REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

<u>SECOND DIVISION</u>

NIPPON EXPRESS PHILIPPINES CORPORATION, Petitioner,	**CTA Case No. 10416**
	Present:
vs.	**RINGPIS-LIBAN**, *Chairperson,* **MODESTO-SAN PEDRO**, and **FERRER-FLORES**, *<u>JJ.</u>*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 27 2025 1:10 p.m.

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DECISION

FERRER-FLORES, <u>J.</u>:

At bar is a *Petition for Review* praying for the refund of the amount of **₱18,748,240.85** representing petitioner's unutilized input value-added tax (VAT) for the period from January 1, 2018 to March 31, 2018.[1]

THE PARTIES

Petitioner **Nippon Express Philippines Corporation** is a corporation duly organized and existing under the laws of the Philippines.[2] It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, with Taxpayer Identification Number (TIN) 004-669-434-00000.[3]

Respondent **Commissioner of Internal Revenue (CIR)** is empowered to perform the duties of his office, including acting upon on

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[1] Summary of the Case, Pre-Trial Order dated October 12, 2021, Docket – Vol. II, p. 516.
[2] Exhibits "P-1" and "P-2", Docket – Vol. II, pp. 737 to 753.
[3] Exhibit "P-3", Docket – Vol. II, p. 754.

protest cases and approval of claims for refund or tax credit as provided by law and implementing regulations.[4]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On July 14, 2020, petitioner filed with the BIR, an *Application for Tax Credits/Refunds* (BIR Form No. 1914)[5] and letter dated July 13, 2020,[6] requesting for the issuance of a tax refund of its unutilized creditable input VAT amounting to ₱18,748,240.85, which are attributable to its zero-rated sale of services for the first quarter (January 1, 2018 to March 31, 2018) of taxable year (TY) 2018.

Consequently, the *Tax Verification Notice* No. TVN201800116303 dated July 15, 2020 was issued to petitioner,[7] authorizing Revenue Officers (ROs) Dexter C. Bustillos and Denise R. Dayanan to verify the supporting documents and/or pertinent records relative to petitioner's claim for VAT refund covering the taxable period January to March 2018.

On November 4, 2020, petitioner received the letter dated September 28, 2020 signed by Assistant Commissioner Maria Luisa I. Belen,[8] stating that petitioner's application for VAT refund for the period January 1, 2018 to March 31, 2018 is denied for lack of factual and legal basis.

PROCEEDINGS BEFORE THIS COURT

Aggrieved, petitioner filed the present *Petition for Review* on December 4, 2020.[9]

Respondent filed his *Answer* on March 3, 2021[10] and, transmitted the *BIR Records* on May 26, 2021.[11]

The Pre-Trial Conference was initially set on April 19, 2021,[12] but was later reset to, and held on, June 30, 2021.[13] Prior thereto, petitioner's

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4 Par. A.1, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, p. 485.
5 Exhibit "P-28", Docket – Vol. II, p. 803.
6 Exhibit "P-29", Docket – Vol. II, pp. 804 to 853.
7 Exhibit "P-30", Docket – Vol. II, p. 854.
8 Exhibit "P-31", Docket – Vol. II, pp. 855 to 866; Exhibit "R-4", BIR Records (Exhibit "R-5"), pp. 304 to 315.
9 Docket – Vol. I, pp. 7 to 49.
10 Docket – Vol. I, pp. 434 to 443.
11 *Compliance* dated May 24, 2021, Docket – Vol. II, pp. 447 to 448.
12 Notice of Pre-Trial Conference dated March 8, 2021, Docket – Vol. II, pp. 445 to 446.
13 Order dated June 1, 2021, Docket – Vol. II, p. 450; Order dated, and Minutes of the hearing held on, June 30, 2021, Docket – Vol. II, pp. 468 to 469.

Pre-Trial Brief was filed on June 22, 2021,[14] while *Respondent's Pre-Trial Brief* was submitted on June 25, 2021.[15]

Thereafter, on July 19, 2021, the parties submitted their *Joint Stipulation of Facts and Issues*,[16] which was approved and adopted by the Court in the Pre-Trial Order dated October 12, 2021,[17] thereby deeming the termination of the Pre-Trial.

Trial then ensued.

Petitioner offered the testimonies of the following witnesses: (1) Ms. Elizabeth D. Quingquing,[18] petitioner's Finance Manager; and, (2) Atty. Conrado M. Briones,[19] the Court-commissioned Independent Certified Public Accountant (ICPA).[20]

The *Amended Report* of the ICPA was submitted on April 22, 2022.[21]

On June 14, 2022, petitioner filed its *Formal Offer of Evidence*.[22] Respondent, however, failed to file his comment thereon.[23] In the Resolution dated October 5, 2022,[24] the Court admitted petitioner's exhibits, *except* Exhibits "P-58", "P-152-a" to "P-152-zz", "P-152-xls" to "P-152-xmb", "P-156-i", "P-156-u", "P-156-gk", "P-156-hw", "P-156-bmo", "P-156-bzl", "P-156-cbh" to "P-156-cbn", "P-156-czd", "P-156-dvj", "P-156-erg", "P-156-fhx" to "P-156-fic", "P-156-flb", "P-156-flr", "P-156-flt", "P-156-fod", "P-156-giz", "P-156-gzy", "P-156-hdx", "P-156-hia", "P-156-hjy", "P-156-hkx", "P-156-hna", "P-156-hvs", "P-156-iby", "P-156-ieh", and "P-156-iep", for not being found in the records.

Thereafter, upon petitioner's *Motion for Reconsideration to the Resolution dated October 5, 2022* filed on October 21, 2022,[25] but without comment from respondent,[26] the Court, in the Resolution dated February 8,

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14 Docket – Vol. II, pp. 452 to 463.
15 Docket – Vol. II, pp. 465 to 467.
16 Docket – Vol. II, pp. 485 to 494.
17 Docket – Vol. II, pp. 516 to 520.
18 Exhibit "P-33", Docket – Vol. I, pp. 225 to 251, and 419 (Attestation); Order dated November 8, 2021.
19 Exhibit "P-162", Docket – Vol. II, pp. 659 to 689 and 720 (Attestation); Minutes of the hearing held on, and Order dated, June 1, 2022, Docket – Vol. II, pp. 722 to 723.
20 Order dated November 8, 2021.
21 Exhibit "P-34", Docket – Vol. II, pp. 691 to 719.
22 Docket – Vol. II, pp. 724 to 735.
23 Records Verification Report dated August 3, 2023, issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 873.
24 Docket – Vol. II, pp. 877 to 879.
25 Docket – Vol. II, pp. 886 to 890.
26 Records Verification Report dated January 3, 2023 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 898.

2023,[27] admitted Exhibits "P-152-a" to "P-152-yz", "P-152-zb" to "P-152-zz", "P-152-xls" to "P-152-xmb", "P-156-i", "P-156-u", "P-156-gk", "P-156-hw", "P-156-bzl", "P-156-dvj", "P-156-erg", "P-156-fhx", "P-156-flb", "P-156-flt", "P-156-fod", "P-156-giz", "P-156-gzy", "P-156-hdx", "P-156-hia", "P-156-hjy", "P-156-hkx", "P-156-hna", "P-156-hvs", "P-156-ieh", and "P-156-iep". However, Exhibits "P-58", "P-152-za", "P-156-bmo", "P-156-cbh" to "P-156-cbn", "P-156-czd", "P-156-fhy" to "P-156-fic", "P-156-flr", and "P-156-iby", were still denied admission for not being found in the records.

For his part, respondent offered the testimony of RO Bustillos.[28]

On October 16, 2023, respondent filed his *Formal Offer of Evidence*,[29] to which petitioner filed its *Comment/Opposition (To the Respondent's Formal Offer of Evidence)* on November 10, 2023.[30] In the Resolution dated January 23, 2024,[31] the Court admitted all of respondent's offered evidence.

Respondent's *Memorandum* was filed on February 28, 2024,[32] whereas petitioner's *Memorandum* was submitted on February 29, 2024.[33]

This case was submitted for decision on March 5, 2024.[34]

THE STIPULATED ISSUE

The sole issue to be resolved, as stipulated by the parties is whether petitioner is entitled to the claim for refund of excess and unutilized input VAT for the period January 1, 2018 to March 31, 2018 amounting to ₱18,747,240.85.[35]

Petitioner's arguments:

Petitioner argues that its claim for tax refund should be granted because all the elements necessary are present; and that the disallowances of the BIR in the *VAT Refund Notice* are without factual and legal basis.

27 Docket – Vol. II, pp. 915 to 918.
28 Exhibit "R-6", Docket – Vol. II, pp. 903 to 909; Minutes of the hearing held on, and Order dated, October 5, 2023, Docket – Vol. II, pp. 921 to 922.
29 Docket – Vol. II, pp. 923 to 927.
30 Docket – Vol. II, pp. 929 to 930.
31 Docket – Vol. II, p. 934.
32 Docket – Vol. II, pp. 935 to 957.
33 Docket – Vol. II, pp. 959 to 1035.
34 Minute Resolution dated March 5, 2024, Docket – Vol. II, p. 1037.
35 Par. B, JSFI, Docket – Vol. II, p. 485.

Respondent's counter-arguments:

Respondent argues that it is an established fact that a decision has already been rendered and in such case, the Supreme Court has held that the duty of the Court is now limited in determining whether the decision is proper; that petitioner is not entitled to the VAT refund; that the claim for tax refund must be denied due to petitioner's failure to comply with the requirements pursuant to Section 112(A) of the National Internal Revenue Code (NIRC) of 1997 , as amended; that the petition must be dismissed for failure of petitioner to substantiate its administrative claim for refund; that petitioner failed to comply with the invoicing requirements under Section 113 of the Tax Code, as amended; and that tax refunds are strictly construed against the taxpayer and in favor of the Government.

THE COURT'S RULING

The present *Petition for Review* must be denied.

Requisites under the law for the refund or issuance of tax credit certificate of input VAT.

Section 112 of the NIRC of 1997, as amended by Republic Act (R.A.) No. 10963,[36] otherwise known as the *Tax Reform for Acceleration and Inclusion* (TRAIN), provides in part, as follows:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or

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36 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 NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES; Effective on January 1, 2018.

> exempt sale of goods or 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 of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however*, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.

Applying the above provision, jurisprudence has laid down certain requisites which the taxpayer-applicant must comply with to successfully obtain a credit/refund of input VAT. Said requisites may be classified into certain categories as follows:

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

1. the refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[37]

2. in case of full or partial denial of the refund claim rendered within a period of ninety (90) days from the date of submission of the official receipts (ORs) or invoices and other documents in support of the application, the judicial claim is filed with this Court within thirty (30) days from receipt of the decision;[38]

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

38 Refer to *Energy Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 203367, March 17, 2021; *Commissioner of Internal Revenue vs. CE Casecnan Water And Energy Company, Inc.*, G.R. No. 212727, February 1, 2023; and *Commissioner of Internal Revenue vs. Vestas Services Philippines, Inc.,* G.R. No. 255085, March 29, 2023.

<u>With reference to the taxpayer's registration with the BIR</u>:

3. the taxpayer is a VAT-registered person;[39]

<u>In relation to the taxpayer's output VAT</u>:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[40]

5. for zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2),[41] the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[42]

<u>As regards the taxpayer's input VAT being refunded</u>:

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

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

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[45] and,

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

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

[40] *Ibid.*

[41] Under RA No. 10963, Section 106(A)(2)(a)**(2)** was renumbered to Section 106(A)(2)(a)**(3)** while Section 106(A)(2)**(b)** was deleted. However, there was no corresponding amendment to the subsections cited in Section 112(A) of the NIRC of 1997, as amended.

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

[43] *Ibid.*

[44] *Ibid.*

[45] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.

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

Petitioner's administrative and judicial claims for refund were timely filed.

The *first* requisite pertains to the filing of a claim for tax refund or credit of input VAT before the BIR, within two years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the first quarter of TY 2018 (January 1 to March 31, 2018). Counting two years from the close of the said quarter, the last day for the filing of the administrative claim was on March 31, 2020.

Considering that petitioner's administrative claim covering the first calendar quarter of 2018 was filed only on July 14, 2020,[47] the same already fell outside the two-year prescriptive period. Nonetheless, pursuant to R.A. No. 11469[48] and Section 2 of RR No. 16-2020,[49] the period for application for VAT credit/refund claims for the calendar quarter ending March 31, 2018 was extended to **July 15, 2020**.

As petitioner's administrative claim covering the first quarter of TY 2018 was filed with the BIR on July 14, 2020,[50] the same was timely made within the two-year prescriptive period.

Anent the *second* requisite, the same necessitates that the judicial claim must have been filed within 30 days from receipt of respondent's decision or after the expiration of the 90-day period from the date of submission of the ORs or invoices and other documents in support of the application for refund as provided under Section 112(C) of the NIRC of 1997, as amended.

From the filing of the administrative claim for refund on July 14, 2020, respondent had 90 days, or until October 12, 2020, within which to act on the said claim. The 90-day period to decide, however, was suspended at

[47] Exhibit "P-28", Docket – Vol. II, p. 803.
[48] AN ACT DECLARING THE EXISTENCE OF A NATIONAL EMERGENCY ARISING FROM THE CORONAVIRUS DISEASE 2019 (COVID-19) SITUATION AND A NATIONAL POLICY IN CONNECTION THEREWITH, AND AUTHORIZING THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES FOR A LIMITED PERIOD AND SUBJECT TO RESTRICTIONS, TO EXERCISE POWERS NECESSARY AND PROPER TO CARRY OUT THE DECLARED NATIONAL POLICY AND FOR OTHER PURPOSES.
[49] SUBJECT: Regulations Further Suspending the Due Dates in the Application of the Ninety (90)-Day Period to Process Value Added Tax (VAT) Refund/Claim Pursuant to Section 112 of the Tax Code of 1997, as Amended by Republic Act (R.A.) No. 10963 (TRAIN Law) For Taxable Quarters Affected by the Declaration of the National State of Emergency.
[50] Exhibit "P-28", Docket – Vol. II, p. 803.

that time pursuant to RR No. 16-20[51] and RR No. 27-20, which provides as follows:

> RR No. 16-20
>
> Section 3. Processing of VAT Refund. – The 90-day period of processing VAT refund claims shall be suspended in areas where ECQ or Modified ECQ is still in force.
>
> RR No. 27-20
>
> Section 4. *Processing of VAT Refunds* – The 90-day processing of VAT refund claims pursuant to Section 112 (C) of the Tax Code of 1997, as amended, is hereby suspended during the effectivity of R.A. No. 11494 or until the next adjournment of the Eighteenth Congress on December 19, 2020.

Considering that petitioner received on November 4, 2020 the letter dated September 28, 2020 denying its claim,[52] it had 30 days or until **December 4, 2020** within which to appeal before this Court. Accordingly, the filing of the present *Petition for Review* on December 4, 2020[53] was likewise timely made.

Petitioner, thus, complied with the *first* and *second* requisites.

Petitioner is a VAT-registered person/entity.

Anent the *third* requisite, it is also undisputed that petitioner is a VAT-registered person/entity, with TIN 004-669-434-00000, as evidenced by BIR Certificate of Registration No. OCN 8RC0001191014E.[54] Thus, there is no question that petitioner showed compliance with the said requisite. ꟿ

51 SUBJECT: Regulations Further Suspending the Due Dates in the Application of the Ninety (90)-Day Period to Process Value Added Tax (VAT) Refund/Claim Pursuant to Section 112 of the Tax Code of 1997, as Amended by Republic Act (R.A.) No. 10963 (TRAIN Law) for Taxable Quarters Affected by the Declaration of the National State of Emergency, June 19, 2020.

52 Exhibit "P-31", Docket – Vol. II, pp. 855 to 866.

53 Docket – Vol. I, pp. 7 to 49.

54 Exhibit "P-3", Docket – Vol. II, p. 754.

Petitioner failed to establish that it had valid zero-rated or effectively zero-rated sales for the first quarter of TY 2018.

The *fourth* and *fifth* requisites respectively require that the taxpayer be engaged in zero-rated or effectively zero-rated sales, and that for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b),[55] 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.

For the first quarter of TY 2018, petitioner alleges that it rendered services to entities registered with the Philippine Economic Zone Authority (PEZA), Board of Investments (BOI), Clark Development Corporation (CDC), Subic Bay Metropolitan Authority (SBMA) and Freeport Area of Bataan (FAB), which are subject to zero percent VAT, pursuant to Section 108(B)(3) of the NIRC of 1997, as amended by the TRAIN law. It also alleges that it performed services to the Asian Development Bank (ADB), Consular Office of Japan/Embassy of Japan, and Philippine Amusement and Gaming Corporation (PAGCOR), which are also treated as VAT-zero-rated sales under Section 108(B)(3) of the NIRC of 1997, as amended.[56]

Petitioner claims that it also rendered services to non-resident foreign corporations (NRFCs) not doing business in the Philippines which were duly paid for and inwardly remitted to the Philippines in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP. Such being the case, petitioner posits that the revenues it obtained as VAT-registered taxpayer, are subject to VAT at zero percent rate, pursuant to Section 108(B)(2) of the NIRC of 1997, as amended.[57]

Petitioner further states that in the course of its actual and indirect export sales, it earned freight revenues attributable to such sales of services. The said freight revenues are allegedly subject to VAT at zero percent pursuant to Section 108(B)(2) and (3) of the NIRC of 1997, as amended, and Revenue Memorandum Circular (RMC) No. 35-2006.[58]

In its Amended Quarterly VAT Return for the first quarter of TY 2018, petitioner declared an aggregate amount of ₱1,040,555,254.06

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[55] Under RA No. 10963, Section 106(A)(2)(a)(**2**) was renumbered to Section 106(A)(2)(a)(**3**) while Section 106(A)(2)(**b**) was deleted. However, there was no corresponding amendment to the subsections cited in Section 112(A) of the NIRC of 1997, as amended.

[56] Pars. 3.3 and 5.3, petitioner's *Memorandum*, Docket – Vol. II, pp. 961 and 966, respectively.

[57] Pars. 3.4 and 3.5, petitioner's *Memorandum*, Docket – Vol. II, p. 961.

[58] Par. 5.5, petitioner's *Memorandum*, Docket – Vol. II, pp. 966 to 967.

sales/receipts, comprised of VATable sales/receipts of ₱456,345,892.49, and zero-rated sales/receipts of ₱584,209,361.57, shown as follows:[59]

	Amount
Vatable Sales/Receipts	₱ 456,345,892.49
Zero-Rated Sales/Receipts	584,209,361.57
Total Sales/Receipts	**₱ 1,040,555,254.06**

Upon examination of the documents supporting petitioner's reported zero-rated sales/receipts amounting to ₱584,209,361.57, the Court-commissioned ICPA, Atty. Conrado M. Briones, found that the said amount consisted of the following:

Zero-Rated Sales/Receipts	Amount	Reference
Sales of Services to PAGCOR, Japan Embassy, ADB, BOI and Ecozone-registered enterprises	₱ 322,959,077.49	Exhibit "P-34" (Table 12-A, pp. 10 to 13)[60]
Sales of Services to NRFCs	120,138,441.50	Exhibit "P-34" (Table 12-B, pp. 13 to 17)[61]
Freight Revenues	141,111,842.58	Exhibit "P-34" (Tables 12-C1, 12-C2, 12-C3-1, 12-C3-2, 12-C4-1, 12-C4-2, pp. 17 to 19)[62]
Total Zero-Rated Sales/Receipts	**₱ 584,209,361.57**	

As stated earlier, for the VAT zero-rating of its sales/receipts, petitioner invokes Sections 108(B)(2) and (3) of the NIRC of 1997, as amended, which are all quoted hereunder:

> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (1) Processing, manufacturing or repacking 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**

59 Exhibit "P-21", Docket - Vol. II, p. 789-790.
60 Docket – Vol. II, pp. 700 to 703.
61 Docket – Vol. II, pp. 703 to 707.
62 Docket – Vol. II, pp. 707 to 709.

> **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);"**
>
> **(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;**

For a sale or supply of services to be subject to the VAT rate of zero percent (0%) under Section 108(B)(2) of the NIRC of 1997, as amended, certain essential elements must be present, to wit:

1) The service must be performed in the Philippines[63] by a VAT-registered person;

2) The services fall under any of the categories under Section 108(8)(2),[64] or simply, the services rendered should be other than "*processing, manufacturing or repacking goods*";[65]

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;[66] and,

4) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[67]

On the other hand, to qualify for VAT zero-rating under Section 108(B)(3), the following conditions must be met:

1) The service must be performed in the Philippines by a VAT-registered person; and,

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63 *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

64 *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, supra.

65 *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra.

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

67 *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.

2) The recipient of such service is a person or entity exempt from VAT pursuant to a special law or international agreement to which the Philippines is a signatory.

Before the Court delves on whether or not petitioner's reported zero-rated sales/receipts met all of the foregoing conditions for VAT zero-rating under Sections 108(B)(2) and (3) of the NIRC of 1997, as amended, the Court shall first determine whether petitioner complied with the pertinent invoicing requirements under Section 113(A) and (B) of the NIRC of 1997, as amended, and Section 4.113-1 of RR No. 16-2005, as amended. The invoicing and substantiation requirements must be observed to determine the veracity of the taxpayer's claims.[68] More importantly, it must be emphasized that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[69]

Section 113 of the NIRC of 1997, as amended by RA No. 9337,[70] provides as follows:

> 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.
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* – The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:
>
> (a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

68 *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.
69 *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
70 AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

(b) If the sale is exempt from value-added tax, the term **'VAT-exempt sale'** shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided,* That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

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

(4) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.

xxx xxx xxx.

Implementing the foregoing provision, Section 4.113-1 of Revenue Regulations (RR) No. 16-2005[71] states:

SEC. 4.113-1. *Invoicing Requirements.* —

(A) *A VAT-registered person shall issue:* —

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or official receipts. Said documents shall be considered as a 'VAT Invoice' or 'VAT official receipt.' All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

[71] SUBJECT: Consolidated Value-Added Tax Regulations of 2005.

(B) *Information contained in VAT invoice or VAT official receipt.* — The following information shall be indicated in VAT invoice or VAT official receipt:

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

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

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

(b) If the sale is exempt from VAT, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) VAT, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) In the case of sales in the amount of one thousand peso (P1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section.

Additionally, the sales invoices (SIs) and official receipts must be duly registered with the BIR as prescribed under Section 237, in relation to Section 238, of the NIRC of 1997, as amended, to wit:

SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* —

(A) *Issuance.* — All persons subject to an internal revenue tax shall, at the point of each sale and transfer of merchandise or for services rendered valued at One hundred pesos (P100) or more, **issue duly registered receipts or sale or commercial invoices, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service**: *Provided, however,* That where the receipt is issued to cover payment made as rentals, commissions, compensation or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided, further,* That where the purchaser is a VAT-registered person, in addition

> to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.
>
> xxx xxx xxx *(Emphasis added)*
>
> SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.
>
> xxx xxx xxx

Since petitioner's claimed zero-rated sales are in the nature of sales of services under Sections 108(B)(2) and (3) of the NIRC of 1997, as amended, petitioner is mandated to issue BIR-registered VAT ORs with the information contained therein in compliance with the applicable provisions previously cited.

Based on the review and validation made by the ICPA, out of the amount of ₱584,209,361.57 being claimed by petitioner as zero-rated sales/receipts, only the amount of ₱323,364,461.33 is duly supported by BIR-registered VAT ORs. The remaining amount of ₱260,844,900.24 falls among the following noted exceptions, to wit: (a) while supported by BIR-registered VAT ORs, the same are dated outside of the quarter, (b) while supported by BIR-registered VAT ORs, the same are dated outside the validity period of *Authority to Print* (ATP), (c) while supported by BIR-registered VAT ORs, there are issues on the invoicing requirements (sales not aligned in zero-rated line/no zero-rated stamp and corrections in the sales amount without countersignature), and (d) without BIR-registered VAT ORs, as summarized below:

	Sales of Services to PAGCOR, Japan Embassy, ADB, BOI and Ecozone-registered enterprises	**Sales of Services to NRFCs**	**Freight Revenues**	**Total Declared Zero-Rated Sales/Receipts**
Supported by BIR-registered VAT ORs	₱320,420,663.87[72]	₱2,943,797.46[73]		**₱323,364,461.33**
Supported by BIR-registered VAT ORs dated outside of the quarter	54,600.00[74]			**54,600.00**
Supported by BIR-registered VAT ORs but dated outside the validity period of ATP	-	116,365,342.03[75]		**116,365,342.03**
Supported by BIR-registered VAT ORs but with issues on invoicing requirements (sales not aligned in zero-rated line/no zero-rated stamp, and corrections in the sales amount without countersignature)	2,387,920.35[76]	-		**2,387,920.35**
Without BIR-registered VAT ORs	95,893.27[77]	829,302.01[78]	141,111,842.58[79]	**142,037,037.86**
Total	**₱322,959,077.49**	**₱120,138,441.50**	**₱141,111,842.58**	**₱584,209,361.57**

As correctly found by the ICPA, the amount of ₱142,037,037.86 must be disallowed for being unsupported by BIR-registered VAT ORs, which is in violation of Section 113(A)(2) of the NIRC of 1997, as amended, and Section 4.113-1(A)(2) of RR No. 16-2005, as amended.

Likewise, the claimed zero-rated sales/receipts of ₱54,600.00, ₱116,365,342.03 and ₱2,387,920.35, must be disallowed. For failure to

72 Sum total of Exhibits "P-59", "P-59-1", "P-60", "P-60-1", "P-61", "P-62", "P-63" and "P-68" ICPA Findings numbers 1 to 7 and 12, Table 12-A, Exhibit "P-34", pp. 10 to 12, Docket, – Vol. II, pp. 700 to 702.

73 Sum total of Exhibits "P-72", "P-73.1", "P-73.2", "P-74", "P-75", "P-84" and "P-87", ICPA Findings numbers 1 to 5, 15 and 18, Table 12-B, Exhibit "P-34", pp. 13 to 14, 16 to 17, Docket-Vol. II, pp. 703 to 704, 706 to 707.

74 Exhibit "P-67", ICPA Finding number 11, Table 12-A, Exhibit "P-34", p. 12, Docket – Vol. II, p. 702.

75 Sum total of Exhibits "P-76", "P-77", "P-78", "P-79", "P-80", "P-81", "P-82", "P-83.1", "P-83.2", Table 12-B, ICPA Findings numbers 6 to 14, Exhibit "P-34", pp. 14 to 16, Docket-Vol. II, pp. 704 to 706.

76 Sum total of Exhibits "P-64", "P-65", "P-66", Table 12-A, ICPA Finding numbers 8 to 10, Table 12-A, Exhibit "P-34", pp. 11 to 12, Docket – Vol. II, pp. 701 to 702.

77 Sum total of Exhibits "P-69", "P-70" and "P-71", ICPA Finding numbers 13 to 15, Table 12-A, Exhibit "P-34", pp. 12 to 13, Docket – Vol. II, pp. 702 to 703.

78 Sum total of Exhibits "P-85" and "P-86", ICPA Finding numbers 16 and 17, Table 12-B, Exhibit "P-34", pp. 16, Docket – Vol. II, p. 706.

79 ICPA Finding numbers 1 and 2, Table No. 12-C4-2, Exhibit "P-34", p. 19, Docket – Vol. II, p. 709.

meet the invoicing requirements under Section 113(B) of the NIRC of 1997, as amended, and Section 4.113-1(B) of RR No. 16-2005, as amended.

Similarly, the amount of ₱323,364,461.33, which was found by the ICPA to be duly supported by BIR-registered VAT ORs,[80] must also be disallowed for failure to indicate the **nature of services** performed by petitioner.

To recall, under Section 113(B)(3) of the NIRC of 1997, as amended, the following information, among others, are **required** to be indicated in the VAT invoice or VAT OR, to wit:

a. Date of transaction;
b. Quantity;
c. Unit cost; and,
d. Description of the goods or properties or **nature of the service.**

However, the Court observed that petitioner did not indicate the nature of the service(s) in the ORs but only the phrase "various invoices" or certain reference number(s) for which the payments received by petitioner were made. Unfortunately, petitioner did not submit in evidence the said invoices, which could have been cross-referenced with the ORs and provided the necessary data that will confirm the nature and details of the supposed zero-rated sales. Consequently, the Court cannot ascertain on its own whether the payments received are indeed for the claimed services rendered by petitioner.

Apropos, the importance of complying with the substantiation and invoicing requirements of the law is hereby reiterated. It also bears stressing that in *Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue*, the Supreme Court said:[81]

> On a final note, the Court reiterates its consistent ruling that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also **the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that he (or she) has strictly complied with the conditions for the grant of the tax refund or credit.** Since taxes are the lifeblood of the government, tax laws must be

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80 Exhibits "P-59-a" to "P-59-abi", "P-59-1-a" to "P-59-1-c", "P-60-a" to "P-60-alq", "P-60-1-a" to "P-60-1-s", "P-61-a" to "P-61-aw", "P-62-a" to "P-62-ay" "P-63-a" to "P-63-k, "P-68-a" to "P-68-hr", "P-72-a" to "P-72-e", "P-73.1-a" to "P-73.1-r", "P-73.2-a" to "P-73.2-b", "P-74-a" to "P-74-b", "P-75-a", "P-84-a" to "P-84-c" and "P-87-a".

81 G.R. No. 222428, February 19, 2018.

faithfully and strictly implemented as they are not intended to be liberally construed. xxx" *(Emphasis added)*

Furthermore, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[82] Thus, it behooves petitioner to show compliance with each of the foregoing requisites and invoicing requirements.

Considering the foregoing, petitioner's claim for refund in the amount of ₱18,748,240.85, representing unutilized input VAT attributable to its zero-rated sales for the first quarter of TY 2018, must fail.

Accordingly, the Court deems it no longer necessary to discuss or determine petitioner's compliance with the other remaining requisites to successfully obtain a credit/refund of input VAT.

WHEREFORE, in light of the foregoing considerations, the present **Petition for Review** is **DENIED** for lack of merit.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[82] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Division Chairperson

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