

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

**FOUNDEVER PHILIPPINES
CORPORATION**

**(Formerly SITEL PHILIPPINES
CORPORATION)**

Petitioner,

CTA CASE NO. 10224

Members:

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

-versus-

Promulgated:

**COMMISSIONER OF
INTERNAL REVENUE,**

Respondent.

OCT 25 2023

3:30 p.m.

X ----- X

DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before this Court is a **Petition for Review**,¹ filed on 12 December 2019 by **Foundever Philippines Corporation** (formerly Sitel Philippines Corporation, hereinafter referred as “**petitioner**”), against respondent **Commissioner of Internal Revenue** (“**CIR**” or “**respondent**”), praying that judgment be rendered ordering respondent to refund a total amount of Twenty-Five Million Three Hundred Four Thousand Eight Hundred Eighty-One and 90/100 Pesos (**Php25,304,881.90**), representing petitioner’s alleged excess and unutilized input value added tax (“**VAT**”) attributable to zero-rated transactions for the third (3rd) and fourth (4th) quarters (“**Q3**” and “**Q4**”, respectively) of taxable year 2017 (“**TY2017**”).

The Parties

Petitioner Foundever Philippines Corporation is a corporation duly organized and existing under the laws of the Republic of the Philippines primarily engaged in providing outsourced call center services from the Philippines to domestic and offshore businesses, particularly non-resident,

¹ Docket Vol. 1, pp. 6-60, with annexes.

foreign corporation (“NRFC”) affiliates, including but not limited to tactical telemarketing campaigns and programs and customer relationship management services.²

Petitioner is registered with the Bureau of Internal Revenue (“BIR”) as a VAT-registered large taxpayer with identification number (“TIN”) 208-780-708-000.³

Prior to 12 October 2018, petitioner’s registered address was at the 14th floor Wynsum Corporate Plaza, Emerald Avenue Ortigas Center, San Antonio, Pasig City.⁴ Currently, it has its principal place of business at Ground Floor, One Julia Vargas Building, Ortigas Home Depot Complex, One Julia Vargas Avenue, Barangay Ugong, Pasig City.⁵

On the other hand, respondent is the Commissioner of the BIR, vested with the authority to decide, approve, and grant tax refunds pursuant to *Section 112 (C) of the National Internal Revenue Code of 1997, as amended* (“**Tax Code**”). He may be served with summons and other Court processes at the BIR National Office Building, Agham Road, Diliman, Quezon City.⁶

The Facts

On 30 September 2019, petitioner filed with the Office of the VAT Credit Audit Division (“VCAD”) of the BIR its administrative claim for refund together with petitioner’s Application for Tax Credits/Refunds (BIR Form No. 1914). On even date, petitioner submitted supporting documents for the said claim.⁷

Petitioner then received Tax Verification Notice No. TVN201800083147, dated 30 September 2019, issued by the VCAD of the BIR for the verification of supporting documents relative to the VAT refund claim of petitioner covering the period Q3 and Q4 2017 in the aggregate amount of Php25,304,881.90.⁸

On 21 November 2019, petitioner received a letter, dated 4 November 2019, from the Office of the Assistant Commissioner of the Assessment Service of the BIR, informing petitioner that its administrative claim had been denied (“Denial Letter”).⁹ ✓

² See Petition for Review, *id.*, p. 7; see also Exhibit “P-1.3”, Certificate of Filing Amended Articles of Incorporation with attached Amended Articles of Incorporation, Docket Vol. 2, p. 812-831.

³ Exhibit “P-2”, *id.*, p. 833.

⁴ Exhibits “P-2” *id.*, p. 833 with a remark on the change of registered address; see also Exhibit “P-3”, *id.*, p. 834 indicating previous registered address.

⁵ See Petition for Review, Docket Vol. 1, p. 6; see also Exhibit “P-2”, *id.*, p. 833.

⁶ See Petition for Review, Docket Vol. 1, p. 11.

⁷ Pars. 2-3, Admitted Facts, Statement of Facts and Issues, Pre-Trial Order, Docket Vol. 1, p. 584.

⁸ Par. 4, *id.*

⁹ See Petition for Review, Docket Vol. 1, pp. 10-11.

Aggrieved, petitioner filed the instant Petition for Review¹⁰ with the Court on 12 December 2019, to which respondent filed his Answer,¹¹ within the extended period granted by the Court,¹² on 5 March 2020.

On 4 and 11 September 2020, respondent¹³ and petitioner¹⁴ submitted their respective Pre-Trial briefs.

The Pre-Trial Conference ensued on 17 September 2020.¹⁵ Thereafter, on 8 October 2020, the parties submitted their Joint Stipulation of Facts and Issues.¹⁶ The Pre-Trial Order was then issued by the Court on 5 November 2020.¹⁷

For its testimonial evidence, petitioner presented Ronald Portula, its Senior Tax Analyst, who gave his direct testimony through the Judicial Affidavit, dated 3 September 2020,¹⁸ and Supplemental Judicial Affidavit, dated 16 November 2020.¹⁹

In his affidavit, Portula testified that consistent with petitioner's primary purpose in its Amended Articles of Incorporation ("AOI"),²⁰ it rendered outsourced call center services from the Philippines to domestic and offshore businesses, particularly to NRFC affiliates.

Portula further testified that subsequent to securing a Certificate of Registration with the BIR, petitioner established various sites in different locations within the Philippines and registered the same as "facility" with the BIR. According to Portula, these sites were intended to be a place where its contact center agents would be located and would perform contact center services. No invoices or official receipts were being issued in such sites. Thus, petitioner deemed it proper to register these sites as "facilities" rather than as "branches".

In addition, Portula stated that twelve (12) of these so-called facilities were registered with the Philippine Economic Zone Authority ("PEZA"). Others, specifically the Eastville Citywalk site in Puerto Princesa, Palawan ("Palawan Facility") and Ortigas Technopoint in Pasig City ("Technopoint Facility") remain unregistered as these two sites are not declared as PEZA zones. ✓

¹⁰ *Supra* note 1.

¹¹ See Answer, Docket Vol. 1, pp. 78-86.

¹² See Resolution dated 11 February 2020, *id.*, p. 77.

¹³ See Respondent's Pre-Trial Brief, *id.*, pp. 125-128.

¹⁴ See Pre-Trial Brief for Petitioner, *id.*, pp. 133-146.

¹⁵ See Minutes of the Hearing on 17 September 2020, Docket Vol. 2, p. 524.

¹⁶ See Joint Stipulations of Facts and Issues, *id.*, pp. 529-541.

¹⁷ See Pre-Trial Order, *id.*, pp. 583-593.

¹⁸ Exhibit "P-35", Judicial Affidavit of Ronald Portula, Docket Vol. 1, pp. 153-179.

¹⁹ Exhibit "P-35.2", Supplemental Judicial Affidavit of Ronald Portula, Docket Vol. 2, pp. 605-607.

²⁰ Exhibit "P-1.3", Certificate of Filing Amended Articles of Incorporation with attached Amended Articles of Incorporation, Docket Vol. 2, 821-832.

Also as testified by Portula, petitioner's zero-rated sales of services to NRFCs in Q3 and Q4 of TY2017 totaled Php2,009,950,658.21. Out of this amount, the zero-rated sales equivalent to Php800,282,066.63 is relevant to the instant case. These were sales to petitioner's clients, Sitel Operating Corporation and Sitel UK Limited, both NRFC affiliates, rendered in petitioner's Palawan and Technopoint Facilities. Petitioner alleges that the amount claimed for refund (Php25,304,881.90) represents the aggregate input VAT directly attributable to zero-rated sales of petitioner to these two NRFC affiliates generated in its Palawan and Technopoint Facilities.

Subsequently, pursuant to a Motion to Avail of the Provisions of *Section 5, Rule 12 of the Revised Rules of the Court of Tax Appeals*,²¹ which was granted by the Court on 11 November 2020,²² petitioner submitted the Judicial Affidavit of Independent Certified Public Accountant (ICPA) Emmanuel Y. Mendoza of Mendoza Querido & Co. on 28 January 2021.²³ Prior to such submission, ICPA Mendoza provided the Court a copy of its Report on 11 December 2020.²⁴ The flash drive attached therein was later replaced by petitioner on 28 December 2020, manifesting that the replacement USB flash drive contained a complete copy of the pertinent exhibits.²⁵

In his Report, ICPA Mendoza concluded that out of petitioner's claim for refund amounting to Php25,304,881.90, only the amount of Php21,892,292.37 represents valid input taxes attributable to valid zero-rated sales.

Meanwhile, to support respondent's position, the CIR offered the Judicial Affidavit of Revenue Officer Denise R. Dayanan ("Dayanan") dated 3 September 2020.²⁶ Dayanan was the revenue officer tasked to review and evaluate petitioner's claim for refund who eventually recommended the denial of the application.

After the presentation of evidence, petitioner formally rested its case and filed its Formal Offer of Evidence²⁷ on 21 May 2021 to which the respondent interposed no objections but only as to the manner that the evidence were identified in open court.²⁸ The Court ruled to admit petitioner's evidence except Exhibits "P-40-B-1", "P-40-68-B-2", "P-40-64-B-2", "P-41-17-B-7" to "P-41-17-B-16", "P-42-48-B", "P-42-51-B", "P-43-53-A", "P-43-74-A", "P-43-75-A", "P-43-34-B", "P-43-35-B", "P-43-53-B", "P-43-6-1-B", "P-43-74-B-1" to "P-43-74-B-15", "P-43-75-B-1", "P-43-75-B-14", "P-✓

²¹ See Motion to Avail of the Provisions of Section 5, Rule 12 of the Revised Rules of the Court of Tax Appeals, Docket Vol. 2, pp. 565-575, with annexes.

²² See Minutes of the Hearing on 11 November 2020, *id.*, p. 596.

²³ Exhibit "P-36", Judicial Affidavit of Emmanuel Y. Mendoza, *id.*, pp. 712-716.

²⁴ Exhibit "P-37", ICPA Report, *id.*, pp. 615-680, with annexes.

²⁵ See Manifestation with Motion for Leave to Admit Attached USB, *id.*, pp. 684-689; see also Resolution dated 20 January 2021 granting the Motion for Leave.

²⁶ Exhibit "R-7", Judicial Affidavit of Revenue Officer Denise R. Dayanan, Docket Vol. 1, 111-127.

²⁷ See Formal Offer of Evidence, Docket Vol. 2-3, pp. 728-1087, with annexes.

²⁸ See Comment (Re: Petitioner's Formal Offer of Evidence), Docket Vol. 3, pp. 1092-1094.

43-74-A”, “P-44-1”, “P-44-3”, “P-46-2”, “P-46-13” to “P-46-15”, “P-46-23”, “P-46-24”, “P-46-26”, “P-46-28” to “P-46-30”, “P-46-37”, “P-46-39”, and “P-46-41” due to petitioner’s failure to submit copies of the same.²⁹ However, upon a motion for reconsideration,³⁰ the Exhibits “P-40-1-B”, “P-40-68-B-2”, “P-40-64-B-2”, “P-42-48-B”, “P-42-51-B”, “P-43-53-A”, “P-43-61-B”, “P-43-74-A”, “P-43-75-A”, “P-43-34-B”, “P-43-35-B”, “P-43-53-B”, “P-43-74-B-1” to “P-43-74-B-15”, “P-43-75-B-1”, “P-43-75-B-14”, “P-43-74-A”, “P-44-1”, “P-44-3”, “P-46-2”, “P-46-13” to “P-46-15”, “P-46-23”, “P-46-24”, “P-46-26”, “P-46-28” to “P-46-30”, “P-46-37”, “P-46-39”, and “P-46-41” were then admitted in the Court’s Resolution, dated 19 April 2022.

On the other hand, respondent formally offered his evidence on 24 June 2022,³¹ to which petitioner likewise interposed no objections as to the existence of the exhibits without admitting the truthfulness of the contents, relevance, materiality, and probative value thereof.³² The Court admitted all the evidence submitted by the respondent in its Resolution, dated 13 September 2022.³³

Respondent³⁴ and petitioner³⁵ thereafter submitted their respective Memoranda on 18 and 24 October 2022.

Upon noting such submission, the instant case was submitted for decision on 26 October 2022.³⁶

The Issue

The sole issue for this Court’s resolution is:

WHETHER PETITIONER IS ENTITLED TO A REFUND OF ITS ALLEGED UNUTILIZED INPUT VAT FROM DOMESTIC PURCHASES OF GOODS (OTHER THAN CAPITAL GOODS) AND SERVICES, AND PURCHASE OF CAPITAL GOODS, ATTRIBUTABLE TO ZERO-RATED SALES FOR Q3 AND Q4 OF TY2017 IN THE AMOUNT OF PHP25,304,881.90.³⁷

Arguments of the Parties ✓

²⁹ See Resolution dated 5 January 2022, Docket Vol. 3, pp. 1100-1102.

³⁰ See Motion for Reconsideration (of Resolution dated January 5, 2022), *id.*, pp. 1120-1125.

³¹ See Formal Offer of Evidence, *id.*, pp. 1136-1139.

³² See Comment [Re. Respondent’s Formal Offer of Evidence dated June 22, 2022], *id.*, pp. 1142-1144.

³³ See Resolution dated 13 September 2022, Docket Vol. 3, p. 1149.

³⁴ See Memorandum, *id.*, pp. 1150-1159.

³⁵ See Memorandum for Petitioner, *id.*, pp. 1162- 1191.

³⁶ See Resolution dated 26 October 2022, *id.*, p. 1194.

³⁷ See Pre-Trial Order, Docket Vol. 2, p. 584.

Petitioner's Arguments³⁸

Petitioner posits that it is entitled to a VAT refund or a tax credit certificate for its alleged unutilized input VAT for the Q3 and Q4 of TY2017. It contends that it has timely filed both its administrative and judicial claims for refund. It further alleges that it is a VAT-registered taxpayer engaged in the sale of services to its non-resident affiliates doing business outside of the Philippines; that the consideration for such services were paid in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas ("BSP"); that the input tax incurred or paid were not transitional input taxes; and that the input taxes were not applied against output tax liability during Q3 and Q4 of TY2017 and in the succeeding quarters. Finally, petitioner emphasizes that respondent incorrectly denied its administrative claim for refund and that such disallowance is bereft of any factual and legal bases.

Respondent's Counter-Arguments³⁹

On the other hand, respondent maintains that petitioner's judicial claim for tax refund must fail due to the latter's failure to substantiate the claim for refund at the administrative level. Specifically, respondent emphasizes that since an administrative decision has already been rendered, the duty of the Court is now limited to determining whether the decision is proper. Further, respondent raises that the claim for refund should be denied for failure to comply with the mandatory invoicing requirement pursuant to *Section 113* in relation to *Section 110 of the Tax Code, as amended*.

The Ruling of the Court

We deny the instant Petition for Review.

Claims for refund or issuance of tax credit certificates for excess or unutilized creditable input VAT attributable to zero-rated sales are primarily governed by *Sections 112(A) and (C) of the Tax Code*, which provide:

"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 ✓

³⁸ See Petition for Review, Docket Vol 1, pp. 12-23; see also Memorandum for Petitioner, Docket Vol. 3, pp. 1168-1189.

³⁹ See Answer; Docket Vol. 1, pp. 77-86; see also Argument and Discussions, Memorandum, Docket Vol. 3, pp. 1152-1158.

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 or 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.

X X X

(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 the tax credit certificate for creditable input taxes within one hundred twenty (120) /now 90/⁴⁰ days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.**

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

(Emphasis and underscoring supplied.)

Based on the foregoing provisions, case law has laid down the requisites which the taxpayer-applicant must comply with to successfully obtain a credit or refund of input VAT. The said requisites are classified into certain categories, to wit:

Timeliness of the filing of the administrative and judicial claims:

1. the administrative claim with the BIR should be filed within two (“2”) years after the close of the taxable quarter when the pertinent zero-rated sales were made;⁴¹
2. that in case of full or partial denial of the refund claim, or the failure on the part of the respondent to act on the said claim within a period of one hundred twenty (“120”) days, the judicial claim should be filed with this Court, within thirty (“30”) days from receipt of the decision or after the expiration of the said 120-day period;⁴² ✓

⁴⁰ As amended under Section 36 of Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion (TRAIN) Law, effective 1 January 2018.

⁴¹ Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue, G.R. No. 191495, 23 July 2018.

⁴² *Ibid.*

Taxpayer's registration with the BIR:

3. the taxpayer is a VAT-registered person;⁴³

Taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;⁴⁴
5. for zero-rated sales under *Sections 106(A)(2)(a)(1), (2), and (b) and 108(B)(1) and (2)*, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;⁴⁵

Taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;⁴⁶
7. the input taxes are due or paid;⁴⁷
8. the input taxes have not been applied against output taxes during and in the succeeding quarters; and⁴⁸
9. 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.⁴⁹

It must be emphasized that in cases filed before this Court, which are litigated *de novo*, taxpayer-claimants must prove every minute aspect of their case.⁵⁰ Thus, petitioner must rightfully show compliance with the foregoing requisites. The absence of any of the aforementioned requirements constitutes a valid ground for the denial of the claim.

It is at this point that this Court expresses its disagreement with the respondent's position that since an unfavorable decision has already been rendered at the administrative level, petitioner cannot present before the Court documents categorically inadmissible in the administrative level for failure to comply with the documentary requirements. Respondent espouses the myopic view that the Court must be confined to a limited issue of whether there is indeed insufficiency of substantiation requirements to warrant the denial of the claim. ✓

⁴³ Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 166732, April 27, 2007; Southern Philippines Power Corporation v. Commissioner of Internal Revenue, G.R. No. 179632, 19 October 2011; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, 25 November 2009.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ Commissioner of Internal Revenue vs. CE Casecan Water and Energy Company, Inc., G.R. No. 212727, 1 February 2023; Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.), G.R. No. 231581, 10 April 2019.

However, the Court reiterates that as a court of record, it has the authority to determine issues raised by the parties even if these were not raised in the administrative level. Similarly, it has the authority to accept evidence offered by the taxpayer-claimant to the Court, regardless of whether these were submitted at the administrative level. This has been clearly explained by the Supreme Court in the case of *Commissioner of Internal Revenue vs. CE Casecanan Water and Energy Company, Inc.*⁵¹ citing *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*,⁵² to wit:

“The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. Thus, **the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the CTA to support its case for tax refund.**

Cases filed in the CTA are litigated de novo as such, respondent “should prove every minute aspect of its case by presenting, formally offering and submitting x x x to the Court of Tax Appeals all evidence x x x required for the successful prosecution of its administrative claim.” **Consequently, the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.”** (Emphasis and underscoring supplied.)

The Court shall now proceed to the substantive merits of the instant case.

**First and second requisites:
Petitioner’s administrative and
judicial claims for refund were
timely filed.**

The *first* and *second* requisites in refund applications relate to the timeliness of the administrative and judicial claims. The reglementary periods thereof are prescribed under *Sections 112(A) and (C) of the Tax Code* discussed above and were discussed by the Supreme Court in case of *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*,⁵³ which states:

“x x x a VAT-registered taxpayer who has excess and unutilized creditable input VAT attributable to zero-rated sales may file an application for cash refund or issuance of TCC (administrative claim)” ✓

⁵¹ G.R. No. 212727, 1 February 2023.

⁵² G.R. No. 231581, 10 April 2019.

⁵³ G.R. No. 191495, 23 July 2018.

before the CIR who has primary jurisdiction to decide such application. The period within which to file the administrative claim is two (2) years reckoned from the close of the taxable quarter when the pertinent zero-rated sales were made.

From the submission of complete documents to support the administrative claim, **the CIR is given a 120-day period to decide. In case of whole or partial denial of or inaction on the administrative claim, the taxpayer may bring his judicial claim, through a petition for review, before the CTA who has exclusive and appellate jurisdiction. The period to appeal is thirty (30) days counted from the receipt of the decision or inaction by the CIR.**

(Emphasis and underscoring supplied.)

In summary, there are three relevant periods governing claims for refund of input VAT attributable to zero-rated or effectively zero-rated sales:

1. the **administrative claim** for refund or issuance of tax credit certificate must be filed by the VAT-registered taxpayer **within two (2) years from the close of the taxable quarter** when the sales were made;
2. the **CIR has 120 days (now 90 days)⁵⁴ to grant or deny the claim** for refund from the date of submission of complete documents in support of the administrative application; and
3. the **judicial appeal** must be filed by the claimant **within 30 days from the receipt of the decision** denying the claim or after the **expiration of the 120-day period**, whichever comes first.⁵⁵

In relation to the 120-day period above, the running of the same shall be triggered by the simultaneous submission by the taxpayer-applicant of the tax refund claim together with the complete supporting documents, in accordance with the pronouncement of the Supreme Court in *Pilipinas Total Gas, Inc., v. CIR*,⁵⁶ to wit:

“To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing.

In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section ✓

⁵⁴ As amended by Section 36 of the TRAIN Law.

⁵⁵ Commissioner of Internal Revenue vs. CE Casecan Water and Energy Company, Inc., G.R. No. 212727, 1 February 2023.

⁵⁶ G.R. No. 207112, 8 December 2015.

112(A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected.

It bears mentioning at this point that the foregoing summation of the rules should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014, such as the claim at bench. **As it now stands, RMC 54-2014 dated June 11, 2014 mandates that:**

The application for VAT refund/tax credit must be accompanied by complete supporting documents as enumerated in Annex "A" hereof. In addition, the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents (Annex B). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (i.e., at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.

Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant.

Thus, under the current rule, the reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54-2014, since it requires him at the time he files his claim to complete his supporting documents and attest that he will no longer submit any other document to prove his claim. Further, the taxpayer is barred from submitting additional documents after he has filed his administrative claim."
(Emphasis supplied.)

In the present claim, petitioner's application covers the third and fourth quarters of TY2017 which respectively close on 30 September 2017 and 31 December 2017. Counting two (2) years therefrom, petitioner had until 30 September 2019 and 31 December 2019, respectively, within which to file its application for refund before the BIR. Thus, upon perusal of the duly stamped received BIR Form No. 1914⁵⁷ together with the letter application for input VAT refund filed with the BIR,⁵⁸ the Court finds for the timely filing of the administrative claim on 30 September 2019. ✓

⁵⁷ Exhibit "P-28", Docket Vol. 3, p. 1056.

⁵⁸ Exhibit "P-25", *id.*, pp. 1052-1054.

On 21 November 2019, a date prior to the supposed lapse of the 120-day period from the date of application (i.e. 28 January 2020), petitioner received the Denial Letter⁵⁹ from the respondent, stating the disapproval of subject refund claim.

Counting 30 days from 21 November 2019, petitioner had until 21 December 2019 within which to elevate the refund application to the Court. Hence, the instant Petition for Review was timely filed on 12 December 2019.⁶⁰

A summary of the relevant dates is shown in the table below:

	Q3 TY2017	Q4 TY2017
Period Covered by the Refund Claim	July to September 2017	October to December 2017
Deadline of Filing the Administrative Claim	30 September 2019	31 December 2019
Date of Filing of Administrative Claim ⁶¹	30 September 2019	30 September 2019
End of 120 days for BIR to decide on the claim	28 January 2020	28 January 2020
Date of receipt of Denial Letter ⁶²	21 November 2019	21 November 2019
End of the 30-day period to file a judicial claim	21 December 2019	21 December 2019
Date of Filing of the Petition for Review ⁶³	12 December 2019	12 December 2019

Third requisite: The requirement of proper VAT registration equally applies to branches and facilities; the Palawan and Technopoint sites are improperly registered as “facility”

To support its alleged compliance to the *third requisite*, petitioner submitted its BIR Certificate of Registration (“COR”)⁶⁴ OCN No. 

⁵⁹ Exhibit “P-29”, Docket Vol. 3, pp. 1057-1058.

⁶⁰ See Petition for Review, *supra* note 1.

⁶¹ Exhibit “P-28”, Docket Vol. 3, p. 1056; Exhibit “P-25”, *id.*, pp. 1052-1054.

⁶² Exhibit “P-29”, Docket Vol. 3, pp. 1057-1058.

⁶³ See Petition for Review, *supra* note 1.

⁶⁴ Exhibit “P-2”, Docket Vol. 2, p. 833.

8RC0000065770, dated 14 December 2000, with Tax Identification No. (“TIN”) 208-780-708-000, duly stating that it is registered as an entity subject to VAT.

Moreover, petitioner also submitted the CORs of the Palawan⁶⁵ and Technopoint⁶⁶ sites indicating registration with the BIR as “facility” specifically as “Showroom (Customer Service Center)”.

Notably, however, in respondent’s Denial Letter, such registration as facility was cited as one of the reasons for the disapproval of the claim. The BIR explained:

“4. Based on the documents submitted, your alleged zero-rated sales were from the Puerto Princesa, Palawan Site and OJV Technopoint Facilities. However, the Certificate of Registration (COR) presented in your 1st Quarter of 2017 claim revealed that the Palawan Site was registered with the Regular LT Audit Division III – Large Taxpayers Services (RLTAD III – LTS) on August 9, 2017. Your company also labeled OJV Technopoint as a “Facility” without submitting documentary proof that says otherwise. Moreover, said “Site” was registered as “Facility” (Showroom Customer Service Center). Section 3(8) of the Revenue Regulations (RR) No. 7-2012 defines “Facility” as follows:

“may include but not limited to place of production, showroom, warehouse, storage place, garage, bus terminal, or real property for lease with no sales activity. A facility shall be registered as a branch whenever sales transactions/activities are conducted thereat. Registration of the “Facility” with no sales activity is not subject to payment of Annual Registration Fee (ARF)”

On the other hand, “Branch”, per Section 3(7) of the same RR, is defined as *“separate or distinct establishment or place of business where sales transactions are conducted independently from the HO”*.

Based on the aforementioned RR, the registration of an entity with the BIR determines the official activities that will be conducted therein. In your case, the Palawan Site was registered only as a “Facility” instead of a “Branch”, thus, the dealings undertaken by the subject site a beyond the scope of its registered activity and therefore not authorized to conduct sales transactions. As further provided under RR 7-2012, a certain “Facility” should be registered as a “Branch” when sales transactions/activities are conducted thereat.”

Meanwhile, petitioner submits that the sites were properly registered as “facility” instead of a branch. It emphasizes that under *Section 3(8) of Revenue Regulations No. 7-2012*,⁶⁷ a facility “may include but not limited to place of production, showroom, warehouse, storage place, garage, bus ✓

⁶⁵ Exhibit “P-32”, Docket Vol. 3, p. 1063.

⁶⁶ Exhibit “P-32.1”, *id.*, p. 1064.

⁶⁷ Subject: Amended Consolidated Revenue Regulations On Primary Registration, Updates, And Cancellation, dated 2 April 2012.

terminal, or real property for lease with no sales activity.” According to petitioner, the Palawan and Technopoint Facilities are akin to a “place of production” of a manufacturer or manufacturing business, that is, the place where goods to be sold are manufactured, assembled, and produced.

Petitioner further raises that similar to a place of production, the sites are where services are performed, with such services other than production – such as monitoring, billing, invoicing, receipting, marketing and collection – being conducted by petitioner’s main office. It submits that since the facilities do not issue billing statements and official receipts, these sites cannot be construed as conducting transactions independently of the main office which is how a branch is defined under *Section 3(7)* of the same RR. Thus, Portula explained in his affidavit:

“Q-13: You mentioned that petitioner established various sites or facilities in different locations in the Philippines and registered the same with the BIR as “facility”. Why were sites registered as “facility”, if you know?

A-13 “Facility” was defined under Revenue Regulations NO. 7-2012 to mean place of production, showroom, warehouse, storage place, garage, bus terminal, or real property for lease with no sales activity. It is petitioner’s understanding that a “facility”, as distinguished from a “branch”, is a place or establishment where no sales transaction or activities are conducted. It cannot conduct operations or transactions independently from the Head Office or Main Office.

The sites established by petitioner were intended to be a place where its contact center agents would be locations and would perform contact center services. However, no invoices or official receipts would be issued in such sites. Considering the nature of the transaction being performed in the sites, petitioner deemed it proper to register it as “facility” rather than a “branch”.

Moreover, in the course of applying for a permit for its computerized accounting system with the BIR, petitioner obtained confirmation from the BIR of the registration of its sites as “Facilities” for which reason the BIR allowed indeed such registration.”

(Emphasis supplied)

Further, petitioner submits that assuming for the sake of argument that the registration as facility was erroneous, that does not mean that no input VAT may be attributed thereto, particularly if the input VAT is attributable to the services rendered therein.

We find petitioner’s contentions devoid of merit. ✓

Section 236 of the Tax Code, as amended, which provides for the registration requirements of persons or entities subject to taxes reads as follows:

"SEC. 236. Registration Requirements. —

(A) Requirements. — Every person subject to any internal revenue tax shall register once with the appropriate Revenue District Officer:

- (1) Within ten (10) days from date of employment, or
- (2) On or before the commencement of business, or
- (3) Before payment of any tax due, or
- (4) Upon filing of a return, statement or declaration as required in this Code.

The registration shall contain the taxpayer's name, style, place of residence, business, and such other information as may be required by the Commissioner in the form prescribed therefor. Provided, that the Commissioner shall simplify the requirements of self-employed individuals and/or professionals.

A person maintaining a head office, branch or facility shall register with the Revenue District Officer having jurisdiction over the head office, branch or facility. For purposes of this Section, the term 'facility' may include but not limited to sales outlets, places of production, warehouses or storage places."
(Emphasis supplied.)

To implement the foregoing, *Section 9.236-1(a) of RR No. 16-2005*⁶⁸ provides:

"SEC. 9.236-1. Registration of VAT Taxpayers. —

(a) In general. — Any person who, in the course of trade or business, sells, barter, exchanges goods or properties, or engaged in the sale of services subject to VAT imposed in Secs. 106 and 108 of the Tax Code shall register with the appropriate RDO using appropriate BIR forms and pay an annual registration fee in the amount of Five Hundred Pesos (P500) using BIR Form No. 0605 for every separate and distinct establishment or place of business (save a warehouse without sale transactions) before the start of such business and every year thereafter on or before the 31st day of January.

'Separate or distinct establishment' shall mean any branch or facility where sales transactions occur.

'Branch' means a fixed establishment in a locality which conducts sales operation of the business as an extension of the principal office.

'Principal place of business' refers to the place where the head or main office is located as appearing in the corporation's Articles of Incorporation. In the case of an individual, the principal place of business

⁶⁸ Subject: Consolidated Value-Added Tax Regulations of 2005, dated 1 September 2005.

shall be the place where the head or main office is located and where the books of accounts are kept.

'Warehouse' means the place or premises where the inventory of goods for sale are kept and from which such goods are withdrawn for delivery to customers, dealers, or persons acting in behalf of the business.

Any person who maintains a head or main office and branches in different places shall register with the RDO which has jurisdiction over the place wherein the main or head office or branch is located. However, the registration fee shall be paid to any accredited bank in the Revenue District where the head office or branch is registered provided that in areas where there are not accredited banks, the same shall be paid to the RDO, collection agent, or duly authorized treasurer of the municipality where each place of business or branch is situated.

Each VAT-registered person shall be assigned only one TIN. The branch shall use the 9-digit TIN of the Head Office plus a 3-digit Branch Code.

'VAT-registered person' refers to any person registered in accordance with this section.'

(Emphasis and underscoring supplied.)

Moreover, consistent with *Section 236 of the Tax Code, as amended*, and *Section 9.236-1 of RR No. 16-2005, RR No. 7-2012*⁶⁹ provide as follows:

"SECTION 3. DEFINITION OF TERMS. — For purposes of these Regulations, the following words and/or phrases shall be defined as follows:

x x x

6. **'Head Office (HO)'**— refers to the declared specific or identifiable principal place/head office of business as stated in the Articles of Incorporation/Articles of Partnership/Articles of Cooperation/DTI Certificate of Registration, as the case may be, or, in the absence thereof, the place where the complete books of accounts are kept. x x x

7. **'Branch'** — means a separate or distinct establishment or place of business where sales transactions are conducted independently from the HO. For purposes of these Regulations, branch shall include the following:

i. Sales outlet or establishment situated in another location/address other than at the HO;

ii. Facility with sales activity;

x x x

8. **'Facility'** — may include but not limited to place of production, showroom, warehouse, storage place, garage, bus terminal, or real property for lease ***with no sales activity***. A facility shall be registered as a branch whenever sales transactions/activities are conducted thereat. Registration of

⁶⁹ Subject: Amended Consolidated Revenue Regulations On Primary Registration, Updates, and Cancellation, dated 2 April 2012.

the 'Facility' with no sales activity is not subject to payment of Annual Registration Fee (ARF).

x x x

SECTION 6. PRESCRIBED PERIODS TO COMPLETE PRIMARY REGISTRATION — Every person subject to any internal revenue tax to be filed/paid periodically shall complete its registration with the BIR as follows:

1. On or before the commencement of business — Self-employed individuals, estates and trusts, corporations and their branches, if any:

Commencement of business shall be reckoned as defined in Section 3(6) hereof. A person shall be considered to have violated this provision when he/it proceeded to this stage after the lapse of thirty (30) days from the issuance of Mayor's Permit/PTR by the concerned LGU, or COR issued by the SEC or the date of its first sales transaction prior to its registration.

x x x”

(Underscoring supplied)

As can be gleaned from the foregoing provisions of the law and BIR issuances, every person subject to any internal revenue tax is mandated to register with the BIR. Also, if such person maintains a head office, a branch, or a facility, such registration shall be made with the BIR office having jurisdiction over said branch or facility.

Specifically for VAT purposes, *Section 9.236-1(a) of RR No. 16-2005* requires the registration of any person who, in the course of trade or business, sells, barter, exchanges goods or properties, or is engaged in the sale of services subject to VAT under the law. Such **registration must be made for every separate and distinct establishment or place of business**, save in the case of warehouses without sale transactions.

The same regulations define ‘**separate or distinct establishment**’ as any “branch or facility where sales transaction occur”. By ‘**branch**’, it means “a fixed establishment in a locality which conducts sales operation of the business as an extension of the principal office”. A branch has also been deemed by *Section 3 of RR No. 7-2012* to include a facility with sales activities. Meanwhile, a ‘**facility**’ may include but is not limited to a **place of production, showroom, warehouse, storage place, garage, bus terminal, or real property for lease with no sales activity**.

Also note that *RR No. 7-2012* further requires registration on or before the commencement of the business of the taxpayer.

More importantly, based on the above-cited provisions, the subject persons or entities must be “**registered in accordance with**” *RR No. 16-2005*; otherwise, it cannot be deemed as a ‘**VAT-registered person**’.

In the case at hand, Palawan and Technopoint sites were registered as facilities on 9 August 2017 and 31 October 2019, respectively. Petitioner maintains that these sites were properly registered as such as it is akin to a “place of production”.

The Court, however, disagrees and finds for the non-compliance of the petitioner with the above-discussed provisions of the law and BIR regulations.

As pointed out by petitioner, the term “place of production” relates to manufacturers or manufacturing businesses. It is the place where raw materials procured by the manufacturers are processed and turned into the intended finished goods. These finished goods are the articles subject of the sales conducted by the business, primarily at its head office.

The same is not true for entities engaged in the sale of services such as petitioner. Here, the services performed in the facilities are the main objects of the sale to the NRFC clients and are rendered directly to the latter. The sites thus conduct the very same activities which generate the revenue for the entity. It does not act as a “Customer Service Center”, unlike what is stated in its registration, since the services are not merely in support of sales transactions and other operations. Instead, the services are exactly the activities within the scope of work as per Amended and Restated Service Agreements with Sitel Operating Corporation⁷⁰ and Sitel UK Limited.⁷¹

To the Court’s mind, it was erroneous for the petitioner to limit the definition of “conducting sales activity” to the issuance of invoices and ORs, which is allegedly being done solely in its main office, when the primary revenue generating activities of the company are extended to its sites, including the Palawan and Technopoint facilities.

The Court also notes the registration of the facilities after the petitioner had already commenced operations on these sites. To recall, the transactions covered by the instant petition are those incurred from July to December 2017. Thus, as regards the Palawan Facility, it remained unregistered for the month of July 2017. On the other hand, for the Technopoint Facility, registration was secured only after two (2) years from the period covered by the instant refund claim. Clearly, with the performance of service activities in the Palawan and Technopoint sites in Q3 and Q4 2017, petitioner acted beyond its existing registrations with the BIR.

In sum, the Court deems the petitioner non-compliant with the *third* requisite in claiming input VAT refund/credit. ✓

⁷⁰ Exhibit “P-14”, pp. 924-931.

⁷¹ Exhibit “P-14.1”, pp. 932-941.

Nevertheless, assuming the propriety of petitioner's registration of sites as facilities, the Petition must still fail for petitioner's failure to substantiate the instant claim due to the reasons discussed in the subsequent section.

**Fourth and fifth requisites:
Petitioner failed to establish that it
was engaged in zero-rated or
effectively zero-rated sales.**

The *fourth* requisite mandates that the taxpayer-applicant must be engaged in zero-rated or effectively zero-rated sales. The importance of such requisite is highlighted in the case of *Coca-Cola Bottlers Philippines, Inc. v. CIR*,⁷² to wit:

"A plain and simple reading of the aforequoted provisions reveals that if and when the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. It is only when the sales of a VAT-registered person are zero-rated or effectively zero-rated that he may have the option of applying for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Such is the clear import of the Court's ruling in *San Roque*, to wit:

Under Section 110(B), a taxpayer can apply his input VAT only against his output VAT. The only exception is when the taxpayer is expressly "zero-rated or effectively zero-rated" under the law, like companies generating power through renewable sources of energy.
xxx."

(Emphasis and underscoring supplied.)

Moreover, as for the *fifth* requisite, the *Tax Code* requires that those zero-rated sales falling under *Sections 106 (A)(2)(a)(1) and (2), and 108 (B)(1) and (2)* thereof must be paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.

Based on petitioner's amended Q3⁷³ and Q4⁷⁴ TY2017 VAT returns, petitioner reported sales amounting to **Php4,267,931,262.38** broken down as follows:

Sales	Q3 TY2017 (in Php)	Q4 TY2017 (in Php)	Total (in Php)
VATable sales		5,042,446.08	5,042,446.08

⁷² G.R. No. 222428, 19 February 2018.

⁷³ Exhibit "P-6", Docket Vol. 2, pp. 848-845.

⁷⁴ Exhibit "P-7", *id.*, pp. 850-851.

Zero-rated sales	852,754,274.25	1,157,196,383.96	2,009,950,658.21
VAT-exempt sales	1,065,259,275.45	1,187,678,882.64	2,252,938,158.09
Total Sales	1,918,013,549.70	2,349,917,712.68	4,267,931,262.38

Petitioner claims that its zero-rated transactions arose from the export sale of services to persons engaged in business conducted outside the Philippines, the consideration for which were paid in acceptable foreign currencies and accounted for in accordance with the BSP rules, pursuant to **Section 108(B)(2) of the Tax Code**, which states:

“SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. —

x x x

(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 of 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)."**
(Emphasis supplied.)

Based on the foregoing, the following elements must be present for the sale or supply of services to be considered subject to VAT zero-rating:

- 1) The services fall under any of the categories under **Section 108(B)(2)**,⁷⁵ or, simply, be other than “processing, manufacturing, or repacking goods”;⁷⁶
- 2) The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines or is a non-✓

⁷⁵ Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch), G.R. No. 152609, 29 June 2005.

⁷⁶ Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. 153205, 22 January 2007.

resident person not engaged in business who is outside the Philippines when the services were performed;⁷⁷

- 3) The services must be performed in the Philippines⁷⁸ by a VAT-registered person; and
- 4) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.⁷⁹

(i) First element – Petitioner renders services other than processing, manufacturing, or repacking of goods

Petitioner has proven compliance with the *first* element by presenting its Amended and Restated Service Agreements with Sitel Operating Corporation⁸⁰ and Sitel UK Limited.⁸¹ *Article 1.2* of both contracts state:

“ARTICLE 1 – SERVICES TO BE PERFORMED

x x x

2. Scope of Work – Sitel hereby subcontracts to Subcontractor the services, or any designated portion thereof which Sitel is obligated to provide pursuant to the client contract (“Client Contracts”). Subcontractor services may consist of the following as required by the Client Contracts:

- Customer Care;
- Client Retention;
- Technical Support;
- Collection Services;
- Item Processing; or
- Outbound Call Services.

Such services will be provided through a variety of means, such as telephone, web, email, fax and traditional mail and shall include when applicable answering customer telephone calls, researching open issued, date entry, interfacing with other service providers supporting the Sitel’s business and outbound calling to customers or prospects to inform them about the status of their service issue or to provide updates on the program (the “Services”)” ✓

⁷⁷ Sitel Philippines Corporation (Formerly Clientlogic Phils. Inc.) v. Commissioner of Internal Revenue, G.R. No. 201326, 8 February 2017; Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 153205, 22 January 2007; Accenture, Inc. v. Commissioner of Internal Revenue, G.R. No. 190102, 11 July 2012.

⁷⁸ Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. 153205, 22 January 2007; Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch), G.R. No. 152609, 29 June 2005.

⁷⁹ Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 153205, 22 January 2007; Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch), G.R. No. 152609, 29 June 2005.

⁸⁰ Exhibit “P-14”, pp. 924-931.

⁸¹ Exhibit “P-14.1”, pp. 932-941.

Clearly, the above-mentioned services fall within the scope of “services other than processing manufacturing or repacking of goods” contemplated under *Section 108(B)(2) of the Tax Code*, as amended. Thus, *first* element has been complied with.

(ii) Second element – Petitioner has sufficiently proven that its client-affiliates are non-resident foreign corporations

As per petitioner’s Summary List of Sales,⁸² zero-rated sales were rendered to its client-affiliates including Sitel Operating Corporation and Sitel UK Limited.

Jurisprudence⁸³ has established that for taxpayer-claimants to establish that the recipient of its services are non-resident foreign corporation (NRFC) doing business outside the Philippines, there must be proof of two (2) components: (1) the client was established under the laws of a country which is not the Philippines; and (2) the client is not engaged in trade or business in the Philippines.

Anent the first component, the fact that the client is not a domestic corporation can be proven by its SEC Certification of Non-Registration of Corporation. As for the second component, the same can be evidenced by the client’s certificate of incorporation in another country which confirms client’s establishment under the laws of a foreign country. These were sufficiently explained by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*,⁸⁴ to wit:

“To the Court’s mind, the SEC Certifications of Non-Registration show that these affiliates are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are prima facie evidence that their clients are not engaged in trade or business in the Philippines.

Proof of the abovementioned second component sets this case apart from *Accenture, Inc. v. Commissioner of Internal Revenue* and *Site/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

⁸² Exhibit “P-12” to “P-12.1”, Docket Vol. 2, 909-914.

⁸³ *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) vs. Commissioner of Internal Revenue*, G.R. No. 215159, 5 July 2022; *Commissioner of Internal Revenue vs. Macquarie Offshore Services Pty., Ltd. – Philippine Branch*, G.R. No. 225169, 6 October 2021; *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*, G.R. No. 234445, 15 July 2020.

⁸⁴ G.R. No. 234445, 15 July 2020.

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.”
(Emphasis supplied.)

A review of the records shows that petitioner submitted the following documents:

	To prove the <i>First</i> component	To prove the <i>Second</i> component
Sitel Operating Corporation	• Certificate of Non-registration of Company issued by the SEC for Sitel Operating Corporation dated 20 June 2019⁸⁵	• Authenticated Certificate of Amendment of Amended and Restated Certificate of Incorporation of Sitel Operating Corporation dated 25 September 2009;⁸⁶ • Apostilled tax residency certificate of Sitel Operating Corporation dated 18 June 2018⁸⁷
Sitel UK Limited	• Certificate of Non-registration of Company issued by the SEC for Sitel UK Limited dated 29 June 2019⁸⁸	• Apostilled Memorandum and Articles of Association of Sitel UK Limited;⁸⁹ • Apostilled Certificate of UK Residence of Sitel UK Limited dated 17 January 2019⁹⁰

⁸⁵ Exhibit “P-19.”, Docket Vol. 2, p. 997.

⁸⁶ Exhibit “P-17”, *id.*, pp. 972-975.

⁸⁷ Exhibit “P-18”, *id.*, pp. 990-992.

⁸⁸ Exhibit “P-19.1”, *id.*, p. 998.

⁸⁹ Exhibit “P-17.1”, *id.*, pp. 976-989.

⁹⁰ Exhibit “P-18.1” *id.*, pp. 993-996.

Having duly established the two (2) required components in determining whether a client is a NRFC, the Court finds that the petitioner has satisfied the *second* element.

(iii) Third element – Petitioner failed to establish that the services were rendered in the Philippines.

With regard to the third element, petitioner failed to clearly establish its compliance therewith. It must be noted that the issue as to whether petitioner performed the services in the Philippines is a question of fact; hence, it must be proven by specific evidence.

Upon perusal of petitioner’s Formal Offer of Evidence, the Court notes that no evidence was offered to prove that the alleged zero-rated services were rendered in the Philippines. Moreover, while the Amended and Restated Service Agreements were submitted, these were offered for the purpose of proving that (1) petitioner is engaged in zero-rates sale of services to non-resident affiliates not engaged in business who are outside the Philippines when the services are performed; (2) petitioner renders services other than processing, manufacturing or repacking of goods to its non-resident affiliate; (3) the consideration for the zero-rated sales of services is paid for in foreign currency and accounted for in accordance with the rules and regulations of the BSP; and (4) as part of the testimony of Ronald Portula per his Judicial Affidavit dated 3 September 2020.⁹¹

It was only during the hearing on 18 February 2021 when the place of performance of services was briefly mentioned upon the Court’s questioning on witness Portula, to wit:

- | | |
|---------------------|--|
| “Justice San Pedro: | Okay. Of the subject sales transactions, the services took place or were generated from the Palawan Technopoint facilities, do you confirm that? |
| Mr. Portula: | The services were rendered in Palawan and Technopoint facilities... <i>interrupted</i> |
| Justice San Pedro: | What specific activities take place in these facilities? |
| Mr. Portula: | We perform mostly call center activities, your Honors.” |

However, it should be noted that the Amended and Restated Service Agreements do not bear any indication that the subject services were to be

⁹¹ See Formal Offer of Evidence, Docket Vol 2, pp. 743-744.

performed by petitioner in the Philippines. Further, the same agreements state that while the services may not be generally assigned or subcontracted, it can be done with the written consent of the client.⁹² However, no evidence was presented to prove that the services were rendered exclusively by petitioner within the Philippines.

Given the foregoing, the Court finds that the mere testimony of Portula without supporting documentary evidence renders the assertion uncorroborated; thus, insufficient for purposes of proving petitioner's compliance with the *third* element.

(iv) Fourth element – Petitioner failed to establish that the services were paid in acceptable foreign currency accounted for in accordance with the BSP Rules and Regulations.

Relative to the *fourth* element, and in relation to the *fifth* requisite for the granting of the input VAT refund, taxpayer-claimants must prove that the payments for the alleged zero-rated services were paid in acceptable foreign currency duly accounted for in accordance with the rules and regulations of the BSP.

Further, it must be emphasized that the remittances must also comply with the pertinent invoicing requirements, containing all the required information under **Section 113 (A) and (B) of the Tax Code**, as amended, to wit:

“SEC. 113. Invoicing and Accounting Requirements for VAT-registered Persons. —

(A) Invoicing Requirements. — 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.**

(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: *e/*

⁹² See Article 6.4 Assignment; Successor, Amended and Restated Service Agreement, Exhibit “P-14”, *id.*, p. 929; “P-14.1”, *id.*, p. 937.

- (a) The **amount of the tax shall be shown as a separate item** in the invoice or receipt;
- (b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;
- (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**;
- (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 value-added tax** on each portion of the sale shall be shown on the invoice or receipt: Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) The **date of transaction, quantity, unit cost and description of the goods or properties or nature of the service**; and

(4) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the **name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.**"
(Emphasis supplied.)

The foregoing provisions are further implemented by *Section 4.113-1(A) and (B) of RR No. 16-05*, which state:

"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: ✓

- (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;
- (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 (P1,000.00) 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 (1) and (2) of this Section.”
(Emphasis supplied.)

Here, petitioner presented the Certificate of Inward Remittance from Bank of America, N.A. purportedly showing the payments of its non-resident foreign clients, together with the Reconciliation of Foreign Currency Remittance on Zero-Rated Sale of Services for the Taxable Quarters Ending 30 September 2017⁹³ and 31 December 2017.⁹⁴

Copies of the official receipts (OR)⁹⁵ supposedly covering these inward remittances were likewise submitted to the Court.

The details of the inward remittances, with the corresponding ORs were summarized by ICPA Mendoza in Table 6 of his Report, reproduced below:

OR No.	Sales in Peso	Sales in Foreign Currency	Currencies	Amount of Remittance	Remittance Reference No.	Site
378	13,555,836.21	272,201.19	USD	272,201.19	1931AH72	Palawan
361	79,935,880.54	1,288,630.03		1,288,630.03		Technopoint
363	(206,333.70)	(3,149.72)		(3,149.72)		Palawan
	79,729,546.84	1,285,480.31	GBP	1,285,480.31	206LAD22	
387	11,282,892.97	226,560.49		226,560.49		Palawan
388	40,460,489.20	812,446.62		812,446.62		Technopoint
	51,743,382.17	1,039,007.11	USD	1,039,007.11	220LAD49	
400	52,214,789.87	849,243.10	GBP	849,243.10	234LAC50	Technopoint
413	43,954,373.17	882,603.81	USD	882,603.81	249LAD95	Technopoint
416	(1,744,193.96)	(34,535.04)		(34,535.04)		Technopoint
417	17,837,057.84	358,168.12		358,168.12		Palawan
	16,092,863.88	323,633.08	USD	323,633.08	254LAC43	

⁹³ Exhibit “P-34”, *id.*, pp. 1082-1085
⁹⁴ Exhibit “P-34.1”, *id.*, pp. 1086-1087.
⁹⁵ Exhibit “P-40-1-A” to “P-48-11”, USB Flash drive attached to the ICPA Report.

420	10,932,630.12	178,375.11	GBP	178,375.11	255LAA61	Technopoint
427	28,191,654.03	557,630.92		557,630.92		Palawan
428	45,820,535.13	906,330.19		906,330.19		Technopoint
	74,012,189.16	1,463,961.11	USD	1,463,961.11	268LAC07	
471	12,862,418.83	271,139.79		271,139.79		Palawan
472	14,693,124.43	299,592.80		299,592.80		Technopoint
	27,555,543.26	570,732.59	USD	570,732.59	312LAA05	
482	2,965,976.39	59,665.78	USD	59,665.78	312LAD48	Palawan
489	4,431,273.86	220,340,118.51	USD		327LAA42	Technopoint
492	(21,200,703.08)	(338,584.55)		(338,584.55)		Technopoint
494	957,758.66	15,031.65		15,031.65		Palawan
	(20,242,944.42)	(323,552.90)	GBP	(323,552.90)	327LAD60	
503	31,855,876.21	636,823.63	USD	636,823.63	340LAA20	Palawan
509	2,179,457.95	33,152.62	GBP	33,152.62	341LAE27	Palawan
528	32,761,716.74	644,095.35	USD	644,095.35	355LAA07	Palawan
532	1,209,269.08	23,774.23	USD	23,774.23	361LAA26	Palawan
497	7,389,591.33	148,752.47	USD	148,752.47	333LAG444	Technopoint
504	74,006,675.21	1,481,098.72	USD	1,481,098.72	340LAA20	Technopoint
507	4,315,251.50	65,433.85	GBP	65,433.85	341LAE27	Technopoint
520	(1,574,799.51)	(31,653.47)	USD	(31,653.47)	342LAD31	Technopoint
531	31,834,776.77	625,871.71	USD	625,871.71	361LAA26	Technopoint
TOTAL	₱800,282,066.63					

ICPA Mendoza also prepared his own Summary of Inward Remittance for Q3 and Q4 of TY2017 attached to his Report as Annex A-4⁹⁶ and Annex A-5.⁹⁷

The Court, however, notes the incongruities in the documents, schedules, and table prepared by the petitioner and ICPA Mendoza, as discussed below.

First, ICPA Mendoza stated in his Report that he was able to verify that petitioner's total zero-rated sales for Q3 and Q4 of TY2017 amounting to Php2,009,950,658.21 is equal to the amount of zero-rated sales declared in the quarterly VAT returns for the same period. He added that only Php800,282,066.63, as claimed by the petitioner, pertains to Palawan and Technopoint sites, and that the corresponding sales are supported by various ORs and other documents attached to the Report. ICPA Mendoza also claims that he was able to verify that the zero-rated sales were indeed paid in acceptable foreign currencies based on the notarized certificate of inward remittance, as summarized in Table 6 of his Report, replicated above.

However, upon the Court's checking of the amounts in Table 6, the total "Sales in Peso" does not equal to Php800,282,066.63, but only Php540,923,275.79. Thus, contrary to ICPA Mendoza's assertion, it appears that the zero-rated sales were not fully accounted.

Next, We reviewed the ORs and other documents supporting the alleged zero-rated sales listed in Table 6 of the Report and noted the following exceptions, which render the corresponding sales non-compliant with the mandates of *Section 113 (A) and (B) of the Tax Code*: ✓

⁹⁶ See Annex A-4, ICPA Report, Docket Vol. 2, pp. 651-655.

⁹⁷ See Annex A-5, ICPA Report, *id.*, pp. 656-657.

Exhibit No.	OR No.	Sales in Peso (per ICPA Report)	Sales in Foreign Currency (per ICPA Report)	Exceptions Noted
P-41-2-A and P-41-2-B	378	13,555,836.21	272,201.19	OR date does not match with the Value Date / Remittance Date per Annex A-4 and A-5 (Summary or Inward Remittances)
P-41-27-A and P-41-27-B-1 to P-41-27-B-3	416	-1,744,193.96	-34,535.04	OR labeled as pertaining to the ETON site; Encoded as a negative amount in ICPA Mendoza's table but the OR indicates the amount of Php803,371.68.
P-41-5-A and P-41-5-B	427	28,191,654.03	557,630.92	OR date does not match with the Value Date / Remittance Date per Annex A-4 and A-5 (Summary or Inward Remittances)
P-41-11-A and P-41-11-B.pdf	428	45,820,535.13	906,330.19	OR date does not match with the Value Date / Remittance Date per Annex A-4 and A-5 (Summary or Inward Remittances)
P-40-78-A and P-40-78-B-1 to P-40-78-B-18	489	4,431,273.86	220,340,118.51	OR labeled as pertaining to TARLAC site; Amount per OR is Php3,93,677.50

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P-40-66-A and P-40-66-B-1 to P-40-66-B-11	492	21,200,703.08	-338,584.55	VAT Exempt sale per OR; Encoded as a negative amount in ICPA Mendoza's table but the OR indicates the amount of Php508,392.39
P-41-44-A and P-44-41-B	497	7,389,591.33	148,752.47	OR does not indicate the site it pertains to
P-40-68-A and P-40-68-B-1	520	-1,574,799.51	-31,653.47	VAT Exempt sale per OR; Encoded as a negative amount in ICPA Mendoza's table but the OR indicated the amount of Php484,650.30
TOTAL		74,869,194.01	221,820,260.22	

Lastly, as regards the schedule of inward remittances, the Court notes the unreconciled differences between the petitioner's sales and the payments remitted by its clients, in foreign currency.

We reviewed the Reconciliation of Foreign Currency Remittance on Zero-Rated Sale of Services for the Q3⁹⁸ and Q4⁹⁹ of TY2017, prepared by the petitioner. As per checking, it was observed that there are significant amounts of discrepancies between the "Amount Billed (in Foreign Currency)" and the "Amount Remitted (in Foreign Currency)." In the "Remarks" column, the petitioner merely stated that the "discrepancy pertains to other official receipts lumped in the remittance" without providing information and supporting documents as to which ORs these were combined with. ✓

⁹⁸ Exhibit "P-34", *id.*, pp. 1082-1085

⁹⁹ Exhibit "P-34.1", *id.*, pp. 1086-1087.

Meanwhile, a review of the Summary of Inward Remittances (Annex A-4¹⁰⁰ and Annex A-5¹⁰¹) prepared by ICPA Mendoza also reveals that the inward remittances remain not fully accounted for. In Annex A-4 of the Report, there is an “Unaccounted” column which shows the unreconciled differences between the sales and amount remitted in foreign currency.

More importantly, the Court cannot even perform its own verification and reconciliation of the sales amounts and remittances since the ORs do not reflect the corresponding reference number that would allow Us to trace the payments to the pertinent inward remittance. Thus, We cannot ascertain if the client’s remittances were indeed “accounted for in accordance with the rules and regulations of the BSP.”

Accordingly, the Court hereby finds that petitioner also failed to fulfill the *fourth* element, in relation to the *fifth* requisite, for the granting of the input VAT refund.

It is well-settled that tax refunds are in the nature of a claim for exemption and, therefore, the law is construed in *strictissimi juris* against the taxpayer. Accordingly, the pieces of evidence presented entitling a taxpayer to an exemption must also *strictissimi* scrutinized and must be duly proven.¹⁰² In this case, petitioner was not able to prove with competent evidence its entitlement to a refund or issuance of a tax credit certificate.

In light of the above discussions, it becomes unnecessary to determine whether petitioner fulfilled the remaining requisites for granting a credit/refund of input VAT for the period Q3 and Q4 of TY2017.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

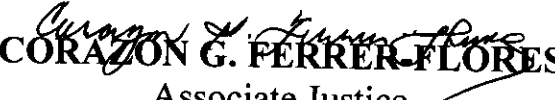


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

¹⁰⁰ See Annex A-4, ICPA Report, Docket Vol. 2, pp. 651-655.

¹⁰¹ See Annex A-5, ICPA Report, *id.*, pp. 656-657.

¹⁰² Atlas Consolidated Mining and Development Corporation v. CIR, G.R. No. 159490, 18 February 2008.


CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

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


MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

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 ✓