REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

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IBEX PHILIPPINES INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9546

Members:

UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

NOV 07 2019
4:00 p.m.

x - x

DECISION

UY, *J.*:

Before this Court is a *Petition for Review* filed on February 27, 2017 by Ibex Philippines, Inc., petitioner, against the Commissioner of Internal Revenue, respondent seeking the refund of petitioner's alleged unutilized input value-added tax (VAT) in the amount of ₱13,480,821.26, which are allegedly attributable to zero-rated sales for the four (4) quarters of the fiscal year (FY) ended June 30, 2015.

THE FACTS

Petitioner Ibex Philippines, Inc., formerly known as TRG Philippines, Inc., is a corporation organized and existing under the laws of the Philippines, registered with the Securities and Exchange Commission (SEC) under Company Registration No. CS200513223.[1] It is also registered with the Board of Investments (BOI) as a New IT Export Service Firm in the Field of Operation of a Call Center, by virtue of the BOI Certificate of Registration No. 2006-005 dated January 6, 2006[2]; and with the Bureau of Internal Revenue (BIR)

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[1] Exhibits "P-1-1" and "P-1-2", Docket – Vol. 1, pp. 456 to 489.
[2] Exhibit "P-4-D".

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under Tax Identification No. 239-838-099-000, with registered address at 29/F, Joy-Nostalg Center, 17 ADB Avenue, Ortigas Center, San Antonio, Pasig City.[3]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue with office address at Bureau of Internal Revenue (BIR) Building, Diliman, Quezon City.[4]

For the four quarters of FY ending June 30, 2015, petitioner filed with the BIR its Quarterly VAT Returns (BIR Form No. 2550-Q) on the following dates:

Period	VAT Return	Date of Filing
1st Quarter FY 2015	Quarterly VAT Return[5] (Original)	October 24, 2014
	Quarterly VAT Return[6] (Amended)	September 27, 2016
2nd Quarter FY 2015	Quarterly VAT Return [7] (Original)	January 23, 2015
	Quarterly VAT Return[8] (Amended)	September 27, 2016
3rd Quarter FY 2015	Quarterly VAT Return[9] (Original)	April 27, 2015
	Quarterly VAT Return[10] (Amended)	September 27, 2016
4th Quarter FY 2015	Quarterly VAT Return[11] (Original)	July 24, 2015
	Quarterly VAT Return[12] (Amended)	September 27, 2016

On September 30, 2016, petitioner filed with the BIR an *Application for Tax Credits/Refunds* (BIR Form No.1914), for the four quarters of FY ending June 30, 2015, in the amount of ₱13,480,821.26.[13]

Petitioner filed the present *Petition for Review* on February 27, 2017.[14]

On May 19, 2017, respondent filed his *Answer*,[15] alleging, *inter alia*, that petitioner's claim for the issuance of tax credit certificate is

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[3] Exhibit "P-1-4", Docket – Vol. 1, p. 490.
[4] Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 1, p. 145.
[5] Exhibit "P-1-5-A", Docket – Vol. 1, pp. 491 to 492.
[6] Exhibit "P-1-5-B", Docket – Vol. 1, pp. 493 to 494.
[7] Exhibit "P-1-6-A", Docket – Vol. 1, pp. 495 to 496.
[8] Exhibit "P-1-6-B", Docket – Vol. 1, pp. 497 to 498.
[9] Exhibit "P-1-7-A", Docket – Vol. 1, p. 499 to Docket – Vol. 2, p. 500.
[10] Exhibit "P-1-7-B", Docket – Vol. 2, pp. 501 to 502.
[11] Exhibit "P-1-8-A", Docket – Vol. 2, pp. 503 to 504.
[12] Exhibit "P-1-8-B", Docket – Vol. 2, pp. 505 to 506.
[13] Exhibit "P-1-14", Docket – Vol. 1, p. 118.
[14] Docket – Vol. 1, pp. 10 to 21.
[15] Docket – Vol. 1, pp. 32 to 35.

subject to administrative investigation/examination by respondent's Bureau. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable. Thus, in order to validly claim for tax credit/refund, it is imperative for petitioner to prove its compliance with the following: (1) registration of, invoicing and accounting requirements for, VAT-registered persons, (2) filing and payment of VAT, (3) submission of complete documents in support of the administrative claim for tax refund, and (4) filing of the claim within two (2) years after the close of the quarter when the sales were made.

According to respondent, it is well-established that tax refunds, which are in the nature of tax exemptions, are construed strictly against the taxpayer and liberally in favor of the government; and that the burden of proof is upon the claimant of the tax refund to prove the factual basis of his claim.

By agreement of both counsels during the Pre-Trial Conference held on August 15, 2017[16], the parties filed the *Joint Stipulation of Facts and Issues* (JSFI) on September 4, 2017.[17] Subsequently, the Court issued the Pre-Trial Order dated October 12, 2017,[18] thereby terminating the Pre-Trial Conference.

On November 28, 2017, Neil U. Sison was commissioned as the Independent Certified Public Accountant (ICPA) for the instant case.[19] He submitted his *Report* on December 28, 2017.[20]

During trial, petitioner presented the following witnesses: (1) Joel S. Aldaya,[21] and the ICPA, Neil U. Sison.[22]

On May 9, 2018, petitioner filed its *Formal Offer of Evidence*,[23] offering Exhibits "P-1" to "P-5", inclusive of submarkings. In the

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[16] Notice of Pre-Trial Conference dated May 23, 2017, Docket – Vol. 1, pp. 36 to 37; Minutes of the hearing held on, and Order dated, August 15, 2017, Docket – Vol. 1, pp. 137 to 139.
[17] Docket – Vol. 1, pp. 145 to 149.
[18] Docket – Vol. 1, pp. 170 to 176.
[19] Minutes of the hearing held on, and Order dated, November 28, 2017, Docket – Vol. 1, pp. 194 to 195.
[20] Exhibit "P-3", Docket – Vol. 1, pp. 200 to 212.
[21] Minutes of the hearing held on, and Order dated, January 23, 2018, Docket – Vol. 1, pp. 341 to 342; and Exhibits "P-1" and "P-5", Docket – Vol. 1, pp. 436 to 455, and Vol. 2, 534 to 537.
[22] Minutes of the hearing held on, and Order dated, April 24, 2018, Docket – Vol. 1, pp. 384 to 386; and Exhibit "P-2", Docket – Vol. 2, pp. 517 to 530.
[23] Docket – Vol. 1, pp. 424 to 435.

Resolution dated July 13, 2018,[24] this Court admitted all of petitioner's offered exhibits, except Exhibits "P-4-I-18" and "P-4-T-19", for not being found in the records.

During the hearing held on September 10, 2018 for the presentation of respondent's evidence, respondent's counsel manifested that he has no evidence to present. Hence, the Court directed both parties to file their respective memorandum on or before October 10, 2018.[25]

Petitioner filed its *Memorandum* on October 15, 2018.[26] Respondent, however, failed to file his memorandum despite due notice.[27] In the Resolution dated November 9, 2018,[28] the Court deemed the instant case submitted for decision.

Hence, this Decision.

THE ISSUES

The sole issue stipulated by the parties for the consideration of this Court is as follows:

> "Whether or not Petitioner is entitled to a refund in the total amount of Php13,480,821.26 representing the unutilized input VAT attributable to Petitioner's zero-rated sales for the four quarters of the fiscal year ended June 30, 2015."[29]

Petitioner's arguments:

Petitioner argues that its sale of business process and contact center services to its sole client, a non-resident foreign corporation, is VAT zero-rated.

According to petitioner, the input VAT it incurred in the course of its business: (1) are duly paid; (2) are attributable to zero-rated or

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[24] Docket – Vol. 2, pp. 551 to 552.
[25] Minutes of the hearing held on, and Order dated, September 10, 2018, Docket – Vol. 2, pp. 560 to 561.
[26] Docket – Vol. 2, pp. 570 to 590.
[27] Records Verification Report dated October 22, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. 594.
[28] Docket – Vol. 2, p. 596.
[29] Stipulation of Issue, JSFI, Docket – Vol. 1, pp. 145 to 149.

effectively zero-rated sales; and (3) have not been applied against output taxes, during and in the succeeding quarters.

Lastly, petitioner points out that it timely applied for the issuance of a TCC or refund of creditable input tax.

Respondent's counter-arguments:

In his *Answer*, respondent alleged that petitioner's claim for the issuance of tax credit certificate is subject to administrative investigation/examination by respondent's BIR; and that taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable.

According to respondent, in order to validly claim for tax credit/refund, it is imperative for petitioner to prove its compliance with the following: (1) registration of, invoicing and accounting requirements for, VAT-registered persons, (2) filing and payment of VAT, (3) submission of complete documents in support of the administrative claim for tax refund, and (4) filing of the claim within two (2) years after the close of the quarter when the sales were made.

It is allegedly well-established that tax refunds, which are in the nature of tax exemptions, are construed strictly against the taxpayer and liberally in favor of the government; and that the burden of proof is upon the claimant of the tax refund to prove the factual basis of his claim.

Thus, the respondent prays that the instant *Petition for Review* be dismissed for lack of merit.

THE COURT'S RULING

In order that petitioner may validly claim for the refund of its supposed unutilized input VAT allegedly attributable to its zero-rated sales for the four quarters of the fiscal year ended June 30, 2015, it is imperative that it proves compliance with legal requirements.

Requisites for the grant of the refund or issuance of a TCC under the law.

Section 112 of the NIRC of 1997, as amended by RA No. 9337,[30] provides:

"SEC. 112. *Refunds or Tax Credits of Input Tax.* –

(A) *Zero-Rated or Effectively Zero-Rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: xxx.

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.*— In proper cases, the Commissioner shall grant a refund or issue a tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the

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

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claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

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

<u>Timeliness of the filing of the administrative and judicial claims</u>:

1. the claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[31]

2. in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 120 days from the date of submission of complete documents in support of the application, the judicial claim must be filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[32]

<u>Taxpayer's registration with the BIR</u>:

3. the taxpayer is VAT registered;[33]

<u>Taxpayer's output VAT</u>:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[34]

5. for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly

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

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

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

[34] *Id.*

accounted for in accordance with BSP rules and regulations;[35]

<u>*Taxpayer's refund claim for input VAT:*</u>

6. the input taxes are due or paid;[36]

7. the input taxes are not transitional input taxes;[37]

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[38] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[39]

Petitioner's administrative and judicial claims were timely made.

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

The instant claim covers the four (4) quarters of FY 2015. Counting two (2) years from the respective close of the said quarters, the following table indicates the pertinent last days for the filing of an administrative claim for the said four (4) quarters, to wit:

Period (FY 2015)	Close of the Taxable Quarter	Last Day to File Administrative Claim
July 1 to September 30, 2014	September 30, 2014	September 30, 2016
October 1 to December 31, 2014	December 31, 2014	December 31, 2016
January 1 to March 31, 2015	March 31, 2015	March 31, 2017
April 1 to June 30, 2015	June 30, 2015	June 30, 2017

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

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Considering that petitioner's administrative claim [*Application for Tax Credits/Refunds* (BIR Form No.1914)], covering the said four (4) quarters, was filed with the BIR on September 30, 2016,[40] the same was timely made.

The *second* requisite is to the effect that the judicial claim must have been filed within thirty (30) days from receipt of respondent's decision or after the expiration of the 120-day period under the aforequoted Section 112(C). Considering that there is no indication that respondent issued a decision relative to petitioner's administrative claim, the determination of the 120+30-day periods, as applied to this case, is shown as follows:

Date of Filing of Administrative Claim	End of 120 days for BIR Commissioner to decide the claim	End of 30 days from expiration of the 120 days
September 30, 2016	January 28, 2017	February 27, 2017

It appears that the instant *Petition for Review* was filed on February 27, 2017,[41] hence, petitioner's judicial claim was likewise timely made.

Such being the case, petitioner fulfilled the above-stated *first* and *second* requisites.

Petitioner is a VAT-registered taxpayer.

As for its compliance with the *third* requisite, petitioner has fulfilled the same by presenting its Certificate of Registration issued by BIR with TIN 239-838-099-000, indicating that it is liable to VAT.[42]

Petitioner failed to show that it was engaged in zero-rated or effectively zero-rates sales.

Petitioner submits that its sales of business process and contact center services to its sole client, which is a non-resident foreign corporation, the consideration for which was paid in acceptable foreign currency and accounted for in accordance with the

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[40] Exhibit "P-1-14", Docket – Vol. 1, p. 118.
[41] Docket – Vol. 1, p. 10.
[42] Exhibit "P-1-4", Docket – Vol. 1, p. 490.

rules and regulations of the BSP, are subject to zero percent (0%) VAT, pursuant to Section 108(B)(2) of the NIRC of 1997, as amended.

We, however, disagree.

Said Section 108(B) provides, in part, as follows:

> "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**:
>
> (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)**;" *(Emphases supplied)*

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

1) The recipient of the services is a foreign corporation, and the said corporation is doing business *outside* the Philippines, or is a nonresident person not engaged in business who is *outside* the Philippines when the services

were performed;[43]

2) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules;[44]

3) The services fall under any of the categories under Section 108(B)(2),[45] or simply, the services rendered should be other than *"processing, manufacturing or repacking goods"*;[46] and

4) The services must be performed in the Philippines[47] by a VAT-registered person.

Petitioner was able to establish the *first* essential element by presenting: (1) the *Certification of Non-Registration of Company* dated March 2, 2017 issued by the SEC to the effect that the records of the latter do not show the registration of petitioner's sole client, Lovercius Consultants, Ltd., as a corporation or partnership,[48] and (2) the *Certificate of Incorporation* dated January 31, 2013 issued by the Republic of Cyprus in favor of the same client.[49] The former document proves that the said client is not doing business in the Philippines; while the latter document shows that the same client is doing business outside the Philippines. Taken together, the said documents establish that Lovercius Consultants, Ltd. is a non-resident foreign corporation.

Relative to the *second* essential element, petitioner presented a Proof of Inward Remittances issued by Union Bank for FY ending June 30, 2015,[50] purportedly showing the remittances of Lovercius

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

[44] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

[45] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), supra.*

[46] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra.

[47] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, supra.

[48] Exhibit "P-1-11", Docket – Vol. 2, p. 516.

[49] Exhibit "P-1-10", Docket – Vol. 2, p. 515.

[50] Exhibit "P-4-I-1", "P-4-I-2", "P-4-I-3", "P-4-I-4", "P-4-I-5", "P-4-I-6", "P-4-I-7", "P-4-I-8", "P-4-I-9", "P-4-I-10", "P-4-I-11", and "P-4-I-12".

Consultants, Ltd. to petitioner. Considering that the certification (or proof) of inward remittances attests to the fact of payment *"in acceptable foreign currency ...and accounted for in accordance with the rules and regulations of the BSP"*,[51] petitioner is considered to have complied with the above-stated *second* essential element.

As for the *third* essential element, petitioner' compliance therewith is shown in the *Service Agreement* dated April 1, 2013 entered into by petitioner and Lovercius Consultants, Ltd.[52] Pursuant thereto, the services to be rendered by the former to the latter shows that the same is other than *"processing, manufacturing or repacking goods"*, to wit:

> "**1. Details of Services**
>
> Call Center services: (provision of Call Center Agents and related personnel working 9 hour shift US time zone)"[53] *(Underscoring supplied)*

With regard to the *fourth* essential element, however, *i.e.*, that the subject services were performed in the Philippines, the same has not been established. No evidence was presented by petitioner to prove that the said services were performed in the Philippines. In fact, in its FOE filed on May 9, 2018,[54] petitioner did not offer any specific evidence to show that the subject services were performed in the Philippines.

In cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[55]

Thus, since it was never established that the place of performance of the subject services is in the Philippines, petitioner's

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[51] Refer to *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.
[52] Docket – Vol. 2, pp. 510 to 514.
[53] Docket – Vol. 1, p. 117.
[54] Docket – Vol. 1, pp. 424 to 435.
[55] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank,* G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.,* G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.

sales of services to Lovercius Consultants, Ltd. cannot qualify as subject to the zero percent (0%) VAT under Section 108(B) of the NIRC of 1997, as amended.

Such being the case, the subject refund claim on petitioner's alleged excess and unutilized input VAT must perforce fail.

Correspondingly, it is no longer necessary to determine whether petitioner fulfilled the remaining requisites to merit favorable consideration of it claim for tax credit/refund of its input VAT for FY ending June 30, 2015.

Statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to the VAT are in the nature of such exemptions.[56] It is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[57]

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for insufficiency of evidence.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[56] *Panasonic Communication Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010.
[57] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

ATTESTATION

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

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

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Petitioner,

- versus -

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RINGPIS-LIBAN,
and
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

NOV 07 2019
4:00 p.m.

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DISSENTING OPINION

RINGPIS-LIBAN, *J.*:

With all due respect to the ponencia of my esteemed colleague, the Honorable Associate Justice Erlinda P. Uy, which denied the above-captioned Petition for Review for insufficiency of evidence, I beg to disagree.

In my humble opinion, I believe that there is sufficient evidence on record to establish the fourth requisite - that the services sought to be subject to the VAT rate of zero percent (0%), under Section 108(B)(2) of the NIRC, be performed in the Philippines by a VAT-registered person.

As regards compliance with the fourth requisite - that services must be performed in the Philippines - the *ponencia* cites *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[1] (Burmeister case) and *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*[2] (AMEX Case). However, *Burmeister* dealt with a recipient of services that was doing business, not outside, but within the Philippines - a situation clearly

[1] G.R. No. 153205, January 22, 2007.
[2] G.R. No. 152609, June 29, 2005,

not on all fours as the case at bar. The *AMEX* case, on the other hand, clarified the exception to the "destination principle" in the VAT System, thus:

> "As a general rule, the value-added tax (VAT) system uses the destination principle. However, our VAT law itself provides for a clear exception, under which the supply of service shall be zero-rated when the following requirements are met: **(1) the service is performed in the Philippines**; (2) the service falls under any of the categories provided in Section 102(b) of the Tax Code; and (3) it is paid for in acceptable foreign currency that is accounted for in accordance with the regulations of the Bangko Sentral ng Pilipinas. Since respondent's services meet these requirements, they are zero-rated. Petitioner's Revenue Regulations that alter or revoke the above requirements are ultra vires and invalid.
>
> Respondent is a VAT-registered person that facilitates the collection and payment of receivables belonging to its non-resident foreign client, for which it gets paid in acceptable foreign currency inwardly remitted and accounted for in conformity with BSP rules and regulations. Certainly, the service it renders in the Philippines is not in the same category as 'processing, manufacturing or repacking of goods" and should, therefore, be zero-rated.'"

The *AMEX* Case, however, did not elaborate on the quantum of evidence needed to establish the fact that services were indeed performed in the Philippines, thus, making it clearly a matter of sound judicial discretion.

In the case at bar, Petitioner has presented its Certificate of Incorporation of Petitioner issued by the SEC[3] with attached Articles of Incorporation in which its primary purpose is "to engage in the business of providing call/contact center and other facilities and services as may be required by manufacturers and sellers of goods and services and the buyers and consumers thereof, through digital and electronic software applications and other services to facilitate and complete commercial transactions"[4], among others. It has likewise presented its Certificate of Filing of Amended Articles of Incorporation issued by the SEC[5] with the same primary purpose.

The Authenticated Service Agreement between Petitioner and Lovercius Consultants, Ltd.[6] states that it is between "a Philippine Company and a Cyprus Company". It was issued an Authority to Print VAT zero-rated official receipts[7] by Respondent and it issued these receipts when it received "payment for its

[3] Exhibit P-1-1.
[4] *Id.*
[5] Exhibit P-1-2.
[6] Exhibit P-1-9.
[7] Exhibit P-1-13.

services in acceptable foreign currency accounted for in accordance with BSP rules". According to the *ponencia*, this requisite has been established. The receipts have likewise been examined by the ICPA, Mr. Neil U. Sison, as evidenced by the ICPA Report[8], and has been testified to in his Judicial Affidavit[9]. In my opinion, the official receipts issued by a company incorporated in the Philippines that have been printed with approval of the Philippine taxation authorities and itemize services that are part and parcel of their primary purpose is more than ample evidence of the fact that the services were indeed performed in the Philippines.

Based on the foregoing, I vote to **GRANT** the Petition for Review in CTA Case No. 9546, and **ORDER** Respondent to refund Petitioner's unutilized input VAT in the amount of ₱13,480,821.26, attributable to zero-rated sales for the four (4) quarters of the fiscal year (FY) ended June 30, 2015.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[8] Exhibit P-3, P-3-A, and P-3-1.
[9] Exhibit P-2 and P-2-A.