REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL FIRST DIVISION

SANKYU-ATS CONSORTIUM-B,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10471

Members:

DEL ROSARIO, *P.J. and Chairperson*
MANAHAN, and
REYES-FAJARDO, *JJ.*

Promulgated:

AUG 01 2023, 8:30AM

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed by Sankyu-ATS Consortium-B on February 22, 2022 pursuant to Rule 8, Section 3(a), in relation to Rule 4, Section 3(a)(1) of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, as well as Section 112(C) in relation to Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended. Petitioner seeks to annul, reverse, and set aside the decision of respondent Commissioner of Internal Revenue (CIR) rendered through Revenue District Office No. 98-Cagayan De Oro City, denying petitioner's claim for value-added tax (VAT) refund in the total amount of ₱3,744,698.32 for the third (3rd) quarter of taxable year (TY) 2018.

THE PARTIES

Petitioner Sankyu-ATS Consortium-B is a consortium duly created by virtue of a Consortium Agreement between ATS Construction International, Inc. and Sankyu, Inc. on October 4, 2017. It is a VAT-registered taxpayer with Tax Identification Number (TIN) 710-338-514-000. It is engaged in supplying services and construction materials.[1]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), the government agency tasked to collect all national internal revenue taxes, among others. As Commissioner, respondent has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the NIRC of 1997, as amended, or other laws or portions thereof administered by the BIR.[2]

THE FACTS

In its Amended Quarterly VAT Return for the 3rd quarter of TY 2018, petitioner reported zero-rated sales in the amount of ₱15,540,000.00 and purchases of goods and services in the aggregate amount of ₱31,205,818.25 with input VAT amounting to ₱3,744,698.19.[3]

On September 30, 2020, petitioner filed with the Revenue District Office No. 98-Cagayan De Oro City a claim for refund[4] of its excess or unutilized creditable input VAT for the 3rd quarter of TY 2018, in the amount of ₱3,744,698.32.

On January 22, 2021, petitioner received the BIR Letter dated January 20, 2021[5] issued by Revenue District Office No. 98-Cagayan De Oro City, informing the former of the denial of its claim for refund (Denial Letter), the pertinent portion thereof reads:

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[1] Par. 1, *Facts Admitted, Joint Stipulation of Facts (JSF)* filed on June 1, 2022, CTA Docket, Vol. II, p. 498.
[2] Par. 2, *Facts Admitted, JSF*, CTA Docket, Vol. II, pp. 498-499.
[3] Exhibit "P-4", CTA Docket, Vol. II, p. 715.
[4] Exhibit "P-13", CTA Docket, Vol. II, pp. 889 to 902.
[5] Exhibit "P-19", CTA Docket, Vol. II, pp. 917 to 918.

> "In view of the foregoing, we regret to inform you that your application for VAT refund is denied. As a matter of course, we are returning to your end the entire documents which you have previously submitted."

Petitioner then filed its Petition for Review with the Court of Tax Appeals (CTA) on February 22, 2021.[6]

On May 31, 2021, a Resolution[7] was issued directing petitioner to submit the original or certified true copy of the Secretary's Certificate and to amend its Petition for Review to comply with the requisites of Section 6, Rule 7, Administrative Matter No. 19-10-20-SC.[8] Thus, on July 12, 2021, petitioner filed its Compliance[9] and Amended Petition for Review.[10]

In response to the Petition and the Summons served upon him on January 5, 2022,[11] respondent filed his Answer[12] on February 18, 2023, alleging the following Special and Affirmative Defenses:

(i) The Honorable Court has no jurisdiction over the instant petition considering that petitioner's claim for refund with the BIR was not accepted for failure to submit complete supporting documents;

(ii) Petitioner has no cause of action;

(iii) It is incumbent upon petitioner to prove that it is entitled to the refund sought because a claim for refund is not *ipso facto* granted upon the filing of the claim; and,

(iv) Tax refunds are strictly construed against the taxpayer and in favor of the government.

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[6] CTA Docket, Vol. I, pp. 6 to 29.
[7] CTA Docket, Vol. I pp. 105 to 106.
[8] Proposed Amendments to the 1997 Rules of Civil Procedure.
[9] CTA Docket, Vol. I, pp. 107 to 110.
[10] CTA Docket, Vol. I, pp. 114 to 148.
[11] CTA Docket, Vol. I, p. 355.
[12] CTA Docket, Vol. I pp. 372 to 389.

Petitioner filed its Pre-Trial Brief[13] on April 26, 2022, while respondent filed his Pre-Trial Brief on May 2, 2022.[14] The Pre-Trial Conference was held on May 5, 2022.[15]

The parties filed their Joint Stipulation of Facts[16] on June 1, 2022. Thereafter, the Pre-Trial Order[17] was issued.

During trial, petitioner offered the testimonies of its witnesses, namely, Ms. Yvonne Karla M. Telan and the Independent Certified Public Accountant (ICPA), Mr. Ericson D. Tadeja.

Petitioner's Formal Offer of Evidence with Manifestation[18] was filed on October 4, 2022. In a Resolution dated January 12, 2023,[19] the Court admitted petitioner's exhibits, except for the following: Exhibit "P-2" for failure to submit the duly marked exhibit; and, Exhibits "P-25" and "P-25-a" for failure to contain the sworn attestation required under the Judicial Affidavit Rule.

On the other hand, respondent opted not to present any witness in this case.

Petitioner submitted its Memorandum with Manifestation for Refund and/or Issuance of a Tax Credit Certificate[20] on February 20, 2023.

Meanwhile, per Records Verification dated February 27, 2023, respondent failed to file his Memorandum.

In a Minute Resolution[21] dated March 13, 2023, petitioner's Exhibits "P-25" and Exhibits "P-25-a" were admitted, and the present case was submitted for decision.

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[13] CTA Docket, Vol. I, pp. 411 to 420.
[14] CTA Docket, Vol. I, pp. 426 to 428.
[15] CTA Docket, Vol. I, pp. 430 to 432.
[16] CTA Docket, Vol. II, pp. 498 to 504.
[17] CTA Docket, Vol. II, pp. 511 to 522.
[18] CTA Docket, Vol. II, pp. 691 to 701.
[19] CTA Docket, Vol. II, pp. 940 to 943.
[20] CTA Docket, Vol. II, pp. 944 to 973.
[21] CTA Docket, Vol. II, p. 977.

ISSUE

The parties jointly stipulated the following issue to be tried and resolved:

> Whether petitioner is entitled to a tax refund or the issuance of a tax credit certificate (TCC) in the amount of ₱3,744,698.32, representing excess and/or unutilized input VAT for the 3rd quarter of TY 2018.[22]

PETITIONER'S ARGUMENTS

Petitioner asserts that it is entitled to a VAT refund and/or issuance of a TCC in the amount of ₱3,744,698.32 which is attributable to its zero-rated sales of goods and services to Philippines Sinter Corporation (PSC) in the 3rd quarter of TY 2018 as it was able to comply with the requisites to be entitled to a refund or TCC.

Petitioner further argues that respondent's denial of its administrative claim for VAT refund is bereft of legal basis. Allegedly, the additional requirements for VAT refund claims imposed under RMC 47-2019 are violative of Section 4 of the NIRC of 1997, as amended; and, that denying the buyer-taxpayer the right to input VAT refund due to erroneous invoices issued by the seller-taxpayer is unjust.

RESPONDENT'S ARGUMENTS

Respondent argues that this Court has no jurisdiction over the present petition considering that petitioner failed to submit the complete documentary requirements in support of its application for refund, which omission is tantamount to non-filing. Besides, even assuming that this Court has jurisdiction over the present petition, petitioner has no cause of action.

Respondent also avers that while it is incumbent upon petitioner to prove that it is entitled to the refund, tax refunds are strictly construed against the taxpayer and in favor of the government.

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[22] Par. 5, *Issues, JSF,* CTA Docket, Vol. II, pp 501.

THE COURT'S RULING

The present Petition must fail.

The CTA has jurisdiction over the present Petition.

Section 112(A) and (C) of the NIRC of 1997, as amended, provides the legal basis to claim for refund or issuance of a TCC of input VAT, including the taxpayer's remedy to appeal to the CTA the adverse decision or the inaction of the Commission of Internal Revenue (CIR), *viz.*:

> "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: xxx
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> xxx xxx xxx
>
> (C) *Period within which **Refund** of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a **refund** for creditable input taxes within **ninety (90) days** from the date of submission of the **official receipts or invoices and other** documents in support of the application filed in accordance with Subsections (A) **and (B) hereof**; ***Provided*, That, should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.**
>
> <u>In case of full or partial denial of the claim for 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</u>: ***Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.**" *(Underscoring supplied)*

Complementing the aforementioned provision are Sections 7 and 11 of Republic Act (RA) No. 1125,[23] as amended, conferring exclusive appellate jurisdiction upon CTA to review on appeal decision

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[23] An Act Creating the Court of Tax Appeals.

or inaction of the CIR in cases involving refunds of internal revenue taxes, *viz.*:

> "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 Code or other laws administered by the Bureau of Internal Revenue; xxx (*Boldfacing supplied*)
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> x x x
>
> "SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. — Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue x x x may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. x x x"

In this case, petitioner received the Denial Letter on January 22, 2021. Thus, petitioner had thirty (30) days, or until February 22, 2021,[24] to appeal before the CTA. Clearly, petitioner timely filed its Petition for Review on February 22, 2021 and the Court can take cognizance of the case.

Anent respondent's claim that this Court has no jurisdiction over the petition due to petitioner's **alleged failure to submit the complete documentary requirements to support its application for refund**, which is tantamount to non-filing [of its administrative claim], the same is bereft of merit.

To be sure, the failure to submit documentary requirements is one thing; the failure to file an administrative claim is another. In this case, there is no denying that an administrative claim was indeed filed, and that a decision had in fact been issued by the BIR thru its Letter Denial dated January 20, 2021. As afore-discussed, a decision of the CIR is subject to review by this Court pursuant to Section 7(a)(1) of RA 1125, as amended.

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[24] February 21, 2021 fell on a Sunday and the next working day was February 22, 2021.

More importantly, SEC. 4.112-1 of RR 26-2018[25] provides:

> **SEC. 4.112-1. Claims for Refund/Credit of Input Tax.-**
>
> xxx xxx xxx
>
> **(d) Period within which refund/credit of input taxes shall be made**
>
> In proper cases, the Commissioner of Internal Revenue shall grant 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 of the denial.**
>
> ***The 90-day period to process and decide shall start from the filing of the claim up to the release of the payment of the VAT refund. Provided, That, the claim/application is considered to have been filed only upon submission of the official receipts or invoices and other documents in support of the application as prescribed under pertinent revenue issuances.***

The pertinent portions of Revenue Memorandum Circular (RMC) 47-2019,[26] on the other hand, read:

> **I. GENERAL POLICIES**
>
> xxx
>
> 5. The taxpayer-claimant shall ensure the completeness and authenticity of the documentary requirements upon filing of the application for VAT refund. **Failure on the part of the taxpayer-claimant to submit the complete documents in support of the claim shall result in non-acceptance of the applications.** Due to the very limited time for processing the VAT refunds, no additional document/s shall be subsequently requested/required from the

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[25] SUBJECT: Amends Certain Provisions of Revenue Regulations No. 13-2018 to Implement the 90-Day Processing of Claim for VAT Refund Under Section 112(C) of the Tax Code of 1997, as amended by Republic Act (R.A.) No. 10963, Otherwise known as the Tax Reform for Acceleration and Inclusion or TRAIN.

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

> taxpayer-claimant. **Any unsupported claim shall be outrightly disallowed, resulting in full/partial denial of the claim.**
>
> xxx xxx xxx
>
> **II. DOCUMENTS TO BE SUBMITTED BY THE TAXPAYER-CLAIMANTS UPON FILING OF THE APPLICATIONS FOR VAT REFUND**
>
> 1. The application/s must be **accompanied with complete supporting documents enumerated in the Revised Checklist of Mandatory Requirements (Annex "A.1")** for claims filed pursuant to Sec. 112(A) of the Tax Code, as amended, or Checklist of Documentary Requirements (Annex "A.2") for claims filed under Sec. 112(B) of the same Tax Code. xxx

Based on the foregoing, it is clear that the complete supporting documents must be submitted upon application for refund, and the taxpayer-claimant's failure to do so shall result in non-acceptance of the application. It is also categorical that no additional documents shall be requested from the taxpayer-claimant and that any unsupported claim shall be disallowed/denied.

Indubitably, there are two (2) possible actions of the BIR on taxpayer-claimant's claim for refund of input VAT, *viz*:

(1) Non-acceptance of the application for refund for taxpayer-claimant's failure to submit complete documents at the time of the filing of the administrative claim; or,

(2) Deny the unsupported claim.

In this case, records reveal that petitioner's administrative claim as well as the supporting documents were received by the BIR on September 30, 2020. The BIR necessarily found petitioner's submission complete; otherwise, it would not have received the administrative claim and the supporting documents.

After evaluating the documents submitted by petitioner, the BIR issued the Letter Denial dated January 20, 2021, which states:

> "In the evaluation of the documents submitted in support of your claim for VAT refund, the following were noted, to wit:

1. The complete requirements as enumerated in the Revised Checklist of Mandatory Requirements (Annex "A.1") for claims filed pursuant to Section 112(A) of the Tax Code per Revenue Memorandum Circular No. 47-2019 were not submitted, as discussed below:

Legend: X = Not submitted/Not in compliance with the requirements specified in the Checklist.

Ref No.		*Observation/Comments*
2.4	*X*	*Submitted VAT return was not the original copy certified by the BIR Office.*
2.7	*X*	*Sworn statement submitted by the claimant did not indicate the amount of zero-rated sales declared neither stating that a separate sheet with regards to the said amount was attached to the aforesaid sworn statement.*
2.14	*X*	*Sworn statement did not state the completeness and authenticity of the submitted invoices/receipts of the purchased goods/services.*
Other comments: *No soft copies of the required schedules stored in flash drive/memory stick as specifically required in note b of the Checklist of Requirements.*		

2. Invoices/receipts of your local purchases revealed incomplete invoicing requirements in accordance with Section 237 of RA 8424, the Tax Code of 199, to wit:

'SEC. 237. **Issuance of Receipts or Sales or Commercial Invoices**. – All persons subject to an internal revenue tax shall... issue duly registered receipts or sales or commercial invoices... showing the **date of transactions, quantity, unit cost and description of merchandise or nature of service**: Provided, however, That in the case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or regardless of the amount... receipts or invoices shall be issued which shall show the **name, business style, if any, and address of the purchaser, customer or client**: Provided, further, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the **Taxpayer Identification Number (TIN) of the purchaser**.'

> In view of the foregoing, we regret to inform you that your application for VAT refund is denied. As a matter of course, we are returning to your end the entire documents which you have previously submitted."

Plainly, petitioner's claim was denied in view of the afore-quoted observations of the BIR on the submissions made by petitioner. Perforce, it is incumbent upon petitioner to convince this Court that its administrative claim should have been granted by the BIR. The pronouncement in *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[27] is enlightening, *viz*:

> "A distinction must, thus, be made between administrative cases appealed due to inaction and those **dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents**. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be **dismissible**, not for lack of jurisdiction, but **for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim**. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA."

Petitioner is not entitled to tax refund.

The claim for refund of excess and unutilized input VAT is governed by Section 112 of NIRC of 1997, as amended. This Court has time and again followed the criteria contained therein as its basis for its conclusion on whether to grant or deny claims for refund of the same nature.

The Court reiterates the requisites as follows:

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

1) That the claim for refund was filed within the prescriptive period;

2) The taxpayer is VAT registered;

3) That there must be zero-rated or effectively zero-rated sales;

4) That input taxes were incurred or paid;

5) That such input taxes are attributable to zero-rated or effectively zero-rated sales; and,

6) That the input taxes have not been applied against the output tax.

The claim for refund was filed within the prescriptive period.

Under Section 112(A) of the NIRC, as amended, a VAT-registered person, whose sales are zero-rated or effectively zero-rated, may apply for a refund of creditable input tax within two (2) years after the close of the taxable quarter.

Petitioner's claim for refund represents its alleged unutilized input VAT arising from zero-rated sales for the 3rd quarter of TY 2018.[28] Petitioner has two (2) years or until September 30, 2020, within which to file its administrative claim for refund, reckoned after the close of the 3rd quarter of TY 2018 on September 30, 2018. Clearly, petitioner timely filed its administrative claim on September 30, 2020.

Anent the present Petition for Review (judicial claim for refund), petitioner also timely filed the same on February 22, 2021, as already discussed earlier.

Petitioner is a VAT-registered entity.

Records disclose that petitioner is indeed a VAT-registered entity as it presented its Certificate of Registration (BIR Form 2303) with

[28] *Supra*, Note 4.

OCN No. 2RC0001269536, dated October 20, 2017, showing its TIN, 710-338-514-000, and "VAT" as the registered tax type, among others.[29]

Petitioner was unable to prove that its sales were zero-rated or effectively zero-rated.

The third requisite for the claim of VAT refund is that there must be zero-rated or effectively zero-rated sales.

Petitioner claims that its goods and services were sold to PSC, a Philippine Economic Zone Authority (PEZA)-registered enterprise, and that its transactions with its client are zero-rated.[30]

The Court agrees that **sale of services made by a VAT-registered enterprise from the customs territory to a PEZA-registered enterprise within the Special Economic Zones or ECOZONES is subject to VAT at zero percent (0%)**. This is by virtue of Section 108(B)(3) of the National Internal Revenue Code of 1997, as amended (1997 NIRC), which provides:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* -
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* - The following **services performed in the Philippines by VAT-registered persons** shall be subject to zero percent (0%) rate:
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> xxx xxx xxx
>
> (3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects the supply of such services to zero percent (0%) rate**;" (*Emphasis supplied*)

Thus, to qualify for VAT zero-rating, the above-quoted provision requires that a sale of service must satisfy the following:

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[29] Exhibit "P-1", CTA Docket, Vol. II, p. 705.
[30] Questions 11 to 13, *Judicial Affidavit of Yvonne Karla M. Telan,* CTA Docket, Vol. I, p. 310.

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1. Sale of service is performed in the Philippines;
2. Service is performed by a VAT-registered person; and
3. **Service is rendered to persons or entities exempted under special laws** or international agreement to which the Philippines is a signatory.

Revenue Regulation (RR) No. 16-05[31] was issued by the Secretary of Finance to implement the VAT provisions of the 1997 NIRC. Section 4.108-5 of RR No. 16-05 reads:

> "**SECTION 4.108-5. *Zero-Rated Sale of Services.* –**
>
> **(a)** ***In general.*** - A zero-rated sale of service (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these Regulations.
>
> **(b)** ***Transactions Subject to Zero Percent (0%) VAT Rate.*** - The following **services performed in the Philippines by a VAT-registered person** shall be subject to zero percent (0%) VAT rate:
>
> xxx xxx xxx
>
> (3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects the supply of such services to zero percent (0%) rate**[.]" (*Emphasis supplied*)

RR No. 16-05 further defines "effectively zero-rated sale of service" as follows:

> "**SECTION 4.108-6. *Effectively Zero-Rated Sale of Services.*** **-**The term **'effectively zero-rated sales of services'** shall refer to the local sale of services by a VAT-registered person to a person or entity who was granted indirect tax exemption under special laws or international agreement." (*Underscoring supplied*)

In *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.,*[32] the Supreme Court ruled that by virtue of Section 8[33] of RA 7916,[34] as amended, PEZA-registered enterprises

[31] SUBJECT: Consolidated Value-Added Tax Regulations of 2005.
[32] G.R. No. 150154, August 9, 2005.
[33] SECTION 8.ECOZONE to be Operated and Managed as Separate Customs Territory.- The ECOZONES shall be managed and operated by the PEZA as separate customs territory. xxx
[34] AN ACT PROVIDING FOR THE LEGAL FRAMEWORK AND MECHANISMS FOR THE CREATION, OPERATION, ADMINISTRATION, AND COORDINATION OF SPECIAL

are considered VAT-exempt entities. As such, no output VAT may be passed on to them. According to the Supreme Court, the exemption of these entities from the imposition of VAT flows from the legal fiction established in the said law that deemed ECOZONES as foreign territories.

In another case, *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*[35], the Supreme Court discussed why PEZA-registered enterprises are considered as VAT-exempt entities and thus, their purchases of goods and/or services from VAT-registered enterprises located in the customs territory are effectively VAT zero-rated. Thus, the Court held:

> "Applying the special laws we have earlier discussed, **respondent as an entity is exempt from internal revenue laws and regulations.**
>
> **This exemption covers *both* direct and indirect taxes, stemming from the very nature of the VAT as a tax on consumption, for which the direct *liability* is imposed on one person but the indirect *burden* is passed on to another. Respondent, as an exempt entity, can neither be directly charged for the VAT on its sales nor indirectly made to bear, as added cost to such sales, the equivalent VAT on its purchases.** *Ubi lex non distinguit, nec nos distinguere debemus.* Where the law does not distinguish, we ought not to distinguish.
>
> Moreover, the exemption is both express and pervasive for the following reasons:
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> *First,* **RA 7916 states that 'no taxes, local and national, shall be imposed on business establishments operating within the ecozone.' Since this law does not exclude the VAT from the prohibition, it is deemed included.** *Exceptio firmat regulam in casibus non exceptis.* An exception confirms the rule in cases not excepted; that is, a thing not being excepted must be regarded as coming within the purview of the general rule.
>
> **Moreover, even though the VAT is not imposed on the entity but on the transaction, it may still be passed on and, therefore, indirectly imposed on the same entity -- a patent circumvention of the law. That no VAT shall be imposed directly upon business establishments operating within the ecozone under RA 7916 also means that no VAT may be passed on and imposed indirectly.** *Quando aliquid prohibetur ex directo prohibetur et per obliquum.* When anything is prohibited directly, it is also prohibited indirectly.

ECONOMIC ZONES IN THE PHILIPPINES, CREATING FOR THIS PURPOSE, THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA), AND FOR OTHER PURPOSES.
[35] G.R. No. 153866. February 11, 2005.

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> *Second,* **when RA 8748 was enacted to amend RA 7916, the same prohibition applied, except for real property taxes that presently are imposed on land owned by developers. This similar and repeated prohibition is an unambiguous ratification of the law's intent in not imposing local or national taxes on business enterprises within the ecozone.** x x x" (*Emphasis and underscoring supplied; Citations omitted*)

Petitioner posits that its sales to its only client, PSC, allegedly an ECOZONE Export Enterprise operating within an ECOZONE, are zero-rated or effectively zero-rated.

Petitioner's claim is bereft of merit.

It is imperative upon petitioner to prove, on the strength of its own evidence, that its sales are zero-rated or effectively zero-rated. However, the records of the case reveal that the PEZA Certificate of Registration of PSC, petitioner's only client, was **denied admission**[36] for failure to submit the duly marked document.

In its Memorandum with Manifestation,[37] while petitioner prayed that the Court reconsider and admit Exhibits "P-25" and "P-25-a", referring to the Judicial Affidavit of its witness, Ms. Yvonne Karla M. Telan and her signature, respectively, there is nothing in said Memorandum with Manifestation which moves for the reconsideration of the denial of Exhibit "P-2". Moreover, petitioner did not even bother to submit the duly marked Exhibit "P-2". What appears on record, to this date, is the photocopy of Exhibit "P-2", the admission in evidence of which was denied in the Resolution dated January 12, 2023.

It is a basic rule in evidence that each party must prove his affirmative allegation.[38] The burden of evidence lies with the party who asserts the affirmative allegation.[39]

True, petitioner's witness testified that its only client during the pertinent taxable period is PEZA-registered and this was not questioned nor rebutted by respondent.[40] Petitioner's bare assertion,

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[36] *Supra*, Note 19.
[37] *Supra*, Note 20.
[38] *Stolt-Nielsen Marine Services, Inc. vs. National Labor Relations Commission,* G.R. No. 128395, December 29, 1998.
[39] *Aklan Electric Cooperative Incorporated vs. National Labor Relations Commission, G.R. No. 121439, January 25, 2000.*
[40] Transcript of Stenographic Notes CTA Case No. 10471, July 21, 2022, p. 21.

without any documentary evidence, is not sufficient to prove that PSC is indeed a PEZA-registered export enterprise.

In *Republic of the Philippines vs. Sandiganbayan*,[41] the Supreme Court emphasized the superiority of written evidence over oral evidence, to wit:

> "We are thus vividly and fittingly reminded of the proverbial words of Mr. Justice Story that:
>
> 'Naked statements must be entitled to little weight when the parties hold better evidence behind the scenes and
>
> 'A party's nonproduction of a document which courts almost invariably expect will be produced unavoidably throws a suspicion over the cause.
>
> Corollary to this is that the presumption is always and inevitably against a litigant who fails to furnish evidence within his reach, and it is the stronger when the documents, writings, etc., would be conclusive in establishing his case. This is indeed an occasion to emphasize once again that the superiority of written evidence, compared with oral, is so pronounced, obvious and well known, that in most cases the deliberate and inexcusable withholding of the written evidence, and effort to secure favorable consideration of oral testimony in the place of it, is an affront to the intelligence of the court." (*Citations* omitted)

As petitioner was unable to prove compliance with the third requisite for VAT refund, the Court need not belabor on the other requisites for refund. Indeed, it is clear that petitioner was unable to establish its claim.

On a final note, this Court reiterates that tax refunds are a derogation of the State's taxing power.[42] Thus, tax refunds are in the nature of a claim for tax 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.[43]

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[41] G.R. Nos. 112708-09, March 29, 1996.
[42] *Compagnie Financiere Sucres et Denrees vs. Commissioner of Internal Revenue,* G.R. No. 133834, August 28, 2006.
[43] Notice, *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue,* G.R. No. 211779, November 3, 2020.

WHEREFORE, premises considered, the present Petition for Review is **DENIED** for lack of merit. Accordingly, respondent's denial of petitioner's claim for tax refund, as embodied in Letter Denial dated January 20, 2021, is **AFFIRMED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

	(on leave)
CATHERINE T. MANAHAN	**MARIAN IVY F. REYES-FAJARDO**
Associate Justice	Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice