REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

PACIFIC OCEAN MANNING, INC.,	**CTA CASE NO. 9901**
Petitioner,	Members:
	UY, *Chairperson,*
-versus-	**RINGPIS-LIBAN,** *and*
	MODESTO-SAN PEDRO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	NOV 10 2022 2:30 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This Petition for Review ("Petition"), filed by petitioner, **PACIFIC OCEAN MANNING, INC.,** against respondent, **COMMISSIONER OF INTERNAL REVENUE** ("CIR"), prays that the Court render judgment declaring petitioner as entitled to a tax refund/credit of its unutilized input tax credits in the amount of Thirteen Million Forty Four Thousand Two Hundred Six and 75/100 Pesos (Php13,044,206.75), representing unutilized input taxes attributable to petitioner's zero-rated sales covering the period 1 January 2016 to 31 December 2016.[1]

The Parties

Petitioner is a domestic corporation organized and licensed to do business in the Philippines, with principal office address at Aseana Building II, Bradco Avenue, Aseana Business Park, Baclaran, Paranaque City. It is registered with the Bureau of Internal Revenue ("BIR") as a Value Added Tax ("VAT") taxpayer in accordance with ***Section 236 of the National Internal Revenue Code, as amended, ("NIRC")*** as evidenced by BIR Form 2303 or Certificate of Registration Bearing OCN9RC0000916169E.[2]

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[1] See Statement of the Case in the Pre-Trial Order, Records, Vol. 1, p. 304.

[2] See Facts in the Pre-Trial Order, *id.*, p. 305; Exhibit "P-3", *id.*, p. 410; Exhibits "P-5" and "P-5-A", *id.*, pp. 412-427.

Respondent is the duly appointed Commissioner of the BIR, with principal office address at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

The Facts

On 27 April 2016, petitioner filed its Amended Quarterly VAT Return for the first quarter of taxable year ("TY") 2016.[4] Petitioner then filed its Quarterly VAT Returns for the second and third quarters of TY 2016 on 25 July 2016[5] and 21 October 2016,[6] respectively. Finally, it filed its Amended Quarterly VAT Return for the fourth quarter of TY 2016 on 30 March 2017.[7]

On 27 March 2018, petitioner filed administrative claims for refund of its excess input tax amounting to Fourteen Million Seven Hundred Ninety Five Thousand Seventy Two and 27/100 Pesos (Php14,795,072.27), covering the period 1 January 2016 to 31 December 2016, with the BIR's VAT Credit and Audit Division ("VCAD").[8]

Upon filing its administrative claims, petitioner submitted the requirements on the mandatory checklist for input VAT refund, aside from proof that the Non-Resident Foreign Corporation ("NRFC") buyer of services is not doing business in the Philippines (e.g. original copy of the certification from the Securities and Exchange Commission ("SEC"), proof that the NRFC is not a registered corporation in the Philippines, and a certificate of incorporation from the foreign country as certified by an authorized official of the NRFC).[9]

On 27 March 2018, Tax Verification Notice No. TVN-201700022618 was issued by respondent, assigning the verification of petitioner's administrative claims to Revenue Officers ("RO") Estela Buenviaje, Jonathan Simon, and Ma. Cleoffe Tasarra.[10]

On 5 July 2018, petitioner received from the BIR a letter, dated 18 June 2018, denying petitioner's administrative claims. It provided that, after verification of the documents which petitioner submitted, it found that petitioner is liable for deficiency VAT in the amount of Three Million Eight Hundred Fourteen Thousand Eight Hundred Thirteen and 30/100 Pesos (Php3,814,813.30) and that, as such, petitioner's claim for VAT refund is

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3 *Ibid.*
4 Exhibit "P-7", BIR Records, pp. 180-183.
5 Exhibit "P-8", *id.*, pp. 151-153.
6 Exhibit "P-9", *id.*, pp. 125-127.
7 Records, Vol. 1, pp. 213-215.
8 *See* Facts in the Pre-Trial Order, *id.*, p. 305; Exhibits "P-12", "P-12-A", "P-12-B" and "P-12-C", BIR Records, pp. 226-229.
9 Exhibit "P-13" and "R-4", *id.*, p. 231.
10 Exhibit "P-14", Records, Vol. 1, p. 428.

unmeritorious. The computation of this deficiency VAT was made as follows:[11]

Original Amount of Claim		Php14,795,072.27
Less: Adjustments per Verification		
"Big-ticket" purchases	Php5,497,855.68	
Output VAT for the period of claim	8,037.37	
Output VAT on other taxable income	3,931,074.96	9,436,968.01
Amount Recommended for VAT Refund per VCAD Verification		Php5,358,104.26
Less: Adjustments per Review		
Disallowed input VAT not deducted from the claim per verification	Php20,475.06	
Disallowed input VAT per ITS verification	2,078.57	
Disallowed ripened portion of deferred input VAT	27,409.00	
Input VAT attributable to exempt sales	9,113,131.79	
Output VAT on undeclared sales	9,823.14	Php9,172,917.56
Deficiency Input VAT		**Php3,814,813.30**

On 3 August 2018, petitioner filed the instant Petition, appealing the denial of its administrative claims.[12]

On 11 October 2018, this Court issued Summons to respondent to file an Answer to the Petition.[13]Respondent filed, through registered mail, his Answer (With Special and Affirmative Defenses) through registered mail on 21 November 2018.[14]

On 29 November 2018, respondent elevated the BIR Records.[15]

On 3 December 2018, a Notice of Pre-Trial Conference was issued by this Court setting the Pre-Trial on 28 March 2019.[16] Respondent then filed his Pre-Trial Brief on 21 March 2019.[17] On the same date, respondent submitted the Judicial Affidavits of RO Buenviaje[18] and RO Janine Mycka P. Espiritu.[19] Petitioner, meanwhile, filed its Pre-Trial Brief[20] and submitted the Judicial Affidavit of Leonardo A. Aborot on 22 March 2019.[21]

On 23 March 2019, Pre-Trial ensued.[22]

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[11] Judicial Affidavit of Leonardo A. Aborot, Exhibit "P-17", *id.*, p. 170; Exhibit "P-2", *id.*, p. 408.
[12] *Id.*, pp. 10-87.
[13] *Id.*, pp. 100-101.
[14] *Id.*, pp. 107-118.
[15] *Id.*, pp. 119-120.
[16] *Id.*, pp. 121-122.
[17] *Id.*, pp. 124-128.
[18] Exhibit "R-6", *id.*, pp. 129-144.
[19] Exhibit "R-7", *id.*, pp. 145-160.
[20] *Id.*, pp. 231-237.
[21] Exhibit "P-17, *id.*, p. 161-230.
[22] *Id.*, pp. 123-125; Exhibit "P-16", *id.*, pp. 61-119.

The parties then filed their Joint Stipulation of Facts and Issues on 11 April 2019.[23]

On 12 April 2019, petitioner filed its Motion to Commission an Independent Certified Public Accountant ("ICPA"),[24] attaching thereto the Judicial Affidavit of Prudencio F. Tatunay and other documents showing the competence and independence of such person to act as an ICPA.[25] During a hearing conducted on 15 May 2019, this Court appointed Mr. Tatunay as an ICPA.[26]

On 10 May 2019, this Court issued a Pre-Trial Order.[27]

On 14 June 2018, ICPA Tatunay submitted the ICPA Report.[28]Thereafter, on 24 June 2018, petitioner submitted the Judicial Affidavit of Prudencio F. Tatunay in relation to the ICPA Report.[29]

On 27 June 2019, petitioner submitted the Supplemental Judicial Affidavit of Leonardo A. Aborot, which covered additional matters not testified upon in his initial Judicial Affidavit[30]and was admitted as part of the records of this case on 1 July 2019.[31]

On 3 July 2019, petitioner presented its witness, Leonardo A. Aborot, and its ICPA, Prudencio F. Tatunay.[32]

Petitioner filed its Formal Offer of Evidence on 17 July 2019,[33] while respondent filed his Comment (to Petitioner's Formal Offer of Evidence) on 9 August 2019.[34] In a Resolution, dated 14 October 2019, this Court admitted all of petitioner's Exhibits, except for Exhibit "P-11", for failure to correspond with the document actually marked.[35]

On 5 November 2019, respondent filed a Motion to Dismiss the case based on lack of jurisdiction.[36] On 28 November 2019, petitioner filed a Comment thereto on 28 November 2019.[37] The Motion to Dismiss was

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[23] *Id.*, pp. 254-260.
[24] *Id.*, pp. 290-292.
[25] *Id.*, pp. 261-289.
[26] *Id.*, pp. 315-318.
[27] *Id.*, pp. 304-310.
[28] Exhibit "P-21", *id.*, pp. 324-353.
[29] Exhibit "P-22", *id.*, pp. 358-378.
[30] Exhibit "P-24", *id.*, pp. 380-391.
[31] *Id.*, pp. 392-393.
[32] *Id.*, pp. 394-396.
[33] *Id.*, pp. 397-439.
[34] *Id.*, pp. 448-451.
[35] *Id.*, pp. 452-454.
[36] *Id.*, pp. 455-460.
[37] *Id.*, pp. 463-472.

ultimately denied on 10 March 2022, with this Court affirming its jurisdiction over the instant case.[38]

On 7 October 2020, respondent presented his witnesses, ROs Buenviaje and Espiritu.[39]

On 22 October 2020, respondent filed his Formal Offer of Evidence,[40] to which petitioner filed a Comment.[41] In a Resolution, dated 3 February 2021,[42] this Court admitted all of respondent's Exhibits, except Exhibit "R-3", for not being properly marked.

On 9 March 2021, petitioner filed its Memorandum on 9 March 2021,[43] while respondent filed his Memorandum through registered mail on 20 October 2021.[44]

Thus, on 15 November 2021, this Court issued a Resolution submitting the instant case for Decision.[45]

Hence, this Decision.

The Issues[46]

> "WHETHER OR NOT PETITIONER HAS ZERO-RATED OR EFFECTIVELY ZERO-RATED SALES THAT WILL RESULT IN INPUT VALUE-ADDED TAXES THAT MAY BE REFUNDED";
>
> "WHETHER OR NOT PETITIONER'S INPUT TAXES CLAIMED ARE ATTRIBUTABLE TO ZERO-RATED OR EFFECTIVELY ZERO-RATED SALES"; AND
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> "WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND FOR ITS ALLEGED UNUTILIZED INPUT VAT IN THE TOTAL AMOUNT OF PHP13,044,206.75 COVERING THE PERIOD 01 JANUARY 2016 TO 31 DECEMBER 2016."

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38 *Id.*, pp. 473-477.
39 Records, Vols. 1-2, pp. 484-486.
40 Records, Vol. 2, pp. 487-493.
41 *Id.*, pp. 494-499 and pp. 501-509.
42 *Id.*, pp. 519-521.
43 *Id.*, pp. 522-540 and pp. 542-561.
44 *Id.*, pp. 583-594.
45 *Id.*, pp. 596-597.
46 *See* Issues in the Pre-Trial Order, Records, Vol. 1, pp. 305-306.

Arguments of the Parties

Petitioner's Arguments[47]

Petitioner avers the following in its Memorandum:

a) The Output VAT Assessment in the amount of Three Million Nine Hundred Thirty One Thousand Seventy Four and 96/100 Pesos (Php3,931,074.96) on other taxable income is not proper;

   i. As verified by the ICPA Report, these other taxable income was, in fact, derived by petitioner from its non-resident foreign clients as part of its supplemental services in the deployment of its seafarers. These amounts pertain to vessel administration and mobilization fees, which are the sums received by petitioner from its non-resident foreign clients on account of the former's obligation to ensure that professional certificates and travel documents, particularly, the processing of passports and seamen books, were properly secured;

   ii. Moreover, these amounts were also part of the remittances received through the banking system in accordance with the Bangko Sentral ng Pilipinas ("BSP") Regulations, and thus, subject to zero-rated VAT pursuant to ***Revenue Regulations No. 16-2005***;

   iii. As these other taxable income are derived from services rendered to NRFCs, the same should not result in output VAT liability but should be subjected to VAT at zero-percent. Hence, the output VAT imposed by the VCAD on other taxable income must be reconsidered and not deducted against petitioner's claim for tax credit or refund;

b) The input VAT in the amount of Nine Million One Hundred Thirteen Thousand One Hundred Thirty One and 79/100 Pesos (Php9,113,131.79) is attributable to zero-rated sales and not to exempt sales;

   i. Based on the evidence it offered, petitioner was able to prove that the supply of services to V. Ships UK, Ltd. (*i.e.*, the alleged zero-rated sales subject of the present claim for input VAT refund) is subject to VAT at a rate of zero percent;

[47] Records, Vol. 2, pp. 757-785.

ii. This can be shown by the Manning Agency Agreement between petitioner and V. Ships UK, Ltd. The said agreement is clear that the services to be rendered by petitioner are not in the same category as processing, manufacturing, or repacking of goods;

iii. Further, V. Ships UK, Ltd. is not doing business in the Philippines. This can be proven by the SEC Certificate of Non-Registration issued with respect to V. Ships UK, Ltd. stating that said entity is not registered in the Philippines as either a corporation or as a partnership;

iv. Moreover, the official receipts issued by petitioner to its non-resident foreign clients clearly show that the transactions have been subjected to a rate of zero percent VAT;

v. Likewise, as shown by the petitioner's bank remittances, the service rendered by petitioner to its non-resident foreign clients were paid in US dollars;

vi. As the services rendered to V. Ships UK, Ltd. are subject to zero-rated VAT, the input VAT attributable thereto can be claimed by petitioner for tax credit or refund; and

c) After addressing the above mentioned issues, petitioner is clearly entitled to a refund for excess input VAT for TY 2016 in the sum of Thirteen Million Forty Four Thousand Two Hundred Six and 75/100 Pesos (Php13,044,206.75).[48]

Respondent's Counter-Arguments[49]

Respondent counter argues as follows in his Memorandum:

a) Petitioner's judicial claim for refund was filed out of time.

i. Petitioner filed its administrative claims for input VAT refund on 27 March 2018. Under ***Section 112 (C) of the NIRC***, respondent had until 25 June 2018, the last day of the 90-day waiting period to decide on petitioner's claim for VAT refund. Since petitioner had not heard from respondent by said date, it should have already treated the same as a denial of its administrative claim and, as such, should have already filed a judicial claim before this Court within thirty (30) days therefrom. Accordingly, petitioner only had until 25 July 2018

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[48] Php3,931,074.96 Output VAT Assessment on Other Taxable Income plus Php9,113,131.79 attributable to VAT exempt sales.

[49] Records, Vol. 2, pp. 790-804.

to file its judicial claim with this Court. However, petitioner only filed the instant Petition on 3 August 2018. Hence, the instant Petition should be dismissed for lack of jurisdiction;

b) Petitioner is not entitled to refund;

i. Petitioner failed to present proof in the administrative level that the recipient of its services are NRFC;

ii. Following the Manning Agency Agreement presented by petitioner, V. Ships UK, Ltd. appears to be doing business in the Philippines when it appointed petitioner as its agent and legal representative. Hence, the said entity may not be considered as "other person doing business outside the Philippines;"

iii. Normally, the recipient of the services is also the payor of such services. The Manning Agency Agreement clearly provided that services were to be rendered to V. Ships UK, Ltd. However, in the case at bar, the recipient of the services (*i.e.*, V. Ships UK, Ltd.) and the payor of such services (*i.e.*, V. Ships Crew, Ltd.) are two different entities; and

iv. Petitioner failed to show proof of incorporation of the non-resident foreign clients as required by jurisprudence.

The Ruling of the Court

The instant Petition for Review must be denied.

Requisites for claiming unutilized input VAT attributable to zero-rated sales.

The provision that governs the present claim for refund of unutilized input VAT attributable to zero-rated sales is ***Section 112 (A) and (C) of the NIRC***, which reads:

> "**SEC. 112. Refunds or Tax Credits of Input Tax. –**
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales,** except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That **in the case of zero-rated sales under** Section 106(A)(2)(a)(1), (2) and (b)

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

(B)...

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, **the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof:** Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: Provided, however, That failure on the part of any official, agent, or employee of the BIR to act on the application within ninety (90) days period shall be punishable under Section 269 of this Code."

(Emphasis, Ours.)

Based on the foregoing provisions, jurisprudence has laid down the following requisites that must be complied with by the taxpayer-applicant to successfully obtain a tax refund/credit:

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

1. the refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[50]

2. in case of full or partial denial of the refund claim, the judicial claim is filed with this Court, within thirty (30) days from receipt of the decision;[51]

[50] Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 155732, 27 April 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, 25 November 2009; AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182364, 3 August 2010.

[51] Steag State Power, Inc. vs. Commissioner of Internal Revenue, G.R. No. 205282, 14 January 2019; Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue, G.R. No. 168950, 14 January 2015.

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

3. the taxpayer is a VAT-registered person;[52]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[53]

5. for zero-rated sales under ***Section 106(A)(2)(1) and (2), 106(B), and 108(B)(1) and (2) of the NIRC***, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the BSP rules and regulations;[54]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes; [55]

7. the input taxes are due or paid;[56]

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;[57] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[58]

At this juncture, it must be emphasized that cases filed before the CTA are litigated *de novo*.[59] As such, parties are expected to litigate and prove every minute aspect of their case anew by presenting, formally

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[52] Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 155732, 27 April 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, 25 November 2009; AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182364, 3 August 2010.

[53] *Ibid.*

[54] *Ibid.*

[55] *Ibid.*

[56] *Ibid.*

[57] Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 155732, 27 April 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, 25 November 2009.

[58] Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 155732, 27 April 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, 25 November 2009; AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182364, 3 August 2010.

[59] Commissioner of Internal Revenue v. Univation Motor Philippines, Inc., G.R. No. 231581, 10 April 2019.

offering, and submitting to the CTA all evidence required for the successful prosecution of its claim.[60] Consequently, petitioner must competently establish its claim for refund or tax credit following the foregoing requisites.

Petitioner's administrative and judicial claims for refund were timely filed. This Court has jurisdiction over the instant case.

It is settled that jurisdiction over the subject matter or the nature of an action is fundamental for a Court to act on a given controversy.[61] It is conferred only by law and not by the consent or waiver upon a Court which, otherwise, would have no jurisdiction over the subject matter of an action.[62]Lack of jurisdiction of the Court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[63] If the Court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The Court cannot decide the case on the merits.[64]

The Court of Tax Appeals ("CTA") is a Court of special jurisdiction and can only take cognizance of matters which are clearly within its jurisdiction. ***Section 7(a)(1) of Republic Act No. ("RA") 1125,***[65] ***as amended by RA 9282,***[66]provides:

> "Sec. 7· Jurisdiction. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>
> 2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau

60 *Id.*; Philippine Airlines, Inc. v. Commissioner of Internal Revenue, G.R. No. 206079-80 and 206309, 17 January 2018.
61 Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue, G.R. No. 185666, 4 February 2015, 749 SCRA 570.
62 *Ibid.*
63 *Id., citing* Laresma v. Abellana, G.R. No. 140973, 11 November 2004.
64 *Id., citing* Lt. Col. De Guzman, et al. v. Municipal Circuit Judge Escalona, et al., G.R. No. L- 51773, 16 May 1980.
65 AN ACT CREATING THE COURT OF TAX APPEALS.
66 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial[.]"

Based on the aforequoted provision of law, the CTA shall exercise exclusive appellate jurisdiction to review by appeal the decisions as well as the inaction by the respondent in cases involving refunds of internal revenue taxes. In cases where the ***NIRC*** provides a specific period for action, the respondent's inaction shall be deemed a denial.[67]

In relation to this, ***Sections 112 (A) and (C) the NIRC*** governs the filing of administrative and judicial claims for refund or tax credit of excess and unutilized input tax attributable to zero-rated or effectively zero-rated sales. This provision guides taxpayers as to how they can properly invoke this Court's jurisdiction in relation to their input VAT claims.

In ***Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue***,[68] the Supreme Court summarized the rules on prescriptive periods for filing claims for refund or tax credit of input VAT vis-a-vis ***Section 112 of the NIRC***, to wit:

"SUMMARY OF RULES ON PRESCRIPTIVE PERIODS FOR CLAIMING REFUND OR CREDIT OF INPUT VAT

The lessons of this case may be summed up as follows:

A. Two-Year Prescriptive Period

1. It is only the administrative claim that must be filed within the two-year prescriptive period. *(Aichi)*

2. The proper reckoning date for the two-year prescriptive period is the close of the taxable quarter when the relevant sales were made. *(San Roque)*

3· The only other rule is the Atlas ruling, which applied only from 8 June 2007 to 12 September 2008. *Atlas* states that the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of filing of the VAT return and payment of the tax. *(San Roque)*

B. 120[now 90]+ 30-Day Period

1. The taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day [now 90-day] period, or (2) file the judicial claim within thirty days from the expiration of the 120-day [now 90-day] period if the Commissioner does not act within the 120-day [now 90-day] period.

[67] Commissioner of Internal Revenue v. San Roque Power Corporation, G.R. No. 187485, 12 February 2013, 690 SCRA 336.
[68] G.R. No. 173241, 25 March 2015, 754 SCRA 291

2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.

3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. *(Aichi and San Roque)*

4. As an exception to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03 was still in force. *(San Roque)*

5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. *(San Roque)*"

Clearly, therefore, to confer jurisdiction upon this Court over input VAT claims, the refund of unutilized input VAT attributable to zero-rated or effectively zero-rated sales must be administratively filed with the BIR within two (2) years counted from the close of the taxable quarter when the relevant sales were made. Meanwhile, the judicial claim for refund must be filed in Court within 30 days from either: (1) receipt of respondent's decision but such decision must be rendered within the 90-day period to resolve; or (2) after the expiration of the 90-day period, in which case the claim is deemed denied.

It is respondent's contention that his decision on an administrative claim for refund must not only be rendered within the 90-day period but must likewise be served upon and received by the taxpayer-claimant within the aforementioned period. This argument is flawed, without basis, and contrary to law. ***Section 112 of the NIRC*** and jurisprudence simply requires that he decide on an input VAT refund claim within ninety (90) days from receipt of the administrative claim. To rule otherwise will deprive respondent of such period given and guaranteed to him by the ***NIRC*** to act on an administrative claim. Respondent will be forced to take into account the period of mailing or serving the decision unto the taxpayer-claimant whenever he acts upon an input VAT claim. Effectively, his 90-day period to decide will then be shortened.

Therefore, to give effect to the 90-day period guaranteed to the respondent to act on administrative claims for input VAT refund, a taxpayer-claimant who has not yet received a decision from respondent on his or her input VAT claim when the 90-day period has already expired will have two options: *first*, treat his or her input VAT claim as deemed denied through inaction, regardless of whether or not respondent had actually decided upon his or her claim (hence, the taxpayer may already appeal with this Court within thirty (30) days from the expiration of the 90-day period); or *second*, await respondent's decision under the risk that such decision was not rendered by respondent on time (*i.e.*, within ninety (90) days from filing of the administrative claim), in which case the taxpayer-claimant loses his or her right to appeal the denial of his or her input VAT claim.

Applying the foregoing precepts, the administrative and judicial claims of the instant case were timely filed. As such, the Court has jurisdiction over the present input VAT claims. The table below summarizes the relevant dates pertaining to the filing of the administrative and judicial claims for refund for the instant case:

Period of claim	Close of the taxable quarter	Last day for filing of the administrative claim	Date of filing of the administrative claim	Last day of respondent to act on the administrative claim (*i.e.*, 90 days from filing of administrative claim)	Date when respondent issued a Denial	Date when petitioner received the Denial	Last day for filing of the judicial claim (*i.e.*, 30 days from receipt of the Denial)	Date of filing of judicial claim
1st Quarter of TY 2016	31 March 2016	31 March 2018	27 March 2018	25 June 2018	18 June 2018	5 July 2018	4 August 2018	3 August 2018
2ndQuarter of TY 2016	30 June 2016	30 June 2018	27 March 2018	25 June 2018	18 June 2018	5 July 2018	4 August 2018	3 August 2018
3rd Quarter of TY 2016	30 September 2016	30 September 2018	27 March 2018	25 June 2018	18 June 2018	5 July 2018	4 August 2018	3 August 2018
4th Quarter of TY 2016	31 December 2016	31 December 2018	27 March 2018	25 June 2018	18 June 2018	5 July 2018	4 August 2018	3 August 2018

The present case covers the four (4) taxable quarters of TY 2016. Counting two (2) years from the close of the each quarter of TY 2016, petitioner had until 31 March 2018 for the first quarter of TY 2016, 30 June 2018 for the second quarter of TY 2016, 30 September 2018 for the third quarter of TY 2016, and 31 December 2018 for the fourth quarter of TY 2016 within which to file its administrative claim for refund for each of the said VATable quarters. Thus, the administrative claims filed on 27 March 2018 were timely made.

Meanwhile, as to the timeliness of the judicial claim, the same was similarly timely filed. Following the 90-day period given by the ***NIRC*** for him to decide on input VAT claims, respondent had until 25 June 2018 (*i.e.*, ninety (90) days from 27 March 2018, the date of filing of the administrative claim) within which to act on petitioner's administrative claims. Respondent timely acted upon petitioner's administrative claims when he issued a denial of the input VAT claims on 18 June 2018. However, this was only received by petitioner on 5 July 2018. Following the above discussions, petitioner had the option: a) to treat its administrative claims as deemed denied upon the expiration of the 90-day period on 25 June 2018, and from that point, it had thirty (30) days within which to appeal the inaction before this Court; or b) wait for the receipt of respondent's denial of its input VAT claim under the risk that if the decision was not timely rendered (*i.e.*, within ninety (90) days from filing of the administrative claim), it loses its right to appeal the denial. In this case, petitioner chose the second option. As respondent rendered the denial within the 90-day period, petitioner's right to appeal is preserved. From receipt of such decision, which in this case was 5 July 2018, petitioner had thirty (30) days, or until 4 August 2018, within which to file its judicial claim. As petitioner filed the present Petition on 3 August 2018, this Court acquired jurisdiction over the instant case.

Further, given the foregoing, petitioner complied with the *first and second requirements* that the administrative and judicial claims should be timely filed, as stated above.

Petitioner is a VAT-registered taxpayer.

It is undisputed that petitioner is duly registered with the BIR as a VAT taxpayer with TIN 000-201-121-00000 as evidenced by BIR Certificate of Registration No. BIR Form 2303 or Certificate of Registration Bearing OCN9RC0000916169E.[69] Hence, petitioner complied with the *third requisite* that the claimant must be a VAT-registered taxpayer.

Petitioner failed to establish that it was engaged in zero-rated sales or effectively zero-rated sales during the 3rd quarter of CY2015.

To prove its compliance with the *fourth* and *fifth requisites*, petitioner avers that it is engaged in the ship manning agency business providing services domestically and abroad. For its services rendered to non-resident foreign clients, petitioner avers that the same were subjected to zero-percent VAT.[70]Petitioner further asserts that these clients are NRFCs, as certified by the SEC, whose payments for services rendered by petitioner are in US Dollar inward remittances duly accounted for in accordance with the rules and regulations of the BSP.

Petitioner's claim is thus anchored on ***Section 108(B)(2) of the Tax Code, as amended*** which pertains to sale of services to non-resident foreign corporations:

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

[69] See Facts in the Pre-Trial Order, Records, Vol. 1, p. 305; Exhibit "P-3", Records, Vol. 1, p. 410.
[70] Par. 12, Petition, *Id.*, p. 12. Exhibit "P-5", *Id.*, pp. 411-427.

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

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

(3) . . ."
(Emphasis, Ours.)

Based on the foregoing, the following elements must be satisfied for the sale of services to qualify for VAT zero-rating:

1. the service rendered must be other than "processing, manufacturing, or repacking of goods";[71]

2. the service-recipient 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;[72]

3. the service must be performed in the Philippines by VAT-registered persons;[73] and

4. the payment for such service should be in acceptable foreign currency accounted for in accordance with BSP rules and regulations.[74]

Anent the *first element*, petitioner failed to submit in evidence a complete Manning Agency Agreement[75] between petitioner and its client, V. Ships UK, Ltd., the sale of services to which are the alleged zero-rated sales

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

[72] *Ibid.*

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

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

[75] Exhibit "P-15", Records, Vol. 1, pp. 429-435.

subject of the present claim for input VAT refund. The present claim for input VAT refund is for the four (4) VATable quarters of TY 2016. However, the sole Manning Agency Agreement submitted only had an effectivity date of 1 July 2016. This was confirmed when Mr. Aborot was placed in the witness stand, to wit:[76]

> "ATTY. POBAR
>
> Q I refer you to Exhibit P-15 of your Judicial Affidavit, the Manning Agency Agreement?
>
> MR. ABOROT
>
> A Yes, Ma'am.
>
> ATTY. POBAR
>
> Q The Manning Agency was entered into by the parties only on July 1, however, the claim for refund of petitioner is for the whole year of 2016?
>
> MR. ABOROT
>
> A Yes, Ma'am.
>
> ATTY. POBAR
>
> Q So what agreement would govern for the first half of 2016 starting because it is only for July 1 starting July 1 only and not from January to June 2016?
>
> MR. ABOROT
>
> A Every now and then, we renew our manning agency agreement, so it is not perpetual, it not permanent.
>
> ATTY. POBAR
>
> Q So, we will assume that it only started on July 1?
>
> MR. ABOROT
>
> A Yes, but there is another one before this.
>
> ATTY. POBAR
>
> Q It is not submitted before this Honorable Court?
>
> MR. ABOROT
>
> A I do not think we have submitted a copy.
>
> JUSTICE LIBAN

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[76] TSN, Hearing, dated 3 July 2019, pp. 17-20.

Claim for refund is for the whole year of 2016?

ATTY. POBAR

Yes, Your Honors.

JUSTICE LIBAN

I am asking you, Mr. Witness.

MR. ABOROT

Because this is effective July 1, 2016 and what I am saying is that, we have another agreement that was in effect before this one.

JUSTICE LIBAN

So that agreement is not included in your exhibit?

MR. ABOROT

Yes.

JUSTICE LIBAN

So, you are claiming refund for this July 1 agreement made on July 1, 2016 and previous agreement?

MR. ABOROT

A Yes, Your Honor.

JUSTICE LIBAN

And that previous agreement is not one of those exhibits stated?

MR. ABOROT

Yes, Your Honor.

JUSTICE LIBAN

Was that previous agreement filed before the BIR, was it given before the BIR as evidence before the BIR?

MR. ABOROT

I do not think the BIR asked for it, Your Honor."

Hence, there is no way to establish the type and nature of services actually rendered by petitioner to V. Ships UK, Ltd. prior to said effectivity date. While a reading of the Manning Agency Agreement confirms that, from 1 July 2016 until its termination, the services rendered by petitioner to V. Ships UK, Ltd. is of a nature other than processing, manufacturing, or repacking of goods, the same conclusion cannot be bestowed for the services which were rendered for the period prior to 1 July 2016 that is subject of the present input VAT claim (*i.e.,* from 1 January 2016 to 30 June 2016). Settled is the rule that bare allegations do not establish fact. It is still incumbent upon petition to submit in evidence proof that would substantiate its allegations

Further, the sole Manning Agency Agreement clearly provided that petitioner's services were to be rendered to V. Ships UK, Ltd. and that, in exchange for these services, manning fees would be paid by V. Ships UK, Ltd. to petitioner.[77] However, as duly found by the ICPA, payments for these services were not made by V. Ships UK, Ltd. but by V. Ships Crew, Ltd., and in relation to this, official receipts were issued to V. Ships Crew, Ltd. instead of V. Ships UK, Ltd.[78] This manner of payment cannot be found, at the very least, to have been authorized by the Manning Agency Agreement. In fact, it is contrary to its terms as it clearly provided that the manning fees will be paid directly by V. Ships UK, Ltd. to petitioner. This raises doubts as to whether the payment received by petitioner is actually for the services rendered to V. Ships UK, Ltd., which is subject of the Manning Agency Agreement.

In relation to the *second 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** an SEC Certification of Non-Registration of the Company and proof of incorporation or registration in a foreign country (e.g., Certificate of Incorporation, Memorandum of Association, and Articles of Association). The SEC Certifications only establish the first component (i.e., that the affiliate is foreign), while proof of incorporation or registration in a foreign country (e.g., articles of association/certificates of incorporation) proves the second component (*i.e.*, that the affiliate is not doing business here in the Philippines).[79]

To substantiate its compliance with the foregoing requirement, petitioner submitted the following in evidence:

Name of Entity	SEC Certificate of Non-Registration
1. V. Ships UK, Ltd.	Exhibit "P-16"[80]
2. V. Ships Crew, Ltd.	Exhibit "P-25"[81]

However, a perusal of the records shows that petitioner failed to submit in evidence any proof that its foreign clients are not doing business in the Philippines. Petitioner did not submit any Certificate of Incorporation, Memorandum of Association, Articles of Association, or any equivalent

77 Par. 16, Exhibit "P-15", *id.*, p. 433.
78 ICPA Report, Exhibit "P-21", *id.*, pp. 347-348.
79 Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd., G.R. No. 234445, 15 July 2020.
80 Records, Vol. 1, p. 436.
81 *Id.*, p. 439.

document in favor of V. Ships UK, Ltd. or V. Ships Crew, Ltd. that would establish that its clients are not doing business in the Philippines. Consequently, petitioner failed to prove compliance with the requirement that the service- recipient (*i.e.,* V. Ships UK, Ltd. or V. Ships Crew, Ltd.) is a foreign corporation doing business *outside* the Philippines.

In essence, for failure to comply with the above discussed requirements, petitioner's sales to its alleged foreign clients fail to qualify for VAT zero-rating under ***Section 108 (B)(2) of the Tax Code, as amended.***

Given the foregoing, petitioner failed to prove compliance with the *fourth requisite* requiring that the taxpayer is engaged in zero-rated or effectively zero-rated sales and, for zero-rated sales.

It is thus unnecessary for this Court to look into petitioner's compliance with the other remaining requirements for the claim for unutilized input VAT refund to prosper.

At this juncture, it is worthy to emphasize that tax refunds or tax credits, just like tax exemptions, are strictly construed against the taxpayers; hence, the taxpayer claimant has the burden to prove compliance with the conditions for the grant of the tax refund or credit.[82]

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

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

[82] Sitel Philippines Corp. v. Commissioner of Internal Revenue, G.R. No. 201326, 8 February 2017 *citing* Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (now TeaM Energy Corporation), G.R. No. 180434, 20 January 2016.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice