REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

PROCTER & GAMBLE INTERNATIONAL OPERATIONS SA-ROHQ,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 9485 & 9526

Members:

UY, *Chairperson*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JAN 03 2022
3:16 p.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

These consolidated cases involve *Petitions for Review* filed by Procter & Gamble International Operations SA-ROHQ against Respondent Commissioner of Internal Revenue, praying for the refund or issuance of a tax credit certificate to Petitioner in the amounts of Php23,841,096.68 for CTA Case No. 9485 and Php23,123,319.83 for CTA Case No. 9526, allegedly representing its excess and unutilized input value-added tax ("VAT") on the purchases of goods, services and importations, attributable to zero-rated sales for the period covering July 01, 2014 to September 30, 2014 and the 2nd quarter of fiscal year ("FY") 2015 covering October 01, 2014 to December 30, 2014, respectively.[1]

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1 Docket (CTA Case No. 9485) – Vol. 4, Pre-Trial Order dated September 14, 2017, Summary of the Case, p. 1684.

The Parties

Petitioner is a Regional Operating Headquarters ("ROHQ") licensed by the Securities and Exchange Commission ("SEC") to transact business in the Philippines under SEC Registration No. FS201104304 dated March 24, 2011.[2] It is also registered with the Bureau of Internal Revenue ("BIR") as a VAT taxpayer under Tax Identification Number ("TIN") 406-931-778-000, with office address at 11/F Net Park, 5th Avenue, Crescent Park West, Bonifacio Global City, Taguig City.[3]

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

The Facts

On June 01, 2016, Petitioner filed with the BIR the letter dated May 17, 2016 and an *Application for Tax Credits / Refunds* (BIR Form No. 1914), for the refund or tax credit of input tax, covering the quarter from July 01, 2014 to September 30, 2014, in the amount of Php23,841,096.68, pursuant to Section 112(A) of the NIRC of 1997, as amended.[5] The claim was denied by the BIR, through Ms. Teresita M. Angeles, OIC-Assistant Commissioner, Large Taxpayers Service of the BIR, in the letter dated January 26, 2017,[6] for failure to submit requirements within one hundred twenty (120) days, pursuant to Revenue Memorandum Circular (RMC) No. 54-2014.

In the meantime, on August 30, 2016, Petitioner likewise filed with the BIR the letter dated August 25, 2016 and an *Application for Tax Credits / Refunds* (BIR Form No. 1914), for the refund or tax credit of input tax, covering the quarter from October 01, 2014 to December 31, 2014, in the amount of Php23,841,096.68, pursuant to Section 112(A) of the NIRC of 1997, as amended.[7] The claim was likewise denied by the BIR, through OIC-Assistant

2 Docket (CTA Case No. 9485) – Vol. 5, Exhibit "P-1", pp. 2178 to 2189.
3 Docket (CTA Case No. 9485) – Vol. 5, Exhibit "P-2", p. 2217.
4 Docket (CTA Case No. 9485) – Vol. 4, Joint Stipulation of Facts and Issues (JSFI), Stipulated Facts, Par. 1, p. 1673.
5 Docket (CTA Case No. 9485) – Vol. 9, Exhibits "P-9" and "P-9.1", pp. 4348 to 4351.
6 Docket (CTA Case No. 9485) – Vol. 9, Exhibit "P-11", p. 4357.
7 Docket (CTA Case No. 9485) – Vol. 9, Exhibits "P-10" and "P-10.1", pp. 4352 to 4356.

Commissioner Teresita M. Angeles, in an undated letter,[8] for failure to submit complete documents and for lack of factual basis.

CTA Case No. 9485

On October 20, 2016, Petitioner filed a *Petition for Review*,[9] praying for the refund, or issuance of a tax credit certificate in the amount, of Php23,841,096.68, allegedly representing its excess and unutilized input VAT on the purchases of goods and services, and importations, attributable to zero-rated sales for the period covering July 01, 2014 to September 30, 2014 ("the 1st quarter of FY 2015"). The case was docketed as CTA Case No. 9485 and was initially raffled with the Third Division of this Court.

Respondent filed his *Answer* on February 20, 2017,[10] interposing, *inter alia*, the following special and affirmative defenses, to wit: (1) taxpayer is charged with the heavy burden of providing that he has complied with and satisfied al the statutory and administrative requirements to be entitled to the tax refund; (2) the amount of Php23,841,096.68 being claimed for refund by Petitioner was not properly documented; hence, the instant claim for refund or credit must fail; (3) the instant petition is prematurely filed; and (4) nowhere is it indicated in the claim for refund and in this petition that Petitioner has submitted its "complete" documents in support of the claim for refund.

Respondent transmitted to this Court the *BIR Records* for the case on March 24, 2018.[11]

The Pre-Trial Conference was initially scheduled on May 09, 2017,[12] but was later cancelled, and was reset to July 25, 2017, in the Resolution dated May 05, 2017.[13]

On May 04, 2017, Petitioner filed an *Omnibus Motion*, praying for: (1) the consolidation of CTA Case No. 9485, with CTA Case No. 9526, and (2) deferment of the Pre-Trial Conference.[14]

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8 Docket (CTA Case No. 9485) – Vol. 9, Exhibit "P-12", p. 4358.
9 Docket (CTA Case No. 9485) – Vol. 1, pp. 10 to 23
10 Docket (CTA Case No. 9485) – Vol. 1, pp. 105 to 115.
11 Docket (CTA Case No. 9485) – Vol. 1, Respondent's Compliance dated March 17, 2017, pp. 123 to 124.
12 Docket (CTA Case No. 9485) – Vol. 1, Notice of Pre-trial Conference dated February 22, 2017, pp. 117 to 118.
13 Docket (CTA Case No. 9485) – Vol. 1, pp. 151 to 152.
14 Docket (CTA Case No. 9485) – Vol. 1, pp. 133 to 137.

Petitioner's Pre-Trial Brief was filed on May 05, 2017.[15]

In the Resolution dated May 10, 2017, [16] the Court considered Petitioner's *Motion to Defer Pre-Trial Conference* moot in view of the Resolution dated May 05, 2017, and ordered Respondent to comment on Petitioner's *Motion to Consolidate*. In compliance thereto, Respondent filed, on May 23, 2017, a *Manifestation* submitting the resolution of Petitioner's *Motion to Consolidate* to the sound discretion of the Court.[17]

CTA Case No. 9526

On the other hand, in January 20, 2017, Petitioner filed another *Petition for Review*,[18] praying for the refund, or issuance of a tax credit certificate in the amount, of Php23,123,319.83, allegedly representing its excess and unutilized input tax on the purchases of goods and services, and importations, attributable to zero-rated sales for the 2nd quarter of FY 2015, covering October 01, 2014 to December 30, 2014. The case was docketed as CTA Case No. 9526, and was initially raffled with the First Division of this Court.

Respondent filed his *Answer* on February 27, 2017,[19] interposing, *inter alia*, the following special and affirmative defenses, to wit: (1) Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the BIR; (2) the amount being refunded was not properly documented; (3) Petitioner merely substantiated that it had rendered services to foreign entities outside the Philippines, but did not present evidence that these foreign entities are not doing business in the Philippines; (4) Petitioner's failure to comply with the duly mandated legal requirements in such claims for refund/tax credit warranted the denial by inaction of the administrative claim; (5) Petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim; and (6) without a validly and duly filed administrative claim for refund, the Court is without jurisdiction to entertain the *Petition for Review*.

The Pre-Trial Conference was initially set on June 01, 2017.[20] Prior thereto, *Respondent's Pre-Trial Brief* was filed on March 08, 2017.[21]

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15 Docket (CTA Case No. 9485) – Vol. 1, pp. 138 to 149.
16 Docket (CTA Case No. 9485) – Vol. 1, p. 154
17 Docket (CTA Case No. 9485) – Vol. 1, pp. 158 to 159.
18 Docket (CTA Case No. 9526), pp. 10 to 26.
19 Docket (CTA Case No. 9526), pp. 104 to 112.
20 Docket (CTA Case No. 9526), Notice of Pre-Trial Conference dated March 02, 2017, pp. 119 to 120.
21 Docket (CTA Case No. 9526), pp. 125 to 128.

On May 04, 2017, Petitioner filed a *Motion to Consolidate*, praying for the consolidation of this case with CTA Case No. 9485.[22]

The *BIR Records* for the case were transmitted to the Court on May 05, 2017.[23]

In the Resolution dated May 22, 2017,[24] the First Division of this Court granted Petitioner's *Motion to Consolidate*, and ordered the consolidation of CTA Case No. 9526, with CTA Case No. 9485, subject to the conformity of the Third Division of this Court.

Consolidation of Case Nos. 9485 and 9526

In the Resolution dated May 31, 2017,[25] the Third Division of this Court stated that it has no objection to the First Division's Resolution dated May 22, 2017, and thus, ordered the consolidation of CTA Case No. 9526 with CTA Case No. 9485. In the same Resolution, the Court decreed that the Pre-Trial Conference previously scheduled on July 25, 2017 shall proceed as scheduled.

Thus, the Pre-Trial Conference was held on July 25, 2017.[26] Prior thereto, Respondent filed his *Consolidated Pre-Trial Brief* on July 17, 2017,[27] while Petitioner's *Pre-Trial Brief* was received by the Court on July 21, 2017.[28]

On August 29, 2017, the parties submitted their *Joint Stipulation of Facts and Issues.*[29] Subsequently, the Pre-Trial Order dated September 14, 2017 was issued,[30] deeming the termination of the Pre-Trial Conference.

As trial ensued, Petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following individuals, namely: (1)

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22 Docket (CTA Case No. 9526), pp. 152 to 155.
23 Docket (CTA Case No. 9526), pp. 158 to 159.
24 Docket (CTA Case No. 9526), pp. 163 to 164; Docket (CTA Case No. 9485) – Vol. 1, pp. 158 to 159.
25 Docket (CTA Case No. 9485) – Vol. 1, pp. 162 to 163; Notice of Pre-Trial Conference dated June 05, 2017, pp. 164 to 165; Minutes of the hearing held on, and Order dated July 25, 2017, pp. 1658 and 1660 to 1661, respectively.
26 Docket (CTA Case No. 9485) – Vol. 4, Minutes of the hearing held on, and Order dated, July 25, 2017, pp. 1658 to 1661.
27 Docket (CTA Case No. 9485) – Vol. 1, pp. 174 to 176.
28 Docket (CTA Case No. 9485) – Vol. 4, pp. 1644 to 1656.
29 Docket (CTA Case No. 9485) – Vol. 3, pp. 1673 to 1682.
30 Docket (CTA Case No. 9485) – Vol. 4, pp. 1684 to 1689.

Mr. Carlos Ben C. Ignacio,[31] Petitioner's Procure to Pay Global Service Manager and former Comptroller and Compliance Manager; and (2) Mr. Jay A. Ballesteros,[32] the Court-commissioned Independent Certified Public Accountant ("ICPA").[33]

The ICPA *Report* was submitted to the Court on March 09, 2018.[34]

Petitioner filed its *Formal Offer of Evidence* (FOE) on May 22, 2018.[35] Subsequently, Respondent filed his *Comment Re: Petitioner's Formal Offer of Evidence* on May 31, 2018.[36]

In the Resolution dated November 15, 2018,[37] the Court admitted the offered exhibits of Petitioner, *except* for the following:

1) Exhibits "P-4.14", "P-4.35", "P-5.7", "P-5.8", "P-5.9", "P-5.20", "P-5.23", "P-5.31", "P-5.32", "P-5.33", "P-5.51", "P-5.60", "P-5.61", "P-5.62", "P-5.67", "P-6.3", "P-6.10", "P-6.18", "P-6.24", "P-6.25", "P-6.26", "P-6.27", "P-6.28", "P-6.32", "P-6.34", "P-6.36", "P-7.8", "P-7.10", "P-7.22", "P-20", "P-20.1", "P-20.2", "P-20.3", "P-20.4", "P-20.5", "P-20.6", "P-20.7", "P-20.8", "P-20.9", "P-20.10", "P-20.11", "P-20.12", "P-20.13", "P-20.14", "P-20.15", "P-21.1", "P-21.2", "P-21.3", "P-21.4", "P-21.5", "P-21.6", "P-21.7", "P-21.8", "P-21.9", "P-21.10", "P-21.11", "P-21.12", "P-21.13", "P-21.16", "P-21.17", "P-21.18", "P-21.19", "P-21.20", "P-21.21", "P-21.25", "P-21.27", "P-21.28", "P-21.29", "P-21.30", "P-21.31", "P-21.33", for failure to correspond with the documents actually marked;

2) Exhibits "P-21", "P-21.15", "P-21.23", and "P-21.24", for not being found in the records;

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31 Docket (CTA Case No. 9485) – Vol. 4, Exhibit "P-31", pp. 1744 to 1772; Minutes of the hearing held on, and Order dated, January 23, 2018, pp. 1862, and 1864 to 1865, respectively.

32 Docket (CTA Case No. 9485) – Vol. 5, Exhibit "P-23", pp. 1987 to 2018; Minutes of the hearing held on and Order dated, April 17, 2018, pp. 2019 to 2021.

33 Docket (CTA Case No. 9485) – Vol. 4, Oath of Commission dated January 23, 2018, p. 1863; Minutes of the hearing held on, and Order dated, January 23, 2018, pp. 1862, and 1864 to 1865, respectively.

34 Docket (CTA Case No. 9485) – Vol. 5, Exhibit "P-22", pp. 2075 to 2175.

35 Docket (CTA Case No. 9485) – Vol. 5, pp. 2027 to 2072.

36 Docket (CTA Case No. 9485) – Vol. 9, pp. 4368 to 4370.

37 Docket (CTA Case No. 9485) – Vol. 9, pp. 4376 to 4384.

3) Exhibits "P-21.14", "P-21.22", "P-21.26", and "P-21.34", for failure to correspond with the documents actually marked and to submit the originals for comparison; and

4) Exhibit "P-21.32", for being unreadable or not properly scanned/blurred.

Petitioner then filed an *Omnibus Motion (i) Motion for Reconsideration (Re: Resolution dated November 15, 2018); (ii) Motion to Set Commissioner's Hearing; and (iii) Motion for Leave of Court to Recall Witness* on December 03, 2018.[38] Respondent did not file his comment to the said *Omnibus Motion*.[39] In the Resolution dated March 15, 2019,[40] the Court granted Petitioner's *Motion to Set Commissioner's Hearings* and *Motion for Leave of Court to Recall Witness*, while the *Motion for Reconsideration* was held in abeyance. Petitioner then recalled, and presented the testimonies of, Mr. Carlos Ben C. Ignacio,[41] and Mr. Jay A. Ballesteros.[42]

Subsequently, Petitioner filed a *Motion for Clarification* on August 13, 2019,[43] seeking clarification on the whether or not the Court has admitted or denied Exhibits "P-6.25" and "P-6.26". In Resolution dated August 29, 2019,[44] the Court granted the said *Motion for Clarification*, and admitted the said exhibits.

In the meantime, Petitioner filed its *Supplemental Formal Offer of Evidence* on August 23, 2019.[45] Respondent, however, did not file his comment thereon.[46] In the Resolution dated October 15, 2019,[47] the Court admitted certain exhibits of Petitioner, and still *denied* the following:

1) Exhibits "P-6.10", "P-6.34", "P-6.38", "P-6.46", "P-20.4", "P-20.5", "P-20.6", "P-20.11", "P-20.12", "P-21.6", for failure to correspond with the documents actually marked;

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38 Docket (CTA Case No. 9485) – Vol. 9, pp. 4388 to 4409.
39 Docket (CTA Case No. 9485) – Vol. 9, Records Verification Report dated January 08, 2019, p. 4424.
40 Docket (CTA Case No. 9485) – Vol. 9, pp. 4428 to 4430.
41 Docket (CTA Case No. 9485) – Vol. 9, Exhibit "P-32", pp. 4468 to 4479; Docket (CTA Case No. 9485) – Vol. 10, Minutes of the hearing held on, and Order dated, August 13, 2019, pp. 5094 to 5096.
42 Docket (CTA Case No. 9485) – Vol. 9, Exhibit "P-33", pp. 4450 to 4464; Docket (CTA Case No. 9485) – Vol. 10, Minutes of the hearing held on, and Order dated, August 13, 2019, pp. 5094 to 5096.
43 Docket (CTA Case No. 9485) – Vol. 10, pp. 5073 to 5075.
44 Docket (CTA Case No. 9485) – Vol. 11, pp. 5714 to 5715.
45 Docket (CTA Case No. 9485) – Vol. 10, pp. 5097 to 5117.
46 Docket (CTA Case No. 9485) – Vol. 12, Records Verification Report dated September 11, 2019 issued by the Judicial Records Division of this Court, p. 5716.
47 Docket (CTA Case No. 9485) – Vol. 11, pp. 5723 to 5726.

2) Exhibits "P-6.10-1", "P-21.14", "P-21.22", "P-21.26", "P-21.34", for failure to present the originals for comparison;

3) Exhibits "P-21.15", "P-21.23", and "P-21.24", for not being found in the records;

4) Exhibit "P-21.32", for being unreadable or not properly scanned or blurred; and

5) Exhibits "P-6.42", "P-6.43", "P-6.49", "P-6.50", and "P-6.51", for failure to correspond with the documents actually marked and failure to present the originals for comparison (not original and no marking stating if Faithful Reproduction of the Original/Provision Marking).

On November 05, 2019, Petitioner filed a *Motion for Reconsideration (Re: Resolution dated October 15, 2019).*[48] Respondent did not file his comment thereon.[49] In the Resolution dated February 21, 2020,[50] the Court granted Petitioner's *Motion for Reconsideration*, and admitted Exhibits "P-20.4", "P-20.5", "P-20.6", "P-20.11", "P-20.12", "P-21.6", "P-21.15", "P-21.23", and "P-21.24".

For his part, Respondent likewise presented his testimonial and documentary evidence. Respondent offered the testimonies of (1) Revenue Officer Rosario A. Arriola,[51] and (2) OIC - Assistant Chief Wilfredo Reyes.[52]

Respondent's Formal Offer of Evidence was posted on September 28, 2020.[53] Petitioner then filed its *Comment (Re: Respondent's Formal Offer of Evidence* dated September 23, 2020) on October 26, 2020.[54] In Resolution dated November 11, 2020,[55] the Court admitted Respondent's exhibits.

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48 Docket (CTA Case No. 9485) – Vol. 11, pp. 5731 to 5742.

49 Docket (CTA Case No. 9485) – Vol. 12, Records Verification Report dated January 28, 2020 issued by the Judicial Records Division of this Court, p. 5747.

50 Docket (CTA Case No. 9485) – Vol. 12, pp. 5753 to 5755.

51 Docket (CTA Case No. 9485) – Vol. 1, Exhibit "R-4", pp. 169 to 173; Docket (CTA Case No. 9485) – Vol. 9, Minutes of the hearing held on, and Order dated, November 15, 2018, pp. 4385 to 4387.

52 Docket (CTA Case No. 9485) – Vol. 12, Exhibit "R-9", pp. 5761 to 5764; Docket (CTA Case No. 9485) – Vol. 12, Minutes of the hearing held on, and Order dated, September 15, 2020, pp. 5766 to 5768.

53 Docket (CTA Case No. 9485) – Vol. 12, pp. 5769 to 5772.

54 Docket (CTA Case No. 9485) – Vol. 12, pp. 5776 to 5781.

55 Docket (CTA Case No. 9485) – Vol. 12, pp. 5786 to 5787.

On December 28, 2020, Respondent filed his *Memorandum*;[56] and on January 22, 2021, Petitioner's *Memorandum* was filed.[57]

These consolidated cases were considered submitted for decision on January 28, 2021.[58]

The Issue

The sole issue to be resolved in these consolidated cases is whether or not Petitioner is entitled to its claim for refund of or issuance of tax credit certificate for excess or unutilized input VAT in the aggregate amount of Php46,964,416.51 for the 1st and 2nd quarters of FY2015."[59]

Petitioner's arguments:

Petitioner argues that it is a VAT-registered entity; that its sales of services to its customers outside the Philippines are zero-rated sales; that Petitioner paid or incurred input VAT which are properly substantiated in accordance with the law and regulations; that the input VAT paid or incurred by Petitioner are attributable to zero-rated sales or effectively zero-rated sales; that the input VAT have not been applied against output taxes during and in the succeeding periods; and that Petitioner's claim for refund was filed within the mandatory period provided under the law.

Respondent's counter-arguments:

Respondent contends that Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the BIR; that there is no record of Petitioner ever submitting complete documents to substantiate its administrative claim for refund; that Petitioner's administrative claim for refund is denied for failure to submit complete documents and for lack of factual basis; that Petitioner merely substantiated that it had rendered services to foreign entities doing business outside the Philippines, but did not present evidence that these foreign entities are not doing business therein; that without a validly and duly filed administrative claim for refund, the Court is without jurisdiction to entertain the *Petition for Review*; and that claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

56 Docket (CTA Case No. 9485) – Vol. 12, pp. 5788 to 5796.
57 Docket (CTA Case No. 9485) – Vol. 12, pp. 5799 to 5833.
58 Docket (CTA Case No. 9485) – Vol. 12, Resolution dated January 28, 2021, p. 5835.
59 Docket (CTA Case No. 9485) – Vol. 4, JSFI, Stipulated Issue, pp. 1673 to 1674.

Discussion/Ruling

The consolidated *Petitions for Review* must be denied.

Before this Court determines the propriety of the subject claims on the basis of substantive law, it shall first resolve the issue of jurisdiction being raised by Respondent. According to the latter, Petitioner's failure to submit documents supporting its claim for refund makes its administrative claim for refund *pro-forma*. Relative thereto, Respondent argues that this pro-forma administrative claim should not be taken as proper compliance with the requirements of the law; and that without a validly and duly filed administrative claim for refund, the Court is without jurisdiction to entertain the *Petition for Review*.

We disagree with Respondent.

Part II of RMC No. 54-2014, the BIR issuance under which the subject administrative claims were filed, reads as follows:

"II. Filing and Processing of Administrative Claims –

> **The application for VAT refund/tax credit must be accompanied by complete supporting documents as enumerated in Annex 'A' hereof.** In addition, the taxpayer shall attach a statement under oath attesting the completeness of the submitted documents (Annex 'B'). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (i.e., at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.
>
> Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of evaluation. **A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. <u>The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the</u>**

<u>complete supporting documents</u>. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant."[60]

On the basis of the foregoing, there is no indication that a taxpayer-applicant's failure to submit complete supporting documents should result to the treatment of the administrative claim as *pro-forma*. It is merely a ground for the BIR to deny the same administrative claim.

Moreover, this Court sees no legal or jurisprudential basis to treat an administrative claim with incomplete supporting documents as *pro-forma*, so as to oust this Court of jurisdiction.

Considering the unfounded contention of Respondent and since there is no indication that this Court is without jurisdiction over the present consolidated cases, this Court shall assume jurisdiction.

Requisites for the grant of the refund or issuance of a tax credit certificate under the law.

Section 112 of the NIRC of 1997, as amended by Republic Act No. 9337,[61] provides:

> "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

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60 *Emphasis and underscoring supplied.*

61 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.

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: xxx.

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 a tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Based on the foregoing provision, jurisprudence has laid down certain requisites which must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT. Said requisites are classified into certain categories, to wit:

Timeliness of the filing of the administrative and judicial claims:

1. the claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[62]
2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 120 days, the judicial claim has been filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[63]

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62 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; and AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182364, August 03, 2010.

63 Steag State Power, Inc. (Formerly State Power Development Corporation) v. Commissioner of Internal Revenue, G.R. No. 205282, January 14, 2019; Rohm Apollo

With reference to the taxpayer's registration with the BIR:

3. the taxpayer is a VAT-registered person;[64]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[65]
5. for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[66] and

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[67]
7. the input taxes are due or paid;[68]
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;[69] and
9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[70]

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.[71]

Semiconductor Philippines v. Commissioner of Internal Revenue, G.R. No. 168950, January 14, 2015.

64 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; and AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182364, August 03, 2010.

65 *Id.*

66 *Id.*

67 *Id.*

68 *Id.*

69 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.

70 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; and AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182364, August 03, 2010

71 Edison (Bataan) Cogeneration Corporation v. Commissioner of Internal Revenue, G.R. Nos. 201665 and 201668, August 30, 2017; Commissioner of Internal Revenue v. Philippine National Bank, G.R. No. 180290, September 29, 2014; Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc., G.R. No. 197515, July 2, 2014; Dizon v. Court of Tax Appeals, et al., G.R. No. 140944, April 30, 2008; Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue,

Thus, it behooves Petitioner to show compliance with each of the above-enumerated requisites.

Petitioner timely filed its administrative and judicial claims.

The *first* requisite pertains to the filing of the refund for tax credit or refund of input VAT before the BIR, within two (2) years from the close of the quarter when the sales were made.

The present claims cover the 1st and 2nd quarters of FY 2015. Counting two (2) years from the respective close of the said quarters, the following table indicates the pertinent last days for the filing of an administrative claim for the said two (2) quarters, to wit:

Quarter (FY 2015)	Close of the Quarter	Last day to File Administrative Claim	Date of Filing Administrative Claim
1st Quarter (July 1, 2014 to September 30, 2014)	September 30, 2014	September 30, 2016	**June 01, 2016**[72]
2nd Quarter (October 1, 2014 to December 31, 2014)	December 31, 2014	December 31, 2016	**August 30, 2016**[73]

On the basis thereof, it is apparent that Petitioner's administrative claims were timely filed.

The *second* requisite is to the effect that the judicial claim must have been filed within thirty (30) days from the receipt of Respondent's decision or after the expiration of the 120-day period under Section 112(C) of the NIRC of 1997, as amended.

In *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*,[74] the Supreme Court held:

G.R. No. 145526, March 16, 2007; and Commissioner of Internal Revenue v. Manila Mining Corporation, G.R. No. 153204, August 31, 2005.

72 Docket (CTA Case No. 9485) – Vol. 9, Exhibits "P-9" and "P-9.1", pp. 4348 to 4351.

73 Docket (CTA Case No. 9485) – Vol. 9, Exhibits "P-10" and "P-10.1", pp. 4352 to 4356.

74 G.R. No. 182737, March 02, 2016.

> **"Whether Respondent rules in favor of or against the taxpayer - or does not act at all on the administrative claim- within the period of 120 days from, the submission of complete documents, the taxpayer may resort to a judicial claim before the CTA.**
>
> **The judicial claim shall be filed within a period of 30 days after the receipt of Respondent's decision or ruling or after the expiration of the 120-day period, <u>whichever is sooner</u>.**
>
> Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by law, **any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA.**"[75]

Based on the foregoing doctrinal pronouncements, the 30-day period provided by law should be reckoned after the receipt of Respondent's decision/ruling or after the expiration of the 120-day period, **whichever is sooner.** In addition, it is clear that any judicial claim filed in a period less than or beyond the said 120+30-day period is outside the jurisdiction of this Court.

In this case, as already established, Petitioner's administrative claims were filed on June 01, 2016 (1st claim) and August 30, 2016 (2nd claim), respectively. Respondent or the BIR then had one hundred twenty (120) days from the said dates to act on the said claims. For the 1st claim, the one hundred twenty (120) days ended on September 29, 2016; while for the 2nd claim, the one hundred twenty (120) days ended on December 28, 2016.

However, with regard to the 1st claim, it was only on January 26, 2017 that the BIR issued the letter denying the said claim.[76] Thus, it is clear that the BIR's denial is beyond the 120-day period, and that there was inaction.

The same is true as regards the 2nd claim. While the BIR issued a denial letter, the same is undated.[77] Hence, there is no way of knowing whether the same was made within the corresponding 120-day period. Accordingly, it is deduced that there was also inaction.

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75 *Emphasis and underscoring supplied.*
76 Docket (CTA Case No. 9485) – Vol. 9, Exhibit "P-11", p. 4357.
77 Docket (CTA Case No. 9485) – Vol. 9, Exhibit "P-12", p. 4358.

Correspondingly, for the present consolidated cases, the 30-day period to appeal before this Court should be reckoned from the expiration of the 120-day period. Such being the case, for the 1st claim, Petitioner had until October 29, 2016, and for the 2nd claim, Petitioner had until January 27, 2017, within which to file the judicial claims, respectively. Considering that for the 1st claim, the *Petition for Review* was filed on October 20, 2016 (CTA Case No. 9485),[78] and that for the 2nd claim, the *Petition for Review* was filed on January 20, 2017 (CTA Case No. 9526),[79] both appeals were timely made.

Such being the case, Petitioner fulfilled both the above-stated *first* and *second* requisites. The court has jurisdiction over the two (2) claims on the basis of Respondent's inaction.

Petitioner is a VAT-registered person.

Petitioner complied with the *third* requisite, considering that it is a VAT-registered person, under TIN 406-931-778-000, as evidenced by BIR Certificate with OCN 8RC0000448065 issued on February 22, 2016.[80]

However, Petitioner failed to establish that it was engaged in zero-rated sales or effectively zero-rated sales during the subject quarters.

The *fourth* requisite require that the taxpayer is engaged in zero-rated or effectively zero-rated sales.

Petitioner anchors its claim for refund or issuance of tax credit certificate representing its excess and unutilized input VAT on Section 108(B)(2) of the NIRC of 1997, as amended, which provides:

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

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78 Docket (CTA Case No. 9485) – Vol. 1, pp. 10 to 23
79 Docket (CTA Case No. 9526), pp. 10 to 26.
80 Docket (CTA Case No. 9485) – Vol. 5, Exhibit "P-2", p. 2217.

(B) *Transactions Subject to Zero Percent (0%) Rate.* - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

(1) Processing, manufacturing or repacking of goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) **Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);**"[81]

Based on the foregoing provision, however, certain essential elements must be present 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, 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 nonresident person not engaged in business who is *outside* the Philippines when the services were performed;[82]

2) The services fall under any of the categories under Section 108(B)(2),[83] or simply, the services rendered should be other than "*processing, manufacturing or repacking goods*";[84]

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81 *Emphasis supplied.*

82 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.

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

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

3) The services must be performed in the Philippines[85] by a VAT-registered person; and

4) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[86]

Anent the *first* essential element, in order to be considered as a non-resident foreign corporation doing business *outside* the Philippines, each entity must be supported, at the very least, by **both** a *Certification of Non-Registration of Corporation/Partnership* issued by the Philippine SEC, **and** proof of incorporation/registration in a foreign country (*e.g.*, Articles/Certificate of Incorporation/Registration and/or Tax Residence Certificate). The former establishes that the recipient of the service has no registered business in the Philippines, and that it is not engaged in trade or business within the Philippines; while the latter proves that the said recipient of the service is indeed foreign. The said documents have been consistently required by this Court, for purposes of the said *first* essential element. In fact, in *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*,[87] the Supreme Court affirmed the necessity of presenting the said documents in this wise:

> "For purposes of zero-rating under Section 108(B)(2) of the Tax Code, the claimant must establish the two components of a client's NRFC[88] status, *viz*.: (1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of both of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines.
>
> xxx xxx xxx
>
> To recall, the CTA found that the SEC Certification of

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

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

87 G.R. No. 234445, July 15, 2020.

88 Nonresident foreign corporation.

Non-Registration of Company and Authenticated Articles of Association and/or Certificates of Registration/Good Standing/Incorporation sufficiently established the NRFC status of 11 of DKS's affiliates clients.

The Court upholds these findings.

The Court accords the CTA's factual findings with utmost respect, if not finality, because the Court recognizes that it has necessarily developed an expertise on tax matters. Significantly, both the CTA Division and CTA *En Banc* gave credence to the aforementioned documents as sufficient proof of NRFC status. The Court shall not disturb its findings without any showing of grave abuse of discretion considering that the members of the tax court are in the best position to analyze the documents presented by the parties.

In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court *a quo*'s findings. **To the Court's mind, the SEC Certifications of Non-Registration show that these affiliates are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines.**"[89]

In this case, the following table is indicative whether Petitioner complied with the *first* essential element vis-à-vis the presentation of the said required documents pertinent to the alleged recipients of the services rendered by Petitioner, *viz.*:

Client's Name	**SEC Certification of Non-Registration of Company (Exhibit No.)**	**Certificate/ Articles of Incorporation/ Registration (Exhibit No.)**
The Procter & Gamble Company	"P-5"	"P-6"

[89] *Emphasis supplied.*

Client's Name	SEC Certification of Non-Registration of Company (Exhibit No.)	Certificate/ Articles of Incorporation/ Registration (Exhibit No.)
Procter & Gamble South African Trading (Pty) Ltd	"P-5.1"	NONE
Procter & Gamble Magyarorszag Nagykereskedelmi Kkt	"P-5.10"	NONE
P & G South African Trading (Proprietary) Limited (formerly: Eveready (Proprietary) Limited to Eveready South Africa (Proprietary) Limited to Gillette Group South Africa (Proprietary) Limited)	"P-5.1-1"	"P-6.36"
Procter & Gamble Hygiene and Health Care Limited (formerly: Richardson Hindustan Limited to Procter & Gamble India Limited)	"P-5.11"/ "P-5.11-1"	"P-6.3"
P&G Max Factor Godo Kaisha	"P-5.12"	"P-6.4"
Procter & Gamble Levant S.A.L.	"P-5.13"	NONE
Procter & Gamble (Malaysia) SDN BHD	"P-5.14"	NONE
Industries Marocaines Modernes SA	"P-5.15"	NONE
Industries Marocaines Modernes	"P-5.15-1"	NONE
Procter & Gamble Maroc	"P-5.16"	NONE
Procter & Gamble Distributing New Zealand Limited	"P-5.17"	NONE
Procter & Gamble Pakistan (Private) Limited	"P-5.18"	"P-6.41"
Procter and Gamble Polska Sp. z o.o.	"P-5.19"	NONE
P & G Distribution Morocco s.a.s	"P-5.2"	NONE
Modern Industries Company-Dammam	"P-5.20"	NONE
Modern Products Company	"P-5.21"	NONE
P&G Distribution Morocco	"P-5.2-1"	NONE
Procter & Gamble (Singapore) PTE LTD (formerly: Richardson-Merrell PTE. LTD. To Richardson-Vicks PTE. LTD.)	"P-5.22"	"P-6.5"/"P-6.44"
Detergent Products Sarl (Detergent Products GmbH/Detergent Products LLC)	"P-5.23"	"P-6.11"
Procter & Gamble Taiwan Limited	"P-5.24"	"P-6.29"
Procter & Gamble Manufacturing (Thailand) Ltd	"P-5.25"	NONE
Procter & Gamble Manufacturing (Thailand) Limited	"P-5.25-1"	"P-6.30"
Procter & Gamble Trading (Thailand) Ltd	"P-5.26"	NONE
Procter & Gamble Trading (Thailand) Limited (former name: Richardson-Merrell (Thailand) Limited to Richardson-Vicks Limited)	"P-5.26-1"	"P-6.31"
Procter & Gamble Tuketim Mallari Sanayi AS	"P-5.27"	NONE
Procter & Gamble Tuketim Mallari Sanayi Anonim Sirketi	"P-5.27-1"	"P-6.45"
Procter & Gamble Korea, Inc.	"P-5.28"	NONE

Client's Name	SEC Certification of Non-Registration of Company (Exhibit No.)	Certificate/ Articles of Incorporation/ Registration (Exhibit No.)
Procter & Gamble Korea	"P-5.28-1"	"P-6.6"
Procter and Gamble Operations Polska Sp. z o.o.	"P-5.29"	NONE
Gillette Pakistan Limited (formerly: Interpak Shaving Products Ltd.)	"P-5.3"/"P-5.3-1"	NONE
Procter & Gamble, spol s.r.o.	"P-5.30"	NONE
Procter & Gamble Home Products Private Limited (formerly: Personal Care Products Private Limited to Personal Care Products Limited to Procter and Gamble Home Products Limited)	"P-5.31"	"P-6.8"
Procter and Gamble SA (Pty) ltd	"P-5.32"	NONE
Procter & Gamble Marketing	"P-5.33"	NONE
Detergenti SA	"P-5.34"	NONE
Procter & Gamble SA Bulgaria EOOD	"P-5.35"	NONE
PT. Procter & Gamble Home Products Indonesia	"P-5.36"	NONE
Procter & Gamble Europe SA Singapore Branch	"P-5.37"	"P-6.14"
Procter & Gamble Vietnam Co. Ltd.	"P-5.38"	NONE
Procter & Gamble Vietnam Ltd.	"P-5.38-1"	NONE
Procter & Gamble Marketing Latvia Ltd., SIA	"P-5.39"	NONE
Procter & Gamble Australia, Pty Ltd	"P-5.4"	NONE
Procter & Gamble Technical Centers Ltd	"P-5.40"	NONE
Procter & Gamble Technical Centres Limited (formerly: Faxaudio Limited)	"P-5.40-1"	"P-6.47"
Procter & Gamble Indochina Company Limited	"P-5.41"	NONE
Procter & Gamble Indochina	"P-5.41-1"	NONE
Procter & Gamble d.o.o. za trgovinu	"P-5.42"	NONE
Procter & Gamble Pet Care (Australia) Pty Ltd	"P-5.43"	NONE
Procter & Gamble Gulf FZE	"P-5.44"	"P-6.35"
P&G K.K.	"P-5.45"	"P-6.15"
Procter & Gamble Korea S&D, Co.	"P-5.46"	NONE
P&G Korea S&D Co.	"P-5.46-1"	"P-6.16"
Procter & Gamble Korea, IE, Co.	"P-5.47"	NONE
Procter & Gamble International Operations SA Singapore Branch	"P-5.48"	"P-6.18"/"P-6.18-1"
P&G Israel M.D.O. Ltd	"P-5.49"/ "P-5.49-1"	NONE
Wella India Hair Cosmetics Pvt Ltd	"P-5.5"	NONE
Procter & Gamble Czech Republic s.r.o.	"P-5.50"	NONE

Client's Name	SEC Certification of Non-Registration of Company (Exhibit No.)	Certificate/ Articles of Incorporation/ Registration (Exhibit No.)
Procter & Gamble RSC Regi	"P-5.51"	NONE
Wella India Hair Cosmetics Private Limited (formerly: Gillette India Private Limited to Gillette Group India Private Limited)	"P-5.5-1"	"P-6.1"
Procter & Gamble Distribution SRL	"P-5.52"	"P-6.19"
Gillette Diversified Operations Pvt Ltd	"P-5.53"	NONE
Gillette Diversified Operations Private Limited (formerly: Wilkinsons Sword India Private Limited)	"P-5.53-1"	"P-6.26"
Gillette India Limited (formerly: Indian Shaving Products Limited)	"P-5.54"	"P-6.24"
Gillette Poland S.A.	"P-5.55"	NONE
Procter and Gamble DS Polska Sp. z.o.o	"P-5.56"	NONE
Gillette Poland International Sp. z.o.o.	"P-5.57"	NONE
Procter & Gamble Japan K.K.	"P-5.58"	"P-6.20"
Procter & Gamble Export Operations SARL, Taiwan Branch	"P-5.59"	NONE
Procter & Gamble - Rakona s.r.o.	"P-5.6"	NONE
Procter & Gamble Egypt Distribution	"P-5.60"	NONE
Procter & Gamble Egypt Distribution Ltd.	"P-5.60-1"	NONE
Procter & Gamble Egypt Supplies	"P-5.61"	NONE
Procter & Gamble Egypt Supplies Ltd.	"P-5.61-1"	NONE
Procter & Gamble Manufacturing SA	"P-5.62"	NONE
Procter and Gamble Manufacturing SA (Proprietary) Limited (former name: Moonrock Trading 7 (Proprietary) Limited)	"P-5.62.-1"	"P-6.28"
P&G Innovation Godo Kaisha	"P-5.63"	"P-6.22"
Cosmetic Suppliers Pty Ltd	"P-5.64"	NONE
PPS Hairwear Australia Pty Ltd (formerly: Gresham Direct Pty Ltd)	"P-5.65"	"P-6.27"
P.T. Procter & Gamble Operations Indonesia	"P-5.66"	"P-6.39"
Procter & Gamble Taiwan Sales Company Limited	"P-5.67"	"P-6.37"
Procter and Gamble Manufacturing SA (Pty) Ltd	"P-5.68"	NONE
Procter & Gamble Egypt	"P-5.7"	NONE
Procter & Gamble Egypt Ltd.	"P-5.7-1"	NONE
Procter & Gamble Hong Kong Limited	"P-5.8"	"P-6.2"
Hyginett Kft	"P-5.9"	NONE
Interpak Shaving Products Ltd.	NONE	NONE

Client's Name	SEC Certification of Non-Registration of Company (Exhibit No.)	Certificate/ Articles of Incorporation/ Registration (Exhibit No.)
Procter & Gamble Australia Pty Limited (formerly: Vick Products (Pty.) Limited to Richardson-Merrell Pty. Limited to Richardson-Vicks Pty Limited)	NONE	"P-6.40"
Procter & Gamble Holding (HK) Limited	NONE	NONE
Hyginett Magyar-Amerikai Higieniai Cikkeket Gyarto Kft	NONE	NONE
Richardson-Vicks SDN. Berhad (formerly: Richardson-Merrell SDN. Berhad)	NONE	"P-6.25"
Procter & Gamble Maroc SA	NONE	NONE
Procter & Gamble Distributing (New Zealand) Ltd	NONE	NONE
Modern Industries Company	NONE	NONE
Detergent Products AG	NONE	NONE
Procter & Gamble Home Products Limited	NONE	NONE
Procter & Gamble South Africa Pty Ltd	NONE	NONE
Procter and Gamble SA (Proprietary) Limited (formerly: Vick International (Proprietary) Limited to R-M Pharmaceuticals (Proprietary) Limited to Richardson-Vicks (Poprietary) Limited to Permark International (Proprietary) Limited)	NONE	"P-6.32"
Procter & Gamble Marketing Romania SRL	NONE	"P-6.9"
Detergenti SRL	NONE	NONE
Procter & Gamble Bulgaria EOOD	NONE	"P-6.13"
Procter & Gamble Europe SA (Procter & Gamble Europe AG/Procter & Gamble Europe Ltd)	NONE	"P-6.12"
SIA Procter & Gamble Marketing Latvia Ltd.	NONE	NONE
P & G Indochina/Procter and Gamble International S.A.R.L.- without English Translation	NONE	NONE
Procter & Gamble Indochina Ltd	NONE	NONE
Procter & Gamble Korea IE Yuhan Hoesa (Procter & Gamble Korea, IE, Co.)	NONE	"P-6.17"
Procter & Gamble Israel M.D.O. Ltd	NONE	"P-6.48"
Procter & Gamble Regionalis Szolgaltato Kft	NONE	NONE
Gillette India Ltd	NONE	NONE
Procter & Gamble Export Operations SARL (Procter & Gamble Export Operations GmbH/Procter & Gamble Export Operations LLC)	NONE	"P-6.21"
Procter & Gamble Manufacturing South Africa Pty Ltd	NONE	NONE
Cosmetic Suppliers Pty Limited (formerly: Haidressing	NONE	"P-6.23"

Client's Name	SEC Certification of Non-Registration of Company (Exhibit No.)	Certificate/ Articles of Incorporation/ Registration (Exhibit No.)
Suppliers Pty. Limited)		
Procter & Gamble Vietnam Ltd. - without English Translations	NONE	"P-6.33"

On the basis of the foregoing, only the following clients of Petitioner shall be considered non-resident foreign corporations doing business outside the Philippines, insofar as Petitioner's compliance with the *first* essential element is concerned, to wit:

Client's Name	SEC Certification of Non-Registration of Company	Certificate/ Articles of Incorporation/ Registration
The Procter & Gamble Company	"P-5"	"P-6"
Detergent Products Sarl (Detergent Products GmbH/Detergent Products LLC)	"P-5.23"	"P-6.11"
Procter & Gamble Europe SA Singapore Branch	"P-5.37"	"P-6.14"
P&G K.K.	"P-5.45"	"P-6.15"
P&G Korea S&D Co.	"P-5.46-1"	"P-6.16"
Procter & Gamble International Operations SA Singapore Branch	"P-5.48"	"P-6.18"/"P-6.18-1"
Procter & Gamble Distribution SRL	"P-5.52"	"P-6.19"
Procter & Gamble Hong Kong Limited	"P-5.8"	"P-6.2"
Procter & Gamble Japan K.K.	"P-5.58"	"P-6.20"
P&G Innovation Godo Kaisha	"P-5.63"	"P-6.22"
Procter & Gamble Taiwan Limited	"P-5.24"	"P-6.29"
Procter & Gamble Manufacturing (Thailand) Limited	"P-5.25-1"	"P-6.30"
Procter & Gamble Gulf FZE	"P-5.44"	"P-6.35"
Procter & Gamble Taiwan Sales Company Limited	"P-5.67"	"P-6.37"
P.T. Procter & Gamble Operations Indonesia	"P-5.66"	"P-6.39"
P&G Max Factor Godo Kaisha	"P-5.12"	"P-6.4"
Procter & Gamble Pakistan (Private) Limited	"P-5.18"	"P-6.41"
Procter & Gamble Tuketim Mallari Sanayi Anonim Sirketi	"P-5.27-1"	"P-6.45"
Procter & Gamble Korea	"P-5.28-1"	"P-6.6"

Relative to the *second* essential element, of the foregoing clients considered as non-resident foreign corporations doing business outside the Philippines, only the following have Service Agreements with Petitioner, to wit:

Client's Name	**Exhibits (Service Agreements)**
Procter & Gamble Europe SA Singapore Branch	"P-4.34"
P&G K.K.	"P-4.41"
Procter & Gamble International Operations SA Singapore Branch	"P-4.44"
Procter & Gamble Distribution SRL	"P-4.48"
Procter & Gamble Japan K.K.	"P-4.54"
P&G Innovation Godo Kaisha	"P-4.59"
Procter & Gamble Taiwan Limited	"P-4.21"
Procter & Gamble Manufacturing (Thailand) Limited	"P-4.22"
P.T. Procter & Gamble Operations Indonesia	"P-4.62"
P&G Max Factor Godo Kaisha	"P-4.10"

Notably, the said Service Agreements reveal that Petitioner must provide Financial Service & Solutions Services and Employee Services[90] to the above-stated clients. Thus, since the said services are not in the same category as "*processing, manufacturing or repacking of goods*", only the same complies with the *second* essential element.

However, for the purpose of the *third* essential element, there is no indication that the subject services were performed in the Philippines. In fact, in the said Service Agreements, it was provided that Petitioner shall render the services from all or any of its operational location, but it was not clearly indicated or defined where any or all of its operational locations are. Moreover, it was also provided that Petitioner may enter into specific agreement with any third party and with any affiliated P&G company, with the purpose of sub-contracting the services or activities that Petitioner deems it appropriate or necessary to render the purported services. Consequently, such stipulations cast doubt that the services were actually performed in the Philippines. Such being the case, the *third* essential element was not complied with.

Verily, at this juncture, Petitioner has already fell short in establishing that its sales or supply of services qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended. Needless to state, it is only when the sales of a VAT-registered person are zero-rated or effectively zero-rated that he/she/it may have the option of applying for the issuance of a tax credit

90 Chapter I, Par. 4.1 of Exhibits "P-4" series, Exhibit A to the Service Agreements.

certificate or refund of creditable input tax due or paid attributable to such sales.[91] Considering Petitioner's failure to establish its zero-rated or effectively zero-rated sales for the subject periods, the consolidated *Petitions for Review* must necessarily fail.

Consequently, it becomes unnecessary to look into Petitioner's compliance with the *fourth* essential element 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, and even with the remaining requisites to successfully obtain a credit/refund of input VAT, pursuant to Section 112 of the same Code, as amended.

It must be emphasized that actions for tax refund or credit, as in the present case, are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[92] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[93] Hence, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[94] Unfortunately for Petitioner, it has failed to prove such entitlement.

WHEREFORE, in light of the foregoing considerations, the consolidated *Petitions for Review* are **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

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91 Coca-Cola Bottlers Philippines, Inc. v Commissioner of Internal Revenue, G.R. No. 222428, July 19, 2018.

92 Commissioner of Internal Revenue v. S.C. Johnson & Son, Inc., G.R. No. 127105, June 25, 1999.

93 Kepco Philippines Corporation v. Commissioner of Internal Revenue, G.R. No. 179961, January 31, 2011 citing Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue, G.R. No. 159490, February 18, 2008.

94 Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 183531, March 25, 2015 citing J.R.A. Philippines, Inc. v. CIR, G.R. No. 171307, August 28, 2013.

ERLINDA P. UY
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 cases were assigned to the writer of the opinion of the Court.

ERLINDA P. UY
Associate Justice
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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice