REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

CITCO INTERNATIONAL SUPPORT SERVICES LIMITED-PHILIPPINE ROHQ *Petitioner,*	**CTA CASE NO. 10403** Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORE,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 18 2024 3:30 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before this Court is a Petition for Review,[1] filed on November 16, 2020 by CITCO International Support Services Limited-Philippine ROHQ ("CITCO" or "petitioner") against respondent Commissioner of Internal Revenue ("CIR" or "respondent"), praying that judgment be rendered ordering respondent to refund a total amount of Php17,277,953.74, representing petitioner's alleged excess and unutilized input value added tax ("VAT") for the first ("Q1") and second ("Q2") quarters of calendar year 2018 ("CY2018").

The Parties

Petitioner CITCO International Support Services Limited is a multinational company organized and existing under the laws of the Cayman Islands. It was duly licensed by the Securities and Exchange Commission ("SEC") to conduct business in the Philippines as a regional operating headquarters ("ROHQ") under the name CITCO International Support

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[1] Docket Vol. 1, pp. 7-141, with annexes.

Services Limited-Philippine ROHQ, with SEC Registration No. FS201223492.[2]

Petitioner is primarily engaged in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistics services; research and development services, and produce development; technical support and maintenance; data processing and communication; and business development. It is registered with the Bureau of Internal Revenue ("BIR") as a value-added tax ("VAT") taxpayer with identification number 008-438-837.[3] During the period of claim, petitioner's registered principal address is at 20th Floor, Philamlife Tower, 8767 Paseo de Roxas, Makati City.[4]

On the other hand, respondent is the Commissioner of the BIR, vested with the authority to decide, approve, and grant tax refunds pursuant to *Section 112 of the National Internal Revenue Code of 1997, as amended* ("Tax Code"). He may be served with summons and other Court processes at the BIR National Office Building, Agham Road, Diliman, Quezon City.[5]

<u>The Facts</u>

On July 15, 2020, petitioner filed with the BIR VAT Credit Audit Division an application for refund of the alleged utilized and excess creditable input VAT for a total amount of Php17,277,953.74 attributable to its zero-rated sales for the period Q1 and Q2 of CY2018.[6]

On October 15, 2020, petitioner received a letter, dated September 17, 2020,[7] stating the BIR's denial of the entire amount of claim, citing the following reasons:

> Verification and evaluation of the documents submitted pursuant to Annex A.1 of the aforecited RMC disclosed the following findings which impeded a favorable action to your claim, to wit:
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> 1. Disallowed input VAT of Php36,230.70 due to non-compliance with the invoicing requirements under Section 113 of the NIRC of 1997, as amended; and

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2 Exhibit "P-1", *id.*, p. 47.
3 Exhibit "P-33", Docket Vol. 2, p. 601.
4 See Petition for Review, Docket Vol. 1, p. 8; see also Exhibits "P-34" and "P-35", Docket Vol. 2, pp. 602-603; 606-607.
5 See Joint Stipulation of Facts and Issues, Docket Vol. 1, p. 215.
6 Exhibit "P-37", *id.*, p. 135.
7 Exhibit "P-40", *id.*, p. 140.

2. While the Apostilled Bank Certification issued by Citco Banking Corporation N.V., a bank located in Curacao, was provided to establish that the proceeds from export sales were remitted to the claimant's bank account in the said foreign bank, the same was not coursed through a Philippine Bank. Hence, no bank certification was submitted to prove inward remittance as required under 5.1 of Annex "A" and item 11.7 of Revenue Memorandum Circular 47-2019.

Aggrieved, petitioner filed the instant Petition for Review on November 16, 2020, to which respondent filed his Answer[8] on February 17, 2021.

Petitioner submitted its pre-trial brief, initially through email, on April 8, 2021.[9] Hardcopies were thereafter filed with the Court on May 20, 2021.[10] On the other hand, respondent submitted his pre-trial brief[11] on July 1, 2021. The pre-trial conference then ensued on July 5, 2021.[12]

On July 23, 2021, petitioner filed a motion for the commissioning of Atty. Edward M. Menor as Independent Certified Public Accountant (ICPA).[13] The same was granted during the video conference hearing held on November 15, 2021.[14] On even date, the parties submitted their Joint Stipulation of Facts and Issues.[15] Thereafter, on October 13, 2021, the Court issued its pre-trial order.[16]

To support its claim, petitioner presented the testimony of its Senior Financial Controller, Ms. Jocelyn L. Payuyo, who executed her Judicial Affidavit[17] dated December 4, 2023. She was presented to the Court on November 15, 2021.[18]

Petitioner also submitted the Judicial Affidavit of ICPA Atty. Menor, on March 11, 2022. Prior to this, the ICPA report[19] was filed directly with the Court on February 16, 2022. Based on said report, ICPA Atty. Menor recommended the refund of Php14,867,290.24 out of petitioner's claim for refund of Php17,277,953.74. He was then called as witness before the Court on March 30, 2022.[20]

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8 Answer, *id.*, 150-159.
9 See Manifestation and Submission dated May 20, 2021, *id.*, pp. 164-165.
10 Petitioner's Pre-trial Brief, *id.*, pp. 168-180.
11 Respondent's Pre-trial Brief, *id.*, pp. 184-186.
12 See Minutes of hearing dated July 5, 2021, *id.*, p. 188.
13 Motion for Commission, Independent Certified Public Accountant, *id.*, pp. 198-200.
14 See Order dated November 15, 2021, *id.*, pp. 236-237.
15 Joint Stipulation of Facts and Issues, *id.*, pp. 215-223.
16 Pre-Trial Order, *id.*, pp. 226-235.
17 Judicial Affidavit of Ms. Jocelyn L. Payuyo, *id.*, pp. 29-45.
18 See Order dated November 15, 2021, *id.*, pp. 236-237.
19 Report of the Independent Certified Public Accountant, CITCO International Support Services Limited-Philippine ROHQ, CTA Case No, 10403, *id.*, pp. 238-290.
20 See Minutes of hearings dated March 30, 2022, *id.*, p. 307.

On May 12, 2022, petitioner submitted its Formal Offer of Evidence,[21] to which respondent filed its Comment[22] on May 20, 2022. In the resolution[23] on the offer of evidence, dated July 21, 2022, the Court noted the following:

1. While Exhibit "P-31-B" is offered as "Certification of Non-registration of Company of CITCO (Mauritius) Limited", the same is identified by petitioner's witness as "Certification of Non-registration of Company of CITCO (Mauritius) Limited-Trust";

2. There are discrepancies in the description of Exhibit "P-33" in the FOE, JA of Ms. Payuyo, the documents attached to the said JA and the documents duly marked as follows:

Exhibit No.	Description in the Formal Offer of Evidence (FOE)	Description in the JA of Ms. Jocelyn L. Payuyo	Description of document attached to the JA and the document marked
P-33	BIR Certificate of Registration beading Office Control No. 9RC0000355306 issued on 14 February 2013	BIR Certificate of Registration bearing Office Control No. 9RC000553130 issued on February 8, 2013	BIR Certificate of Registration bearing Office Control No. 9RC0000355306; registration date indicated is February 8, 2013; date stamped in the lower left portion of the document is February 14, 2013

3. Exhibits "P-2320-B" and "P-2330-C" are erroneously marked as "P-2321-B" and "P-2321-C", respectively; and

4. Exhibits "P-50", "P-67 to "P-72", "P-75 to P-76", "P-79 to P-80", "P-85 to P-86", "P-89 to P-91", "P-93 to P-95"; "P-104", and "P-167 to P-168", are partially scanned, as the respective years indicated therein are not completely scanned.

As regards the *fourth* item above, petitioner resubmitted, on August 22, 2022, photocopies of the same documents for the intention of removing any doubt on the probative value of the said exhibits.[24]

On the other hand, respondent offered the testimony of Revenue Office Michele J. Alonzo-Bucayu of the VAT Credit Audit Division (VCAD). Her Judicial Affidavit[25] in lieu of actual direct examination was submitted on October 11, 2022, and she was presented before the Court on October 18, 2022.[26]

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21 Formal Offer of Evidence for Petitioner with Motion for Amendment of Marking, Docket Vols. 1 and 2, pp. 332-609.
22 Comment (On Petitioner's Formal Offer of Evidence), Docket Vol. 2, pp. 613-614.
23 Resolution dated July 21, 2022, *id.*, pp. 619-622.
24 See Manifestation and Submission, *id.*, pp. 625-649.
25 Judicial Affidavit of Revenue Officer Michele J. Alonzo-Bucayu, *id.*, pp. 658-662.
26 See Minutes of hearing dated October 18, 2022, *id.*, p. 664.

Respondent submitted his Formal Offer of Evidence[27] on October 21, 2022. The same was resolved by the Court on January 5, 2023.[28]

On February 16, 2023, petitioner submitted its Memorandum.[29] Meanwhile, respondent manifested on December 22, 2022 that he will adopt the arguments stated in Answer filed before this Court, in place of his memorandum, considering that it already contains all the arguments and defenses subject of this case.[30]

After noting the foregoing submission and manifestation, the instant Petition was submitted for decision on April 18, 2023.[31]

Hence, this Decision.

The Issue

The sole issue for this Court's resolution is:

> WHETHER PETITIONER IS ENTITLED TO A REFUND IN THE TOTAL AMOUNT OF PHP17,277,953.74 REPRESENTING ALLEGED UNUTILIZED AND EXCESS INPUT VAT ATTRIBUTABLE TO ZERO-RATED SALES FOR Q1 AND Q2 OF CY2018.[32]

Arguments of the Parties

Petitioner's Arguments[33]

Petitioner argues that it is entitled to a VAT refund in the total amount of Php14,867,290.24 representing the duly substantiated unutilized and excess creditable input VAT attributable to export zero-rated sales for Q1 and Q2 of CY2018, as recommended by ICPA Atty. Menor. Specifically, petitioner contends that its export sales to its non-resident foreign affiliates in Q1 and Q2 of CY2018 are VAT zero-rated; such export sales are properly supported by VAT official receipts and billing invoices in compliance with the invoicing requirements provided under the Tax Code and relevant Revenue Regulations, and are properly reported in its VAT returns; the input tax subject of the claim are duly paid, attributable to petitioner's export sales and have not been applied against output tax; the payment for petitioner's services is in

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27 Formal Offer of Evidence, *id.*, pp. 669-672.
28 See Resolution dated January 5, 2023, *id.*, pp. 696-697.
29 Memorandum for Petitioner, *id.*, pp. 698-720.
30 See Manifestation, *id.*, pp. 682-684.
31 See Minute Resolution dated April 18, 2023, *id.*, p. 725.
32 See Pre-Trial Order, Docket Vol. 1, p. 216.
33 See Memorandum for Petitioner, Docket Vol. 2, pp. 703-720.

acceptable foreign currency accounted for in accordance with the rules regulations of the Bangko Sentral ng Pilipinas (BSP); and that the instant Petition for Review was timely filed.

Respondent's Counter-Arguments[34]

On the other hand, respondent maintains that the instant Petition for Review must be denied due to petitioner's failure to substantiate the claim for refund at the administrative level. He avers that since a decision has been rendered at the administrative level, the Court is now limited in determining whether the decision is proper.

Further, respondent posits that refund should be denied for failure to comply with the mandatory invoicing requirements pursuant to Section 112 of the Tax Code, as amended, and *Revenue Memorandum Circular No. 47-2019.*[35]

Lastly, respondent states that this case, being a tax refund, partakes the nature of a tax exemption, thus should be construed *strictissimi juris* against the claimant and liberally in favor of the government.

The Ruling of the Court

We deny the instant Petition for Review.

The claims for refund or issuance of a tax credit certificate of excess or unutilized creditable input VAT attributable to zero-rated sales are governed by *Sections 112(A) and (C) of the Tax Code*, as implemented by *Section 4.112.1 of the Revenue Regulations (RR) No. 16-2005*,[36] as amended by *RR No. 13-18*,[37] which respectively provide:

> 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*

[34] See Answer; Docket Vol. 1, pp. 163-171.

[35] Revised Guidelines and Mandatory Requirements for the Processing and Grant of Value-Added Tax (VAT) Refund Claims Within the 90-Day Period Pursuant to Section 112 of the Tax Code of 1997, as Amended, April 16, 2019.

[36] Consolidated Value-Added Tax Regulations of 2005, September 1, 2005.

[37] Regulations Implementing the Value-Added Tax Provisions under the Republic Act (RA) No. 10963, or the "Tax Reform for Acceleration and Inclusion (TRAIN)," Further Amending Revenue Regulations (RR) No. 16-2005 (Consolidated Value-Added Tax Regulations of 2005), as Amended, March 15, 2018.

against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the *acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP):* Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods 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.

. . . .

(C) Period within which Refund or Tax Credit of Input Taxes shall be Made. – In proper cases, *the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) [now 90]*[38] *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.*

. . . .

SEC. 4.112-1. *Claims for Refund/Credit of Input Tax.* –

(a) Zero-rated and Effectively Zero-rated Sales of Goods, Properties or Services

A VAT-registered person whose sales of goods, properties or services are zero-rated or effectively zero-rated may apply for the issuance of a tax refund of input tax attributable to such sales. The input tax that may be subject of the claim shall exclude the portion of input tax that has been applied against the output tax. The *application should be filed within two (2) years after the close of the taxable quarter when such sales were made.*

In case of zero-rated sales under Secs. 106(A)(2)(a)(1) and (3), Secs. 108(B)(1) and (2) of the Tax Code, the payments for the sales must have been made in *acceptable foreign currency duly accounted for in accordance with the BSP rules and regulations.*

Where the taxpayer is engaged in both zero-rated or effectively zero-rated sales and in taxable (including sales subject to final withholding VAT) or exempt sales of goods, 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, only the proportionate share of input taxes allocated to zero-

[38] As amended under Section 36 of Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion (TRAIN) Law, effective January 1, 2018.

rated or effectively zero-rated sales can be claimed for refund or issuance of a tax credit certificate.

> In the case of a person engaged in the transport of passenger and cargo by air or sea vessels from the Philippines to a foreign country, the input taxes shall be allocated ratably between his zero-rated sales and non-zero-rated sales (sales subject to regular rate, subject to final VAT withholding and VAT-exempt sales).
> (Italics supplied.)

In accordance with the foregoing provisions, the Supreme Court has jurisprudentially established certain requirements which must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT. Said requisites may be classified into certain categories:

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

1. the administrative claim with the BIR should be filed within two ("2") years after the close of the taxable quarter when the pertinent zero-rated sales were made;[39]
2. that in case of full or partial denial of the refund claim, or the failure on the part of the respondent to act on the said claim within a period of one hundred twenty ("120") days, the judicial claim should be filed with this Court, within thirty ("30") days from receipt of the decision or after the expiration of the said 120-day period;[40]

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

3. the taxpayer is a VAT-registered person;[41]

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

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[42]
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;[43]

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

6. the input taxes are not transitional input taxes;[44]

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39 Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue, G.R. No. 191495, July 23, 2018.
40 *Ibid.*
41 Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 166732, April 27, 2007; Southern Philippines Power Corporation v. Commissioner of Internal Revenue, G.R. No. 179632, October 19, 2011; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, November 25, 2009.
42 *Ibid.*
43 *Ibid.*
44 *Ibid.*

7. the input taxes are due or paid;[45]
8. the input taxes have not been applied against output taxes during and in the succeeding quarters;[46] and
9. 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.[47]

Upon review of the evidence offered by the parties, We find that petitioner failed to comply with these requisites and is thus not entitled to the refund of input VAT.

The Court is not limited by the evidence presented in the administrative claim; the taxpayer is allowed to present additional evidence with the CTA to support its claim for tax refund.

It must be emphasized that in cases filed before this Court, which are litigated *de novo*, taxpayer-claimants must prove every minute aspect of their case.[48] Thus, petitioner must rightfully show compliance with the abovementioned requisites. The absence of any of the requirements constitutes a valid ground for the denial of the claim.

Accordingly, the Court disagrees with the respondent's position that since an unfavorable decision has already been rendered at the administrative level, petitioner cannot present before the Court documents not submitted at the administrative level. Respondent espouses the myopic view that the Court must be confined to a limited issue of whether there is indeed insufficiency of substantiation requirements to warrant the denial of the claim.

However, We reiterate that as a court of record, the CTA has the authority to determine issues raised by the parties even if these were not raised in the administrative level. Similarly, it has the authority to accept evidence offered by the taxpayer-claimant to the Court, regardless of whether these were submitted at the administrative level. This has been clearly explained by the Supreme Court in the case of *Commissioner of Internal Revenue vs. CE*

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45 *Ibid.*
46 *Ibid.*
47 *Ibid.*
48 Commissioner of Internal Revenue vs. CE Casecnan Water and Energy Company, Inc, G.R. No. 212727, February 1, 2023; Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.), G.R. No. 231581, April 10, 2019.

Casecnan Water and Energy Company, Inc.[49] citing *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*,[50] thus:

> The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. Thus, *the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the CTA to support its case for tax refund.*
>
> *Cases filed in the CTA are litigated de novo* as such, respondent "should prove every minute aspect of its case by presenting, formally offering and submitting x x x to the Court of Tax Appeals all evidence. . . required for the successful prosecution of its administrative claim." *Consequently, the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.*
> (Italics supplied.)

Given the foregoing, the Court is not limited to the evidence presented at the administrative level.

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

As regards the *first* and *second* requisites in refund claims relating to the timeliness of the administrative and judicial claims, the Court finds guidance from the ruling of the Supreme Court in case of *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue,*[51] which states:

> . . . a VAT-registered taxpayer who has excess and unutilized creditable input VAT attributable to zero-rated sales may file an application for cash refund or issuance of TCC (administrative claim) before the CIR who has primary jurisdiction to decide such application. *The period within which to file the administrative claim is two (2) years reckoned from the close of the taxable quarter when the pertinent zero-rated sales were made.*
>
> From the submission of complete documents to support the administrative claim, *the CIR is given a 120-day period to decide.* In case of whole or partial denial of or inaction on the administrative claim, the taxpayer may bring his judicial claim, through a petition for review, before the CTA who has exclusive and appellate jurisdiction. *The period to appeal is thirty (30) days counted from the receipt of the decision or inaction by the CIR.*
> (Italics supplied.)

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[49] G.R. No. 212727, February 1, 2023.
[50] G.R. No. 231581, April 10, 2019.
[51] G.R. No. 191495, July 23, 2018.

Based on the foregoing, there are three relevant periods governing claims for refund of input VAT attributable to zero-rated or effectively zero-rated sales:

1. the administrative claim for refund or issuance of tax credit certificate must be filed by the VAT-registered taxpayer within two years from the close of the taxable quarter when the sales were made;
2. the CIR has 90 days[52] to grant or deny the claim for refund from the date of submission of complete documents in support of the administrative application; and
3. the judicial appeal must be filed by the claimant within 30 days from the receipt of the decision denying the claim or after the expiration of the 90-day period, whichever comes first.[53]

In relation to the period granted to the CIR for acting on claims for refund, the running of the same shall be triggered by the simultaneous submission by the taxpayer-applicant of the tax refund claim together with the complete supporting documents, in accordance with the pronouncement of the Supreme Court in *Pilipinas Total Gas, Inc., v. Commissioner of Internal Revenue*,[54] to wit:

> To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing.
>
> In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected.
>
> It bears mentioning at this point that the foregoing summation of the rules should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014, such as the claim at bench. *As it now stands, RMC 54-2014 dated June 11, 2014 mandates that:*

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[52] As amended by Section 36 of the TRAIN Law. As petitioner filed its administrative claim in 2020, the 90-day period applies here.

[53] Commissioner of Internal Revenue vs. CE Casecnan Water and Energy Company, Inc., G.R. No. 212727, February 1, 2023.

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

In *RR No. 16-2020*, the BIR likewise suspended the 90-day period to act on refund claims, in areas where enhanced community quarantine (ECQ) or modified enhanced community quarantine (MECQ) is still in force. Such suspension was reiterated in *RR No. 27-2020*,[57] 57 dated October 6, 2020, which suspended the 90-day processing during the effectivity of R.A. No. 11494, otherwise known as the "Bayanihan to Recover as One Act".

Here, the BIR issued its denial letter on September 17, 2020, and the same was received by petitioner on October 15, 2020. Note that the foregoing dates are within the suspension period of the 90-day refund processing of the BIR. Given this, the reckoning point for the elevation of the refund application to the Court is the date of receipt of the BIR's decision on the administrative claim.

Counting 30 days from October 15, 2020, petitioner had until November 14, 2020 to elevate the refund claim to this Court. However, since the due date falls on a Saturday, the actual deadline is the next business or November 16, 2020. Hence, the instant Petition for Review was likewise timely filed.[58]

A summary of the relevant dates is shown in the table below:

Period Covered by the Refund Claim	Deadline of Filing Administrative Claim	Date of Filing of Administrative Claim	Receipt of BIR's decision, as the 90-day period was suspended	End of 30-day period to appeal	Date of Filing of the Petition for Review
January to March 2018	July 15, 2020	July 15, 2020	October 15, 2020	November 16, 2020 (Nov. 14 is a Saturday)	November 16, 2020
April to June 2018	August 31, 2020	July 15, 2020	October 15, 2020	November 16, 2020 (Nov. 14 is a Saturday)	November 16, 2020

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57 Regulations Suspending the Filing and Ninety (90)-Day Processing of Value-Added Tax (VAT) Refund Claims Anchored Under Section 112 of the Tax Code of 1997, as Amended, in Relation to Section 4(tt) of Republic Act (R.A.) No. 11494, Otherwise Known as the "Bayanihan to Recover as One Act", October 6, 2020.

58 See Petition for Review, *supra* note 1.

> *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 to 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 its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant.

> *Thus, under the current rule, the reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54-2014, since it requires him at the time he files his claim to complete his supporting documents and attest that he will no longer submit any other document to prove his claim.* Further, the taxpayer is barred from submitting additional documents after he has filed his administrative claim.
> (Italics supplied.)

Here, petitioner's claim covers the period Q1 (January to March) and Q2 (April to June) of CY2018. Counting two years form March 31 and June 30, 2018, petitioner originally had until March 31 and June 30 2020, within which to file its claim for VAT refund or tax credit with the BIR.

However, due to the unprecedented impact of the COVID-19 pandemic, the BIR, through *RR No. 16-2020*,[55] extended the deadline for the filing of refund claims for Q1 and Q2 of CY2018 to July 15 and August 31, 2020, respectively.

Based on the duly stamped received BIR Form No. 1914,[56] the administrative claim for both quarters was filed on July 15, 2020 and was thus seasonably filed.

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[55] 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.

[56] *Supra* note 6.

Petitioner is a VAT-registered entity.

Petitioner submitted its BIR Certificate of Registration ("COR")[59] OCN No. 9RC0000355306 with Tax Identification No. ("TIN") 008-438-837-000 duly stating that it is registered as an entity subject to VAT. Accordingly, petitioner is hereby deemed to be compliant with the *third* requisite.

Petitioner failed to establish that it performed zero-rated sales within the Philippines

The *fourth* requisite mandates that the taxpayer-applicant must be engaged in zero-rated or effectively zero-rated sales. The importance of such requisite is highlighted in the case of *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*,[60] to wit:

> A plain and simple reading of the aforequoted provisions reveals that if and when the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. ***It is only when the sales of a VAT-registered person are zero-rated or effectively zero-rated that he may have the option of applying for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales.*** Such is the clear import of the Court's ruling in San Roque, to wit:
>
> > *Under Section 110(B), a taxpayer can apply his input VAT only against his output VAT. The only exception is when the taxpayer is expressly "zero-rated or effectively zero-rated" under the law,* like companies generating power through renewable sources of energy. . . .
>
> (Emphasis and underscoring supplied.)

Moreover, as for the *fifth* requirement, the *Tax Code* requires that those zero-rated sales falling under *Sections 106 (A)(2)(a)(1) and (2), and 108 (B)(1) and (2)* thereof must be paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.

In its Amended VAT returns for Q1 and Q2 of CY2018, petitioner reported total zero-rated sales amounting to Php900,037,769.67 broken down as follows:

Period	Amount of Sales	
January to March 2018	Php	447,041,439.20
April to June 2018		452,996,330.47
Total S	**Php**	**900,037,769.67**

[59] *Supra* note 3.
[60] G.R. No. 222428, February 19, 2018.

Meanwhile, as per his report,[61] ICPA Atty. Menor testified that petitioner's zero-rated sales entirely came from services rendered to non-resident foreign affiliates.

Relative thereto, petitioner claims that its sale of services to non-resident foreign corporations (NRFCs) is subject to zero percent VAT, pursuant to *Section 108(B)(2) of the Tax Code*, as amended, which states:

> **SEC. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties. —*
>
> . . . .
>
> (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).***
> (Emphasis and italics supplied.)

Based on the foregoing, the following elements must be present for the sale or supply of services to be considered subject to VAT zero-rating:

1) The services fall under any of the categories under *Section 108(B)(2)*,[62] or, simply, be other than "processing, manufacturing, or repacking goods";[63]
2) The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines or is a non-resident person not engaged in business who is outside the Philippines when the services were performed;[64]

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[61] See ICPA Report, *id.*, p. 527.

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

[63] Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. 153205, 22 January 2007.

[64] Sitel Philippines Corporation (Formerly Clientlogic Phils. Inc.) v. Commissioner of Internal Revenue, G.R. No. 201326, 8 February 2017; Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 153205, 22 January 2007; Accenture, Inc. v. Commissioner of Internal Revenue, G.R. No. 190102, 11 July 2012.

3) The services must be performed in the Philippines[65] 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.[66]

(i) First element – Petitioner has proven that it renders services other than processing, manufacturing, or repacking of goods only to the extent of transactions covered by the submitted Service and Delegation Agreements

Petitioner claims that during Q1 and Q2 of CY2018, services were rendered to 31 of CITCO's foreign affiliates. The corresponding sales amounts were broken down in the *Schedule of Sales* attached as *Annex B to the ICPA Report*. These 31 foreign affiliates, as enumerated in the Ms. Payuyo's Judicial Affidavit, are as follows:

1. Aexo Technology, Ltd.;
2. Citco Bank and Trust Company (Bahamas) Ltd. – Bank;
3. Citco Banking Corporation N.V.;
4. Citco Bank Canada;
5. Citco Bank and Trust Company Limited;
6. Citco Vilnius, UAB;
7. Citco Custody Limited;
8. B&C Technology Ltd;
9. Citco C&T Holdings (Luxembourg) S.A.R.L;
10. Citco Fund Services (Europe) B.V.;
11. Citco Fund Administration (Cayman Islands) Limited;
12. Citco Fund Services (Australia) Pty Ltd.;
13. Citco Fund Services (Bahamas) Limited;
14. Citco Fund Services (Bermuda) Limited;
15. Citco Fund Services (Canada) Ltd;
16. Citco Fund Services (Cayman Islands) Limited;
17. Citco Fund Services (Curacao) B.V.;
18. Citco Fund Services (Ireland) Limited;
19. Citco Fund Services (Guernsey) Limited;
20. Citco Fund Services (Holdings) Limited;
21. Citco Fund Services (Jersey) Limited;

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

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

22. Citco Fund Services (Luxembourg) S.A.;
23. Citco Fund Services (Malta) Limited;
24. Citco Fund Services (USA) Inc. NY;
25. Citco Fund Services (San Francisco), Inc.;
26. Citco Fund Services (Singapore) Pte. Ltd.;
27. The Citco Group Limited;
28. Citco Hong Kong Limited;
29. Citco (Mauritius) Limited;
30. Citco Fund Services (Malvern), Inc.; and
31. Citco Pte Ltd.[67]

According to Ms. Payuyo, the services rendered are technical support and data processing in nature, and are supported by Service Agreements or Delegation Agreements executed by petitioner with each of these affiliates.[68]

It is noteworthy, however, that petitioner submitted only one Service Agreement[69] [with Citco Fund Administration (Cayman Islands) Limited] and one Delegation Agreement[70] (with Citco Bank and Trust Company Limited). It claims that these are just sample contracts, and that the other Service and Delegation Agreements executed with other foreign are affiliates are just the same as they are based on a template. Further, Ms. Payuyo stated in her Judicial Affidavit that since the documents are voluminous, they will be referred to and examined by the independent CPA for this Petition for Review.[71]

Indeed, ICPA Atty. Menor claims that he reviewed various documents, including contracts, presented by petitioner to prove that its customers are non-residents doing business outside the Philippines, to wit:

> 15. In support of Petitioner's zero-rated sales, it presented for my review documents proving that its customers are non-residents doing business outside the Philippines. These documents include contracts, SEC Certificates of Non-Registration and incorporation documents in foreign countries. These documents were already pre-marked by the petitioner's counsel as part of Exhibits P-2 to P-32, inclusive of sub-markings. Moreover, I have pre-marked the SEC Certificates I have examined as Exhibits P-2267 to P-2297.[72]

However, no further descriptions or attachments were made to the ICPA report to verify the completeness and existence of all the 31 Service or Delegation Agreements mentioned by Ms. Payuyo.

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[67] Judicial Affidavit of Ms. Jocelyn L. Payuyo, Docket Vol. I, pp. 31-32.
[68] *Id.* at p. 31.
[69] Exhibit "P-8", *id.*, pp. 55-70.
[70] Exhibit "P-9", *id.*, pp. 72-95.
[71] Judicial Affidavit of Ms. Jocelyn L. Payuyo., at p. 33.
[72] ICPA Report, *id.*, p. 245.

In this regard, We hereby find that petitioner failed to discharge the burden of proving that the services rendered are other than processing, manufacturing, or repacking goods, to the extent of the alleged zero-rated sales *not* covered by the Service and Delegation Agreements submitted to the Court.

Section 3 of the Service Agreement enumerates the services to be rendered by petitioner. Similarly, *Section 3 of the Delegation Agreement* lists petitioner's duties. In both contracts, We find that petitioner performs services other than processing, manufacturing, or repacking of goods; thus, sufficient for purposes of the foregoing requisite.

The Court is aware that petitioner's Certificate of Registration and License[73] specifically indicates that it shall engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistics services; research and development services, and produce development; technical support and maintenance; data processing and communication; and business development.

However, We cannot be expected to make a conclusion that the services rendered to the foreign affiliates are indeed the same as the qualifying services described above, absent the contract executed by the parties enumerating the services agreed upon.

This position is further bolstered by the fact the said Certificate of Registration and License was offered for the purpose of proving that petitioner is a foreign corporation, duly organized and existing under the laws of the Cayman Islands; and to prove that petitioner is licensed to do business in the Philippines as a regional operating headquarters with License No. FS201223492 and TIN 008-438-837.[74] Clearly, the Certificate was not intended to prove the sales declared by petitioner pertain to services falling under *Section 108(B)(2) of the Tax Code.*

Accordingly, as to the *first* element, petitioner was able to prove that the services fall under the categories stated in *Section 108(B)(2) of the Tax Code* ***only*** with respect to those rendered to (1) Citco Fund Administration (Cayman Islands) Limited; and (2) Citco Bank and Trust Company Limited.

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[73] *Supra* note 2.

[74] See Formal Offer of Evidence For Petitioner with Motion for Amendment of Marking, *supra* note 21.

(ii) Second element – Petitioner has sufficiently proven that its client-affiliates are non-resident foreign corporations

Anent the *second* element, petitioner submitted various documents to prove that the client-affiliates are non-resident foreign corporations. In this regard, we emphasize that jurisprudence[75] has established that there must be proof of two (2) components: (1) the client was established under the laws of a country which is not the Philippines; and (2) the client is not engaged in trade or business in the Philippines.

As for the first component, the fact that the client is not a domestic corporation can be proven by its SEC Certification of Non-Registration of Corporation. As regards the second component, the same can be evidenced by the client's certificate of incorporation in another country which confirms client's establishment under the laws of a foreign country. These were sufficiently explained by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*,[76] to wit:

> 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.**
>
> Proof of the abovementioned second component sets this case apart from Accenture, Inc. v. Commissioner of Internal Revenue and Site/Philippines Corp. v. Commissioner of Internal Revenue. In these cases, the claimants similarly presented SEC Certifications and client service agreements. However, the Court consistently ruled that documents of this nature only establish the first component (i.e., that the affiliate is foreign). **The absence of any other competent evidence** (e.g., articles of association/certificates of incorporation) proving the second component (i.e., that the affiliate is not doing business here in the Philippines) **shall be fatal to a claim for credit or refund** of excess input VAT attributable to zero-rated sales.
> (Emphasis supplied.)

At this point, since it has been established above that the *first* element was proven and complied with only to the extent of those rendered to Citco Fund Administration (Cayman Islands) Limited and Citco Bank and Trust Company Limited, the summary of documents provided below are only those pertinent to the said two affiliates:

[75] Chevron Holdings, Inc. (Formerly Caltex Asia Limited) vs. Commissioner of Internal Revenue, G.R. No. 215159, July 5, 2022; Commissioner of Internal Revenue vs. Macquarie Offshore Services Pty., Ltd. – Philippine Branch, G.R. No. 225169, October 6, 2021; Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd., G.R. No. 234445, July 15, 2020.

[76] G.R. No. 234445, July 15, 2020.

	To prove the *First* component	To prove the *Second* component
Citco Fund Administration (Cayman Islands) Limited	Certificate of Non-registration of Company issued by the SEC for Citco Fund Administration (Cayman Islands) Limited dated June 30, 2021[77]	Certificate of Incorporation of Citco Fund Administration (Cayman Islands) Limited[78]
Citco Bank and Trust Company Limited	Certificate of Non-registration of Company issued by the SEC for Citco Bank and Trust Company Limited dated June 30 2021[79]	Memorandum of Articles of Association of Citco Bank and Trust Company Limited[80]

Having duly established the two required components in determining whether a client is a NRFC, the Court finds that petitioner had satisfied the *second* element for its transactions with Citco Fund Administration (Cayman Islands) Limited and Citco Bank and Trust Company Limited.

(iii) Third element – Petitioner failed to establish that the services were rendered in the Philippines

With regard to the third element, petitioner failed to clearly establish its compliance therewith. It must be noted that the issue as to whether petitioner performed the services in the Philippines is a question of fact; hence, *it must be proven by specific evidence.*

Upon perusal of petitioner's Formal Offer of Evidence,[81] the Court notes that the Court offered the Judicial Affidavit of Ms. Payuyo "to prove that petitioner ***performed in the Philippines*** zero-rated export services such as technical support and data processing for its nonresident affiliate-clients in the 1st and 2nd quarters of the calendar year 2018." No other document was submitted to establish the foregoing element.

However, a perusal of the said Judicial Affidavit shows that no statement to such effect was categorically made by Ms. Payuyo. Instead, the nature of the services were merely discussed as follows:

77 Exhibit "P-8-B.", Docket Vol. 1, p. 412.
78 Exhibit "P-8-A", *id.*, pp. 410-411.
79 Exhibit "P-9-B", *id.*, p. 440.
80 Exhibit "P-9-A", *id.*, pp. 413-439.
81 *Supra* note 21.

Q11. In the first and second quarters of 2018, what was the business of Petitioner and who were its customers and clients?

A11. For the first and second quarters of 2018, the Petitioner rendered services to its customers, Citco affiliates, which are located and doing business outside the Philippines.

Q12. You stated that Petitioner renders services to its affiliates which are located and doing business outside the Philippines. Please explain the nature of these services.

A12. As an ROHQ, the Petitioner renders technical support and data processing in nature of its Citco affiliates which are non-resident Citco foreign corporations[82]

Moreover, a review of the Service Agreement[83] with Citco Fund Administration (Cayman Islands) Limited and of the Delegation Agreement[84] with Citco Bank and Trust Company Limited reveals that the fact of rendering services within the Philippines was not established therein.

As regards the Service Agreement, the following may be observed:

First, *Section 3.4* thereof states that "CISSLPHG covenants with CFACAY that sufficient persons will be employed by CISSLPHG and the requisite resources utilized in order that the Services are provided to CFACAY in a diligent, timely and competent manner. *The Services are rendered from the* ***location of CISSLPHG***."

Note that CISSLPHG, pursuant to the second paragraph of the same agreement, pertains to "Citco International Support Services Limited, a company incorporated under the laws of the Cayman Islans, having *registered office at 89, Nexus Way, 2nd Floor, Camana Bay, KYI-1205 Grand Cayman*, Cayman Islands, acting through its *regional operating headquarters in the Philippines*."

Based on the foregoing, the "location of CISSLPHG" remains ambiguous. The same can be construed as Cayman Islands since that is where the registered office is located; or the Philippines where the ROHQ operates.

Second, *Section 3.12* thereof states that "CISSLPHG shall not delegate or sub-contract any duties and functions arising under the terms of this Agreement to any person without prior written consent of CFACAY."

Stated differently, the performance of the services may be delegated with the written consent of the client. It should be noted, however, that no evidence or claim was adduced to establish that the services were rendered exclusively by petitioner within the Philippines.

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82 Judicial Affidavit of Ms. Jocelyn L. Payuyo, Docket Vol. 1, p. 31.
83 Exhibit "P-8", *id.*, pp. 55-70.
84 Exhibit "P-9", *id.*, pp. 72-95.

On the other hand, anent the Delegation Agreement, there is nothing in the provisions therein which specifies the location as to where the services of petitioner shall be performed. Moreover, the following may be noted:

First, Section 3(i) of the same agreement states that the Delegatee (petitioner) shall "provide personnel to CBCAY on a temporary basis at the request of CBCAY."

From the foregoing, it appears that the parties have agreed that personnel of petitioner may be assigned to work with the client which, as stated in the recitals portion of the agreement, is located in Cayman Islands. In such case, the services cannot be deemed as rendered within the Philippines.

Second, Section 5 (a) thereof states that "[s]ubject to the prior written approval of CBCAY, the Delegatee (petitioner) may, in the performance of its duties and in the exercise of any of the powers vested in it hereunder, act by an authorized officer or officers for the time being and employ and pay an agent or agents at the expense of the Delagatee to perform or concur in performing any of the duties required to be performed hereunder."

Similar to the above observation on the Service Agreement, it appears that the performance of the services in the subject Delegation Agreement may be assigned with the written consent of the client. Likewise, no evidence or claim was given by petitioner to establish that the services were rendered exclusively by petitioner within the Philippines.

Accordingly, the Court hereby finds that petitioner failed to fulfill the *third* requisite, for the granting of the input VAT refund.

It is well-settled that tax refunds are in the nature of a claim for exemption and, therefore, the law is construed in *strictissimi juris* against the taxpayer. Accordingly, the pieces of evidence presented entitling a taxpayer to an exemption must also *strictissimi* scrutinized and must be duly proven.[85] In this case, petitioner was not able to prove with competent evidence its entitlement to a refund or issuance of a tax credit certificate.

In light of the above discussions, it becomes unnecessary to determine whether petitioner fulfilled the remaining requisites for granting a refund of input VAT for the period Q1 and Q2 of CY2018.

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

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[85] Atlas Consolidated Mining and Development Corporation v. CIR, G.R. No. 159490, February 18, 2008.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

I CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

I attest that the conclusion 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
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