REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

**FIRST DIVISION**

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| **BSM CREW SERVICE CENTRE PHILIPPINES, INC.,** Petitioner, | **CTA CASE NO. 9892** |
| | Members: |
| - versus - | **DEL ROSARIO,** *P.J., Chairperson,* and **MANAHAN,** *JJ.* |
| **THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,** Respondent. | Promulgated: SEP 08 2020 8:30am |

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# DECISION

***DEL ROSARIO, P.J.*:**

This is a Petition for Review[1] filed on July 26, 2018 by BSM Crew Service Centre Philippines, Inc. praying that the decision of the Bureau of Internal Revenue (BIR) contained in a Letter dated June 13, 2018, denying petitioner's claim for Value Added Tax (VAT) refund for the period January 1, 2016 to December 31, 2016 be reconsidered, set aside and reversed, and that its claim for refund in the amount of ₱4,142,818.64[2] be granted.

## THE PARTIES

Petitioner is a corporation duly organized and existing under the laws of the Philippines. Petitioner's Certificate of Filing of Amended Articles of Incorporation was issued by the Securities and Exchange Commission (SEC) on January 19, 2011.[3] Its business address is at

[1] CTA Docket Vol. I, pp.10-175 (*inclusive of annexes*).
[2] Claim for refund in the amount of P5,309,805.24 less the accepted disallowances of P1,098,732.34 and P68,254.26.
[3] Exhibit "P-1", CTA Docket Vol. 2, p. 645.

BSM House, 1965 Leon Guinto Street, Malate, Manila.[4] Petitioner's primary purpose is to act as representative, agent, charterer, or broker of ships or vessels for owners and/or operators, be they natural persons, firms, entities, corporations or associations.[5] Petitioner is licensed by the Philippine Overseas Employment Administration (POEA) as a local manning agency to recruit Filipino seafarers for overseas employment on vessels of foreign principals.[6]

Respondent is the Commissioner of the BIR with office address at the BIR National Office Building, Diliman, Quezon City.[7] He is empowered to, among others, decide disputed assessments, refunds of internal revenue taxes, fees, and other charges, penalties in relation thereto, and other matters arising from the implementation of the National Internal Revenue Code (NIRC) of 1997, as amended, and other laws administered by the BIR.[8]

## FACTS

On March 28, 2018, petitioner filed a claim for VAT refund, representing alleged unutilized input taxes on local purchases of goods and services in the amount of ₱5,309,805.24 for the period January 1, 2016 to December 31, 2016.[9]

On June 29, 2018, petitioner received a letter dated June 13, 2018 signed by Erlinda A. Simple, Assistant Commissioner (ACIR), Assessment Service of the BIR, informing it that its VAT refund application for the period January 1, 2016 to December 31, 2016 has been denied for lack of legal and factual basis.[10] ACIR Simple referred to Annex A[11] of said letter for details of the denial, which states:

"

| | Local | Importation | TOTAL |
|---|---|---|---|
| **Amount of Claim** | **₱ 5,309,805.24** | **₱ -** | **₱5,309,805.24** |
| **Disallowances per VCAD Verification** | | - | |

[4] Par. 1(c), A. Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), CTA Docket Vol. I, p. 578.
[5] Par. 1(a), A. Stipulated Facts, JSFI, CTA Docket Vol. I, p. 578.
[6] Par. 1(b), A. Stipulated Facts, JSFI, CTA Docket Vol. I, p. 578.
[7] Par. 2(b), A. Stipulated Facts, JSFI, CTA Docket Vol. I, p. 579.
[8] Par. 2(a), A. Stipulated Facts, JSFI, CTA Docket Vol. I, p. 579.
[9] Exhibit "P-10", CTA Docket Vol. 2, p. 719; Par. 3(b), A. Stipulated Facts, JSFI, CTA Docket Vol. I, p. 579.
[10] Exhibit "P-11", CTA Docket Vol. II, p. 720; Par. 4(a), A. Stipulated Facts, JSFI, CTA Docket Vol. I, p. 579.
[11] Exhibit "P-11-a", CTA Docket Vol. II, p. 721.

| | | | |
|---|---|---|---|
| Findings on invoicing requirements | (339,447.99) | - | (339,447.99) |
| Deficiency documents of "big-ticket" purchases" | (564,333.52) | - | (564,333.52) |
| Invalid TIN per BIR-ITS | (25,269.00) | - | (25,269.00) |
| Deferred input tax of capital goods exceeding 1M | (169,681.83) | - | (169,681.83) |
| **Total Disallowances per verification** | **₱ (1,098,732.34)** | **₱ -** | **₱1,098,732.34)** |
| **Disallowances per TARD Review** | | | |
| "Big ticket" purchases disallowance | (30,017.82) | | (30,017.82) |
| Output VAT assessed on related party transactions | (1,783,836.96) | | (1,783,836.96) |
| Output VAT assessed on other income | (606,623.88) | | (606,623.88) |
| Output VAT assessed on transfer of PPE to related parties | (38,236.44) | | (38,236.44) |
| Input VAT attributable to exempt sales | (4,181,055.08) | | (4,181,055.08) |
| **Total Disallowances per Review** | **₱ (6,639,770.18)** | **₱-** | **₱ (6,639,770.18)** |
| **Total Deductions from Claim** | **₱ (7,738,502.52)** | **₱-** | **₱ (7,738,502.52)** |
| **Deficiency VAT** | **₱ (2,428,697.28)** | **₱-** | **₱ (2,428,697.28)** |

Scrutiny of export sales and their corresponding supporting documents revealed that all of the customers of the claimant are engaged in management services. Inasmuch as they are not engaged in international shipping or international air transport operations and the herein claim is being anchored under Section 108(B)(4) in relation to Section 112(A), both of the NIRC of 1997, as amended, the subject alleged zero-rated sales can be considered as falling under Section 108(B)(2) of the same Tax Code. However, proofs that the customers are not doing business in the Philippines were not submitted, specifically original copy of the certification from SEC that the NRFC is not a registered corporation in the Philippines and a certificate of incorporation from the foreign country as certified by an authorized official, to satisfy the requirements under item 3.4 of Annex A.1 (Revised Checklist of Mandatory Requirements for Claims for VAT Refund) of Revenue Memorandum Circular (RMC) No. 17-2018. In both instances, the corresponding zero-rated sales in the amount of ₱158,056,656.89 should be considered exempt. Thus, the corresponding input tax covered by the claim attributable to the said exempt sales in the amount of ₱4,181,055.08 was disallowed."

Aggrieved, petitioner filed a Motion for Reconsideration of aforesaid denial letter on July 23, 2018.[12]

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[12] Exhibit "P-12", CTA Docket Vol. II, p. 727.

Thereafter, petitioner filed the present Petition for Review on July 26, 2018[13] which was raffled to the Second Division of the Court.

In view of the reorganization of the three (3) Divisions of the Court, pursuant to Court of Tax Appeals (CTA) Administrative Circular No. 02-2018 dated September 18, 2018, the present case was transferred to the First Division in the Order dated September 25, 2018,[14]

On October 23, 2018, within the extended period granted by the Court,[15] respondent filed his Answer,[16] and interposed the following special and affirmative defenses: (i) petitioner is not entitled to its claim for VAT refund in the amount of ₱4,142,818.64 representing unutilized input taxes on purchases of goods and services covering the period from January 1, 2016 to December 31, 2016; (ii) the judicial claim for refund should be denied for petitioner's failure to substantiate the same at the administrative level; (iii) the claim for refund should be denied for failure of petitioner to prove the existence of valid zero-rated sales; (iv) the taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by submitting the said document before the CTA; and, (v) tax refunds are construed strictly against the claimant and cannot be allowed unless granted in the most explicit and categorical language.

Respondent filed his Pre-Trial Brief on January 31, 2019,[17] while petitioner's Pre-Trial Brief was filed on February 1, 2019.[18]

During the February 7, 2019 Pre-Trial Conference, the parties were ordered to file their Joint Stipulation of Facts and Issues.[19]

On February 21, 2019, the parties filed their Joint Stipulation of Facts and Issues,[20] which was approved in the Resolution dated March 7, 2019.[21] The same Resolution terminated the Pre-Trial and directed

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[13] Supra note 1.
[14] CTA Docket Vol. I, p. 188.
[15] Resolution dated October 3, 2018, CTA Docket Vol. I, p. 191; Order dated August 31, 2018, CTA Docket Vol. I, p. 183.
[16] CTA Docket Vol. I, pp. 192-202.
[17] CTA Docket Vol. I, pp. 548-551.
[18] CTA Docket Vol. I, pp. 207-211.
[19] Order dated February 7, 2019, CTA Docket Vol. I, p. 575-576.
[20] CTA Docket Vol. I, pp. 578-582.
[21] CTA Docket Vol. I, p. 584.

the issuance of a Pre-Trial Order. On May 6, 2019, the Court issued the Pre-Trial Order.[22]

During trial, both parties presented their respective testimonial and pieces of documentary evidence.

Petitioner presented the testimony of Mrs. Leonila L. Duran and Ms. Jennifer B. Mendoza on March 26, 2019[23] and April 30, 2019,[24] respectively. Petitioner's formally offered exhibits, as contained in its Formal Offer of Exhibits[25] filed on May 17, 2019, with respondent's Comment thereon filed on May 23, 2019,[26] were admitted in the Court's Resolution dated July 10, 2019.[27]

On the other hand, respondent presented his sole witness, Revenue Officer (RO) Junelle Aira C. Salamanca, on September 17, 2019.[28]

On October 8, 2019, respondent filed his Motion for Leave to Admit Attached Formal Offer of Evidence,[29] which the Court granted in the Resolution dated December 6, 2019.[30] In the same Resolution, respondent's exhibits were admitted and the parties were given a period of thirty (30) days from receipt thereof within which to file their respective memoranda.[31]

On January 9, 2019, the Memorandum for Petitioner was timely filed.[32] On February 11, 2020, within the extended period,[33] respondent filed his Memorandum.[34] Thus, in the Resolution dated February 18, 2020, the case was submitted for decision.[35]

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[22] CTA Docket Vol. II, pp.626-636.
[23] Minutes of the Hearing dated March 26, 2019, CTA Docket Vol. I, pp. 602-603; Order dated March 26, 2019, CTA Docket Vol. I, pp. 604-605.
[24] Order dated April 30, 2019, CTA Docket Vol. II, pp. 618-619.
[25] CTA Docket Vol. II, pp. 639-644.
[26] CTA Docket Vol. II, pp. 1028-1029.
[27] CTA Docket Vol. II, pp. 1036-1037.
[28] Order dated September 17, 2019, CTA Docket Vol. II, pp. 1049-1050.
[29] CTA Docket Vol. II, pp. 1055-1058.
[30] CTA Docket Vol. II, pp. 1073-1075.
[31] *Id.*
[32] CTA Docket Vol. II, pp. 1076-1092.
[33] Resolution, CTA Docket Vol. II, p. 1098.
[34] CTA Docket Vol. II, pp. 1099-1108.
[35] CTA Docket Vol. II, p. 1111.

## THE ISSUES

The parties submitted the following issues for consideration of the Court:

1. Whether petitioner is entitled to a refund of its alleged unutilized input VAT on local purchases of goods and services for the period January 1, 2016 to December 31, 2016 in the amount of ₱4,142,818.64;

2. Whether the administrative decision denying the claim for refund is correct; and,

3. Whether the administrative decision denying the claim for refund is correct based on the documents submitted in the administrative level.[36]

## PETITIONER'S ARGUMENTS[37]

Petitioner argues that the BIR's denial of its claim for VAT refund for lack of legal and factual basis is due to a precipitate review and is, therefore, grossly erroneous. According to petitioner, its 2006 VAT refund claim was unanimously recommended for approval by the VAT Credit Audit Division (VCAD) [which] spent a longer time studying and evaluating the claim, but the case was single-handedly reviewed by Revenue Officer Junnelle Aira C. Salamanca for only two (2) weeks, relying only on the BIR Records.

It further states that its 2016 VAT refund claim is based on Section 108(B)(4) of the NIRC of 1997, as amended, similar to its claims for refund in previous years, which had been granted by the BIR. Hence, it honestly and in good faith believed that like its previous claims, the documents which prove that petitioner's customers are not doing business in the Philippines need not be submitted. Citing the documents marked as Exhibits "P-13" to "P-28", petitioner contends that they sufficiently prove that its foreign principals are: (i) not registered in the Philippines; (ii) registered abroad; and, (iii) engaged in international shipping, and not merely on ship management.

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[36] Pre-Trial Order, CTA Docket Vol. II, pp. 628.
[37] Arguments, Memorandum for Petitioner, CTA Docket Vol. II, pp. 1079-1086.

## RESPONDENT'S ARGUMENTS[38]

Respondent counters that the present judicial claim should be denied for petitioner's failure to substantiate its claim for refund at the administrative level.

According to respondent, petitioner failed to comply with Section 108(B)(2) of the NIRC of 1997, as amended. Based on the audit findings and verification of the documents submitted, petitioner failed to submit proof that the customers are not doing business in the Philippines (*i.e.* original certification from the SEC that the non-resident foreign corporation is not a registered corporation in the Philippines, and a certificate of incorporation from the foreign country as certified by an authorized official), as required under item 3.4 in the Revised Checklist of Mandatory Requirements for Claims for VAT Refund of Revenue Memorandum Circular (RMC) No. 17-2018. Hence, petitioner failed to prove the existence of its zero-rated sales in the amount of ₱158,056,656.89.

Respondent maintains that the disallowance of input VAT in the aggregate amount of ₱30,017.82 arising from "big-ticket" purchases was proper since the tax identification number (TIN) indicated on the computerized official receipts was handwritten. Hence, said "big-ticket" purchases were not properly substantiated. An additional output VAT was also assessed in the amount of ₱38,236.44 for properties transferred, and these disallowances were already accepted by petitioner. In short, petitioner failed to establish that it is entitled to the alleged claim for refund in the amount of ₱4,142,818.64.

Moreover, respondent insists that a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by submitting said document before the Court. Stated differently, respondent contends that no additional documentation may be accepted by the Court and the evaluation of the taxpayer's claim for refund shall be based on the documents submitted at the time the administrative claim for refund was filed.

Finally, respondent avers that tax refunds partake the nature of tax exemptions, and are strictly construed against the claimant.

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[38] Discussion, Memorandum, CTA Docket Vol. II, pp. 1101-1107.

## THE COURT'S RULING

***The CTA, as a court of record, may conduct a trial de novo and admit evidence not presented at the administrative level***

At the outset, the Court finds it imperative to resolve the issue raised by respondent that the instant judicial claim should be denied for petitioner's failure to substantiate its claim for refund at the administrative level.

Citing *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue ("Pilipinas Total Gas ")*,[39] respondent avers that since he rendered a decision denying the claim for refund at the administrative level, this Court's jurisdiction becomes strictly appellate in nature, and thus, petitioner can no longer present documents before the Court that it did not submit at the administrative level. According to respondent, the Court is confined to the more limited issue of whether the substantiation at the administrative level was sufficient and relatively, whether the denial was proper.

The Court finds respondent's argument bereft of merit.

The issue of whether or not the non-submission of documents at the administrative level bars a taxpayer from submitting documents before this Court has been time and again raised by respondent. The Court has repeatedly ruled that the non-submission of complete supporting documents at the administrative level is not necessarily fatal to the claimant's judicial claim.

To reiterate, a taxpayer may present additional documents before the CTA to substantiate its claim for refund, albeit the same were not presented at the administrative level. Republic Act (RA) No. 1125, as amended, provides that the CTA is a court of record, *viz.*:

> "Section 8. *Court of record; seal; proceedings.* - **The Court of Tax Appeals shall be a court of record** and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may

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[39] G.R. No. 207112, December 8, 2015.

be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence." (*Boldfacing supplied.*)

Undeniably, cases filed before this Court are litigated *de novo*, and party-litigants are required to prove every minute aspect of their cases. The explicit pronouncement in *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue*[40] that a taxpayer-claimant may present new and additional evidence to the CTA to support its case for tax refund is instructive:

"The Commissioner contends that PAL failed to present several of its documentary evidence before the Bureau of Internal Revenue during the administrative level. Thus, she claims that the new evidence that petitioner presented in the Court of Tax Appeals should not have been considered because trial de novo in the Court of Tax Appeals must be limited to the evidence shown in the administrative claim.

This Court rules that the **Court of Tax Appeals is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue.** The claimant may present new and additional evidence to the Court of Tax Appeals to support its case for tax refund.

Section 4 of the National Internal Revenue Code states that the Commissioner has the power to decide on tax refunds, but his or her decision is subject to the exclusive appellate jurisdiction of the Court of Tax Appeals:

xxx xxx xxx

Republic Act No. 9282, Republic Act No. 1125, is the governing law on the jurisdiction of the Court of Tax Appeals. Section 7 provides that the Court of Tax Appeals has exclusive appellate jurisdiction over tax refund claims in case the Commissioner fails to act on them:

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This means that while the Commissioner has the right to hear a refund claim first, if he or she fails to act on it, it will be treated as a denial of the refund, and the Court of Tax Appeals is the only entity that may review this ruling.

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[40] G.R. Nos. 206079-80 and 206309, January 17, 2018.

> **The power of the Court of Tax Appeals to exercise its appellate jurisdiction does not preclude it from considering evidence that was not presented in the administrative claim in the Bureau of Internal Revenue.** Republic Act No. 1125 states that the Court of Tax Appeals is a **court of record**:
>
>> Section 8. Court of record; seal; proceedings. — The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.
>
> As such, **parties are expected to litigate and prove every aspect of their case anew and formally offer all their evidence. No value is given to documentary evidence submitted in the Bureau of Internal Revenue unless it is formally offered in the Court of Tax Appeals. Thus, the review of the Court of Tax Appeals is not limited to whether or not the Commissioner committed gross abuse of discretion, fraud, or error of law, as contended by the Commissioner. As evidence is considered and evaluated again, the scope of the Court of Tax Appeals' review covers factual findings**." (*Boldfacing supplied.*)

The Court is not barred from receiving, evaluating and appreciating evidence submitted before it. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevance, probative value and weight of evidence presented to substantiate the claim become subject to the relevant provisions of the Rules of Court.

In fine, in determining petitioner's entitlement to its claim for refund, this Court may consider all pieces of exhibits formally offered before it during trial, which were admitted in evidence.

***Timeliness of the filing of the administrative and judicial claims for refund***

Anent petitioner's administrative claim, Section 112(A) of the NIRC of 1997, as amended, specifically requires that the taxpayer's application for refund or issuance of tax credit certificate (TCC) of unutilized and/or excess input VAT attributable to its zero-rated sales, must be filed within two (2) years after the close of the taxable quarter when the sales were made.

Petitioner's administrative claim for refund or issuance of TCC for the period January 1, 2016 to December 31, 2016 covers the four (4) taxable quarters of 2016; hence the reckoning of the two (2)-year period and the deadline to file the administrative claim are shown below:

| Taxable Quarter | Reckoning of the 2-year period | Deadline for Filing an Administrative Claim |
|---|---|---|
| First Quarter – ending March 31, 2016 | March 31, 2016 | March 31, 2018 |
| Second Quarter – ending June 30, 2016 | June 30, 2016 | June 30, 2018 |
| Third Quarter – ending September 30, 2016 | September 30, 2016 | September 30, 2018 |
| Fourth Quarter – ending December 31, 2016 | December 31, 2016 | December 31, 2018 |

Based on the foregoing, petitioner's filing of its administrative claim on March 28, 2018 was well within the two (2)-year prescriptive period under Section 112(A) of the NIRC of 1997, as amended.

With regard to the timeliness of petitioner's judicial claim for refund or issuance of TCC, Section 112(C) of the NIRC of 1997, as amended,[41] and Section 11 of Republic Act No. (RA) 1125,[42] as amended by RA No. 9282[43] specify the reglementary period within which to appeal before this Court, *viz.:*

> "SEC. 112. Refunds or Tax Credits of Input Tax
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> xxx xxx xxx
>
> *(C) Period within which Refund of Input Taxes shall be Made.* – In proper cases, **the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application** filed in accordance with Subsections (A) and (B) hereof: Provided, That should the

[41] RA No. 10963, Tax Reform for Acceleration and Inclusion (TRAIN).
[42] An Act Creating the Court of Tax Appeals.
[43] Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, otherwise known as the law creating the Court of Tax Appeals, and for Other Purposes.

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.

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SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

Appeal should be made by filing a **petition for review** under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days from the receipt of the decision** or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. xxx" *(Boldfacing supplied)*

Also, Section 4.112-1 of RR No. 13-2018[44] provides that the judicial claim for refund or credit of input taxes shall be made within thirty (30) days from receipt of the decision denying the claim, *viz.*:

"d) Period within which refund/credit of input taxes shall be made

In proper cases, the Commissioner of Internal Revenue shall grant 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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[44] Regulations Implementing the Value-Added Tax Provisions under the Republic Act (RA) No. 10963, or the "Tax Reform for Acceleration and Inclusion (TRAIN)," Further Amending Revenue Regulations (RR) No. 16-2005 (Consolidated Value-Added Tax Regulations of 2005), as Amended.

> The 90-day period to process and decide, pending the establishment of the enhanced VAT Refund System shall only be up to the date of approval of the Recommendation Report on such application for VAT refund by the Commissioner **or his duly authorized representative**: Provided, That all claims for refund/tax credit certificate filed prior to January 1, 2018 will be governed by the one hundred twenty (120)-day processing period.
>
> 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 the Tax Code, as amended." *(Boldfacing supplied)*

As aforementioned, on March 28, 2018, petitioner filed its administrative claim for refund or issuance of TCC representing its unutilized input VAT for the period January 1, 2016 to December 31, 2016 in the amount of ₱5,309,805.24. Counting the 90-day period from March 28, 2018, respondent had until June 26, 2018 to act on the claim. Within the 90-day period to act on petitioner's administrative claim for refund, respondent, through ACIR Simple denied petitioner's administrative claim in a Letter dated June 13, 2018, which was received by petitioner on June 29, 2018.

The authority of ACIR Simple to issue the denial letter finds basis in RMC No. 17-2018, pertinent parts of which state:

"I. Claims for value-added tax (VAT) refund

> A. General Policies
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> xxx
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> 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.
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> **Should the claim be for denial, such fact should be communicated in writing to the taxpayer within the 90-day period. The denial letter shall be signed by the** Commissioner (CIR)/Deputy Commissioner – Operations

ON

> Group (DCIR-OG)/**Assistant Commissioner (ACIR)**/Regional Director, as the case may be.
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> C. Claims for VAT refund by other zero-rated taxpayers, indirect exporters and claims filed in accordance with Sec. 112 (B) of the Tax Code, as amended by R.A. No. 10963
>
> 1. All claims for VAT refund by other zero-rated taxpayers, indirect exporters and claims filed in accordance with Sec. 112 (B) of the Tax Code, as amended, shall be filed with and processed by the **concerned Revenue District Office and LT Audit Division having jurisdiction over the taxpayer-claimant**.
>
> 2. **The docket with report on said claims shall be reviewed by the Assessment Division**/Office of the Head Revenue Executive Assistant (HREA), and shall be **subject to approval/disapproval** by the Regional Director/**ACIR-LTS**, as the case may be, irrespective of amount.
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> xxx"*(Boldfacing supplied)*

Clearly, ACIR Simple's Letter dated June 13, 2018, denying petitioner's administrative claim is the "Denial Letter" contemplated in RMC No. 17-2018, which is appealable to this Court, pursuant to RR No. 13-2018. Since petitioner received the aforesaid Letter on June 29, 2018, petitioner had thirty (30) days from said date or until July 29, 2018 within which to appeal to the CTA. The Petition for Review which was filed on July 26, 2018 was filed within the reglementary period to appeal. Thus, the Court has jurisdiction to take cognizance of the Petition for Review.

***Substantiation of Petitioner's Claim for Refund***

Under Section 112 of the NIRC of 1997, as amended, a VAT-registered person may apply for the refund or issuance of a TCC of input VAT which are attributable to zero-rated or effectively zero-rated sales, *viz.*:

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

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zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided,* further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. *Provided,* finally, That for a person making sales that are zero-rated under Section 108(B) (6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.*- In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within ninety (90) days from the date of submission of complete 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 the ninety (90)-day period shall be punishable under Section 269 of this Code.

xxx" *(Boldfacing supplied)*

Based on the aforequoted provisions of law, a claimant must satisfy the following **six (6) requisites** in order to be entitled to a refund or tax credit of unutilized input VAT attributable to zero-rated sales:[45]

1. The administrative and judicial claims were filed within the prescribed period.

2. The taxpayer-claimant must be VAT-registered;

3. There must be zero-rated or effectively zero-rated sales;

4. The input VAT were incurred or paid;

[45] *Vestas Services Philippines, Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 9382, May 9, 2018.

5. The input VAT are attributable to zero-rated or effectively zero-rated sales; and,

6. The input VAT were not applied against any output VAT liability.

As discussed earlier, petitioner complied with the **first requisite**. Thus, the Court shall proceed to determine petitioner's compliance with the remaining requisites.

Anent the **second requisite**, petitioner has proven its compliance therewith through its BIR Certificate of Registration No. OCN PC0000525766 dated January 1, 1997[46] which shows that it is a duly VAT- registered taxpayer with TIN 000-139-083-000.

With regard to the **third requisite**, petitioner alleges that for the period January 1, 2016 to December 31, 2006, it rendered services for persons engaged in international shipping, which are zero-rated under Section 108(B)(4) of the NIRC of 1997, as amended.

Section 108(B)(4) of the NIRC of 1997, as amended provides:

> "SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. -
>
> xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx
>
> (4) **Services rendered to persons engaged in international shipping or international air transport operations, including leases of property for use thereof: Provided, That these services shall be exclusive for international shipping or air transport operations**;
>
> xxx" *(Boldfacing supplied)*

In its Quarterly VAT Return for the same period, petitioner declared the following amounts as zero-rated sales/receipts:

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[46] BIR Records, p. 56.

m

| Quarter | Zero-rated Sales/Receipts |
|---|---|
| 1st Quarterly VAT Return[47] | ₱44,009,779.59 |
| 2nd Quarterly VAT Return[48] | ₱42,866,021.09 |
| 3rd Quarterly VAT Return[49] | ₱35,833,902.45 |
| 4th Amended Quarterly VAT Return[50] | ₱35,346,953.76 |

In support of its claim for refund, petitioner presented Exhibits "P-29", "P-30", and "P31", which are *sample invoices* received from its customers, Corrpro Asia PTE LTD., RMS Marine Service Company Ltd., and Wilhelmsen Ships Service, respectively, to prove that said customers are engaged in international shipping. Further perusal of petitioner's evidence, however, reveals that no service agreement or contract executed by petitioner and its customers were presented to prove the nature of services rendered by petitioner to its customers.

Petitioner likewise failed to present the official receipts, which will prove that it rendered services either to persons engaged in international shipping or international transport operations. Pursuant to Section 113 of the NIRC of 1997, as amended, the substantiation with VAT official receipts of sale of services is indispensable, *viz.*:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* -
>
> (A) Invoicing Requirements. - **A VAT-registered person shall issue:**
>
> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
>
> (2) **A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.**
>
> xxx xxx xxx." *(Boldfacing supplied)*

Based on the foregoing, petitioner failed to substantiate, by the required quantum of proof, that the services it rendered to its customers are zero-rated under Section 108(B)(4) of the NIRC of 1997, as amended.

[47] Exhibit "R-3", BIR Records, p. 211-212.
[48] BIR Records, p. 208-209.
[49] BIR Records, p. 205-206.
[50] BIR Records, p. 202-203.

The Court notes that in Annex A of the Denial Letter signed by ACIR Simple,[51] it was stated that petitioner's alleged zero-rated sales may be considered as falling under Section 108(B)(2) of the NIRC of 1997, as amended, provided that petitioner can prove that its customers are not doing business in the Philippines. Section 108(B)(2) of the NIRC of 1997, as amended states:

> "(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 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).**" (*Boldfacing supplied.*)

In *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*,[52] the Supreme Court held that in order for the supply of services to be VAT zero-rated under the above-mentioned provision, the taxpayer-claimant must prove the following:

1. the services must be other than processing, manufacturing or repacking of goods;
2. the payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and,
3. the recipient of such services is doing business outside the Philippines.

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[51] Exhibit "P-11-a", CTA Docket, p. 721.
[52] G.R. No. 153205, January 22, 2007.

Petitioner has proven that the recipients of the services are doing business outside the Philippines when it offered in evidence Exhibits "P-13" to "P-20", which are Certifications of Non-Registration of Company issued by the SEC, certifying that Bernard Schulte Shipmanagement (BSS for brevity) (Hongkong) Limited Partnership, BSS (Deutschland) GMBH & Co. KG, BSS (Isle of Man) Limited, BSS (India) Pvt. Limited, BSS (China) Company Ltd., BSS (Cyprus) Limited, BSS (Singapore) Pte. Ltd., and BSS (Bermuda) Limited, are not registered with the SEC, and Exhibits "P-21" to "P-28", which consist of the Articles of Incorporation/Association of said foreign companies.

But then again, it is unfortunate that petitioner failed to offer in evidence the service agreements or contracts it executed with its foreign clients as well as the VAT zero-rated official receipts it issued in their favor to prove the nature of services that petitioner performed and to establish that the payment for said services were made in acceptable foreign currency accounted for in accordance with the BSP rules and regulations, respectively.

In fine, petitioner fell short in showing that its sales are zero-rated under either Section 108(B)(2) or Section 108(B)(4) of the NIRC of 1997, as amended. In short, compliance with the aforementioned **third requisite** was not established.

Finally, even assuming that petitioner substantiated its zero-rated sales, its claim for refund must still fail. Petitioner's failure to offer in evidence valid VAT invoices and/or official receipts, evidencing its purchases of goods and services from which it allegedly generated the input VAT subject of the present claim for refund, is truly fatal to its cause. As compliance with the **fourth requisite** was lacking, it necessarily follows that the **fifth** and **sixth requisites** were likewise absent.

Tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government.[53] The burden in claiming tax refund rests upon the taxpayer which petitioner has failed to discharge. For failing to prove its entitlement to a tax refund, petitioner's claim must perforce be denied.

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[53] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 183531, March 25, 2015.

**WHEREFORE,** premises considered, the instant Petition for Review is **DENIED** for lack of merit.

**SO ORDERED.**

**ROMAN G. DEL ROSARIO**
Presiding Justice

*I CONCUR:*

**CATHERINE T. MANAHAN**
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.

**ROMAN G. DEL ROSARIO**
Presiding Justice