REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

ORGANISATIONAL SUPPORT SERVICES, INC., *Petitioner,*	**CTA Case No. 10929**
- versus -	Members: **REYES-FAJARDO,** *Acting Chairperson* and **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 20 2026 3:50 p.m.

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DECISION

REYES-FAJARDO, *J.*:

This Petition for Review filed by Organisational Support Services, Inc., seeks the refund of alleged unutilized input value-added tax (VAT) attributable to its zero-rated sales of services in the amount of ₱618,441.08 for calendar year (CY) 2020.[1]

FACTS

Petitioner Organisational Support Services, Inc. is a corporation duly organized and existing under and by virtue of Philippine laws.[2] It is registered with the Bureau of Internal Revenue (BIR), Revenue District No. 044, under Taxpayer Identification Number (TIN) 010-018-321-00000, with address at 8th Floor Unit 9 One Park Drive 11th Drive Cor. 9th Avenue Fort Bonifacio, Taguig City.[3]

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1 Statement of the Case, Pre-Trial Order dated September 27, 2023, Docket - Vol. 1, p. 425.
2 Exhibits "P-1" and "P-2," Docket - Vol. 2, pp. 510 to 547.
3 Exhibit "P-3," Docket - Vol. 2, p. 548.

Respondent is the incumbent Commissioner of Internal Revenue, vested under the applicable laws with the authority to carry out the functions, duties and responsibilities of the BIR, including *inter alia*, the duty to act upon and approve claims for refund or tax credit pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules, and regulations.[4]

On March 29, 2022, petitioner filed an administrative claim for refund with the BIR VAT Credit Audit Division (BIR-VCAD), in the amount of ₱1,341,363.75, representing alleged unutilized input VAT for the period covered by the claim.[5]

On the same date, respondent issued a Tax Verification Notice authorizing Revenue Officers (ROs) Dexter C. Bustillos and Denise R. Dayanan to examine petitioner's supporting documents and pertinent records in relation to its refund claim for CY 2020.[6]

On June 21, 2022, petitioner received a VAT Refund Notice dated May 19, 2022, signed by Ms. Maria Luisa I. Belen, Assistant Commissioner of the Assessment Service. The notice partially granted petitioner's administrative claim.[7] Thus, the net allowable VAT refund was computed as follows:[8]

VAT Refund Claimed	₱1,341,363.75
Deductions from Claim	**618,371.08**
Net Allowable VAT Refund	₱ 722,992.67

On July 20, 2022, petitioner filed a Petition for Review, which was docketed as CTA Case No. 10929,[9] to which respondent filed his Answer (Re: Petition for Review dated 20 July 2022), on October 14, 2022.[10]

4 Par. 2, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket - Vol. 1, p. 393.
5 Par. 3, Admitted Facts, JSFI, Docket - Vol. 1, p. 393.
6 Par. 4, Admitted Facts, JSFI, Docket - Vol. 1, p. 393.
7 Exhibit "P-13," Docket - Vol. 2, pp. 642 to 646.
8 Par. 5, Admitted Facts, JSFI, Docket - Vol. 1, p. 393.
9 Docket - Vol. 1, pp. 6 to 22.
10 Docket - Vol. 1, pp. 179 to 189.

On October 17, 2022, respondent transmitted the *BIR Records* of the present case, consisting of 233 pages in one (1) folder.[11]

On February 17, 2023, petitioner filed an Omnibus Motion consisting of (I. Motion for Leave to File Supplemental Petition for Review; and II. Motion to Defer Pre-Trial Conference),[12] *sans* comment of the Respondent.[13]

In a Resolution dated May 23, 2023,[14] the Court granted petitioner's Motion for Leave to File Supplemental Petition for Review and admitted its Supplemental Petition for Review,[15] while declaring the Motion to Defer Pre-Trial Conference moot in light of the Court's Notice of Resetting dated February 21, 2023,[16] which rescheduled the Pre-Trial Conference to July 11, 2023.

On June 8, 2023, respondent filed his Answer (to Petitioner's Supplemental Petition for Review).[17]

On July 11, 2023, the Pre-Trial Conference was held.[18]

On August 8, 2023, the parties filed their Joint Stipulation of Facts and Issues,[19] which the Court approved through its Resolution dated August 10, 2023.[20] On the basis thereof, a Pre-Trial Order was issued on September 27, 2023.[21]

Trial ensued.

Petitioner presented: (1) Mr. Marvin L. Dela Cruz (Dela Cruz),[22] petitioner's President, and was its General Manager from January

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11 *Compliance* dated October 17, 2022, Docket - Vol. 1, pp. 209 to 211.
12 Docket - Vol. 1, pp. 232 to 241.
13 Records Verification dated March 29, 2023 issued by the Judicial Records Division of this Court, Docket - Vol. 1, p. 304.
14 Docket - Vol. 1, pp. 308 to 309.
15 Docket - Vol. 1, pp. 249 to 257.
16 Docket - Vol. 1, p. 301.
17 Docket - Vol. 1, pp. 311 to 320.
18 Minutes of the hearing held on, and Order dated, July 11, 2023, Docket - Vol. 1, pp. 381 and 384 to 386, respectively.
19 Docket - Vol. 1, pp. 392 to 411.
20 Docket - Vol. 1, p. 413.
21 Docket - Vol. 1, pp. 425 to 433.
22 Exhibits "P-14" and "P-17," Docket - Vol. 1, pp. 24 to 43, and 371 to 375, respectively; Minutes of the hearing held on, and Order dated, September 27, 2023, Docket - Vol. 1, pp. 434 and 436 to 437, respectively.

2019 to June 2022; and (2) Mr. Cedric Francis S. Apurillo,[23] the Court-commissioned Independent Certified Public Accountant (ICPA Apurillo).[24]

On October 27, 2023, ICPA Apurillo submitted his Report.[25]

On February 21, 2024, petitioner filed its Formal Offer of Evidence,[26] to which respondent filed his Comment (to Petitioner's Formal Offer of Evidence) on February 26, 2024.[27]

By Resolution dated May 21, 2024,[28] the Court admitted petitioner's offered exhibits.

For his part, respondent presented ROs Dexter C. Bustillos;[29] and Eufemia Mylene N. Mabingnay as witnesses[30]

On July 4, 2024, respondent filed his Formal Offer of Evidence,[31] to which petitioner submitted its Comment (On Respondent's Formal Offer of Evidence dated 4 July 2024) on July 15, 2024.[32]

By Resolution dated October 31, 2024,[33] the Court admitted respondent's offered exhibits.

In its Resolution dated January 20, 2025[34], the case was submitted for decision, taking into account petitioner's Memorandum, filed on December 5, 2025[35] and respondent's

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23 Exhibit "P-26," Docket - Vol. 2, pp. 472 to 479; Minutes of the hearing held on, and Order, dated February 8, 2024, Docket - Vol. 2, pp. 485 to 487.

24 *Oath of Commission* dated September 27, 2023, Docket - Vol. 1, p. 435; Minutes of the hearing held on, and Order dated, September 27, 2023, Docket - Vol. 1, pp. 434 and 436 to 437, respectively.

25 Exhibit "P-25," Docket - Vol. 1, pp. 439 to 465.

26 Docket - Vol. 2, pp. 488 to 507.

27 Docket - Vol. 2, pp. 655 to 657.

28 Docket - Vol. 2, pp. 662 to 666.

29 Exhibit "R-6," Docket - Vol. 1, pp. 194 to 199; Minutes of the hearing held on, and Order, dated June 25, 2024, Docket - Vol. 2, pp. 667 to 669.

30 Exhibit "R-7," Docket - Vol. 1, pp. 203 to 208; Minutes of the hearing held on, and Order, dated June 25, 2024, Docket - Vol. 2, pp. 667 to 669.

31 Docket - Vol. 2, pp. 670 to 673.

32 Docket - Vol. 2, pp. 676 to 679.

33 Docket - Vol. 2, pp. 684 to 685.

34 Minute Resolution dated January 20, 2025, Docket - Vol. 2, p. 722.

35 Docket - Vol. 2, pp. 687 to 712.

Manifestation filed on December 11, 2024,[36] wherein he adopted the arguments raised in his Answer as his Memorandum.

ISSUES

Whether petitioner is entitled to a refund in the amount of ₱618,441.08, representing its unutilized input VAT attributable to its zero-rated sales for the first, second, third and fourth quarters of CY 2020.

Whether the partial denial of petitioner's claim for refund was based on the evidence presented at the administrative level."[37]

ARGUMENTS

Petitioner argues that it has satisfied all the conditions for the grant of input VAT refund under Section 112 of the 1997 National Internal Revenue Code (NIRC), as amended by Republic Act (RA) 10963.[38] In particular: 1) it is a VAT-Registered person; 2) it timely filed both its administrative and judicial claims for input VAT refund; 3) its sale of services to a foreign corporation not engaged in business in the Philippines is subject to zero percent (0%) VAT pursuant to Section 108(B)(2) of the NIRC, as amended; 4) it duly substantiated its claimed input taxes in accordance with Sections 110 and 113 of the same Code; and 5) these substantiated input taxes are attributable to its zero-rated sales; and 6) the input taxes remained unutilized and were not applied to its output VAT. On this basis, petitioner claims entitlement to the amount of ₱618,441.08, representing unutilized input VAT attributable to its zero-rated sales of services for CY 2020.

Respondent, however, counters that petitioner failed to establish at the administrative level all the requisites for the full grant of input VAT refund under Section 112 of the NIRC, as amended by RA No. 10963. Respondent likewise argues that claims for tax refunds are strictly construed against the taxpayer and in favor of the government.

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36 Docket - Vol. 2, pp. 717 to 719.
37 Issue for Resolution, JSFI, Docket - Vol. 1, pp. 393 to 394.
38 Tax Reform for Acceleration and Inclusion (TRAIN).

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RULING

The Petition for Review lacks merit.

Section 112 (A) and (C) of the NIRC, as amended by Republic Act (RA) No. 10963[39] [otherwise known as the Tax Reform for Acceleration and Inclusion Act (TRAIN)], states in part:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* —
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> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> ...
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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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39 AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

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

The Court acquired jurisdiction over CTA Case No. 10929.

Section 112(A) of the NIRC, as amended by RA No. 10963, requires the taxpayer to file an administrative claim for input VAT refund, within two (2) years, following the close of the taxable quarter when the sales were made.

Section 112(C) of the same Code grants the BIR a period of ninety (90) days from date of submission of the official receipts or invoices and other supporting documents to decide on the taxpayer's administrative claim for input VAT refund. At present, said invoices, official receipts, and other supporting documents are submitted upon the filing the taxpayer's administrative claim for input VAT refund.[40] If the BIR renders an adverse decision within the ninety (90)-day period, an appeal to the Court may be filed within thirty (30) days from receipt thereof.

Petitioner's input VAT refund claim covers the 1st to 4th quarters of CY 2020, which closed on March 31, 2020 June 30, 2020 September 30, 2020 and December 31, 2020, respectively. Counting two (2) years therefrom, petitioner had until March 31, 2022, June 30, 2022, September 30, 2022 and December 31, 2022, respectively, to file its administrative claim for input VAT refund with the BIR VCAD. Thus, its administrative claim covering said quarters was timely filed on March 29, 2022.[41]

The BIR VCAD had ninety (90) days from March 29, 2022, or until June 27, 2022, to decide on said administrative claim. On June

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40 See *Zuellig-Pharma Asia Pacific Ltd. Phils. ROHQ v. Commissioner of Internal Revenue,* G.R. No. 244154, July 15, 2020. Beginning June 11, 2014, or upon effectivity of Revenue Memorandum Circular (RMC) No. 54-2014, the documents are deemed complete upon filing of the taxpayer's administrative claim for input VAT refund.

41 Exhibits "P-11" and "P-11.1," Docket - Vol. 2, pp. 634 to 639.

21, 2022,[42] respondent, through OIC-ACIR Maria Luisa I. Belen, issued a VAT Refund Notice dated May 19, 2022,[43] partially granting petitioner's refund claim. Counting thirty (30) days from petitioner's receipt thereof, the latter had until July 21, 2022, to seek judicial recourse. Accordingly, the timely filing of petitioner's Petition for Review on July 20, 2022[44] vested the Court with jurisdiction over this case.

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

In *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue (Chevron),*[45] the Supreme Court summarized the requisites for the successful prosecution of unused input VAT refund imputable to zero-rated sales under Section 112 of the NIRC, as amended:

1. The claim must be filed within two (2) years after the close of the taxable quarter when such sales were made;
2. The taxpayer is VAT-registered;
3. The taxpayer is engaged in zero-rated or effectively zero-rated sales; and
4. The creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

Indeed, *Chevron* acknowledged that among the conditions for entitlement to input VAT refund is the existence of the claimant's zero-rated sales, and that the input VAT be attributable to said sales. These conditions were *not* met. Elucidation of these observations follow.

Petitioner anchored its zero-rated sales under Section 108(B)(2) of the NIRC, as amended, providing as follows.

> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –

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42 Par. 13, *Petition for Review*, vis-à-vis par. 1, *Answer*, Docket - Vol. 1, pp. 9 and 179, respectively; Exhibit "P-13," Docket - Vol. 2, at p. 642.

43 Exhibit "P-13," Docket - Vol. 2, pp. 642 to 646.

44 Docket - Vol. 1, pp. 6 to 22.

45 G.R. No. 215159, July 05, 2022.

...

(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);

(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);...[46]

For sale of services to qualify for the zero percent (0%) VAT rate under Section 108(B)(2) of the NIRC, as amended, the following conditions must concur:

1. The services fall under any of the categories under Section 108(B)(2),[47] or simply, the services rendered should be other than *"processing, manufacturing or repacking goods;"*[48]

2. The service must be performed in the Philippines[49] by a VAT-registered person;

3. 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] and

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46 Boldfacing supplied.

47 *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

48 *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007.

49 *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, supra.

50 *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017; *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian*

4. The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[51]

Of these four (4) requisites, requisite (3) was not met.

In *Accenture, Inc. v. Commissioner of Internal Revenue (Accenture)*,[52] the Supreme Court ruled that to fall within the coverage of Section 108(B)(2) of the NIRC, as amended, the taxpayer must prove that the entity to whom it rendered services is a foreign corporation **not doing business in the Philippines**, thus:

> The evidence presented by Accenture may have established that its clients are foreign. This fact does not automatically mean, however, that these clients were doing business outside the Philippines. After all, the Tax Code itself has provisions for a foreign corporation engaged in business within the Philippines and vice versa, to wit:
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> > SEC. 22. Definitions - When used in this Title:
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> > ...
> >
> > (H) The term "resident foreign corporation" applies to a foreign corporation engaged in trade or business within the Philippines.
> >
> > (I) The term nonresident foreign corporation applies to a foreign corporation not engaged in trade or business within the Philippines.
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> Consequently, to come within the purview of Section 108(B)(2), it is not enough that the recipient of the service be proven to be a foreign corporation; rather, **it must be specifically proven to be a nonresident foreign corporation. ...**[53]

The *prima facie* evidence, namely, foreign articles of association or incorporation, and SEC Certificate of Non-Registration, used to establish the nonresident foreign corporation (NRFC) status of the refund claimant's clients, as referred to in *Accenture* was further discussed in *Commissioner of Internal Revenue v. Deutsche Knowledge*

Contractor Mindanao, Inc., supra; *Accenture, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 190102, July 11,2012.

51 *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, supra

52 G.R. No. 190102, July 11, 2012.

53 Boldfacing supplied.

Services Pte. Ltd. (Deutsche),[54] where the Supreme Court explained as follows:

> **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 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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> ...
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> 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.**[55]

In turn, *Commissioner of Internal Revenue v. Asalus Corporation*[56] clarified that "*prima facie* evidence" is one which will establish a fact or sustain a judgment **unless contradictory evidence is produced**."

Petitioner presented: *first,* Securities and Exchange Commission (SEC)'s Certification of Non-Registration of Company dated July 18, 2022,[57] attesting that the records of the SEC "do not show the registration of Therapeutic Case Management Services Limited as a corporation, partnership or One Person Corporation (OPC);" and *second,* apostilled Certificate of Incorporation and Articles of Association of Therapeutic Case Management Services Limited,[58] issued by the Registrar of Companies Hong Kong Special Administrative Region. Consistent with *Deutsche* and *Asalus,* these documents collectively establish TCMS's status as a foreign corporation not doing business in the Philippines, unless contradicted by other evidence.

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54 G.R. No. 234445, July 15, 2020.
55 Boldfacing ours.
56 G.R. No. 221590, February 22, 2017. Boldfacing supplied.
57 Exhibit "P-6," Docket - Vol. 2, p. 557.
58 Exhibit "P-7," Docket - Vol. 2, pp. 559 to 595.

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Contradictory evidence negating TCMS's status as a foreign corporation not doing business in the Philippines was produced in this case. Specifically, pertinent provisions of the Service Agreement[59] between petitioner and TCMS provide:

> **1. SERVICES**
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> **1.1. Projects.** TCMS may from time to time request OSS to conduct call and administration services **on its behalf or for its international clients**, which requests may be through various forms of communications. ...
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> **1.2. Performance; No Conflicting Obligations.** ...OSS also agrees **not to perform similar services during the term of this Agreement for any other company competitive with the business of TCMS** as presently conducted or as proposed to be conducted unless TCMS gives prior written consent.
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> ...
>
> **2. TERM AND TERMINATION.**
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> **2.1 Initial Term; Renewal.** The initial term of this Agreement shall begin on the Effective Date[60] and **continue in force through the fifth anniversary of the date thereof**. Thereafter, this Agreement shall be **automatically renewed each year for successive terms of one (1) year** unless and until one party provides written notice to the other party at least thirty (30) days prior to the end of such term.
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> ...
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> **2.3 Rights upon Termination.** On termination or expiration of this Agreement or the appointments, **authorizations and licenses granted hereunder** for any reason, OSS shall **immediately destroy or return to TCMS** all copies of any Proprietary Information or documents in its possession.
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> **3. MISCELLANEOUS.**
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> ...
>
> **3.2 Right of Audit. TCMS may, from time to time inspect and audit the premises and all the** relevant **accounting books and records of OSS** to ensure compliance with the terms of this Agreement. ...

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59 Exhibit "P-5," Docket - Vol. 2, pp. 551 to 553; Docket - Vol. 1, p. 66 (for page 2 of the Service Agreement).

60 July 1, 2018.

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These covenants clearly establish that the contractual relationship between TCMS and petitioner is one of agency. Consequently, petitioner's act of providing services in the Philippines means that TCMS itself is likewise doing business in the Philippines.

Article 1868 of the Civil Code defines agency as a contract whereby a person binds himself to render some service or to do something in representation or on behalf of another.[61] The contract of agency requires the presence of the following essential elements: (1) there is consent, express or implied of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for himself, and (4) the agent acts within the scope of his authority.[62] All of these elements are present in this case.

For the *first* element, TCMS and petitioner, by mutual consent, entered into a Service Agreement.

For the *second* element, the Service Agreement engaged petitioner to conduct call and administration services to TCMS and its international clients, in accordance with the schedule of work communicated by TCMS. Clearly, TCMS relied on petitioner's services to extend its business presence in dealing with its international clients. The object of the contract was petitioner's obligation to render services not only to TCMS, but also directly to TCMS's clients.

For the *third* element, the Service Agreement contains provisions that demonstrate petitioner was authorized to act **on behalf of TCMS.** This stipulation show that petitioner was not acting independently, but rather as of TCMS's representative in the Philippines. Without doubt, TCMS has control as how the service would be performed by petitioner.

For the *fourth* element, petitioner agreed to provide services in accordance with the specifications prescribed by TCMS. The Service Agreement further restricted petitioner from performing similar

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61 Article 1868. By the contract of agency a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.

62 *Spouses Viloria vs. Continental Airlines, Inc.,* G.R. No. 188288, January 16, 2012.

services for any other company competitive with TCMS's business, whether presently conducted or proposed to be conducted.

With the concurrence of the four (4) elements, the contractual relationship between petitioner and TCMS is one of agency; hence, petitioner's act of providing services in the Philippines means that TCMS is likewise doing business of providing services in the Philippines. This is strengthened by the pronouncement in *Air Canda v. Commissioner of Internal Revenue,*[63] holding that the appointment of a local agent by a foreign corporation is an act constitutive of doing business in the Philippines, to wit:

> ...The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization. **In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character.**[64]

In fine, petitioner failed to establish that its client, TCMS, is a foreign corporation doing business outside the Philippines. Being so, petitioner failed prove that its sales of services fall under Section 108(B)(2) of the NIRC, as amended.

In *Maibarara Geothermal, Inc. (MGI) v. Commissioner of Internal Revenue,*[65] the Supreme Court ruled that "[i]t is essential for the taxpayer-claimant to prove that it had zero-rated or effectively zero-rated sales during the pertinent taxable quarter unto which the input VAT, which is sought to be refunded, can be attributed to. Thus, petitioner must first establish that zero-rated or effectively zero-rated sales unto which the input VAT can attributed to exist...."Conversely, if said zero-rated or effectively zero-rated sales are *not* proven, no attribution of input VAT refund can be made.

In conformity with *MGI,* sans existence of zero-rated sales by petitioner, attribution of input VAT thereon is no longer possible.

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63 G.R. No. 169507, January 11, 2016, citing *British Overseas Airways Corporation,* G.R. Nos. L-65773-74, April 30, 1987

64 Boldfacing supplied.

65 G.R. No. 250479, July 18, 2022.

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Finally, the rationale behind the refund of input tax attributable to zero-rated sales is clear. In *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, the Supreme Court explained that the zero-rating of export sales is intended to benefit the seller thereof by promoting international competitiveness through the refund or credit of input taxes attributable to such sales.[66] Put differently, the VAT zero-rating under Section 108(B)(2) of the NIRC, as amended serves as a mechanism to ensure that foreign entities not doing business in the Philippines are not burdened by VAT. This safeguard ultimately promotes the global competitiveness of local service providers.

Accordingly, since petitioner sales of services cannot be regarded as zero-rated under Section 108(B)(2) of the NIRC, as amended, it is precluded from availing this benefit.

On these accounts, petitioner's claim for input VAT for CY 2020 must be denied in its entirety.

WHEREFORE, the Petition for Review filed by Organisational Support Services, Inc. is **DENIED**, for lack of merit.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

HENRY S. ANGELES
Associate Justice

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66 See *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, G.R. No. 153866 February 11, 2005.

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.

MARIAN IVY F. REYES-FAJARDO
Associate Justice
Acting Chairperson

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice