and official receipts (ORs) must be duly registered with the BIR as prescribed under Section 237 in relation to Section 238 of the 1997 NIRC, as amended, to wit:
>
> xxx xxx xxx
>
> Since petitioner's reported sales are in the nature of sales of services under Section 108(B)(2) of the NIRC of 1997, as amended, petitioner is required to issue BIR-registered VAT ORs for the foreign currency proceeds of each sales transaction, the information contained therein must be in compliance with the applicable provisions previously cited, such as the word "zero-rated" and the taxpayer's TIN-VAT number.
>
> To prove that petitioner's clients paid for its services in acceptable foreign currency in accordance with BSP Rules and Regulations, petitioner provided Certification of Inward Remittances issued by Bank of America, replicated as follows:
>
> xxx xxx xxx
>
> Aside from the Certificates of Inward Remittance from Bank of America, petitioner also presented the corresponding VAT ORs stamped with the words "Zero-Rated Sales" that it issued to its clients to prove that for services rendered during CY 2017, petitioner was paid in US Dollars amounting to US$7,401,311.98 with a Philippine Peso equivalent of ₱372,953,811.58.
>
> Based on the court-commissioned ICPA's examination, there are no differences between the amounts per VAT ORs issued by respondent vis-à-vis the amounts per Certification of Inward Remittance.
>
> After a careful review of the VAT ORs submitted by petitioner, **the Court confirms the findings of the ICPA. The ORs submitted comply with invoicing requirements set forth by Section 113 of the Tax Code**, as amended, hence, petitioner satisfied the fourth essential element. (Boldfacing supplied)

The above finding of the Court in Division should be accorded with highest degree of respect in the absence of clear showing of any abuse, arbitrariness, or capriciousness on the part of the court.[30] Hence, this Court holds that respondent was able to comply with the invoicing requirements as found by the Court in Division.

Accordingly, this Court finds no reversible error with the Special Third Division's pronouncements.

---

[30] *Heirs of Teresita Villanueva, et al. vs. Heirs of Petronila Syquia Mendoza, et al.*, G.R. No. 209132, June 5, 2017.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated November 2, 2022 and assailed Resolution dated April 5, 2023 in CTA Case No. 10131 are **AFFIRMED**.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

(On Official Business)
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON LEAVE
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

HENRY S. ANGELES
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.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice