REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

ASURION HONG KONG LIMITED - ROHQ,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10121

Members:

BACORRO-VILLENA, *Acting Chairperson,*
CUI-DAVID *JJ.*

Promulgated:
OCT 05 2022

x-- x
3:11 p.m.

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Asurion Hong Kong Limited - ROHQ (**petitioner/AHKL-ROHQ**) on 18 July 2019, pursuant to Rule 8, Section 3(a)[2] of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It seeks the refund of the alleged excess unutilized value-added tax (**VAT**) attributable to its zero-rated sales for calendar year (**CY**) 2017 amounting to ₱17,135,383.37.

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1 Division Docket, Volume I, pp. 10-29.

2 **SEC. 3.** *Who may appeal; period to file petition.* – (a) A party adversely affected … by a decision or ruling of the Commissioner of Customs … may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling [.]

PARTIES OF THE CASE

Petitioner is the Philippine Branch of a multinational company organized and existing under the laws of Hong Kong. As such, petitioner is licensed by the Securities and Exchange Commission (**SEC**) to transact business in the Philippines as a regional operating headquarters (**ROHQ**) under SEC Registration No. FS201413422.[3]

Respondent is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**) vested with authority to carry out the functions, duties, and responsibilities of his Office including the duty to act upon claims for tax refund and credit pursuant to the National Internal Revenue Code (**NIRC**) of 1997, as amended.

FACTS OF THE CASE

For CY 2017, petitioner rendered services to the following companies:

1) Asurion Insurance Services, Inc. (**AISI**), a corporation organized under the laws of Nashville, Tennessee, United States of America (**USA**);
2) New Asurion Corporation (**NAC**), a corporation organized under the laws of Nashville, Tennessee, USA;
3) Phone Repair Centre Limited (**PRCL**), a corporation organized under the laws of London, United Kingdom (**UK**); and,
4) New Asurion Singapore Pte. Ltd. (**NAS**), a corporation organized under the laws of Singapore.

The foregoing entities allegedly paid petitioner the amount of ₱760,169,016.95 for its services in acceptable foreign currency, in accordance with the Bangko Sentral ng Pilipinas' (**BSP's**) rules and regulations.

[3] Exhibit "P-1", Division Docket, Volume II, p. 457.

Petitioner thus filed with the Bureau of Internal Revenue (**BIR**) its Original and Amended Quarterly VAT Returns[4] (BIR Form No. 2250-Q) for the four (4) quarters of CY 2017 on the following dates:

Period	Type of Return	Date of Filing
1st Quarter	Original	20 April 2017
	Amended	29 November 2017
2nd Quarter	Original	25 July 2017
	Amended	19 December 2017
3rd Quarter	Original	23 October 2017
	Amended	19 December 2017
4th Quarter	Original	18 January 2018
	Amended	12 March 2019

As alleged by petitioner, it did not have any sales subject to 12% VAT nor VAT-exempt sales during the aforementioned period, while it incurred an input VAT amounting to ₱17,135,383.37 wholly attributable to its zero-rated sales for the same period.

On 27 March 2019, petitioner filed its administrative claim with the BIR for refund[5] for the above amount of incurred input VAT. On 21 June 2019, petitioner received a letter[6] dated 14 May 2019 from BIR Revenue Region No. 8 – Makati, denying its administrative claim for refund. On 18 July 2019, petitioner filed the instant petition.[7] The case was raffled to the Second Division and docketed as CTA Case No. 10121.

On 22 July 2019, the Court issued its Summons[8] on respondent. On 14 October 2019, respondent filed his Answer[9] to petitioner's petition. In the Answer, respondent countered petitioner's claims, essentially stating that: (1) petitioner did not comply with the substantiation requirements; (2) the corporation's officer who filed the administrative claim for refund lacked authority to do so; and, (3) that petitioner failed to prove that its customers are foreign nationals.

4 Exhibits "P-10" to "P-17", id., pp. 742-762.
5 Exhibits "P-18" to "P-19", id., pp. 763-768.
6 Exhibit "P-21", id., pp. 770-772.
7 Supra at note 1.
8 Division Docket, Volume I, p. 165.
9 Id., pp. 173-180.

Thereafter, on 24 October 2019, the Court issued a Notice of Pre-Trial Conference[10] ordering the parties to file their respective Pre-Trial Briefs (**PTBs**).

On 15 November 2019, petitioner filed its PTB[11], while on 29 November 2019 respondent filed its PTB.[12] In the Pre-Trial Conference that followed on 05 December 2019, the Court ordered the parties to file their Joint Stipulation of Facts and Issues[13] (**JSFI**). On 03 January 2020, the parties filed their JSFI[14] which the Court approved in a Pre-Trial Order[15] dated 15 January 2020.

During the trial proper, petitioner offered the testimony of the following witnesses, both of whom have testified *via* their respective judicial affidavits, namely: (1) Santiago De Guzman II (**De Guzman**), petitioner's Finance Manager; and, (2) Enrico E. Baluyot (**Baluyot**), the Independent Certified Public Accountant (**ICPA**).

On the witness stand, De Guzman testified on the circumstances that led to the filing of petitioner's Quarterly VAT Returns for CY 2017. He also stated that since petitioner did not shift any amount of output tax, its remaining unutilized input tax amounted to ₱17,135,383.37. Likewise, he testified about petitioner's eventual application for a tax refund with the BIR and the latter's subsequent denial of the same.[16]

On the other hand, ICPA Baluyot, aside from identifying and verifying the authenticity of petitioner's voluminous documents, testified on why he recommended that petitioner was to be entitled to a refund of excess input tax (although at a lesser amount than that it claimed). According to ICPA Baluyot, petitioner's documents were only able to substantiate the amount of ₱13,835,860.51.[17]

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[10] Id., pp. 182-183.
[11] Id., pp. 195-208.
[12] Id., pp. 382-387.
[13] See Order dated 05 December 2019, id., p. 389.
[14] Id., pp. 401-411.
[15] Id., pp. 418-422.
[16] Exhibit "P-22", id., pp. 212-233.
[17] Exhibit "P-23", id., pp. 491-505.

After presenting its last witness, the Court, in an Order dated 14 October 2020[18], directed petitioner to file its Formal Offer of Evidence (FOE) within fifteen (15) days from 28 October 2020 or until 12 November 2020. Respondent was also given a similar period within which to file its comment or opposition to petitioner's FOE.

On 16 November 2020, petitioner filed its FOE.[19] On the other hand, respondent failed to file a comment to petitioner's FOE.[20]

In a Resolution dated 13 January 2021[21], the Court resolved to admit all of petitioner's exhibits, except for **Exhibits "P-4-a"**[22] and **"P-4-b"**[23] for petitioner's failure to submit their originals for comparison; Exhibits **"P-26"**[24], **"P-27"**[25], **"P-28"**[26], **"P-29"**[27], **"P-46-AQ"**[28], **"P-74-C"**[29], and **"P-74-D"**[30] for not being found in the records; and, Exhibit **"P-34-O"**[31] for being unreadable. The Court further noted that Exhibits **"P-32-BM"**[32], **"P-34-J"**[33], **"P-40-B"**[34], **"P-56-U"**[35], **"P-58-J"**[36], **"P-62-I"**[37], **"P-64-ES"**[38], **"P-68-BC"**[39], **"P-68-BX"**[40], **"P-71-C"**[41], and **"P-93-O"**[42] were partly unreadable.

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18 Id., p. 508.
19 Id., Volume II, pp. 513-556.
20 See Records Verification dated 16 December 2020, id., p. 777.
21 Id., pp. 779-781.
22 Signature of Mr. Francis Mariano.
23 Signature of Mr. Mark S. Gunning.
24 Summary Schedule of Zero-Rated Sales declared in the amended VAT Return for the 1st Quarter of CY 2017.
25 Summary Schedule of Zero-Rated Sales declared in the amended VAT Return for the 2nd Quarter of CY 2017.
26 Summary Schedule of Zero-Rated Sales declared in the amended VAT Return for the 3rd Quarter of CY 2017.
27 Summary Schedule of Zero-Rated Sales declared in the amended VAT Return for the 4th Quarter of CY 2017.
28 Part of copies invoices/ORs for 2nd Quarter of CY 2017.
29 Part of copies of supporting documents for domestic purchases of goods/services already reported in previous quarters of CY 2017.
30 Id.
31 Part of copies of SOA/BS/DRS/AR/NVAR/CR for the 1st Quarter of CY 2017.
32 Part of copies of valid supporting invoices/ORs for the 1st Quarter of CY 2017.
33 Part of copies of SOA/BS/DRS/AR/NVAR/CR for the 1st Quarter of CY 2017.
34 Part of copies of VAT invoices/ORs for 1st Quarter of CY 2017 which contain incorrect business style of petitioner.
35 Part of copies of SOA/BS/DRS/AR/NVAR/CR for the 3rd Quarter of CY 2017.
36 Part of copies invoices/ORs that fail to comply with at least two (2) of the invoicing requirements in RMC No. 62-2005 for the 3rd Quarter of CY 2017.
37 Part of copies of VAT invoices/ORs for 3rd Quarter of CY 2017 without ATP or expired ATP.
38 Part of copies of valid supporting invoices/ORs for the 4th Quarter of CY 2017.
39 Part of copies invoices/ORs that fail to comply with at least two (2) of the invoicing requirements in RMC No. 62-2005 for the 4th Quarter of CY 2017.
40 Id.
41 Part of copies of VAT invoices/ORs for 4th Quarter of CY 2017 which contain incorrect name or incomplete name of petitioner.

On 02 February 2021, petitioner filed an "Omnibus Motion (i) Motion for Reconsideration (Re: Resolution dated January 13, 2021) (ii) Motion to Admit Secondary Evidence"[43] (**Omnibus Motion**). In a Resolution dated 09 February 2021[44], the Court ordered respondent to file its comment to the foregoing motion. Respondent failed to file a comment to petitioner's motion.[45] On 21 May 2021[46], the Court admitted petitioner's **Exhibits "P-4", "P-4-a", "P-4-b", "P-26", "P-27", "P-28"** and **"P-29"**.

Thereafter, during respondent's initial presentation of evidence, it manifested that it had no witnesses to present. Accordingly, with no countervailing evidence from respondent, the Court, upon motion of both parties, were granted a period of thirty (30) days within which to file their respective memoranda.[47]

Later or on 22 July 2021, petitioner filed its Memorandum[48], while respondent filed his own Memorandum[49] on 28 July 2021.

On 06 October 2021[50], the Court submitted the case for decision. Subsequently, on 16 May 2022, petitioner filed a "Submission (With Motion to Set Additional Commissioner's Hearing)" (**Submission**).[51]

Considering that the petition was already submitted for decision, the Court merely noted without action petitioner's Submission.[52]

ISSUE

In their JSFI, the parties forwarded the following issue for the Court's resolution:

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42 Part of copies of supporting invoices/ORs for input VAT amortization on domestic purchase of capital goods exceeding Php1,000,000.00.
43 Division Docket, Volume II, pp. 783-791.
44 Id., p. 794.
45 See Records Verification dated 08 March 2021, id., p. 795.
46 See Resolution dated 21 May 2021, id., pp. 799-804.
47 See Order dated 23 June 2021, id., p. 806.
48 Id., pp. 807-836.
49 Id., pp. 842-869.
50 See Resolution dated 06 October 2021, id., p. 872.
51 Id., pp. 873-876.
52 See Resolution dated 21 June 2022, id., pp. 899-900.

WHETHER PETITIONER ASURION HONG KONG LIMITED - ROHQ IS ENTITLED TO ITS CLAIM FOR THE REFUND OF ₱17,135,383.37, REPRESENTING ITS ALLEGED EXCESS AND UNUTILIZED INPUT VALUE-ADDED TAX (VAT) ATTRIBUTABLE TO ITS ZERO-RATED SALES OF SERVICES FOR THE FOUR (4) QUARTERS OF CY 2017.[53]

ARGUMENTS

In support of the above, petitioner anchored its claim for refund on Section 110(B), in relation to Section 112(A) and (C) of the NIRC of 1997, as amended, by Republic Act (**RA**) No. 10963[54], otherwise known as the Tax Reform for Acceleration and Inclusion (**TRAIN Law**). The said provisions read, thusly:

> ...
>
> **SEC. 110.** *Tax Credits.* — ...
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> ...
>
> (B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however,* that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.
>
> ...
>
> **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

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53 Id., Volume I, p. 402, supra at note 14,

54 AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> 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.
>
> ...
>
> (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.
>
> 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 the ninety (90)-day period shall be punishable under Section 269 of this Code.
>
> ...

Allegedly having no output tax during CY 2017 due its services to foreign corporations, petitioner claimed that it was to be entitled to a full of refund of input VAT incurred for the same period.

Respondent, on the other hand, maintained that petitioner failed to substantiate the amount of refund being claimed and that its customers were foreign nationals. It is on these two grounds that respondent justified the denial of petitioner's claim for refund.

RULING OF THE COURT

After a careful scrutiny of the parties' contrasting arguments, We are constrained to partially grant the instant petition.

In *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[55] (**Deutsche Knowledge Services**), the Supreme Court laid down the requisites for the entitlement to a tax refund or credit of excess input VAT attributable to zero-rated sales, as follows:

> ...
> Under Section 4.112-1(a) of Revenue Regulations No. (RR) 16-05, otherwise known as the Consolidated VAT Regulations of 2005, in relation to Section 112 of the Tax Code, a claimant's entitlement to a tax refund or credit of excess input VAT attributable to zero-rated sales hinges upon the following requisites: "(1) the taxpayer must be VAT-registered; (2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax."
> ...

We shall now proceed to the determination of petitioner's compliance with the aforementioned requisites.

FIRST (1ST) REQUISITE:
PETITIONER MUST BE VALUE-ADDED TAX (VAT)-REGISTERED.

It is undisputed that petitioner is a VAT-registered taxpayer with Tax Identification No. (**TIN**) 008-817-591-000, as evidenced by its BIR Registration No. OCN 9RC0000541042.[56]

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55 G.R. No. 234445, 15 July 2020. Citations omitted.
56 Exhibit "P-3", Division Docket, Volume II, p. 635.

SECOND (2ND) REQUISITE:
PETITIONER MUST BE ENGAGED IN SALES WHICH ARE ZERO-RATED OR EFFECTIVELY ZERO-RATED.

The 2nd requisite requires that the taxpayer is engaged in zero-rated or effectively zero-rated sales and, for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b)[57], and 108(B)(1) and (2)[58] of the NIRC[59] of 1997, as amended, the acceptable foreign currency exchange proceeds must have been duly accounted for in accordance with the BSP rules and regulations.

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57 **Sec. 106.** *Value-Added Tax on Sale of Goods or Properties.* –

(A) *Rate and Base of Tax.* – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to twelve percent (12%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

...

(2) *[Zero-rated sales]* – The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* - The term 'export sales' means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);

...

(b) *Foreign Currency Denominated Sale.* — The phrase '*foreign currency denominated sale*' means sale to a nonresident of goods, except those mentioned in Sections 149 and 150, assembled or manufactured in the Philippines for delivery to a resident in the Philippines, paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP).

...

58 **Sec. 108**. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* –

...

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

(1) Processing, manufacturing or repacking 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);

...

59 Prior to the changes brought about by TRAIN.

In its Amended VAT returns for the 1st to 4th quarters of CY 2017, petitioner reported total zero-rated sales amounting to ₱760,168,716.95, broken down as follows:

	Zero-Rated Sales
1st Quarterly CY 2017 Amended VAT Return[60]	₱181,737,269.10
2nd Quarterly CY 2017 Amended VAT Return[61]	201,916,747.07
3rd Quarterly CY 2017 Amended VAT Return[62]	163,145,150.78
4th Quarterly CY 2017 Amended VAT Return[63]	213,369,550.00
Total	**₱760,168,716.95**

Based on petitioner's Summary List of Sales (**SLS**)[64], its total zero-rated sales of ₱760,168,716.95 pertain to sales of services to foreign clients or affiliates.

Relative to the above, petitioner explained that its sale of services to non-resident foreign corporations (**NRFCs**) is a transaction subject to 0% VAT[65], pursuant to Section 108(B)(2) of the NIRC of 1997, as amended, which states:

> ...
>
> **SEC. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —
>
> ...
>
> (B) *Transactions Subject to Zero Percent (0%) Rate* — The following services **performed in the Philippines** by VAT-registered persons shall be subject to zero percent (0%) rate.
>
> > (1) Processing, manufacturing or repacking 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);

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60 Exhibit "P-11", Division Docket, Volume II, pp. 744-746.
61 Exhibit "P-13", id., 749-751.
62 Exhibit "P-15", id., 754-756.
63 Exhibit "P-17", id., 759-762.
64 Exhibits "P-98" to "P-101", USB (Exhibit "P-24-b").
65 Petition for Review, Division Docket, Volume I, p. 20.

> (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).**[66]

...

It is undisputed that petitioner is licensed as an ROHQ.[67] Petitioner's witness, De Guzman, also confirmed that it is an ROHQ of a multinational company organized and existing under the laws of Hong Kong and it is engaged in performing general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistics services; research and development services, and product development; technical support and maintenance; data processing and communication; and, business development based on the Certificate of Registration and License with License No. FS201413422[68] issued by the SEC.[69] **On this note, it is clear that petitioner's qualifying services should be classified as sales of "other services" defined under Section 108(B)(2) of the NIRC of 1997, as amended.**

In *Deutsche Knowledge Services*[70], the Supreme Court held that in order for the sales of "other services" to be considered VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended, the taxpayer must prove the following conditions:

> ...
>
> ... *First*, the seller is VAT-registered. *Second*, the services are 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." *Third*,

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66 Emphasis supplied.

67 Paragraph 1, Stipulation of Facts, JSFI, Division Docket, Volume I, p. 401.

68 Supra at note 3.

69 Question and Answer (Q&A) Nos. 4 and 5, Sworn Statement of Mr. Santiago de Guzman II, Exhibit "P-22", Division Docket, Volume I, p. 213.

70 Supra at note 55; Citation omitted.

> the services are "paid for in acceptable foreign currency and accounted for in accordance with [BSP] rules and regulations."
>
> ...

In addition to the foregoing, Section 108(B)(2) of the NIRC of 1997, as amended, provides that the "other services" must be performed in the Philippines.

As to the *first condition*, it was previously established that petitioner is VAT-registered.

As regards the *second condition*, the Supreme Court, in *Deutsche Knowledge Services,* discussed the two (2) components that the taxpayer must establish to prove its client's status as an NRFC, to wit:

> ...
>
> ... (1) that [the] client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of *both* of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines.
>
> ...
>
> Proof of the above-mentioned second component sets the present case apart from *Accenture, Inc. v. Commissioner of Internal Revenue* and *Sitel Philippines Corp. v. Commissioner of Internal Revenue.* In these cases, the claimants similarly presented **SEC Certifications and client service agreements.** However, the Court consistently ruled **that documents of this nature only establish the *first* component (*i.e.*, that the affiliate is foreign). The absence of any other competent evidence (*e.g.*, articles of association/certificates of incorporation) proving the *second* component (*i.e.*, that the affiliate is not doing business here in the Philippines) shall be fatal to a claim for credit or refund of excess input VAT attributable to zero-rated sales.**[71]
>
> ...

From the above, sufficient proof of both components must have been present – (1) that the taxpayer's clients are **foreign corporations** (which can be proven by the SEC Certifications of Non-Registration);

71 Supra at note 55; Citations omitted, italics in the original text, and emphasis supplied.

and, (2) **not doing business in the Philippines** (the *prima facie* proof of which is the **articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines**).

To prove the existence of the foregoing components, petitioner presented the following SEC Certifications of Non-Registration and consularized foreign registration documents of its clients:

Registered Name of Client		SEC Certification of Non-Registration	Consularized/ Apostilled Certificate/Articles of Incorporation/ Association
		Exhibit	
1	Asurion Insurance Services, Inc. (AISI)	"P-8"	"P-7"
2	Phone Repair Centre Limited (PRCL)	"P-8-a"	"P-7-b"
3	New Asurion Singapore Pte. Ltd. (NAS)	"P-8-c"	"P-7-c"
4	New Asurion Corporation (NAC)	"P-8-b"	"P-7-a"

The Court observed that there are significant differences in the names reflected in the pertinent SEC Certification of Non-Registration, foreign registration documents and official receipts (**ORs**) issued, to wit:

Name in the SEC Certification of Non-Registration	Name in the Apostilled Foreign Registration Documents	Name in the OR	Exhibit	Total Amount
Phone Repair Centre Limited	Phone Repair Centre Limited	Repair Center UK	"P-26-B"	₱116,814.41
			"P-26-E"	63,352.37
			"P-26-G"	63,352.37
			"P-27-B"	63,771.75
			"P-27-D"	63,225.29
			"P-28-B"	64,178.43
			"P-28-C"	64,178.43
			"P-28-E"	64,229.26
Total				**₱563,102.31**

It bears noting that "Repair Center LLC" is the sole subscriber of PRCL as evinced by its Apostilled Memorandum of Association.[72] Nevertheless, PRCL and Repair Center LLC are two different entities.

72 Exhibit "P-7-b", Division Docket, Volume II, p. 684.

Thus, the amount of ₱563,102.31 must be disallowed and deducted from the total valid zero-rated sales.

On the above matter, respondent claims that petitioner's clients, AISI and NAC, cannot be classified as "other person doing business outside the Philippines" in accordance with this Court's decision in the case of *Institutional Shareholder Services, Inc.-Philippine ROHQ v. Commissioner of Internal Revenue* (**ISSI**).[73] It is because NAC is allegedly petitioner's parent company and AISI has the same address as NAC and is not listed as one of petitioner's affiliates in its Application of Multinational Company for Registration and License to Establish a Regional Operating Headquarters in the Philippines under the name "Asurion Hong Kong Limited -ROHQ".[74]

We disagree with respondent's reliance on *ISSI*.

In the said case, Institutional Shareholder Services, Inc.-Philippine ROHQ (**ISSI-ROHQ**) is the ROHQ of Institutional Shareholder Services, Inc. (**ISSI-US**), a foreign multinational company organized under the laws of New York, USA. ISSI-ROHQ rendered services solely and exclusively to its head office, ISSI-US. Thus, in *ISSI*, this Court held that an ROHQ's parent company may not be considered an affiliate, subsidiary or branch since the ROHQ and its parent company are treated as one and the same entity for taxation purposes. Moreover, in light of the fact that ISSI-US and ISSI-ROHQ are regarded as one and the same entity, and that ISSI-US is seen to be conducting business in the Philippines *via* ISSI-ROHQ, ISSI-US may not be deemed as "other person **doing business outside the Philippines**". As a result, the ISSI-ROHQ's services to ISSI-US do not qualify for VAT zero-rating.

In contrast, in the instant case, petitioner rendered qualifying services not to its parent company in Hong Kong but to corporations doing business and established outside the Philippines.

As the records show, petitioner was registered with the SEC as an ROHQ of Asurion Hong Kong Limited, a multinational company

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73 CTA Case No. 7662, 03 June 2010.

74 Attachment to Exhibit "P-1", Division Docket, Volume II, p. 559.

organized and existing under the laws of Hong Kong.[75] However, AISI and NAC are corporations duly organized and existing under and by virtue of the laws of the States of Tennessee[76] and Delaware[77], USA, respectively. It is then obvious that petitioner is neither entities' ROHQ nor can any of the said entities be considered as petitioner's parent company.

With the above disquisition, the Court could only thus hold that petitioner has sufficiently proved that AISI and NAC qualify as "other person doing business outside the Philippines" as contemplated under Section 108(B)(2) of the NIRC of 1997, as amended.

With respect to the *third condition* that payment for such services must be in acceptable foreign currency duly accounted for in accordance with the rules and regulations of the BSP, petitioner presented the: (1) Certificate of Inward Remittance issued by the Bank of America[78]; and, (2) ORs issued for zero-rated sales.[79]

As ICPA Baluyot duly noted, ORs and Certificates of Inward Remittance supported petitioner's zero-rated sales amounting to ₱760,168,716.92.

In addition to the foreign currency remittances referred to under Section 108(B)(2), the same must not only be duly accounted for in accordance with the BSP's rules, they must likewise be compliant with the invoicing requirements under Section 113(A) and (B) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(1), (B)(1) and (2)(c) of Revenue Regulations (**RR**) No. 16-2005[80] which provide:

> ...
> **SEC. 113.** *Invoicing and Accounting Requirements for VAT-Registered Persons.* —
>
> (A) *Invoicing Requirements.* — A VAT-registered person shall issue:

75 Exhibit "P-1", id., p. 557.
76 Exhibit "P-7", id., p. 665.
77 Exhibit "P-7-a", id., pp. 679-682.
78 Exhibit "P-9", id., pp. 740-741.
79 Exhibits "P-26" to "P-29", USB (Exhibit "P-24-b").
80 Consolidated Value-Added Tax Regulations of 2005.

1. A VAT invoice for every sale, barter or exchange of goods or properties; and

2. **A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.**

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:

1. A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);

2. The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided,* That:

   ...

   c. If the sale is subject to zero percent (0%) value-added tax, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt[.]

...

SEC. 4.113-1. ***Invoicing Requirements***. —

(A) A VAT-registered person shall issue: —

1. A VAT invoice for every sale, barter or exchange of goods or properties; and

2. **A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.**

   Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or official receipts. Said documents shall be considered as a 'VAT Invoice' or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

   VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) **Information contained in VAT invoice or VAT official receipt.** — The following information shall be indicated in VAT invoice or **VAT official** receipt:

1. A statement that the seller is a VAT-registered person, followed by his TIN;
2. The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; ***Provided*, That**:

   ...

   c. If the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt[.][81]

...

Moreover, the ORs supporting petitioner's sale of "other services" must be duly registered with the BIR and must contain all the required information, pursuant to Section 237 of the NIRC of 1997, as amended, the provision states:

> ...
>
> **SEC. 237.** *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax **shall**, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, **issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and <u>description of merchandise or nature of service</u>**: *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, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, 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.[82]
>
> ...

To summarize the foregoing, the following information shall be indicated in the VAT invoice or OR:

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[81] Emphasis in the original text and supplied.
[82] Emphasis and underscoring supplied.

1. A statement that the seller is a VAT-registered person, followed by its TIN;

2. The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT, provided that (a) the amount of tax shall be shown as a separate item in the invoice or receipt, (b) if the sale is exempt from VAT, the term "VAT exempt sale" shall be written or printed prominently on the invoice or receipt, or (c) if the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt; (d) if the sale involves goods, properties or services, some of which are subject to and some of which are VAT-zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale;

3. In the case of sales in the amount of one thousand pesos (₱1,000) or more, where the sale or transfer is made to a VAT-registered person, the name, business style, if any, **address** and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in nos. (1) and (2);

4. Date of transaction; and,

5. Quantity, unit cost and description of merchandise or nature of service.

Corollarily, Revenue Memorandum Circular (**RMC**) No. 42-03[83] expressly provides that a taxpayer's failure to comply with these invoicing requirements will result in the disallowance of the claim for input tax, to wit:

83 Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters.

...

Q-13: **Should penalty be imposed on TCC application for failure of claimant to comply with certain *invoicing requirements*, (e.g., sales invoices must bear the TIN of the seller)?**

A-13: Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.

If the claim for refund/[tax credit certificate] is based ***on the existence of zero-rated sales by the taxpayer*** *but* ***it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g., failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be <u>denied</u>*** considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer.[84]

...

A scrutiny of petitioner's ORs would reveal that it failed to indicate the addresses of its customers on the following ORs:

Exhibit	OR No.	Customer	Amount in ₱
"P-26-C"	0090	New Asurion Corporation	₱2,656,252.24
"P-26-F"	0093	New Asurion Singapore Pte. Ltd.	1,361,997.71
Total			**₱4,018,249.95**

As it already is, our VAT system is invoice-based, *i.e.*, taxation relies on sales invoices or official receipts.[85] Also, Section 237 of the NIRC of 1997, as amended, uses the word "shall" and thus operates to impose a duty which may be enforced.[86] Consequently, the taxpayer is duty-bound to ensure full compliance with the invoicing requirements.

[84] Emphasis in the original text, italics and underscoring supplied.
[85] *Team Energy Corporation (Formerly: Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 197663, 14 March 2018.
[86] *Filipino v. Macabuhay*, G.R. No. 158960, 24 November 2006.

Furthermore, along with the entity name, the address serves as a connection between petitioner's ORs and the foreign registration documents.

Based on the foregoing, the amount of ₱4,018,249.95 must be disallowed and deducted from the total valid zero-rated sales that petitioner claimed.

The ***4th requirement***, which provides that the "other services" must be rendered in the Philippines is sufficiently established by the fact that it is an ROHQ. Section (2)3, Book III, Executive Order No. 2267, as amended by RA 8756[87], describes the nature of an ROHQ as "foreign business entity which is allowed to **derive income in the Philippines** by performing qualifying services to its affiliates, subsidiaries or branches in the Philippines, in the Asia-Pacific Region and in other foreign markets". Petitioner's operation as an ROHQ is also supported De Guzman's uncontested testimony on this matter, *viz*:

> ...
>
> Q35: Based on item 1 of the Service Agreement, AISI appointed Petitioner to provide certain services in the Philippines. Can you please explain this statement?
>
> A: Since AISI is organized and doing business in the USA and not engaged in business in the Philippines, AISI appointed Petitioner to **perform the services enumerated in the Service Agreements in the Philippines**.
>
> ...
>
> Q44: How did Petitioner incur the excess and unutilized input VAT for which it is claiming a refund?
>
> A: Petitioner paid or incurred the excess and unutilized input taxes from its purchases of goods and services during CY 2017 in the course of **rendering** corporate advisory services, training and personnel management, research and development services and product development, technical support and maintenance, and data processing and

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87 AN ACT PROVIDING FOR THE TERMS, CONDITIONS AND LICENSING REQUIREMENTS OF REGIONAL OR AREA HEADQUARTERS, REGIONAL OPERATING HEADQUARTERS, AND REGIONAL WAREHOUSES OF MULTINATIONAL COMPANIES, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF EXECUTIVE ORDER NO. 226, OTHERWISE KNOWN AS THE OMNIBUS INVESTMENTS CODE OF 1987.

communication **services in the Philippines to AISI, NAC, PRCL, and NAS.**[88]

...

Neither respondent's Answer[89] nor his Memorandum[90] made mention of petitioner's purported failure to comply with this requirement. As it is, the disputable presumption[91] that petitioner, as an ROHQ, rendered the qualifying services in the Philippines stands absent proof to the contrary.

In sum, petitioner's valid and duly substantiated zero-rated sales for the four (4) quarters of CY 2017 amounted to ₱755,587,364.69, computed as follows:

Particulars	**CY 2017**
Zero-Rated Sales	₱760,168,716.95
Less: *Disallowances*	
1) Discrepancy in the names stated in the ORs	563,102.31
2) ORs issued without customers' address	4,018,249.95
Total Valid and Substantiated Zero-Rated Sales	**₱755,587,364.69**

THIRD (3RD) REQUISITE:
THE CLAIM MUST BE FILED WITHIN TWO (2) YEARS AFTER THE CLOSE OF THE TAXABLE QUARTER WHEN SUCH SALES WERE MADE.

In accordance with the previously cited Section 112(A) and (C) of the NIRC of 1997, as amended, the administrative claim for refund of excess input tax must be filed within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

88 Exhibit "P-22", supra at note 16, emphasis supplied.
89 Supra at note 9.
90 Supra at note 49.
91 Section 3(q) and (ff), Rule 131 of the Revised Rules on Evidence states:

...

Sec. 3. *Disputable Presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

...

(q) That the ordinary course of business has been followed;

...

(ff) That the law has been obeyed[.]

...

Petitioner's administrative claim covered the four (4) quarters of CY 2017. Thus, petitioner's last day for filing of its administrative claim and the actual filing of administrative claim for the said periods fell on the following dates:

Period Covered	**Last Day to File Administrative Claim**	**Actual Date of Filing of Administrative Claim**
January to March 2017 (1st Quarter)	31 March 2019	27 March 2019[92]
April to June 2017 (2nd Quarter)	30 June 2019	
July to September 2017 (3rd Quarter)	30 September 2019	
October to December 2017 (4th Quarter)	31 December 2019	

Clearly as shown above, petitioner's administrative claim was timely filed.

As regards the timeliness of petitioner's judicial claim, respondent had ninety (90) days or until 25 June 2019, to decide petitioner's administrative claim. Considering that respondent issued a letter dated 14 May 2019[93] (which petitioner received on 21 June 2019) denying totally the same, petitioner had 30 days therefrom or until 21 July 2019, within which to file a judicial claim before this Court. Thus, the instant Petition for Review was also seasonably filed on 18 July 2019.[94]

On this note, respondent challenged De Guzman's authority to act on petitioner's behalf and/or its Head Office in the filing of the administrative claim because the required notarized certificate bearing the name of De Guzman (as petitioner's authorized representative) was not signed by the duly elected and qualified Director of the Head Office, John Unger (**Unger**), as required under 2.14 of the Revised Checklist of Mandatory Requirements for Claims for VAT Refund pursuant to RMC No. 17-18.[95]

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92 Exhibits "P-18", "P-19" and "P-20", Division Docket, Volume II, pp. 763-769.

93 Exhibit "P-21", id., pp. 770-772.

94 Supra at note 1.

95 Amending Revenue Memorandum Circular (RMC) No. 89-2017 and Certain Provisions of RMC No. 54-2014 Regarding the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) in Relation to Amendments Made in the National Internal Revenue Code of

Contrary to respondent's assertions, De Guzman attached to the Petition for Review a consularized and notarized Certificate[96] designating him and a certain Dexter Medilla as petitioner's authorized representatives to file and process the latter's administrative claim for refund before the BIR. The records show that Unger signed on 30 August 2017[97] hence, De Guzman's authority to file the instant claim on petitioner's behalf has been established clearly.

FOURTH (4TH) REQUISITE:
THE CREDITABLE INPUT TAX DUE OR PAID MUST BE ATTRIBUTABLE TO SUCH SALES, EXCEPT THE TRANSITIONAL INPUT TAX, TO THE EXTENT THAT SUCH INPUT TAX HAS NOT BEEN APPLIED AGAINST THE OUTPUT TAX.

To satisfy the 4th requisite, the following conditions must be complied with:

a. 1st **condition**: the input taxes are due or paid;

b. 2nd **condition**: the input taxes claimed are attributable to zero-rated or effectively zero-rated sales and 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;

c. 3rd **condition**: the input taxes are not transitional input taxes; and,

d. 4th **condition**: the input taxes have not been applied against output taxes during and in the succeeding quarters. 7

1997, as Amended by Republic Act No. 10963, Known as the Tax Reform for Acceleration and Inclusion (TRAIN).

96 Division Docket, Volume I, pp. 23-28.

97 Id., p. 28.

With respect to the *3rd condition*, petitioner's input taxes do not appear to be transitional input taxes since they operate to benefit only newly VAT-registered persons; thus, petitioner is deemed to have complied with the same.

As to the *1st condition*, petitioner, in its Amended Quarterly VAT Returns[98] for the 1st to 4th quarters of CY 2017, declared excess and unutilized input tax amounting to ₱17,135,383.37 from its domestic purchases of goods other than capital goods, services and capital goods, as well as the amortization of capital goods, as shown below:

	1st Quarter CY 2017	2nd Quarter CY 2017	3rd Quarter CY 2017	4th Quarter CY 2017	Total
Input VAT on current purchases					
Importation of Goods Other than Capital Goods	₱-	₱153,972.57	₱-	₱-	₱153,972.57
Purchases of Goods Other than Capital Goods	129,821.55	-	2,648,667.75	205,845.52	2,984,334.82
Purchases of Services	2,488,684.80	2,661,583.62	243,755.47	4,577,551.35	9,971,575.24
Subtotal [A]	***₱2,618,506.35***	***₱2,815,556.19***	***₱2,892,423.22***	***₱4,783,396.87***	***₱13,109,882.63***
Allowable Amortizations of Input VAT on Purchases of Capital Goods Exceeding ₱1 Million					
Input Tax Deferred on Capital Goods Exceeding ₱1 Million from Previous Quarter	9,028,376.12	8,354,131.42	7,441,291.98	9,288,495.91	9,028,376.12
Input Tax on Purchases of Capital Goods Exceeding ₱1 Million	267,646.90	-	2,899,905.86	755,808.37	3,923,361.13
Less: Input Tax on Purchases of Capital Goods Exceeding ₱1 Million deferred for the succeeding period	8,354,131.42	7,441,291.98	9,288,495.91	8,926,236.51	8,926,236.51
Total Allowable Amortizations of Input VAT on Purchases of Capital Goods Exceeding ₱1 Million [B]	***₱941,891.60***	***₱912,839.44***	***₱1,052,701.93***	***₱1,118,067.77***	***₱4,025,500.74***
Total Claim of Input VAT for CY 2017 [A + B]	**₱3,560,397.95**	**₱3,728,395.63**	**₱3,945,125.15**	**₱5,901,464.64**	**₱17,135,383.37**

98 Exhibits "P-11", "P-13", "P-15" and "P-17", id., Volume II, pp. 744-746, 749-751, 754-756 and 759-762, respectively.

However, ICPA Baluyot noted that the following receipts amounting to ₱2,179,858.18 were non-compliant with the NIRC's invoicing requirements of the NIRC of 1997, as amended:

Particulars	Amount	Exhibit
1st Quarter		
a. Domestic purchases of goods/services supported with invoice or OR with incomplete address, no address, or incorrect address	45,760.44	"P-33" and "P-33-A" to "P-33-H"
b. Domestic purchases of goods/services supported with Statement of Account/Billing Statement/ Delivery Receipt Statement/Acknowledgement Receipt/Non-VAT Acknowledgement Receipt/ Collection Receipt only	53,096.95	"P-34" and "P-34-A" to "P-34-U"
c. Domestic purchases of goods/services supported with invoice or ORs where the amount of input VAT is not separately indicated, indicated not in the proper line item, or written in different color of pen ink and not countersigned	259,710.61	"P-35" and "P-35-A" to "P-35-AS"
d. Domestic purchases of goods/services supported with VAT invoices/ORs that failed to comply with at least two (2) of the invoicing requirements in RMC No. 62-2005	50,670.27	"P-36" and "P-36-A" to "P-36-AJ"
e. Domestic purchases of goods/services supported with VAT invoices/ORs which contain incorrect TIN or do not indicate TIN	8,044.29	"P-37" and "P-37-A" to "P-37-C"
f. Domestic purchases of goods/services with invoices/ORs dated out of the taxable year	34,847.04	"P-38" and "P-38-A" to "P-38-CB"
g. Domestic purchases of goods/services supported with VAT invoices/ORs which contain incorrect name or incomplete name of the Company	2,403.36	"P-39" and "P-39-A" to "P-39-F"
h. Domestic purchases of goods/services supported with VAT invoices/ORs which contain incorrect business style of the Company	41,943.16	"P-40" and "P-40-A" to "P-40-B"
i. Domestic purchases of goods/services supported with VAT invoices/ORs without Authority to Print (ATP) or with expired ATP validity	275.79	"P-41" and "P-41-A" to "P-41-F"
j. Domestic purchases without supporting documents	4,062.42	"P-42"
Subtotal	500,814.33	
2nd Quarter		
a. Domestic purchases of goods/services supported with invoice or OR with incomplete address, no address, or incorrect address	30,004.94	"P-44" and "P-44-A" to "P-44-Q"
b. Domestic purchases of goods/services supported with Statement of Account/Billing Statement/ Delivery Receipt Statement/Acknowledgement Receipt/Non-VAT Acknowledgement Receipt/ Collection Receipt only	52,714.85	"P-45" and "P-45-A" to "P-45-R"
c. Domestic purchases of goods/services supported	197,268.24	"P-46" and "P-

Particulars	Amount	Exhibit
with invoice or ORs in which the amount of input VAT is not separately indicated, indicated not in the proper line item, or written in different color of pen ink and not countersigned		46-A" to "P-46-AP"
d. Domestic purchases of goods/services supported with VAT invoices/ORs that failed to comply with at least two (2) of the invoicing requirements in RMC No. 62-2005	123,498.07	"P-47" and "P-47-A" to "P-47-BU"
e. Domestic purchases of goods/services supported with VAT invoices/ORs which contain incorrect TIN or do not indicate TIN	26,707.31	"P-48" and "P-48-A" to "P-48-D"
f. Domestic purchases of goods/services with invoices/ORs dated out of the taxable year	41.15	"P-49" and "P-49-A" to "P-49-E"
g. Domestic purchases of goods/services supported with VAT invoices/ORs which contain incorrect name or incomplete name of the Company	18,730.05	"P-50" and "P-50-A" to "P-50-D"
h. Domestic purchases of goods/services supported with VAT invoices/ORs which contain incorrect business style of the Company	24,930.12	"P-51" and "P-51-A" to "P-51-D"
i. Domestic purchases of goods/services supported with VAT invoices/ORs without ATP or with Expired ATP validity	439.75	"P-52" and "P-52-A" to "P-52-F"
j. Domestic purchases without supporting documents	34,813.49	"P-53"
Subtotal	<u>509,147.97</u>	
3rd Quarter		
a. Domestic purchases of goods/services supported with invoice or OR with incomplete address, no address, or incorrect address	9,454.29	"P-55" and "P-55-A" to "P-55-S"
b. Domestic purchases of goods/services supported with Statement of Account/Billing Statement/ Delivery Receipt Statement/Acknowledgement Receipt/Non-VAT Acknowledgement Receipt/ Collection Receipt only	55,696.56	"P-56" and "P-56-A" to "P-56-AI"
c. Domestic purchases of goods/services supported with invoice or ORs in which the amount of input VAT is not separately indicated, indicated not in the proper line item, or written in different color of pen ink and not countersigned	385,674.61	"P-57" and "P-57-A" to "P-57-AS"
d. Domestic purchases of goods/services supported with VAT invoices/ORs that failed to comply with at least two (2) of the invoicing requirements in RMC No. 62-2005	118,639.19	"P-58" and "P-58-A" to "P-58-CC"
e. Domestic purchases of goods/services supported with VAT invoices/ORs which contain incorrect TIN or do not indicate TIN	21,212.73	"P-59" and "P-59-A" to "P-59-J"
f. Domestic purchases of goods/services with invoices/ORs dated out of the taxable year	1,175.98	"P-60" and "P-60-A"
g. Domestic purchases of goods/services supported with VAT invoices/ORs which contain incorrect name or incomplete name of the Company	5,287.78	"P-61" and "P-61-A" to "P-61-H"

Particulars	Amount	Exhibit
h. Domestic purchases of goods/services supported with VAT invoices/ORs without ATP or with Expired ATP validity	6,982.84	"P-62" and "P-62-A" to "P-62-AG"
i. Domestic purchases without supporting documents	405.04	"P-63"
Subtotal	*604,529.02*	
4th Quarter		
a. Domestic purchases of goods/services supported with invoice or OR with incomplete address, no address, or incorrect address	15,235.65	"P-65" and "P-65-A" to "P-65-Z"
b. Domestic purchases of goods/services supported with Statement of Account/Billing Statement/ Delivery Receipt Statement/Acknowledgement Receipt/Non-VAT Acknowledgement Receipt/ Collection Receipt only	76,317.85	"P-66" and "P-66-A" to "P-66-AC"
c. Domestic purchases of goods/services supported with invoice or ORs in which the amount of input VAT is not separately indicated, indicated not in the proper line item, or written in different color of pen ink and not countersigned	114,001.41	"P-67" and "P-67-A" to "P-67-AE"
d. Domestic purchases of goods/services supported with VAT invoices/ORs that failed to comply with at least two (2) of the invoicing requirements in RMC No. 62-2005	45,328.15	"P-68" and "P-68-A" to "P-68-CG"
e. Domestic purchases of goods/services supported with VAT invoices/ORs which contain incorrect TIN or do not indicate TIN	13,281.44	"P-69" and "P-69-A" to "P-69-H"
f. Domestic purchases of goods/services with invoices/ORs dated out of the taxable year	282,964.72	"P-70" and "P-70-A" to "P-70-Z"
g. Domestic purchases of goods/services supported with VAT invoices/ORs which contain incorrect name or incomplete name of the Company	7,230.73	"P-71" and "P-71-A" to "P-71-AF"
h. Domestic purchases of goods/services with VAT invoices/ORs which contain incorrect business style of the Company	3,413.19	"P-72" and "P-72-A" to "P-72-D"
i. Domestic purchases of goods/services supported with VAT invoices/ORs without Authority to Print (ATP) or with Expired ATP validity	3,195.94	"P-73" and "P-73-A" to "P-73-D"
j. Domestic purchases of goods/purchases supported with VAT invoices/ORs which were already reported in the previous quarters of CY2017	1,291.71	"P-74" and "P-74-A" to "P-74-B"
k. Domestic purchases without supporting documents	3,106.07	"P-75"
Subtotal	*565,366.86*	
Total	**₱2,179,858.18**	

Moreover, with petitioner's input tax on domestic purchase and importation of capital goods exceeding ₱1,000,000.00, ICPA Baluyot noted the following exceptions totaling ₱1,119,664.65:

Particulars	Amount	Exhibit
1st to 4th Quarters		
a. Domestic purchases of Capital Goods exceeding ₱1 Million in the 1st quarter of CY 2017 supported with Statement of Account/Collection Receipt only	89,215.64	"P-80" and "P-80-A" to "P-80-C";
b. Domestic purchases of Capital Goods exceeding ₱1 Million from previous periods (outside CY 2017) supported with Statement of Account/Collection Receipt only	159,621.68	"P-85" and "P-85-A" to "P-85-C"; "P-90" and "P-90-A" to "P-90-C"; and "P-95" and 95-A" to "P-95-E"
c. Domestic purchases of Capital Goods exceeding ₱1 Million in the 4th quarter of CY 2017 supported with Statement of Account/Collection Receipt only	16,545.29	"P-95" and 95-A" to "P-95-E"
d. Domestic purchases of Capital Goods exceeding ₱1 Million from previous periods with VAT invoices/ORs that failed to comply with at least two (2) of the invoicing requirements in RMC No. 62-2005	574,210.68	"P-81" and "P-81-A" to "P-81-D"; "P-86" and "P-86-A" to "P-86-D"; "P-91" and "P-91-A" to "P-91-D"; and "P-96" and "P-96-A" to "P-96-D"
e. Domestic purchases of Capital Goods exceeding ₱1 Million from previous periods without supporting documents	280,071.36	"P-82", "P-87", "P-92" and "P-97"
Total	**₱1,119,664.65**	

On the above, respondent claimed that petitioner's big-ticket purchases that are only supported by ORs or invoices should also be disallowed because RMO No. 16-2007[99] (which amended RMO No. 53-98[100]) requires the taxpayer to submit proof of payment <u>**other than**</u> invoices and receipts to validate the said big-ticket purchases.

[99] Prescribing Additional Procedures in the Audit of Input Taxes Claimed in the VAT Returns By Revenue Officers and Amending "Annex B" of Revenue Memorandum Order (RMO) No. 53-98 With Respect to the Checklist of Documents to be Submitted by a Taxpayer Upon Audit of His/Its VAT Liabilities As Well As the Mandatory Reporting Requirements to be Prepared by the Assigned Revenue Officer/s Relative Thereto, All of Which Shall Form an Integral Part of the Tax Docket.

[100] Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer all of which Comprise a Complete Tax Docket.

Contrary to respondent's arguments, this Court has held consistently that the requirements in the above RMOs go beyond or expand what the law actually requires. In this Court's decision in *Commissioner of Internal Revenue v. CE Casecnan Water and Energy Company, Inc.*[101], We ruled thusly:

> ...
>
> Moreover, **the law does not recognize the documents listed in Revenue Memorandum Order ("RMO") No. 53-98, as amended by RMO No. 16-2007** as supporting documents required from claimants seeking refund of excess or unutilized input taxes attributable to zero-rated sales as declared by this Court in the case of *Commissioner of Internal Revenue v. Visayas Geothermal Power Company* which ruled that:
>
> > Otherwise stated, a taxpayer seeking for a refund or the issuance of a tax credit certificate of unutilized input VAT payments directly attributable to zero-rated or effectively zero-rated sales must satisfy the following requisites:
> >
> > 1. There must be zero-rated or effectively zero-rated sales;
> > 2. The input taxes were incurred or paid;
> > 3. Such input VAT payments are directly attributable to zero-rated or effectively zero-rated sales;
> > 4. The input VAT payments were not applied against any output VAT liability; and
> > 5. The claim for refund or tax credit was filed within the two year prescriptive period.
> >
> > Indubitably, the law does not require the taxpayer to submit the documents prescribed by RMO 53-98 and the VAT registration requirements under Revenue Regulations ("R.R.") 6-97, in relation to Section 4.107-1 (a) of R.R. 7-95, and Section 236 of the 1997 NIRC, as amended, as a pre-condition to the claim for refund of unutilized input VAT payments.
>
> ...

In *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[102] (**Total Gas**), the Supreme Court, in resolving a similar argument forwarded by respondent, held that:

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[101] CTA EB No. 1072, 28 April 2014; Citation omitted and emphasis supplied.

[102] G.R. No. 207112, 08 December 2015; Emphasis supplied.

...

Indeed, a taxpayer's **failure with the requirements listed under RMO No. 53-98 is not fatal** to its claim for tax credit or refund of excess unutilized excess VAT. This holds especially true when the application for tax credit or refund of excess unutilized excess VAT **has arrived at the judicial level**. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.

...

Considering the above declaration, this Court could not agree with respondent's assertion that, for big-ticket purchases, taxpayers must provide proof beyond invoices and receipts. Verily, there was nothing in Section 112(A) of the NIRC of 1997, as amended, and RR No. 16-2005 that requires additional proof of payment for big-ticket purchases.

Certainly, the Court may not construe a statute that is free from doubt. Neither can we impose conditions or limitations when none is provided for.[103] While tax refunds are in the nature of tax exemptions and are construed *strictissimi juris* against the taxpayer, tax statutes shall be construed strictly against the taxing authority and liberally in favor of the taxpayer, for taxes, being burdens, are not to be presumed beyond what the statute expressly and clearly declares.[104]

Notwithstanding the foregoing, We, however, find that an additional amount of ₱309,113.53 must be disallowed. The reasons are set forth in the table below:

Exhibit	Supplier	Amount	Reason
A. Domestic purchase of goods or services			
1st Quarter			
"32-AT"	MISNET EDUCATION INC	₱1,367.46	Incorrect TIN of petitioner
"32-BM"	COMPUTER GROUP PHILS., INC.	366.43	Illegible supporting document

103 *Commissioner of Internal Revenue v. American Express International, Inc.*, G.R. No. 152609, 29 June 2005.

104 *Commissioner of Internal Revenue v. Philex Mining Corporation*, G.R. No. 230016, 23 November 2020.

Exhibit	Supplier	Amount	Reason
Subtotal		*1,733.89*	
2nd Quarter			
"43-C"	BEYOND CONCEPTS INC	106.60	Incorrect registered name of petitioner
"43-R"	GLOBE TELECOM	34,746.25	Supporting document not signed by payee's authorized representative
"43-AW"	NTT DATA PHILIPPINES INC	449.36	Incorrect TIN of petitioner
"43-CH"	TESORO ALEGRE INC.	208.33[105]	Overclaimed input VAT
Subtotal		*35,510.54*	
3rd Quarter			
"54-Z"	FRESH AND FAMOUS FOODS INC	281.25	Incorrect TIN of petitioner
"54-EI"	TESORO ALEGRE INC	9.89[106]	Overclaimed input VAT
Subtotal		*291.14*	
4th Quarter			
"64-L"	ADDBELL TECHNICAL SERVICES INC	2,842.72	Description of merchandise or nature of service is not indicated
"64-P"	AMBER GOLDEN POT RESTAURANT CORPORATION	274.30	Incorrect registered address of petitioner
"64-AR"	FAME.DISH INC.	1,085.89	Description of merchandise or nature of service is not indicated
"64-BO"	KAREILA MANAGEMENT CORPORATION	195.40	Incorrect TIN of petitioner
"64-BR"	LAZARO, GUILLERMO C. JR, (GUILLY'S FLOWERS AND FRUITS)	214.29	Incorrect registered address of petitioner
"64-CM"	"OFFICE WAREHOUSE INC BONIFACIO GLOBAL CITY - BR51"	141.38	No registered name, TIN and address
"64-DA"	PORKFAT VENTURES INC.	777.32	Illegible registered name, TIN and address
"64-ES"	SHAKEYS PIZZA RESTAURANT	202.83	Illegible supporting document

105 *Computed as: Input VAT claimed (₱608,663.90) – [VATable amount per OR x 12%] (₱5,070,463.12 x 12%).*

106 *Computed as: Input VAT claimed (₱623,874.77) – [VATable amount per OR x 12%] (₱5,198,874.00 x 12%).*

Exhibit	Supplier	Amount	Reason
"64-FI"	THE FORQUARES INC.	382.03	Incorrect TIN of petitioner
"64-FQ"	THE REAL AMERICAN DOUGHNUT COMPANY INC	1,267.00	
"64-GI"	YELLOW CAB FOOD CORPORATION	263.04	Illegible TIN
Subtotal		*7,646.20*	
B. Purchase of Capital Goods exceeding ₱1 Million			
"P-88-B"	CWC INTERNATIONAL CORPORATION	263,931.76[107]	Illegible registered name, TIN, address and VAT amount
Total		**₱309,113.53**	

Accordingly, out of the total allowable input tax of ₱17,135,383.37, only the amount of ₱13,526,747.01 is substantiated. The amount is computed as follows:

Claimed Input VAT		₱17,135,383.37
Less: Disallowances *per* ICPA Report		
Domestic purchase of goods/services	₱2,179,858.18	
Domestic purchase and importation of capital goods exceeding ₱1 Million	1,119,664.65	3,299,522.83
Disallowances by the Court		309,113.53
Substantiated/Valid Input VAT		**₱13,526,747.01**

To satisfy the ***2nd condition***, only the substantiated input VAT of ₱13,526,747.01 can be attributed to the total zero-rated sales in the amount of ₱760,168,716.95 and only the excess and unutilized input VAT of ₱13,445,586.53 is attributable to the valid zero-rated sales of ₱755,587,364.69, as determined below:

	CY 2017
Total Zero-Rated Sales [A]	₱760,168,716.95
Valid Zero-Rated Sales [B]	755,587,364.69
Percentage of Valid Zero-Rated Sales [C=B/A]	99.40%
Substantiated/Valid Input VAT attributable to Zero-Rated Sales [D]	13,526,747.01
Excess and Unutilized Input VAT attributable to Valid Zero-Rated Sales [F x C]	**₱13,445,586.53**

107 *Amortized input VAT claimed for the 3rd and 4th quarters of CY 2017.*

Petitioner also met the *4th condition* when the claimed input VAT of ₱17,135,383.38[108] was deducted under "Line 23D VAT Refund/TCC Claimed" of petitioner's Quarterly VAT Return[109] for the 1st quarter of CY 2018 filed on 09 March 2020.

In conclusion, petitioner has sufficiently proven its entitlement to the refund or issuance of a Tax Credit Certificate (TCC) in the reduced amount of **₱13,445,586.53**, representing the excess and unutilized input VAT attributable to its zero-rated sales for the 1st to 4th quarters of CY 2017.

WHEREFORE, the foregoing considered, the Petition for Review filed by petitioner Asurion Hong Kong Limited – ROHQ on 18 July 2019 is hereby **PARTIALLY GRANTED.** Accordingly, respondent Commissioner of Internal Revenue is **ORDERED** to **ISSUE** a **TAX REFUND** or **TAX CREDIT CERTIFICATE** in favor of petitioner in the total amount of ₱13,445,586.53 representing its excess unutilized input value-added tax for calendar year 2017.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

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[108] *Rounding difference of 0.01.*
[109] Exhibit "P-107", USB (Exhibit "P-24-b").

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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting 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