Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

VESTAS SERVICES PHILIPPINES, INC. Petitioner,	**CTA CASE NO. 9672**
-versus-	Members: CASTAÑEDA, JR., *Chairperson,* MINDARO-GRULLA, and BACORRO-VILLENA, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: DEC 17 2019 3:10 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on January 21, 2019 is a Petition for Review filed by petitioner Vestas Services Philippines, Inc. against respondent Commissioner of Internal Revenue on August 29, 2017, praying for the refund of the amount of ₱59,852,615.84, allegedly representing its excess and/or unutilized input value-added tax (VAT) credits attributable to its zero-rated sales for calendar year (CY) 2015.[1]

Petitioner is a domestic corporation engaged in the business of installation and construction services (except contracts for the construction of locally funded public works and contracts for the construction of defense related structures), including entering into subcontracting arrangements, and service of wind power systems (*i.e.*, Wind Turbine Generators, Spare Parts, and activities related thereto). It also acts as a business development and information technology center that provides services to its affiliates in the Asia Pacific Region.[2] It is registered with the Bureau of Internal Revenue (BIR) for VAT

[1] Summary of the Case, Pre-Trial Order dated February 14, 2018, Docket – Volume (Vol.) II, p. 524.
[2] Paragraph (Par.) 1.1, Stipulations of Facts, Joint Stipulation of Facts and Issue (JSFI), Docket – Vol. II, p. 478.

purposes, pursuant to Certificates of Registration Nos. OCN9RC0000382508 and OCN9RC0000777961E.[3]

Respondent, on the other hand, is the Chief of BIR, and is empowered by law to act upon and approve claims for refund, or for the issuance of tax credit.[4]

Petitioner simultaneously filed its Amended Quarterly VAT Returns for CY 2015 on March 27, 2017.[5]

On March 29, 2017, petitioner filed a claim for refund of its unutilized creditable input VAT in the amount of ₱66,063,435.91 for the same period, with the VAT Credit Audit Division (VCAD) of the BIR. Petitioner's administrative claim was duly received on the same date.[6]

On August 15, 2017, petitioner received the Denial Letter dated July 24, 2017, issued by respondent through his authorized representative, denying ₱59,852,615.84 of the claimed excess and/or unutilized input VAT credits, *but granting* ₱6,210,820.07 tax credit certificate.[7]

The instant Petition for Review was filed with this Court on August 29, 2017.[8]

Respondent filed his Answer on November 24, 2017,[9] interposing the following Special and Affirmative Defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

4) Respondent reiterates and repleads the preceding paragraphs of the Answer as part of her Special and Affirmative Defenses;
5) Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;

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[3] Par. 1.3, Stipulations of Facts, JSFI, Docket – Vol. II, p. 479.
[4] Par. 1.2, Stipulations of Facts, JSFI, Docket – Vol. II, p. 478.
[5] Exhibits "P-7", "P-7-1" to "P-7-3", Docket – Vol. I, pp. 202 to 209.
[6] Par. 1.4, Stipulations of Facts, JSFI, p. 479.
[7] Par. 1.5, Stipulations of Facts, JSFI, p. 479.
[8] Docket – Vol. I, pp. 10 to 33.
[9] Docket – Vol. I, pp. 90 to 93.

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6) Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable;
7) It is incumbent upon the Petitioner to show that is has complied with the provision of Section 204 (C) in relation to Section 229 of the 1997 Tax Code, as amended;
8) Petitioner's claim for refund or issuance of tax credit certificate in the amount of Fifty Nine Million Eight Hundred Fifty Two Thousand Six Hundred Fifteen and 84/100 Pesos (Php59,852,615.84) as alleged unutilized input VAT paid on purchases of goods and services attributable to its zero-rated sales for the calendar year ending December 2015 was not fully substantiated by proper documents, such as sales invoices, official receipts and others;
9) In a claim for tax refund or tax credit, taxpayer must prove not only entitlement to the grant of the claim under substantive law, it must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit (*Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, 518 SCRA 425);
10) Claims for refund are construed strictly against the claimant, the same partakes the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma,* 31 SCRA 95) and as such, they are looked upon with disfavour (*Western Minolco Corp. vs. Commissioner of Internal Revenue,* 124 SCRA 121)."

Petitioner filed its Reply on December 1, 2017.[10]

The pre-trial conference was set and held on January 18, 2018.[11]

On January 8, 2018, Respondent's Pre-Trial Brief was filed,[12] while the Pre-Trial Brief of petitioner was filed on January 12, 2018.[13]

The parties filed their Joint Stipulation of Facts and Issue (JSFI) on February 2, 2018.[14] Subsequently, the Pre-Trial Order dated

[10] Docket – Vol. I, pp. 99 to 113.
[11] Notice of Pre-Trial Conference dated December 4, 2017, Docket – Vol. I, pp. 115 to 116; Minutes of the hearing held on, and Order dated, January 18, 2018, Docket – Vol. II, pp. 476 to 477.
[12] Docket – Vol. I, pp. 117 to 119.
[13] Docket – Vol. I, pp. 121 to 137.
[14] Docket – Vol. II, pp. 478 to 484.

February 14, 2018 was issued,[15] thereby approving the said JSFI and terminating the pre-trial.

The trial of the case then ensued.

During trial, petitioner presented its documentary and testimonial evidence. Petitioner's witnesses are: (1) Mr. Ian Jasper E. Monteras,[16] Accounting Assistant of petitioner; and (2) Mr. Edwin F. Ramos,[17] the Court-commissioned Independent Certified Public Accountant (ICPA).[18]

On April 4, 2018, petitioner filed an *Urgent Motion for Leave to Issue Subpoena Duces Tecum*,[19] praying that this Court issue a *Subpoena Duces Tecum* against the Chief of VCAD, Chief of Tax Audit Review Division (TARD), Chief of the Assessment Division of Revenue Region 8, or any responsible revenue officer of the division or the department of the BIR which may have possession of the BIR Records of the case.

The Court-commissioned ICPA submitted its report on April 11, 2018,[20] and a supplemental report on September 12, 2018,[21] which he both identified at the hearing held on September 17, 2018.[22]

On June 5, 2018, respondent submitted the BIR records.[23] Thus, the Court rendered petitioner's *Urgent Motion for Leave to Issue Subpoena Duces Tecum*, moot.[24]

Petitioner filed its *Formal Offer of Documentary Evidence* on September 24, 2018.[25] In the Resolution dated November 22, 2018,[26] the Court admitted petitioner's exhibits *except* Exhibit "P-9", "P-15", "P-

[15] Docket – Vol. II, pp. 524 to 528.
[16] Exhibit "P-23", Docket – Vol. I, pp. 144 to 172; Minutes of the hearing held on, and Order dated, February 19, 2018, Docket – Vol. II, pp. 529 to 530.
[17] Exhibits "P-40" and "P-42", Docket – Vol. II, pp. 562 to 572, and 721 to 727, respectively; Minutes of the hearing held on, and Order dated, September 17, 2018, Docket – Vol. II, p. 732 to 733.
[18] Minutes of the hearing held on, and Order dated, March 12, 2018, Docket – Vol. II, pp. 545 to 546.
[19] Docket – Vol. II, pp. 547 to 551.
[20] Exhibit "P-24", Docket – Vol. II, pp. 573 to 676.
[21] Exhibit "P-41", Docket – Vol. II, pp. 677 to 678.
[22] Minutes of the hearing held on, and Order dated, September 17, 2018, Docket – Vol. II, p. 732 to 733.
[23] *Compliance*, Docket – Vol. II, p. 684.
[24] Resolution dated August 7, 2018, Docket – Vol. II, pp. 689 to 690.
[25] Docket – Vol. II, pp. 737 to 754.
[26] Docket – Vol. II, pp. 760 to 761.

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28" to "P-28-4", "P-28-6" to "P-28-35", "P-28-37" to "P-28-47", "P-28-50", "P-28-54" to "P-28-55", "P-28-60" to "P-28-63", and "P-28-66" to "P-28-75", for failure to present the originals for comparison; and Exhibits "P-29-33" and "P-29-48", for being illegible.

The admitted documentary exhibits of the petitioner are as follows:

Exhibit:	Description:
P-1	Certificate of Incorporation with Company Registration No. CS200919421 issued by the Security and Exchange Commission on 14 December 2009
P-2	Amended Articles of Incorporation dated 29 June 2016
P-3	Certificate of Registration with COR No. OCN 9RC0000382508 issued by the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) 50
P-5	Request for Certified True Copy dated 16 October 2017, stamped received on 18 October 2017
P-6	Application for Tax Credits/Refunds (BIR Form No. 1914), stamped received on 29 March 2017
P-7	Amended Quarter VAT Return (BIR Form No. 2550Q) for the first quarter of CY 2015 which was filed on 27 March 2017
P-7-1	Amended Quarterly VAT Return (BIR Form No. 2550Q) for the second quarter of CY 2015 which was filed on 27 March 2017
P-7-2	Amended Quarterly VAT Return (BIR Form No. 2550Q) for the third quarter of CY 2015 which was filed on 27 March 2017
P-7-3	Amended Quarterly VAT Return (BIR Form No. 2550Q) for the fourth quarter of CY 2015 which was filed on 29 March 2017
P-8	VESTAS SERVICES PHILIPPINES INC. Schedule of Sales for the year ending December 31, 2015
P-10	Articles of Association of Vestas Denmark with Company Registration No. 10403782
P-11	Certification of Non-Registration of Company issued by the Securities and Exchange Commission on 21 November 2016

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P-12	Document issued by the Danish Business Authority to Vestas Denmark on 31 October 2016
P-13	Certificate of Registration No. WESC 2009-09-004 issued by the Department of Energy (DOE) to EDC on 04 February 2011
P-14	Certificate of Registration No. 2011-135 issued by Board of Investment (BOI) to EDC on 29 June 2011
P-16	VESTAS SERVICES PHILIPPINES, INC. Schedule of Purchases JANUARY TO DECEMBER 2015
P-17	Amended Quarterly VAT Return (BIR Form No. 2550Q) for the first quarter of CY 2016 dated 23 June 2017
P-17-1	Amended Quarterly VAT Return (BIR Form No. 2550Q) for the second quarter of CY 2016 dated 27 July 2017
P-17-2	Amended Quarterly VAT Return (BIR Form No. 2550Q) for the third quarter of CY 2016 dated 13 October 2017
P-17-3	Amended Quarterly VAT Return (BIR Form No. 2550Q) for the fourth quarter of CY 2016 dated 13 October 2017
P-18	Amended Quarterly VAT Return (BIR Form No. 2550Q) for the first quarter of CY 2017 dated 17 October 2017
P-18-1	Amended Quarterly VAT Return (BIR Form No. 2550Q) for the second quarter of CY 2017 dated 17 October 2017
P-18-2	Quarterly VAT Return (BIR Form No. 2550Q) for the third quarter of CY 2017 dated 17 October 2017
P-19	Audited Financial Statements for CY 2015
P-20	Audited Financial Statements for CY 2016
P-21	Tax Credit Certificate issued on 24 July 2017
P-22	Letter dated 24 July 2017 signed by Commissioner Caesar R. Dulay
P-23	Judicial Affidavit of Ian Jasper E. Monteras dated 11 January 2018
P-23-1	Signature of Mr. Ian Jasper E. Monteras
P-24	Independent Certified Public Accountant Report dated 11 April 2018
P-24-1	Signature of Mr. Edwin F. Ramos
P-25	Certificate of Registration with COR No. OCN 9RC0000777961E issued by the BIR RDO 51

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P-26 to P-26-5	Official Receipts in support of Zero-rated Sales and VATable Sales in 2015
P-27 to P-27-461	Sales Invoices/ Official Receipts in Support of Petitioner's Domestic Purchases of Services and Goods Other than Capital Goods for CY 2015
P-28-5, P-28-36, P-28-48 to P-28-49, P-28-51 to P-28-53, P-28-56 to P-28-59, P-28-64 to P-28-65	Import Entry and Internal Revenue Declaration (IEIRD) in support of Input VAT on Importation of Goods Other than Capital Goods in CY 2015
P-29 to P-29-32, P-29-34 to P-29-47	Invoices, Billing Statements and Statement of Accounts in Support of Petitioner's Domestic Purchases of Services availed in 1st Quarter and 2nd Quarter and paid in 3rd Quarter
P-30	Petitioner's Schedule of Domestic Purchases of Services and Goods Other than Capital Goods for CY 2015 (Amended)
P-31	Petitioner's Schedule of Importation of Goods Other than Capital Goods in CY 2015
P-32	Consularized Certificate of Tax Residency for CY 2014
P-33-a	Consularized Certificate of Tax Residency for CY 2018
P-34	Service and Energy Based Availability Agreement between EDC Burgos Wind Power Corporation and Vestas Services Philippines Inc. executed on March 1, 2013
P-35	Supplemental Independent Certified Public Accountant Report dated 10 September 2018
P-35-1	Signature of Mr. Edwin F. Ramos
P-36	Period Monthly Average Cross Rates from the Bangko Sentral ng Pilipinas (BSP) Online Statistical Database
P-37 to P-37-AA	Import Entry and Internal Revenue Declaration (IEIRD) in support of Input VAT on Importation of Goods Other than Capital Goods in CY 2015
P-38 to P-38-AA	Statement of Settlement of Duties and Taxes (SSDT) in support of Input VAT on Importation of Goods Other than Capital Goods in CY 2015

P-39	RCBC Realty Corporation's Sworn Certificate of Correction on the Petitioner's Tax Identification Number
P-40	Judicial Affidavit of Mr. Edwin F. Ramos (In Question and Answer Form) dated 18 April 2018
P-40-1	Signature of Mr. Edwin F. Ramos
P-41	Transmittal Letter providing for the submission of the soft copy of the ICPA Report with all relevant annexes and exhibits
P-41-1	Signature of Mr. Edwin F. Ramos
P-42	Supplemental Judicial Affidavit of Mr. Edwin F. Ramos (In Question and Answer Form) dated 11 September 2018
P-42-1	Signature of Mr. Edwin F. Ramos
P-43	CD labelled as VESTAS SERVICES PHILIPPINES, INC. (VSPI) Supplemental Independent CPA Report – Claim for Refund or Issuance of Tax Credit Certificate (TCC) Representing Unutilized Input Value Added Tax (VAT) Paid and Attributable to Zero-rated Sales of Services for the Calendar Year Ended December 31, 2015 (CY 2015) CTA Case No. 9672
P-44	CD labelled as VESTAS SERVICES PHILIPPINES, INC. (VSPI) Independent CPA Report – Claim for Refund or Issuance of Tax Credit Certificate (TCC) Representing Unutilized Input Value Added Tax (VAT) Paid and Attributable to Zero-rated Sales of Services for the Calendar Year Ended December 31, 2015 (CY 2015) CTA Case No. 9672

During the hearing held on September 17, 2018, respondent's counsel manifested that she has no witness to present in this case, as this case has no report of investigation. Upon motion of the counsels of petitioner and respondent, the parties were given thirty (30) days from receipt of the resolution on petitioner's *Formal Offer of Documentary Evidence* within which to file their memoranda.[27]

On December 27, 2018, petitioner filed its *Memorandum*;[28] while the *Memorandum for Respondent* was filed on January 7, 2019.[29]

[27] Minutes of the hearing held on, and Order dated September 17, 2018, Docket – Vol. II, pp. 732 and 733, respectively.
[28] Docket – Vol. II, pp. 764 to 795.
[29] Docket – Vol. II, pp. 797 to 800.

The instant case was considered submitted for decision on January 21, 2019.[30]

THE ISSUE

The parties submitted the following issue[31] for this Court's resolution, to wit:

> "Whether [petitioner] is entitled to a tax refund or to the issuance of tax credit certificate in the amount of Php59,852,615.84[,] representing its excess and/or unutilized input VAT credits attributable to its zero-rated sales for CY 2015."

Petitioner's arguments:

In claiming that it is entitled to the refund being claimed, petitioner argues that it is a VAT-registered entity; and that its sales and gross receipts for CY 2015 were almost entirely zero-rated, considering that petitioner's gross receipts from Vestas Wind Systems A/S (Vestas Denmark) were for general IT services rendered to a person engaged in business conducted outside the Philippines, and that the sales to, and gross receipts from, EDC Burgos Wind Power Corporation (EDC), an RE Developer, are zero-rated pursuant to Renewable Energy Act of 2008, in relation to Sections 106(A)(2)(c), 110, and 112(A), of the Tax Code.

Furthermore, petitioner asserts that the remaining excess input taxes it paid were directly attributable to its zero-rated sales for CY 2015, and that it did not utilize the excess input VAT for the same CY for any subsequent quarter.

Petitioner also contends that it filed its administrative claim for refund within the two(2)-year prescriptive period; and that it filed its judicial claim for refund within thirty (30) days from the expiration of the 120-day period, and within thirty (30) days from receipt of respondent's decision denying the claim.

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[30] Resolution dated January 21, 2019, Docket – Vol. II, p. 803.
[31] Stipulation of the Issue, JSFI, Docket – Vol. II, p. 479.

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Moreover, it avers that the input VAT which were not considered by the ICPA should be allowed and recognized; and that the zero-rated sales to Vestas Denmark should be recognized by the ICPA.

In addition, petitioner argues that respondent's disallowance of its claim is incorrect and without basis, considering that:

1. the claim was properly substantiated by official receipts and invoices;
2. its amended VAT returns properly reflected its transactions for CY 2015;
3. its purchases with big ticket suppliers are properly substantiated;
4. it properly credited its excess input VAT against its output VAT liability; and
5. respondent failed to provide a valid basis or reason for the disallowance of petitioner's claim for refund of ₱59,852,615.84, as petitioner was not informed of the basis of respondent's denial.

Lastly, petitioner maintains that respondent's special and affirmative defenses are without merit.

Respondent's counter-arguments:

Respondent submits that refunds are in the nature of tax exemption, and as such, they are regarded in derogation of sovereign authority and to be construed *strictissimi juris* against the person claiming the exemption.

He also maintains that since the instant case involves a refund, petitioner therefore, has to prove with the required quantum of evidence its entitlement to the refund claimed, and the Court will render its decision on the basis of the facts proven and the evidence presented applying the law and jurisprudence applicable to the issue under consideration, even if no controverting evidence was ever presented by respondent.

In the instant case, respondent asserts that petitioner failed to fully substantiate by proper documents its claim, thus, the claim must be denied.

COURT'S RULING:

The Petition for Review must be denied.

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

Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 9337,[32] provides:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
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> (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: xxx.
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> xxx xxx xxx
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> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.*— In proper cases, the Commissioner shall grant a refund or issue a tax credit certificate for

[32] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

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

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

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

Timeliness of the filing of the administrative and judicial claims:

1. the claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[33]

2. in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 120 days from the date of submission of complete documents in support of the application, the judicial claim must be filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[34]

Taxpayer's registration with the BIR:

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

[34] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue,* G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue,* G.R. No. 168950, January 14, 2015.

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3. the taxpayer is a VAT-registered person;[35]

Taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[36]

5. for zero-rated sales under Section 106(A)(2)(1) and (2); 106(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;[37]

Taxpayer's refund claim for input VAT:

6. the input taxes are due or paid;[38]

7. the input taxes are not transitional input taxes;[39]

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;[40] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[41]

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

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *Id.*

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

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

First requisite:

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

Counting two (2) years from the close of the four (4) quarters of CY 2015, the respective last day for the filing of the administrative claim therefor is shown below:

Period (2015)	**Close of the Taxable Quarter**	**Last Day to File Administrative Claim**
January 1, 2015 to March 31, 2015	March 31, 2015	March 31, 2017
April 1, 2015 to June 30, 2015	June 30, 2015	June 30, 2017
July 1, 2015 to September 30, 2015	September 30, 2015	September 30, 2017
October 1, 2015 to December 31, 2015	December 31, 2015	December 31, 2017

Considering that petitioner's administrative claim covering the said four (4) quarters for the above-stated periods was filed on March 29, 2017,[42] the same was timely made, and thus, petitioner fulfilled the *first* requisite.

Second requisite:

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

In *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*,[43] the Supreme Court held:

> **"Whether respondent rules in favor of or against the taxpayer — or does not act at all on the administrative claim — within the period of 120 days from the submission of complete documents, the taxpayer may resort to a judicial claim before the CTA.**

[42] Par. 1.4, Stipulations of Facts, JSFI, p. 479.
[43] G.R. No. 182737, March 2, 2016.

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The judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the 120-day period, whichever is sooner.

Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by law,[44] **any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA.**" *(Emphases and underscoring supplied)*

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

In this case, the determination of the 120+30-day periods is shown as follows:

Date of Filing of Administrative Claim	End of the 120 days for the BIR to decide the claim	End of the 30 days from expiration of the 120 days
March 29, 2017	July 27, 2017	August 26, 2017

As borne out by the records, respondent issued the Denial Letter on August 15, 2017,[45] which is apparently beyond the 120-day period within which to decide on petitioner's claim for refund. Accordingly, based on the afore-quoted jurisprudence, the end of the 30-day period within which petitioner may file its judicial claim for refund before this Court shall be on August 26, 2017. However, August 26, 2017 was a Saturday and the next working day was August 29, 2017.[46]

[44] In *CIR vs. San Roque Power Corporation, etseq.* (G.R. Nos. 187485, 196113 & 197156, February 12, 2013), the Supreme Court applied the equitable principle of estoppel and ruled that judicial claims filed from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 up to its reversal in *CIR vs. Aichi Forging Company of Asia, Inc.* (G.R. No. 184823) on October 6, 2010 need not wait for the lapse of the 120+30-day period.
[45] Par. 1.5, Stipulations of Facts, JSFI, p. 479.
[46] August 28, 2017 is a holiday – National Heroes Day.

Thus, since the instant *Petition for Review* was filed on August 29, 2017, petitioner's judicial claim for CY 2015 was timely filed before this Court.

Such being the case, the Court finds that petitioner complied with the above-stated *second* requisite.

Third requisite:

It is undisputed that petitioner is registered with the BIR as a VAT taxpayer with Tax Identification Number (TIN) 007-533-154-000 per Certificate of Registration No. OCN9RC0000382508 effective 05 January 2010.[47] Thus, there is compliance with the *third* requisite.

Fourth and fifth requisites:

The *fourth* and *fifth* requisites respectively require that the taxpayer is engaged in zero-rated or effectively zero-rated sales, and that for zero-rated sales under Section 106(A)(2)(a)(1) and (2), 106(B), and 108(B)(1) and (2) of the NIRC of 1997, as amended by RA No. 9337, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the Bangko Sentral ng Pilipinas (BSP) rules and regulations.

In its amended Quarterly VAT Returns for CY 2015, petitioner declared total sales/receipts of ₱106,137,195.57, which supposedly consisted of zero-rated sales/receipts of ₱66,712,784.61, and vatable sales/receipts of ₱39,424,410.96, broken down as follows:

Quarter (2015)	Zero-Rated Sales/Receipts	VATable Sales/Receipts	Total Sales/Receipts
1st[48]	₱ 26,985,927.79	₱ 39,424,410.96	₱ 66,410,338.75
2nd[49]	39,726,856.82	-	39,726,856.82
3rd[50]	-	-	-
4th[51]	-	-	-
Total	**₱ 66,712,784.61**	**₱39,424,410.96**	**₱ 106,137,195.57**

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[47] Exhibit "P-3", Docket - Vol. I, p. 197; Refer also to Par. 1.3, Stipulations of Facts, JSFI, Docket – Vol. II, p. 479.
[48] Exhibit "P-7", Docket – Vol. I, pp. 202 to 203.
[49] Exhibit "P-7-1", Docket – Vol. I, pp. 204 to 205.
[50] Exhibit "P-7-2", Docket – Vol. I, pp. 206 to 207.
[51] Exhibit "P-7-3", Docket – Vol. I, pp. 208 to 209.

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Per report of the Court-commissioned ICPA,[52] petitioner's reported zero-rated sales/receipts per customer name as follows:[53]

Customer	Total
Vestas Denmark	₱ 31,658,608.44
EDC	35,054,176.17
Total	**₱ 66,712,784.61**

(a) Vestas Denmark - ₱31,658,608.44

Petitioner claims that its sale of services to Vestas Denmark, which is a non-resident foreign corporation, is subject to zero percent (0%) VAT pursuant to Section 108(B)(2) of the NIRC of 1997, as amended.

We disagree.

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

1) The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a nonresident person not engaged in business who is outside the Philippines when the service were performed;[54]

2) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules and regulations;[55]

3) The services fall under any of the categories under Section 108(B)(2),56 or simply, the services rendered should be other than *"processing, manufacturing or repacking goods"*;[57] and

[52] Exhibit "P-24", No. 2 of Findings and Observations, Docket - Vol. II, p. 579.
[53] Exhibit "P-8", Docket - Vol. I, p. 210.
[54] *Sitel Philippines Corporation (Formerly Clientlogic Phils. Inc.) vs. Commissioner of Internal Revenue,* G.R. No. 201326, February 8, 2017; *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* G.R. No. 153205, January 22, 2007; *Accenture, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 190102, July 11,2012.
[55] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch),* G.R. No. 152609, June 29, 2005.
[56] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), supra.*

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4) The services must be performed in the Philippines[58] by a VAT-registered person.

Petitioner was able to establish the *first* essential element by presenting: (1) the *Certification of Non-Registration of Company* dated November 21, 2016 issued by the Securities and Exchange Commission (SEC) to the effect that the records of the latter do not show the registration of petitioner's client, Vestas Denmark, as a corporation or partnership,[59] and (2) the consularized *Articles of Incorporation* with Company Registration No. 10403782.[60] The former document proves that the said client is not doing business in the Philippines; while the latter document shows that the same client is doing business outside the Philippines. Taken together, these documents establish that Vestas Denmark is a nonresident foreign corporation.

Likewise, petitioner was able to prove compliance with the *third* essential element. As reflected in petitioner's Audited Financial Statements (AFS) for CY 2015, it entered into a service agreement with Vestas Denmark on April 16, 2010, whereby petitioner shall provide general IT services such as IT operations & support including surveillance, service desk, operations, support and programming effective January 1, 2010, and will continue indefinitely until terminated by Vestas Denmark with three (3) months advance notice to petitioner.[61] These services clearly fall within the scope of *"services other than processing, manufacturing or repacking of goods"* contemplated by the afore-mentioned provision.

However, petitioner failed to comply with the equally significant *second* and *fourth* essential elements.

Relative to the *second* essential element, petitioner presented its *Schedule of Sales* for the year ending December 31, 2015[62] and the corresponding VAT zero-rated official receipts (ORs)[63] proving that for

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[57] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* supra.
[58] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch),* supra.
[59] Exhibit "P-11", Docket - Vol. I, p. 237.
[60] Exhibit "P-10", Docket - Vol. I, pp. 221 to 236.
[61] Note 17, Service revenue, AFS for CY 2015, Exhibit "P-19", Docket – Vol. I, p. 392.
[62] Exhibit "P-8", Docket - Vol. I, p. 210.
[63] Exhibits "P-26" to "P-26-5".

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services rendered to Vestas Denmark for the subject period, petitioner was paid in foreign currency *except* for the reported sales of ₱18,724,356.99, as shown below:

Client Name	Exhibit	OR No.	OR Date	Zero-Rated Sales/Receipts (In US$)	Conversion Rate	Zero-Rated Sales/Receipts in PHP
Vestas Denmark	"P-26"	115	January 6, 2015	$291,598.10	₱44.36	₱12,934,251.45
	not found from the records	121	29-Jun-15	422,100.02	44.36	18,724,356.99
			Total	**$713,698.12**		**₱31,658,608.44**

Thus, the payment in acceptable foreign currency was established only insofar as the amount of US$291,598.10 (equivalent to ₱12,934,251.45) is concerned. In any event, the same may still not be considered for VAT zero-rating, since petitioner was unable to establish that the foreign currency sales proceeds of US$291,598.10 from Vestas Denmark were duly accounted for in accordance with the BSP rules and regulations. Simply put, petitioner failed to fully satisfy the *second* essential element for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended, *i.e.*, payments for its services must be in acceptable foreign currency and accounted for in accordance with the BSP rules and regulations.

With regard to the *fourth* essential element, *i.e.*, that the subject services were performed in the Philippines, the same has not been established, no evidence was presented by petitioner to prove that the said services were performed in the Philippines. Thus, petitioner likewise failed to prove the said element.

In view of the foregoing, petitioner's reported sales to Vestas Denmark in the amount of ₱31,658,608.44 failed to qualify for VAT zero-rating.

<u>(b) EDC - ₱35,054,176.17</u>

In arguing that its sales to EDC are subject to VAT zero-rating, petitioner invokes Section 15(g) of RA 9513 (or Renewable Energy Act of 2008), and Part III, Rule 5, Section 13.G, of the Implementing Rules and Regulations of RA 9513. On the basis of the foregoing provisions, petitioner then points out that EDC is a registered RE Developer; and

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that petitioner's sales and gross receipts from EDC in CY 2015 were purely services rendered in the construction of EDC's wind power plant in Burgos, Ilocos Norte.

While the said provisions are not disputed, We find that petitioner's sales to EDC likewise fail to qualify thereunder for VAT zero-rating.

For easy reference, the said provisions read as follows:

Section 15(g) of RA No. 9513
(Renewal Energy Act of 2008):

"Section 15. *Incentives for Renewable Energy Projects and Activities.* - RE developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:

xxx xxx xxx

(g) *Zero Percent Value-Added Tax Rate.* - The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.

All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.

This provision shall **also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors.**" (*Emphasis and underscoring ours*)

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Part III, Rule 5, Section 13.G of the Implementing Rules and Regulations of RA 9513[64]**:**

"SEC. 13. Fiscal Incentives for Renewable Energy Projects and Activities

DOE-certified existing and new RE Developers of RE facilities, including Hybrid Systems, in proportion to and to the extent of the RE component, for both Power and Non-Power Applications, shall be entitled to the following incentives:

xxx xxx xxx

G. Zero Percent Value-Added Tax Rate

The following transactions/activities shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337:

xxx xxx xxx

(b) **Purchase of local goods, properties and services needed for the development, construction, and installation of the plant facilities of RE Developers;**

(c) **Whole process of exploration and development of RE sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors.**" (*Emphasis ours*)

Based on the foregoing provisions, all RE Developers are entitled to zero-rated VAT *on its purchases* of local supply of goods, properties and services needed for the development, construction and installation of plant facilities. Furthermore, the law declares that the VAT zero-rating applies to the whole process of exploring and developing

[64] Department Circular No. DC2009-05-0008 dated May 25, 2009 issued by the Department of Energy (DOE).

renewable energy sources up to its conversion into power, *including but not limited to the services performed by subcontractors and/or contractors.*

However, the same Part III, Rule 5 of the Implementing Rules and Regulations of RA 9513 further states the conditions for the availment of incentives and other privileges under the said law. Section 18(A), (B), and (C) thereof reads:

> "SEC. 18. Conditions for Availment of Incentives and Other Privileges
>
> *A. Registration/Accreditation with the DOE*
>
> **For purposes of entitlement to the incentives and privileges under the Act, existing and new RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall register with the DOE, through the Renewable Energy Management Bureau (REMB).** The following certifications shall be issued:
>
> > ***(1) DOE Certificate of Registration* – issued to an RE Developer holding a valid RE Service/Operating Contract.**
> >
> > For existing RE projects, the new RE Service/Operating Contract shall pre-terminate and replace the existing Service Contract that the RE Developer has executed with the DOE subject to the Transitory Provision in Rule 13, Section 39.
> >
> > The DOE Certificate of Registration shall be issued immediately upon award of an RE Service/Operating Contract covering an existing or new RE project or upon approval of additional investment.
> >
> > Any investment added to existing RE projects shall be subject to prior approval by the DOE.
> >
> > ***(2) DOE Certificate of Accreditation* – issued to** RE manufacturers, fabricators, and **suppliers of locally-produced RE equipment**, upon submission

of necessary requirements to be determined by the DOE, in coordination with the DTI.

B. Registration with the Board of Investments (BOI)

The RE sector is hereby declared a priority investment sector that will regularly form part of the country's Investment Priority Plan (IPP), unless declared otherwise by law.

To qualify for the availment of the incentives under Sections 13 and 15 of this IRR, <u>RE Developers</u> and manufacturers, fabricators, and <u>suppliers of locally-produced RE equipment</u>, shall register with the BOI.

The registration with the BOI shall be carried out through an agreement and an administrative arrangement between the BOI and the DOE, with the end-view of facilitating the registration of qualified RE facilities. The applications for registration shall be favorably acted upon immediately by the BOI, on the basis of the certification issued by the DOE.

C. *Certificate of Endorsement by the DOE*

<u>RE Developers</u>, and manufacturers, fabricators, and <u>suppliers of locally-produced RE equipment</u> shall be qualified to avail of the incentives provided for in the Act only after securing a Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis.

The DOE, through the REMB, shall issue said certification within fifteen (15) days upon request of the RE Developer or manufacturer, fabricator, and supplier; *Provided,* That the certification issued by the DOE shall be without prejudice to any further requirements that may be imposed by the government agencies tasked with the administration of the fiscal incentives mentioned under Rule 5 of this IRR.

xxx xxx xxx."

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Thus, in order to qualify for VAT zero-rating *on their purchases* as contemplated under RA No. 9513 and its Implementing Rules and Regulations, **RE Developers** must have secured the following:

1.) DOE *Certificate of Registration*;
2.) Registration with the BOI; and
3.) Certificate of Endorsement by the DOE.

On the other hand, for the availment of VAT zero-rating, a **manufacturer, fabricator, and supplier of locally-produced RE equipment** must have obtained the following:

1.) DOE *Certificate of Accreditation*;
2.) Registration with the BOI; and
3.) Certificate of Endorsement by the DOE.

The foregoing documents must all be shown. Otherwise, the transaction between the concerned RE Developer, as purchaser, and the manufacturer, fabricator, and supplier of locally-produced RE equipment, cannot be treated as subject to VAT zero-rating under the law.

In this case, while it may true that the DOE has issued the *Certificate of Registration* No. WESC 2009-09-004 dated February 4, 2011,[65] and the BOI has issued *Certificate of Registration* No. 2011-135 dated June 29, 2011,[66] both in favor of EDC, there is no showing that EDC has been issued a *Certificate of Endorsement* by the DOE. Thus, on this score alone, EDC's purchases from petitioner could not qualify for VAT zero-rating.

Nevertheless, petitioner similarly failed to present the documents required under the aforequoted Section 18(A), (B), and (C). Specifically, there is no indication that petitioner has been issued a DOE *Certificate of Accreditation*, a BOI Registration, and a DOE *Certificate of Endorsement*. Petitioner should have obtained the said documents since it is considered as a *"supplier of locally-produced RE equipment"*. Relative thereto, it is noted that as stated in the Service and Energy Based Availability Agreement dated March 1, 2013 between petitioner and EDC,[67] petitioner has agreed, *inter alia*, to provide certain services

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[65] Exhibit "P-13", Docket – Vol. I, pp. 248.
[66] Exhibit "P-14", Docket – Vol. I, pp. 249.
[67] Exhibit "P-34", Recitals, Pars. B and C, p. 1.

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and spare parts in connection with EDC's wind turbines and the other serviced equipment.

For failure to present the required documents, petitioner's gross receipts of ₱35,054,176.17, representing its sales to EDC, cannot be considered as subject to VAT zero-rating under the law.

With the foregoing disquisitions, it is clear that petitioner failed to fulfill the *fourth* and *fifth* requisites for the successful prosecution of the instant refund claim. Thus, the instant refund claim must already be denied. Correspondingly, it becomes unnecessary to determine whether petitioner fulfilled the remaining requisites for granting the refund of the subject amount of ₱59,852,615.84.

It bears stressing that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. **The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit**. Since taxes are the lifeblood of the government, **tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.** [68]

Simply put, statues that grant tax exemptions are construed ***strictissimi juris*** against the taxpayer and liberally in favor of the taxing authority. **Tax refunds in relation to the VAT are in the nature of such exemptions.**[69] In other words, **a claim for unutilized input VAT is in the nature of a tax exemption**. Thus, strict adherence to the conditions prescribed by the law is required of the taxpayer.[70]

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

[68] *Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018
[69] *Panasonic Communications Imaging Corp. of the Philippines vs. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010.
[70] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

C E R T I F I C A T I O N

Pursuant to Section 13, 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