REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION
****

AVALOQ PHILIPPINES OPERATING HEADQUARTERS, Petitioner,	**CTA Case No. 10119**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** JAN 09 2023 1:58 p.m.

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DECISION

UY, J.:

Before this Court is a *Petition for Review*[1] filed on July 18, 2019 by petitioner, Avaloq Philippines Operating Headquarters, against respondent, Commissioner of Internal Revenue (CIR), praying that respondent be ordered to refund, in favor of petitioner, the amount of ₱3,196,739.74, representing petitioner's unutilized input value-added tax (VAT) attributable to its zero-rated sales for the first and second quarters (Q1 to Q2) of calendar year (CY) 2017 or the period January 1, 2017 to June 30, 2017 (covered period).

THE PARTIES

Petitioner is a regional operating headquarter (ROHQ) of Avaloq Group AG (Head Office), a company organized and existing under the laws of Switzerland.[2]

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[1] Docket – Vol. 1, pp. 10 to 22.
[2] *Joint Stipulation of Facts and Issues (JSFI)*, Stipulation of Facts, par. 1.a., Docket – Vol. 1, p. 335 vis-à-vis Exhibit "P-1", BIR Records – Folder 1, pp. 276 to 302.

Petitioner is licensed to transact business in the Philippines by the Securities and Exchange Commission (SEC).[3] It holds office at 8th and 9th Floors Robinsons Summit Center, Ayala Avenue, Makati City,[4] and may be served with orders, notices, pleadings, and other court processes through its counsel, Cabrera & Company, at 28th Floor, Philamlife Tower, 8767 Paseo de Roxas, 1226 Makati City.[5]

Petitioner is primarily engaged in general administration and planning; business planning and coordination; sourcing/ procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistics services; research and development services; product development; technical support and maintenance; data processing and communication; and business development.[6]

Moreover, petitioner is registered with the Bureau of Internal Revenue (BIR), Revenue District Office No. 050, with Taxpayer's Identification Number (TIN) 008-637-771-000.[7]

On the other hand, respondent CIR is vested by the National Internal Revenue Code (NIRC) of 1997, as amended, with the authority, among others, to decide, approve and grant applications for the refund of excess or unutilized input VAT. She may be served with summons and other court processes at the BIR, National Office Building, Agham Road, Diliman, Quezon City.[8]

THE FACTS

For Q1 to Q2 of CY 2017, petitioner generated gross receipts in the aggregate amount of ₱53,056,083.00.[9] The total

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[3] *JSFI*, Stipulation of Facts, par. 1.b., Docket – Vol. 1, p. 335 vis-à-vis Exhibit "P-2", BIR Records – Folder 1, p. 303.
[4] *Petition for Review (PFR)*, par. 1, Docket – Vol. 1, p. 10 *vis-à-vis* Exhibit "P-3", Docket – Vol. 2, p. 450.
[5] *PFR*, signature of counsel, Docket – Vol. 1, p. 22.
[6] *JSFI*, Stipulation of Facts, par. 1.c., Docket – Vol. 1, p. 336 vis-à-vis Exhibit "P-2", BIR Records – Folder 1, p. 303.
[7] *JSFI*, Stipulation of Facts, par. 1.d., Docket – Vol. 1, p. 336 *vis-à-vis* Exhibit "P-3", Docket – Vol. 2, p. 450
[8] *PFR*, par. 2, Docket – Vol. 1, p. 11 *vis-à-vis Answer*, par. 1, Docket – Vol. 1, p. 118.
[9] *PFR*, par. 5, Docket – Vol. 1, p. 11 *vis-à-vis* Exhibits "P-4" and "P-5", Docket – Vol. 2, pp. 451 to 456.

gross receipts of ₱53,056,083.00 were subjected to VAT at zero percent (0%) because allegedly, petitioner's services were rendered in the Philippines to its non-resident foreign affiliates (foreign clients),[10] and were billed and paid for in acceptable foreign currencies.[11]

Petitioner accumulated input VAT for Q1 to Q2 of CY 2017 in the aggregate amount of ₱3,196,739.74, as follows:

	Tax Base	Tax Due
VATable Sales/Receipts	₱ -	₱ -
Zero-rated Sales/Receipts	53,056,083.00[12]	-
Total Output VAT liabilities (A)	₱ 53,056,083.00	₱ -
Less: Input VAT from Current Transactions (B)		
Purchases of Capital Goods not exceeding ₱1M	-	-
Domestic Purchases of Goods other than Capital Goods	1,164,639.59[13]	139,756.75[14]
Domestic Purchases of Services	17,263,788.81[15]	2,071,654.66[16]
Services rendered by Non-residents	-	-
Subtotal (A-B)		(₱ 2,211,411.41)
Add: (Realized) Deferred Input Tax		(985,328.33)[17]
TOTAL EXCESS/UNUTILIZED INPUT VAT		**(₱ 3,196,739.74)**

On March 29, 2019, petitioner filed a Letter Request for Tax Refund[18] and Application for Tax Credits/Refund (BIR Form No. 1914)[19] for the refund of its accumulated (excess) input tax

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[10] *PFR*, par. 6, Docket – Vol. 1, p. 12 *vis-à-vis* Exhibits "P-39" to "P-46", USB.
[11] *PFR*, par. 6, Docket – Vol. 1, p. 12 *vis-à-vis* Exhibit "P-21", Docket – Vol. 2, pp. 481 to 500.
[12] Line 17 of Exhibit "P-4" plus Line 17 of Exhibit "P-5", Docket – Vol. 2, pp. 451 and 454.
[13] Line 21E of Exhibit "P-4" plus Line 21E of Exhibit "P-5", Docket – Vol. 2, pp. 451 and 454.
[14] Line 21F of Exhibit "P-4" plus Line 21F of Exhibit "P-5", Docket – Vol. 2, pp. 451 and 454.
[15] Line 21I of Exhibit "P-4" plus Line 21I of Exhibit "P-5", Docket – Vol. 2, pp. 451 and 454.
[16] Line 21J of Exhibit "P-4" plus Line 21J of Exhibit "P-5", Docket – Vol. 2, pp. 451 and 454.
[17] Schedule 3, Column G of Exhibit "P-4" plus Schedule 3, Column G of Exhibit "P-5", Docket – Vol. 2, pp. 452 and 455.
[18] Exhibit "P-14", Docket – Vol. 2, pp. 469 to 472.
[19] Exhibit "P-15", Docket – Vol. 2, p. 474.

amounting to ₱3,196,739.74 with the BIR's VAT Credit Audit Division.[20]

On June 18, 2019, petitioner received a letter from the BIR dated June 4, 2019 informing petitioner that its claim for VAT refund of its accumulated (excess) input tax for Q1 to Q2 of CY 2017 was denied.[21]

Aggrieved, petitioner filed the instant *Petition for Review*[22] on July 18, 2019.

On October 22, 2019, respondent filed a *Motion for Leave to File and Admit Attached Answer*[23] with attached *Answer*.[24] In her *Answer*, respondent interposed, among others, special and affirmative defense, to wit:

1) The amount of ₱3,196,739.74 representing alleged unutilized or unapplied excess input taxes allegedly allocable and directly attributable to petitioner's VAT zero-rated sales covering Q1 to Q2 of CY 2017 is subject to determination of sufficiency of proper documentation;

2) In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

3) Petitioner must show that it complied with the provisions of Section 112 of the NIRC of 1997, as amended, on the prescriptive period for claiming tax refund/credit;

4) A portion of petitioner's claim for refund should be denied for failure to comply with the mandatory invoicing requirements under Section 113 in relation to Section 110, and Section 238, of the NIRC of 1997, as amended; and

5) Considering that petitioner's claim has been denied in the administrative level for failure to prove and substantiate the claim for refund, petitioner cannot present before the

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[20] *JSFI*, Stipulation of Facts, par. 1.e., Docket – Vol. 1, p. 336 vis-à-vis Exhibit "P-2", BIR Records – Folder 1, p. 303.
[21] *JSFI*, Stipulation of Facts, par. 1.f., Docket – Vol. 1, p. 336 vis-à-vis Exhibit "P-17", Docket – Vol. 2, pp. 477 to 478.
[22] Docket – Vol. 1, pp. 10 to 22.
[23] Docket – Vol. 1, pp. 111 to 116.
[24] Docket – Vol. 1, pp. 118 to 127.

> Court documents that it did not submit at the administrative level. Thus, the Court is confined to a limited issue of whether there is indeed insufficiency of substantiation requirements to warrant the denial of the claim.

On November 27, 2019, respondent filed her *Compliance*,[25] transmitting the BIR Records of the instant case.

After the Pre-Trial Conference held on August 25, 2020,[26] the parties filed their *Joint Stipulation of Facts and Issues*[27] on September 24, 2020. The same was approved by the Court in the *Resolution*[28] dated October 2, 2020, and the Court subsequently issued the *Pre-Trial Order* dated November 24, 2020.[29]

During trial, petitioner presented the following witnesses: (1) Mary Lalaine Munar,[30] petitioner's accountant; and (2) Krista V. Bambao,[31] the Court-commissioned Independent Certified Public Accountant (ICPA).

For her part, respondent presented a sole witness: Revenue Officer Jelly Anne T. Mateo.[32]

Thereafter, respondent filed her *Memorandum*[33] on March 18, 2022, while petitioner filed its *Memorandum*[34] on April 21, 2022. Thus, the instant case was submitted for decision in the *Resolution*[35] dated April 27, 2022. Hence, this *Decision*.

THE ISSUE

The stipulated issue[36] for the Court's resolution, is as follows:

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[25] Docket – Vol. 1, pp. 136 to 138.
[26] *Minutes of the Hearing* dated August 25, 2020, Docket – Vol. 1, p. 309; *Order* dated August 25, 2020.
[27] Docket – Vol. 1, pp. 335 to 342.
[28] Docket – Vol. 1, p. 347.
[29] Docket – Vol. 1, pp. 423 to 430.
[30] Exhibit "P-25", Docket – Vol. 1, pp. 173 to 188.
[31] Exhibit "P-26", Docket – Vol. 1, pp. 383 to 414.
[32] Exhibit "R-7", Docket – Vol. 1, pp. 323 to 328.
[33] Docket – Vol. 2, pp. 590 to 598.
[34] Docket – Vol. 2, pp. 600 to 634.
[35] Docket – Vol. 2, p. 636.
[36] *JSFI*, Stipulation of Issue, Docket – Vol. 1, p. 336.

> "Whether the Petitioner is entitled to a tax refund amounting to Pesos: **THREE MILLION ONE HUNDRED NINETY-SIX THOUSAND SEVEN HUNDRED THIRTY-NINE AND 74/100 (₱3,196,739.74)** representing its excess and/or unutilized input VAT credits attributable to its zero-rated sales for the covered period."

Petitioner's arguments:

Petitioner argues that it was able to sufficiently establish all the elements or requisites that will support its entitlement to its claim for refund of its excess input VAT attributable to its zero-rated sales for the covered period.

Petitioner asserts that the fact of it being a VAT-registered entity is clearly and sufficiently established by its BIR Certificate of Registration.

Further, petitioner claims that it seasonably filed its administrative and judicial claims for refund within the prescriptive periods under Section 112(A) and (C) of the NIRC of 1997, as amended.

Petitioner also avers that it was able to prove through documentary and testimonial evidence that the ₱53,056,083.00 total sales/receipts per Quarterly VAT Return for the covered period were classified as sales subject to VAT at zero percent (0%) since these were considered transactions entered between petitioner and non-resident foreign customers who are neither registered nor doing business in the Philippines.

In addition, petitioner argues that its sales were paid for in acceptable foreign currency via intercompany offsetting agreement and the proceeds have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). According to petitioner, the intercompany offsetting agreement is recognized by the BIR as an acceptable foreign currency payment for purposes of VAT zero-rating.

Likewise, petitioner claims that the input taxes due from purchases of goods and services directly attributable to zero-rated sales were duly supported by VAT invoices or official receipts.

As regards the fact that petitioner's sales invoice for Q1 to Q2 of CY 2017 were all dated April 25, 2017 while the Authority to Print (ATP) was only issued by the BIR on May 15, 2017, petitioner explains that as of Q1 of 2017, its application, and the release of its new ATP reflecting petitioner's new office address, were still in progress/pending, and that all unused official receipts were surrendered to the BIR. Thus, when Q1 sales/services were billed, petitioner was not able to issue official receipts because the old official receipts were surrendered and the new ones were yet to be received. When the ATP was issued, that was the only time petitioner was able to issue an official receipt for the payment received from Q1 sales.

Furthermore, petitioner explains that the amount of refund claimed remains to be included in the input VAT balances reflected/reported in its Quarterly VAT Returns for the third and fourth quarters (Q3 to Q4) of CY 2017 considering petitioner's receipt of the 2017 Letter of Authority. Thus, petitioner had no choice but to cease the process of amending its Quarterly VAT Returns for Q3 to Q4 of CY 2017 because under Section 6 of the NIRC of 1997, as amended, a taxpayer is prohibited from amending, modifying, or changing its returns for the year covered by an audit. Nonetheless, petitioner still amended its Quarterly VAT Returns for CY 2018 and corrected the input VAT balances reported.

Finally, petitioner avers that the claimed input VAT were not applied against any output VAT in the succeeding periods.

Respondent's counter-arguments:

Respondent counter-argues that petitioner's judicial claim should be denied due to petitioner's failure to prove and substantiate its claim for refund at the administrative level. Particularly, petitioner failed to comply with the mandatory invoicing requirements under Section 113, in relation to Section 110 and Section 238 of the NIRC of 1997, as amended.

According to respondent, it is imperative for petitioner to present the following: 1) registration requirements for VAT-registered persons; 2) invoicing and accounting requirements for VAT-registered persons; 3) proof of compliance with the prescribed checklist of requirements to be submitted for claims involving VAT refund; 4) requirements enumerated under Section

4.104-5 of Revenue Regulations No. 7-95; and to prove: 5) that the input taxes in the amount of ₱3,196,739.74 representing alleged unutilized or unapplied excess input taxes allegedly allocable and directly attributable to petitioner's VAT zero-rated sales have not been applied against any output VAT liability and not carried over to the succeeding taxable quarter/s; 6) that petitioner's administrative and judicial claims for tax refund or credit were filed within the periods provided under Sections 112(A) and (C) of the NIRC of 1997, as amended; and 7) that petitioner's domestic purchases of goods and services were made in the course of its trade or business and properly supported by VAT invoices/official receipts and other documents.

Lastly, respondent asserts that tax refunds, like tax exemptions, are strictly construed against the taxpayer.

THE COURT'S RULING

In an action for the refund of, or issuance of a tax credit certificate (TCC) for, excess and unutilized input tax, Section 112(A) and (C) of the NIRC of 1997, as amended, provides:[37]

> "SECTION 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,*

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[37] The NIRC of 1997, as amended by Republic Act No. 19063 (TRAIN Law), is the version applicable in the instant case considering that petitioner's administrative and judicial claims for refund were filed on March 29, 2019 and July 18, 2019, respectively.

That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

xxx xxx xxx

(C) *Period within which Refund 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 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." *(Emphasis supplied)*

Pursuant to the foregoing legal provision, and in line with the jurisprudential pronouncements of the Supreme Court, the following requisites must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT:

<u>Prescriptive period for 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 sales were made;[38]

2. that in case of full or partial denial of the refund claim, rendered within a period of ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application, the judicial claim has been filed with the Court within thirty (30) days from receipt of the decision;[39]

<u>Taxpayer's registration with the BIR:</u>

3. the taxpayer is VAT registered;[40]

<u>In relation to the taxpayer's output VAT, it must be shown:</u>

4. that the taxpayer is engaged in zero-rated or effectively zero-rated sales;[41]

5. that for zero-rated sales under Section 106(A)(2)(a)(1) and (2); 106(B); and 108(B)(1) and (2) of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[42]

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[38] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.

[39] Section 112(C) of the NIRC of 1997, as amended by the TRAIN Law provides:

"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 <u>receipt</u> 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." *(Emphasis and underscoring supplied)*

[40] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra; *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, supra.*

[41] Ibid.

[42] Ibid.

<u>As regards the taxpayer's input VAT being refunded, it must be shown:</u>

6. that input taxes are not transitional input taxes;[43]

7. that the input taxes are due or paid;[44]

8. 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;[45] and

9. that the input taxes have not been applied against output taxes during and in the succeeding quarters.[46]

First and second requisites: Timeliness of the administrative and judicial claims.

The *first requisite* pertains to the filing of the claim for tax credit or refund of input VAT before the BIR.

Pursuant to Section 112(A) of the NIRC of 1997, as amended, the administrative claim for the issuance of a TCC or refund of input VAT must be filed within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

In the instant case, petitioner's claim covers Q1 to Q2 of CY 2017. Counting two (2) years from the close of each quarter, petitioner had until March 31, 2019 and June 30, 2019,

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[43] Ibid.
[44] Ibid.
[45] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra.
[46] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra; *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, supra.

respectively, within which to file its administrative claim for tax refund or issuance of a TCC for its input VAT, to wit:

Taxable Quarter	Close of Taxable Quarter	Last Day of Filing of Administrative Claim	Date of Filing of Administrative Claim
Q1 (January to March 2017)	March 31, 2017	March 31, 2019	March 29, 2019
Q2 (April to June 2017)	June 30, 2017	June 30, 2019	March 29, 2019

As shown above, petitioner's administrative claim, i.e., the Letter Request for Tax Refund[47] and Application for Tax Credits/Refund (BIR Form No. 1914),[48] for Q1 to Q2 of CY 2017 were timely filed with the BIR on March 29, 2019.

The *second requisite* pertains to the timeliness of the judicial claim pursuant to Section 112(C) of the NIRC of 1997, as amended. The legal provision speaks of two periods: (1) the period of ninety (90) days from the date of submission of official receipts or invoices and other documents in support of the application, for respondent to act on the administrative claim for refund or tax credit; and (2) the period of thirty (30) days from receipt of the decision denying the claim, for petitioner to appeal respondent's decision.

In this case, counting from the filing of petitioner's administrative claim on March 29, 2019, respondent had 90 days therefrom, or until June 27, 2019, to act on the said claim. Within the said 90-day period, petitioner received a denial letter on June 18, 2019 from respondent denying its administrative claim for refund of its excess and unutilized input VAT for Q1 to Q2 of CY 2017 in the amount of ₱3,196,739.74.[49] Thus, petitioner had a period of thirty (30) days from June 18, 2019 or until July 18, 2019 to file its judicial claim.

Considering that the instant *Petition for Review*[50] was filed on July 18, 2019, the judicial claim was likewise filed on time. *mb*

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[47] Exhibit "P-14", Docket – Vol. 2, pp. 469 to 472.
[48] Exhibit "P-15", Docket – Vol. 2, p. 474.
[49] *JSFI*, Stipulation of Facts, par. 1.f., Docket – Vol. 1, p. 336 *vis-à-vis* Exhibit "P-17", Docket – Vol. 2, pp. 477 to 478.
[50] Docket – Vol.1, pp. 10 to 22.

Correspondingly, petitioner complied with the *first* and *second requisites*.

Third requisite: Petitioner is VAT registered.

The *third requisite* pertains to the taxpayer's VAT registration. Notably, petitioner presented its Certificate of Registration issued by the BIR with TIN 008-637-771-000, indicating that it is liable for VAT.[51] Thus, the *third requisite* has also been complied with.

Fourth and fifth requisites: Petitioner was not able to establish that it is engaged in zero-rated or effectively zero-rated sales.

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

In its Amended Quarterly VAT Returns for Q1 to Q2 of CY 2017, petitioner declared total zero-rated sales/receipts in the total amount of ₱53,056,083.00, to wit:

Period	Exhibit Reference	Zero-Rated Sales
1st Quarter	Line 17, "P-4"	-
2nd Quarter	Line 17, "P-5"	₱53,056,083.00
Total		₱53,056,083.00

Petitioner claims that during Q1 to Q2 of CY 2017, it rendered services to non-resident foreign corporations not engaged in business in the Philippines, namely, Avaloq Evolution AG, Avaloq License AG, Avaloq Australia Pty Ltd, and Avaloq

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[51] *JSFI*, Stipulation of Facts, par. 1.d., Docket – Vol. 1, p. 336 *vis-à-vis* Exhibit "P-3", Docket – Vol. 2, p. 450

Sourcing Asia Pacific (Singapore) Pte. Ltd.; and that the services rendered were paid for in acceptable foreign currencies and accounted for in accordance with the rules and regulations of the BSP.

Relative to the foregoing is Section 108(B) 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
>
> The phrase 'sale or exchange of service' means the **performance of all kinds of services <u>in the Philippines</u>** for others for a fee, remuneration or consideration, xxx.
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* — **The following services <u>performed in the Philippines</u> by VAT-registered persons shall be subject to zero percent (0%) rate**:
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> (2) **Services <u>other than those mentioned in the preceding paragraph</u> rendered to a person engaged in business conducted <u>outside the Philippines</u> or to a nonresident person not engaged in business who is <u>outside the Philippines</u> 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)**;" *(Emphasis and underscoring supplied)*

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Based on the foregoing provision, a sale or supply of services will be subject to zero percent (0%) VAT under Section 108(B)(2) of the NIRC of 1997, as amended, provided the following essential elements are present, to wit:

1) The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a non-resident person not engaged in business who is outside the Philippines when the services were performed;[52]

2) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules;[53]

3) The services fall under any of the categories under Section 108(B)(2) of the NIRC of 1997, as amended, or simply, the services rendered should be other than "processing, manufacturing or repacking goods";[54] and

4) The services must be performed in the Philippines[55] by a VAT-registered person.

Anent the *first essential element*, petitioner must show that the recipient of its services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a non-resident person not engaged in business who is outside the Philippines when the services were performed.

In other words, to satisfy the *first essential element*, petitioner must submit, for each of its foreign service-recipients/clients, at the very least, both: (1) the SEC Certificate of Non-Registration of Corporation/Partnership; **and** (2) proof of incorporation,

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[52] *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.

[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), supra.*

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

[55] *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.*

association or registration showing the state/province/country where the entity was organized.

In this case, to show compliance with the *first essential element*, petitioner presented the following documents:

Service-Recipient	Documents Presented
Avaloq Evolution AG	Authenticated Articles of Association[56] and Certificate of Non-Registration of Company issued by the SEC[57]
Avaloq Australia Pty Ltd	Authenticated Constitution[58] and Certificate of Non-Registration of Company issued by the SEC[59]
Avaloq Sourcing Asia Pacific (Singapore) Pte. Ltd.	Authenticated Certified True Copy of Constitution[60] and Certificate of Non-Registration of Company issued by the SEC[61]
Avaloq License AG	Authenticated Articles of Association[62] and Certificate of Non-Registration of Company issued by the SEC[63]

Taken together, the foregoing documents establish that Avaloq Evolution AG, Avaloq Australia Pty Ltd, Avaloq Sourcing Asia Pacific (Singapore) Pte. Ltd., and Avaloq License AG are non-resident foreign corporations not engaged in business in the Philippines, satisfying the *first essential element*.

With respect to the *second essential element*, petitioner must show that the payment for such services are in acceptable foreign currency accounted for in accordance with BSP rules.

Relative thereto, petitioner presented the Foreign Exchange Confirmations,[64] Bank Statements issued by Bank of Philippine

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[56] Exhibit "P-39", USB.
[57] Exhibit "P-40", USB.
[58] Exhibit "P-41", USB.
[59] Exhibit "P-42", USB.
[60] Exhibit "P-43", USB.
[61] Exhibit "P-44", USB.
[62] Exhibit "P-45", USB.
[63] Exhibit "P-46", USB.
[64] Exhibit "P-24", USB.

Islands,[65] and Apostilled English translated Debit Advice in favor of the petitioner,[66] to show that it received inward remittances.

The Court finds that the foregoing documents are sufficient proof to establish the fact of payment *"in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP"*. Hence, petitioner has complied with the *second essential element*.

As to the *third essential element*, petitioner must prove that the subject services fall under any of the categories under Section 108(B)(2) of the NIRC of 1997, as amended, or simply, the services rendered should be other than "processing, manufacturing or repacking goods".

In this case, the Court finds that petitioner entered into a General Framework Services Agreement (GFSA).[67] Pursuant thereto, the following services are included in the definition of *"Services"*:[68]

- Preparation of analyses
- Making of status quo analyses
- Consulting
- Preparation of concepts
- Documentation
- Promotion of products and services
- Sub-project management
- Training and support in training services
- Support in implementation services
- Support in parametrization services
- Support in maintenance services
- Support with and coordination of Global Processing Networks projects
- Coordination
- Audits
- Support in acceptance.

Clearly, the foregoing services to be rendered by petitioner to its foreign clients are other than *"processing, manufacturing or*

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[65] Exhibits "P-53-1" to "P-53-4", USB.
[66] Exhibits "P-202-1" to "P-202-4", Docket – Vol. 2, pp. 552 to 555.
[67] Exhibit "P-23", Docket – Vol. 2, pp. 521 to 539.
[68] Docket – Vol. 2, p. 534.

repacking of goods", pursuant to Section 108(B)(2) of the NIRC of 1997, as amended, thereby satisfying the *third essential element.*

With regard to the *fourth essential element*, petitioner is required to present evidence that the subject services are performed in the Philippines by a VAT-registered person.

However, We find that the GFSA entered into by petitioner and its foreign clients, has no provision as to where the services are to be performed by petitioner.

In the ICPA Report, the GFSA was evaluated as follows:[69]

> "4. In addition to the above-enumerated documents, the General Framework Services Agreement ("GFSA") **(Exhibit P-23, as marked by counsel of Petitioner)**[70] were [sic] evaluated during our review to ascertain the the [sic] nature of the services provided, **the location where the services were provided** as well as the fees to be paid for the services provided by Petitioner to these foreign clients.
>
> xxx xxx xxx
>
> - ***Location Where the Services were Provided*** - **Not specified**"

(Emphasis and underscoring supplied)

The fact that there is no showing in the GFSA that the services rendered by petitioner were performed in the Philippines was reiterated by ICPA Krista V. Bambao in her *Judicial Affidavit*,[71] to wit:

> "25. Q: You mentioned that the sales were subjected to zero-rated VAT. What is the reason why these were subjected/classified as zero-rated transactions by Petitioner?

[69] Docket – Vol. 1, pp. 356 to 357.
[70] Emphasis by the ICPA.
[71] Answer to Question 25, Exhibit "P-26", Docket – Vol. 1, pp. 401 to 404.

A: xxx xxx xxx

In addition to the above-enumerated documents, the General Framework Services Agreement ("GFSA") (**Exhibit P-23, as marked by counsel of Petitioner**)[72] were [sic] evaluated during our review to ascertain the nature of the services provided, **<u>the location where the services were provided</u>** as well as the fees to be paid for the services provided by Petitioner to these foreign clients.

xxx xxx xxx

- ***<u>Location Where the Services were Provided</u>*** - **<u>Not specified</u>**"

(Emphasis and underscoring supplied)

The Court notes that in the same ICPA Report and *Judicial Affidavit of Krista V. Bambao,*[73] ICPA Krista V. Bambao mentioned that petitioner's services were rendered in the Philippines, as follows:

<u>ICPA Report</u>

"3. Verification of the SLS **(Exhibit P-32)**,[74] GL Account No. 2430 (Sales) **(Exhibit P-33)**,[75] and the VAT-registered O.R.s issued by Petitioner to substantiate the amount due to Petitioner for the services rendered during the covered period **(Exhibits P-34 to P-38)**[76] would show that the transactions were considered as sales subject to VAT at zero percent (0%) because these pertain to fees collected **<u>for services rendered in the Philippines</u>** for the following entities ("foreign clients" for brevity):

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[72] Emphasis by the ICPA.
[73] Exhibit "P-26", Docket – Vol. 1, pp. 383 to 414.
[74] Emphasis by the ICPA.
[75] *Ibid.*
[76] *Ibid.*

a. Avaloq Evolution AG and Avaloq License AG, both of which are entities incorporated under the laws of Switzerland and is not registered as a corporation nor partnership in the Philippines;
b. Avaloq Australia Pty Ltd, an entity incorporated under the laws of Australia and is not registered as a corporation nor partnership in the Philippines; and
c. Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd., an entity incorporated under the laws of Singapore and is not registered as a corporation nor partnership in the Philippines." *(Emphasis and underscoring supplied)*

Judicial Affidavit of Krista V. Bambao

"25. Q: You mentioned that the sales were subjected to zero-rated VAT. What is the reason why these were subjected/ classified as zero-rated transactions by Petitioner?

A: As discussed in **Part III (3)**[77] on pages 5 to 7 of my report, sales amounting to ₱53,056,083.00 were considered as sales subject to 0% VAT because these pertain to fees collected **for services rendered in the Philippines** for the following entities ("foreign clients" for brevity):

a. Avaloq Evolution AG and Avaloq License AG, both of which are entities incorporated under the laws of Switzerland and is not registered as a corporation nor partnership in the Philippines;

b. Avaloq Australia Pty Ltd, an entity incorporated under the laws of Australia and is not registered as a

[77] Emphasis by the ICPA.

> corporation nor partnership in the Philippines; and
>
> c. Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd., an entity incorporated under the laws of Singapore and is not registered as a corporation nor partnership in the Philippines." *(Emphasis and underscoring supplied)*

However, despite ICPA Krista V. Bambao's claim in her ICPA Report and in her *Judicial Affidavit* that petitioner's services were performed in the Philippines, the Court finds the same insufficient to establish that the services were performed by petitioner in the Philippines.

Foremost, a careful examination of the GFSA reveals that the same lacks any indication that the services were performed in the Philippines. In fact, ICPA Krista V. Bambao herself stated in her ICPA Report and in her *Judicial Affidavit* that *"Location Where the Services were Provided – Not specified"*.

Second, ICPA Krista V. Bambao's statements in her ICPA Report and *Judicial Affidavit* that *"sales amounting to ₱53,056,083.00 were considered as sales subject to 0% VAT because these pertain to fees collected for services rendered in the Philippines"* contradict her findings that the GFSA is silent as to the place where the services were rendered. Moreover, ICPA Krista V. Bambao cannot be considered a competent witness to testify as to where petitioner renders its services considering that she is not connected with petitioner and is not privy as to where petitioner renders its services.

It must be noted that the issue as to whether or not petitioner performed services in the Philippines is a question of fact; hence, it must be proven by specific evidence. Although petitioner is an ROHQ of Avaloq Group AG (Head Office), it is still necessary on its part to prove that its services were performed in the Philippines. Thus, considering the foregoing, We find that petitioner failed to comply with the *fourth essential element*.

In cases filed before this Court, which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[78]

Considering that it was never established that the place of performance of the subject services was in the Philippines, petitioner's services rendered to its foreign clients, who are classified as non-resident foreign corporations not engaged in business in the Philippines, cannot qualify as subject to zero percent (0%) VAT under Section 108(B)(2) of the NIRC of 1997, as amended. Such being the case, the subject refund claim of petitioner's alleged excess and unutilized input VAT must perforce fail.

Correspondingly, it is no longer necessary to determine whether petitioner fulfilled the remaining requisites for granting a credit/refund of input VAT for Q1 to Q2 of CY 2017.

Statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to the VAT are in the nature of such exemptions.[79] It is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[80]

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for failure of petitioner to show that its sale of services for Q1 to Q2 of CY 2017 qualify for VAT zero-rating.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[78] *Edison (Bataan) Cogeneration Corp. v. Commissioner of Internal Revenue*, G.R. Nos. 201665 & 201668, August 30, 2017.
[79] *Panasonic Communication Imaging Corporation of the Philippines (formerly Matsuhita Business Machine Corporation of the Philippines) v. Commissioner of internal Revenue*, G.R. No. 178090, February 8, 2010.
[80] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice