REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

MANULIFE DATA SERVICES, INC., Petitioner,	**CTA CASE NO. 9881**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and,* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 23 2023 8:02 a.m.

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DECISION

RINGPIS-LIBAN, J.:

THE CASE

The *Petition for Review* prays that the Court:

1. Grant petitioner, as a matter of right, the refund/issuance of a tax credit certificate in the total amount of ₱96,275,284.20, representing the excess and unutilized input value-added tax (VAT) paid for the 1st to 4th quarters of calendar year 2016, and order respondent to refund/issue a tax credit certificate in favor of petitioner in the amount of ₱96,275,284.20;

or, in the alternative;

2. Allow petitioner to present evidence to prove its entitlement to the refund/issuance of tax credit certificate in the total amount of ₱96,275,284.20, representing excess and unutilized input VAT paid for the 1st to 4th quarters of calendar year 2016, and after trial, order

respondent to refund/issue a tax credit certificate in favor of petitioner in the amount of ₱96,275,284.20.[1]

THE PARTIES

Petitioner Manulife Data Services, Inc. is a foreign corporation duly registered with and authorized by the Securities and Exchange Commission (SEC) to operate as a Regional Operating Headquarters (ROHQ) in the Philippines, under SEC Certificate of Registration No. FS200603505. As such, it is engaged in the business of providing qualifying services to its affiliates and related parties in the Asia-Pacific region and in other foreign markets.[2] It is also registered with the Large Taxpayers Services Division of the Bureau of Internal (BIR) Revenue District Office No. 126, as shown by its Certificate of Registration No. 8RC0000525020, issued by BIR Revenue District Office 126.[3]

Respondent, on the other hand, is the Commissioner of the BIR who holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[4] He is vested with the power to decide tax cases, including claims for refunds and/or tax credits pursuant to Section 4 of the 1997 National Internal Revenue Code (NIRC), as amended.[5]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On March 28, 2018, petitioner filed with respondent, through BIR Regular LT-Audit Division III, its administrative application for refund / tax credit of its excess and unutilized input VAT for the whole period of calendar year 2016, together with its supporting documents in accordance with Annex A.1 of Revenue Memorandum Circular (RMC) No. 17-2018.[6]

Subsequently, on June 27, 2018, petitioner received the letter from the BIR dated May 30, 2018, wherein its claim for refund was denied on the sole ground that it failed to comply with "*the submission of Certificate of Incorporation from the foreign country as certified by an authorized official of the Non-Resident Foreign Corporation (NRFC) pursuant to Revenue Memorandum Circular No. 17-2018.*"[7]

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[1] Statement of the Case, Pre-Trial Order dated August 22, 2019, Docket – Vol. 4, p. 1673. Refer also to par. 1(c), Stipulation of Facts, *Joint Stipulation of Facts and Issue* (JSFI), Docket – Vol. 4, p. 1635

[2] Par. 2(a), Stipulation of Facts, JSFI, Docket – Vol. 4, p. 1635; Exhibits "P-1" and "P-2" [*N.B.*: Unless otherwise indicated, any of petitioner's exhibits referred to in this Decision is found on the expanding brown envelope labelled as "Marked Exhibits (Envelope 1 of 2)].

[3] Par. 2(b), Stipulation of Facts, JSFI, Docket – Vol. 4, p. 1635; Exhibit "P-3".

[4] Par. 1(a), Stipulation of Facts, JSFI, Docket – Vol. 4, p. 1634.

[5] Par. 1(b), Stipulation of Facts, JSFI, Docket – Vol. 4, p. 1634.

[6] Exhibits "P-11" and "P-12".

[7] Par. 13, Facts, *Petition for Review*, vis-à-vis par. 1, *Answer*, Docket – Vol. 1, pp. 15 and 245, respectively. Refer also to par. 1(d), Stipulation of Facts, JSFI, Docket – Vol. 4, p. 1635.

PROCEEDINGS BEFORE THIS COURT

The present *Petition for Review* was filed on July 24, 2018.[8]

Respondent filed his *Answer* on February 26, 2019,[9] interposing the following special and affirmative defenses, to wit: (1) the petition must be dismissed for failure of petitioner to substantiate its administrative claim for refund; (2) petitioner is not entitled to refund in the amount of ₱96,275,284.20; (3) administrative agencies in the exercise of their rule-making power can formulate rules and regulations in order to achieve the declared policies as laid down by Congress; (4) taxes paid and collected by the BIR are presumed to have been made in accordance with law, rules and regulations and the burden to prove otherwise is upon petitioner; and (5) claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation, and as such, they are looked upon with disfavor.

On March 8, 2019, respondent transmitted the *BIR Records*, consisting of fifteen (15) folders.[10]

The Pre-Trial Conference was set and held on June 13, 2019.[11] Prior thereto, *Respondent's Pre-Trial Brief* was submitted on April 5, 2019,[12] while petitioner's *Pre-Trial Brief* was filed on June 4, 2019.[13]

On July 8, 2019, the parties filed their *Joint Stipulation of Facts and Issue*,[14] which the Court admitted and approved in its Resolution dated July 25, 2019,[15] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated August 22, 2019 was then issued.[16]

Trial then ensued, with the parties presenting and offering their respective documentary and testimonial evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Iñigo P. Garcia,[17] petitioner's Finance Director; (2) Ms. Clarissa L.

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[8] Docket – Vol. 1, pp. 10 to 24.
[9] Docket – Vol. 1, pp. 245 to 257.
[10] Docket – Vol. 1, pp. 261 to 263.
[11] Notice of Pre-Trial Conference dated March 4, 2019, Docket – Vol. 1, pp. 259 to 260; Minutes of the hearing held on, and Order dated, June 13, 2019, Docket – Vol. 4, pp. 1576, 1580 to 1582.
[12] Docket – Vol. 1, pp. 291 to 294.
[13] Docket – Vol. 1, pp. 297 to 331.
[14] Docket – Vol. 4, pp. 1634 to 1644.
[15] Docket – Vol. 4, p. 1656.
[16] Docket – Vol. 4, pp. 1673 to 1689.
[17] Exhibit "P-99", Docket – Vol. 1, pp. 339 to 383; Minutes of the hearing held on, and Order dated, October 3, 2019, Docket – Vol. 4, pp. 1705 to 1706.

Magarao,[18] petitioner's Accounting Specialist; and, (3) Mr. Glenn Ian D. Villanueva,[19] the Court-commissioned Independent Certified Public Accountant (ICPA).[20]

The partial ICPA *Report* was posted on December 23, 2019,[21] and the final ICPA *Report* was filed on January 27, 2020.[22]

On February 18, 2020, petitioner filed its *Formal Offer of Evidence*,[23] to which respondent filed his *Comment [Re: Petitioner's Formal Offer of Evidence]* on February 21, 2020.[24] In the Resolution dated June 19, 2020,[25] the Court admitted all of petitioner's offered exhibits, *except* the following:

1. Exhibits "P-1" to "P-1-b", "P-2" to "P-2-c", "P-5", "P-6", "P-7", "P-8", "P-10", "P-11" to "P-11-b", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-26", "P-27", "P-28", "P-29", "P-30", "P-31", "P-32" to "P-32-e", "P-33" to "P-33-c", "P-35", "P-36", "P-37" to "P-37-d", "P-38", "P-38-a", "P-38-b", "P-38-c", "P-38-d", "P-39", "P-42", "P-42-a", "P-43", "P-47" to "P-47-d", "P-49" to "P-49-d", "P-50", "P-51", "P-53", "P-53-a", "P-54" to "P-54-d", "P-55" to "P-55-b", "P-56", "P-56-a", "P-57" to "P-57-d", "P-58", "P-59" to "P-59-g", "P-60", "P-61" to "P-61-e", "P-62", "P-62-a", "P-63" to "P-63-d", "P-64", "P-64-a", "P-64-b", "P-65", "P-66" to "P-66-e", "P-67", "P-69", "P-70" to "P-70-d", "P-71", "P-72" to "P-72-d", "P-73" to "P-73-c", "P-74", "P-74-a", "P-74-b", "P-74-c", "P-74-d", "P-75", "P-77", "P-79", "P-79-a", "P-81", "P-85", "P-86" to "P-86-d", "P-86-e" to "P-86-i", "P-88", "P-91", "P-94", "P-95", "P-96", "P-97", and "P-98", for failure to submit the duly marked exhibits;

2. Exhibits "P-3", "P-4", "P-4-a", "P-9", "P-34" to "P-34-c", "P-40" to "P-40-d", "P-41" to "P-41-d", "P-44" to "P-44-d", "P-45" to "P-45-b", "P-46", "P-46-a", "P-48", "P-48-a", "P-58-a", "P-60-a", "P-67-a", "P-68" to "P-68-e", "P-69-a", "P-69-b", "P-71-a", "P-71-b", "P-77-a", "P-84", "P-84-a", "P-84-b", "P-137-89", "P-137-95", "P-137-96", "P-137-98", "P-137-108", "P-137-109", "P-138-200", "P-138-215", "P-138-216",

[18] Exhibit "P-100", Docket – Vol. 3, pp. 1336 to 1356; Minutes of the hearing held on, and Order dated, November 7, 2019, Docket – Vol. 4, pp. 1736, and 1738 to 1739, respectively.
[19] Exhibit "P-102", Docket – Vol. 5, pp. 2063 to 2070; Minutes of the hearing held on, and Order dated, February 12, 2020, Docket – Vol. 5, pp. 2074 to 2076.
[20] *Oath of Commission* dated November 7, 2019, Docket – Vol. 4, p. 1737; Minutes of the hearing held on, and Order dated, November 7, 2019, Docket – Vol. 4, pp. 1736, and 1738 to 1739, respectively.
[21] Exhibit "P-101", Docket – Vol. 4, pp. 1752 to 1798.
[22] Exhibit "P-101-1", Docket – Vol. 4, pp. 1819 to 2020.
[23] Docket – Vol. 5, pp. 2077 to 2111.
[24] Docket – Vol. 5, pp. 2114 to 2116.
[25] Docket – Vol. 5, pp. 2122 to 2125.

"P-138-233", "P-138-239", and "P-138-283", for failure to present originals for comparison;

3. Exhibits "P-52", "P-76", "P-78", "P-80", "P-82", "P-83", "P-87", "P-89", "P-90", "P-92", "P-93", "P-138-42" to "P-138-47, "P-138-121", "P-138-217", "P-138-476", and "P-140-63" to "P-140-68", for not being found in the records of the case; *and*,

4. Exhibits "P-138-163", "P-138-165", "P-138-176", "P-138-186", "P-138-187", "P-138-229", "P-138-344", and "P-138-359", for being unreadable/blank.

Subsequently, on June 29, 2020, petitioner filed a *Motion to Reopen with Motion to Recall*,[26] praying for the Court to (1) reopen the case for the reception of the corrected official receipts/invoices and the certifications issued by its domestic suppliers; (2) allow the court-commissioned Independent CPA, Mr. Glenn Villanueva, to render a supplemental report on these corrected receipts/invoices; and (3) recall Mr. Villanueva to testify on his supplemental report. On the same day, petitioner filed a *Motion to Reset Hearing*.[27]

Petitioner further filed a *Motion for Reconsideration (Re: Resolution dated 19 June 2020)* on July 7, 2020.[28]

Respondent failed to file his comment on the said *Motion to Reopen* and *Motion for Reconsideration* of petitioner.[29]

In the Resolution dated January 21, 2021,[30] the Court: (1) granted petitioner's *Motion to Reopen with Motion to Recall*; (2) set a Commissioner's Hearing on March 2, 2021 for the comparison of the originals of Exhibits "P-3", "P-4", "P-4-a", and "P-9"; (3) set the hearing for the recall of the Court-commissioned ICPA; and (4) held in abeyance the resolution on petitioner's *Motion for Reconsideration*.

On May 10, 2021, the ICPA's *Final Report* was posted.[31]

At the hearing held on October 19, 2021, the Court-commissioned ICPA, Mr. Glenn Ian D. Villanueva, testified on direct examination.[32]

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[26] Docket – Vol. 5, pp. 2126 to 2130.
[27] Docket – Vol. 5, pp. 2132 to 2134.
[28] Docket – Vol. 5, pp. 2137 to 2142.
[29] Records Verification Report dated December 18, 2020 issued by the Judicial Records Division of this Court, Docket – Vol. 5, p. 2149.
[30] Docket – Vol. 5, pp. 2153 to 2155.
[31] Exhibits "P-101-2" and "P-101-2-a", Docket – Vol. 5, pp. 2159 to 2359.
[32] Exhibits "P-155" and "P-155-a", Docket – Vol. 5, pp. 2417 to 2422; Minutes of the hearing held on, and Order dated, October 19, 2021, Docket – Vol. 5, pp. 2414 to 2416.

Within the extended period,[33] petitioner's *Supplemental Formal Offer of Exhibits* was posted on November 8, 2021.[34] Respondent failed to file his comment thereon.[35]

In the Resolution dated March 11, 2022,[36] the Court partially granted petitioner's *Motion for Reconsideration (Re: Resolution dated 19 June 2020)*, and admitted Exhibits "P-1" to "P-1-b", "P-2" to "P-2-c", "P-5", "P-6", "P-7", "P-8", "P-10", "P-11" to "P-11-b", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-26", "P-27", "P-28", "P-29", "P-30", "P-31", "P-32" to "P-32-e", "P-33" to "P-33-c", "P-35", "P-36", "P-37" to "P-37-d", "P-38", "P-38-a", "P-38-b", "P-38-c", "P-38-d", "P-39", "P-42", "P-42-a", "P-43", "P-47" to "P-47-d", "P-49" to "P-49-d", "P-50", "P-51", "P-53", "P-53-a", "P-54" to "P-54-d", "P-55" to "P-55-b", "P-56", "P-56-a", "P-57" to "P-57-d", "P-58", "P-59" to "P-59-g", "P-60", "P-61" to "P-61-e", "P-62", "P-62-a", "P-63" to "P-63-d", "P-64", "P-64-a", "P-64-b", "P-65", "P-66" to "P-66-e", "P-67", "P-69", "P-70" to "P-70-d", "P-71", "P-72" to "P-72-d", "P-73" to "P-73-c", "P-74", "P-74-a", "P-74-b", "P-74-c", "P-74-d", "P-75", "P-77", "P-79", "P-79-a", "P-81", "P-85", "P-86" to "P-86-d", "P-86-e" to "P-86-i", "P-88", "P-91", "P-94", "P-95", "P-96", "P-97", and "P-98"; but still denied the following:

1. Exhibits "P-3", "P-4", "P-4-a", and "P-9", for failure to submit the duly marked exhibits; and

2. Exhibits "P-34" to "P-34-c", "P-40" to "P-40-d", "P-41" to "P-41-d", "P-44" to "P-44-d", "P-45" to "P-45-b", "P-46", "P-46-a", "P-48", "P-48-a", "P-58-a", "P-60-a", "P-67-a", "P-68" to "P-68-e", "P-69-a", "P-69-b", "P-71-a", "P-71-b", "P-77-a", "P-84", "P-84-a", and "P-84-b", for failure to present originals for comparison.

In the same Resolution, the Court further resolved petitioner's *Supplemental Formal Offer of Exhibits*, and admitted Exhibits "P-101-2", "P-141-91" to "P-141-120", and "P-155".

For his part, respondent presented the testimony of Revenue Officer Marc Denison C. Andrey.[37]

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[33] *Motion for Extension of Time (To File Supplemental Formal Offer of Exhibits)*, Docket – Vol. 5, pp. 2473 to 2475; Resolution dated November 15, 2021, Docket – Vol. 5, p. 2487.
[34] Docket – Vol. 5, pp. 2488 to 2491.
[35] Records Verification Report dated February 3, 2022 issued by the Judicial Records Division of this Court, Docket – Vol. 5, p. 2495.
[36] Docket – Vol. 5, pp. 2499 to 2506.
[37] Exhibit "R-5", Docket – Vol 1, pp. 270 to 273; Minutes of the hearing held on, and Order dated, June 9, 2022, Docket – Vol. 5, pp. 2507 to 2509.

Respondent filed his *Formal Offer of Evidence* on June 13, 2022,[38] to which petitioner did not file any comment thereon.[39] In the Resolution dated September 14, 2022,[40] the Court admitted all of respondent's offered evidence.

Respondent filed his *Memorandum* on September 28, 2022;[41] while petitioner's *Memorandum* was posted on November 7, 2022.[42]

The case was deemed submitted for decision on November 24, 2022.[43]

THE ISSUES

The parties stipulated the following issues for this Court's resolution, *viz.*:

> "a. Whether or not petitioner is entitled to a refund or issuance of a tax credit certificate for its unutilized/excess input VAT payments for the 1st to 4th Quarters of CY 2016 amounting to a total of **NINETY-SIX MILLION TWO HUNDRED SEVENTY-FIVE THOUSAND TWO HUNDRED EIGHTY-FOUR PESOS AND TWENTY CENTAVOS (PHP 96,275,284.20)**; and,
>
> b. Whether the BIR's denial of petitioner's administrative claim – on the basis of petitioner's non-compliance with Revenue Memorandum Circular No. 17-2018 – is valid."[44]

Petitioner's arguments:

Petitioner, in insisting that it is entitled to a refund, argues that it is a VAT-registered entity; that it is engaged in zero-ratable sales paid by inward remittances of foreign currency; that it paid input VAT in calendar year 2016, arising from its domestic purchases of goods and services; that its excess and unutilized input VAT is directly attributable to its zero-rated sales for calendar year 2016, and not applied against output tax in the same or succeeding quarters; and that its administrative and judicial claims were timely filed. In addition, petitioner is of the view that Revenue Memorandum Circular (RMC) No. 17-2018 was unpublished.

[38] Docket – Vol. 5, pp. 2510 to 2513.
[39] Records Verification Report dated July 21, 2022 issued by the Judicial Records Division of this Court, Docket – Vol. 5, p. 2521.
[40] Docket – Vol. 5, pp. 2523 to 2524.
[41] Docket – Vol. 5, pp. 2525 to 2537.
[42] Docket – Vol. 5, pp. 2546 to 2554.
[43] Resolution dated November 24, 2022, Docket – Vol. 5, p. 2557.
[44] Stipulation of Issues, JSFI, Docket – Vol. 4, p. 1635.

Respondent's counter-arguments:

Respondent contends that the petition must be dismissed for failure of petitioner to substantiate its administrative claim for refund; that petitioner is not entitled to refund in the amount of ₱96,275,284.20; that administrative agencies in the exercise of their rule-making power can formulate rules and regulations in order to achieve the declared policies as laid down by Congress; and that claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation and as such, they are looked upon with disfavor.

THE COURT'S RULING

The present *Petition for Review* is partly meritorious.

The Court has exclusive appellate jurisdiction to review by appeal decisions of the Commissioner of Internal Revenue in cases involving refunds of internal revenue taxes.

To reiterate, respondent contends that since he rendered a decision, the jurisdiction of this Court shifts from a trial court to an appellate tribunal; that this Court should confine itself to whether the findings of respondent are consistent with law; and that this Court is confined to a more limited issue of whether the denial was proper given the evidence submitted at the administrative level.

While We partly agree with respondent, Our concurrence with his contentions does **not** sustain his defense. His denial in the amount of ₱96,275,284.20 was not proper.

Indeed, since respondent rendered a decision on the subject claim for refund, the Court, upon appeal thereof, shall exercise its appellate jurisdiction over the claim.

In *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*,[45] the Supreme Court said:

> "At this stage, a review of **the nature of a judicial claim before the CTA** is in order. In *Atlas Consolidated Mining and Development Corporation v. CIR*,[46] it was ruled –

[45] G.R. No. 207112, December 8, 2015.
[46] G.R. No. 145526, March 16, 2007.

> x x x **First, a judicial claim for refund or tax credit in the CTA is <u>by no means an original action</u> but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, <u>as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claim</u>. In this case, <u>it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit</u>.** Second, cases filed in the CTA are litigated *de novo*. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.

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

Based on the foregoing jurisprudential pronouncements of the High Court, it is necessary for a petitioner to show to this Court not only that it is entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit. Simply put, **it is crucial for a taxpayer in a judicial**

claim for refund or tax credit to show that its administrative claim should have been granted in the first place.

There are two (2) matters which must be shown by petitioner before this Court, upon appeal of an unsuccessful administrative claim, to wit: *first*, all documentary and evidentiary requirements for an administrative claim were satisfied at the BIR level, and *second*, the taxpayer's entitlement to the claim for refund or tax credit under substantive law. The *first* matter involves a review or determination whether respondent has basis in fact and/or in law of his denial of the administrative claim; while the *second* matter to be proved entails a determination of petitioner's compliance with the requisites established by law.

More significantly, while the *second* matter to be shown is in accord with the principle that cases filed in this Court are litigated *de novo*, the *first* matter is concerned with the proper exercise of this Court's appellate jurisdiction as conferred by law. Relative thereto, it must be remembered that appellate jurisdiction is the authority of a court higher in rank to *re-examine* the final order or judgment of a lower court which tried the case now elevated for judicial review.[47]

The BIR should not have disallowed the amount of ₱96,275,284.20.

In the letter dated March 30, 2018 issued by Asst. Commissioner Teresita M. Dizon,[48] the latter informed petitioner as follows, to wit:

> "This refers to your application for Tax Credit / Refund of excess or unutilized VAT paid arising from domestic purchases of goods and services in accordance to Section 112(A) of the National Internal Revenue Code of 1997 ('NIRC') attributable to zero-rated sales for the period January 1 to December 31, 2016 in the total amount of Ninety-Six Million Two Hundred Seventy-Five Thousand Two Hundred Eighty-Four and 24/100 (P96,275,284.20).
>
> In reply, please be informed that after careful review and evaluation of your application, the same has been **DISAPPROVED** by the Large Taxpayers Service of this Bureau for <u>non compliance with the submission of Certificate of Incorporation from the foreign country as certified by an authorized official of the Non Resident Foreign Corporation (NRFC) pursuant to Revenue Memorandum Circular No. 17-2018</u>, which amends certain provisions of RMC Nos. 89-2017 and

[47] *Garcia, et al. vs. De Jesus, et al., etseq.*, G.R. Nos. 88158 and 97108-09, March 4, 1992.
[48] Exhibits "P-16"; and "R-4", BIR Records (Main Folder), p. 501.

> 54-2014 on the processing of claims for issuance of Tax Refund/Tax Credit Certificate in relation to amendments made in the NIRC of 1997, as amended by RA No. 10963 (TRAIN Law) and Section 108 of the NIRC." *(Underscoring added)*

Based on the foregoing, respondent denied the petitioner's administrative claim for refund on the ground that it failed to provide Certificate of Incorporation from the foreign country as *certified by an authorized official* of the non-resident foreign corporation (NRFC), as required by RMC No. 17-2018, which amends certain provisions of RMC Nos. 89-2017 and 54-2014.

Indeed, the requirement for the submission of certificate of incorporation from the foreign country certified by an authorized official of the NRFC is found in Annex A.1 *(Revised Checklist of Mandatory Requirements for Claims for VAT Refund, Pursuant to Section 112 (A) of the Tax Code, as Amended by R.A. No. 10963)* of RMC No. 17-2018, to wit:

> "3. SALE OF GOODS OR SERVICES
>
> xxx xxx xxx
>
> ________ 3.4 For sale of services to non-resident foreign corporation (NRFC) covered under Sec. 108 (B) (2), proofs that the NRFC-buyer of the services is not doing business in the Philippines (**e.g. Original copy of** the certification from the SEC that the NRFC is not a registered corporation in the Philippines and **a certificate of incorporation from the foreign country <u>as certified by an authorized official of the NRFC</u>**)
>
> xxx xxx xxx."
>
> *(Emphasis and underscoring added)*

However, a reading of item 3.4 of Annex A.1 *(Revised Checklist of Mandatory Requirements for Claims for VAT Refund, Pursuant to Section 112 (A) of the Tax Code, as Amended by R.A No. 10963)* shows that it does not aim to restrict or confine the supporting documents only to those specifically mentioned as the abbreviation *"e.g."* was, in fact, intentionally placed at the beginning of the provision:

> "**e.g.** Original copy of the certification from the SEC that the NRFC is not a registered corporation in the Philippines and a certificate of incorporation from the foreign country as certified by an authorized official of the NRFC" (*Emphasis supplied*)

Hence, respondent's interpretation is inaccurate.

The abbreviation *"e.g."* stands for the latin words *"exempli gratia"*, which simply means "for the sake of an example".[49] It is thus apparent that the amendment to item 3.4 of Annex A.1 did not contemplate any restriction on the documentary requirements that may be submitted by the taxpayer to prove that its NRFC clients are not doing business in the Philippines. Thus, We find petitioner's contention meritorious that the submission of *consularized charter documents* of its clients, *sans* certification of the authorized officials of the respective NRFCs, should have been considered *substantial compliance.*

In *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,*[50] the Court clarified that an essential condition to qualify for zero-rating under Section 108(B)(2) is that the service-recipient must be doing business outside the Philippines. Likewise, following the pronouncement in *Burmeister*, the Court in *Accenture, Inc. vs. Commissioner of Internal Revenue*[51] emphasized that a taxpayer claiming a VAT refund or credit under Section 108(B) has the burden to prove not only that the recipient of the service is a foreign corporation, but also that the said corporation is doing business outside the Philippines, thus:

> "The evidence presented by Accenture may have established that its clients are foreign. This fact does not automatically mean, however, that these clients were doing business outside the Philippines. After all, the Tax Code itself has provisions for a foreign corporation engaged in business within the Philippines and vice versa, to wit:
>
> SEC. 22. *Definitions.* — When used in this Title:
>
> xxx xxx xxx
>
> (H) The term *"resident foreign corporation"* applies to a foreign corporation engaged in trade or business within the Philippines.
>
> (I) The term *'nonresident foreign corporation'* applies to a foreign corporation not engaged in trade or business within the Philippines. (Emphasis in the original)
>
> **Consequently, to come within the purview of Section 108 (B) (2), it is not enough that the recipient of the service be proven to be a foreign corporation; rather, it must be specifically proven to be a nonresident foreign corporation.**
>
> There is no specific criterion as to what constitutes 'doing' or 'engaging in' or 'transacting' business. We ruled thus in *Commissioner of Internal Revenue v. British Overseas Airways Corporation*:
>
> .... **There is no specific criterion as to what constitutes 'doing' or 'engaging in' or 'transacting'**

[49] https://thelawdictionary.org/exempli-gratia/ last accessed on October 26, 2023.
[50] G.R. No. 153205, January 22, 2007, 541 Phil. 118.
[51] G.R. No. 190102, July 11, 2012.

> **business. Each case must be judged in the light of its peculiar environmental circumstances.** The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization. 'In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character.'
>
> A taxpayer claiming a tax credit or refund has the burden of proof to establish the factual basis of that claim. Tax refunds, like tax exemptions, are construed strictly against the taxpayer." (*Emphasis supplied and citations omitted*)

In *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*,[52] the Supreme Court affirmed this Court's decision on the sufficiency of presenting the following documents:

> "*Proof of NRFC Status*
>
> For purposes of zero-rating under Section 108(B)(2) of the Tax Code, the claimant must establish the two components of a client's NRFC status, *viz*: (1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of both of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines.
>
> Such proof must be especially required from ROHQs such as DKS. That the law expressly authorizes ROHQs to render services to local and foreign affiliates alike only stresses the ROHQ's burden to distinguish among their clients' nationalities and actual places of business operations and establish that they are seeking refund or credit of input VAT only to the extent of their sales of services to foreign clients doing business outside the Philippines.
>
> To recall, the **CTA found that the SEC Certification of Non-Registration of Company and Authenticated Articles of Association and/ or Certificates of Registration/Good Standing/Incorporation sufficiently established the NRFC status** of 11 of DKS's affiliates clients.
>
> **The Court upholds these findings.**
>
> The Court accords the CTA's factual findings with utmost respect, if not finality, because the Court recognizes that it has necessarily developed an expertise on tax matters. Significantly, both the CTA Division and CTA *En Banc* gave credence to the aforementioned documents as sufficient proof of NRFC status. The Court shall not disturb its findings without any showing of

[52] G.R. No. 234445, July 15, 2020.

> grave abuse of discretion considering that the members of the tax court are in the best position to analyze the documents presented by the parties.
>
> In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court a quo's findings. **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.**" (*Emphasis and underscoring added*).

Clearly, respondent's disallowance of the refund claim amount of ₱96,275,284.20, representing petitioner's total unutilized input VAT is improper. The same cannot, therefore, be sustained by this Court.

Having dealt with the *first* matter anent the denial of petitioner's administrative claim, We shall proceed with the determination of petitioner's entitlement to the claim for refund or tax credit and compliance with the requisites set forth by law.

Requisites for refund or tax credit of input VAT established by law.

Pertinent to the resolution of the instant case is Section 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 10963 [53], otherwise known as Tax Reform for Acceleration and Inclusion (TRAIN Law), which reads as follows:

> "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

[53] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

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.

xxx xxx xxx

(C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code." *(Emphases added)*

From the afore-quoted provision, jurisprudence has laid down the following requisites for claiming refund or tax credit of unutilized or excess input VAT attributable to zero-rated or effectively zero-rated sales, *viz.*:

As to timeliness of the filing of the administrative and judicial claims:

1. The claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[54]

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 ninety (90) days, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision or after the expiration of the said 90-day period;[55]

Concerning the taxpayer's registration with the BIR:

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[54] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 155732, 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.*, G.R. No. 182364, August 3, 2010.

[55] Refer to *Energy Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 203367, March 17, 2021; *Commissioner of Internal Revenue vs. CE Casecnan Water and Energy Company, Inc.*, G.R. No. 212727, February 1, 2023; and *Commissioner of Internal Revenue vs. Vestas Services Philippines, Inc.*, G.R. No. 255085, March 29, 2023.

3. The taxpayer is a VAT-registered person;[56]

In relation to the taxpayer's output VAT:

4. The taxpayer is engaged in zero-rated or effectively zero-rated sales;[57]

5. For zero-rated sales under Sections 106 (A)(2)(1) and (2); 106 (B); and 108 (B)(1) and (2) of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[58]

As regards the taxpayer's input VAT being refunded:

6. The input taxes are not transitional input taxes;[59]

7. The input taxes are due or paid;[60]

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;[61] and

9. The input taxes have not been applied against output taxes during and in the succeeding quarters.[62]

1ST and 2nd Requisites: Petitioner's administrative and judicial claims were timely filed.

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.

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[56] *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.*
[57] *Id.*
[58] *Id.*
[59] *Id.*
[60] *Id.*
[61] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, supra*; and *San Roque Power Corporation vs. Commissioner of Internal Revenue, supra.*
[62] *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.*

The present claim covers 1st to 4th quarters of calendar year 2016. Counting two (2) years from the respective close of the quarters, the following table indicates the last day for filing administrative claim, *to wit*:

Period Covered	**Close of the Taxable Quarter**	**Last day to File Administrative Claim**
January to March 2016 (1st Quarter)	March 31, 2016	March 31, 2018
April to June 2016 (2nd Quarter)	June 30, 2016	June 30, 2018
July to September 2016 (3rd Quarter)	September 30, 2016	September 30, 2018
October to December 2016 (4th Quarter)	December 31, 2016	December 31, 2018

By filing the *Application for Tax Credits/Refunds* in the amount of ₱96,275,284.20 covering all the taxable quarters provided above on March 28, 2018,[63] the administrative claim was filed within the reglementary periods.

The *second* requisite necessitates that the judicial claim must have been filed within thirty (30) days from receipt of respondent's decision or after the expiration of the 90-day period under the afore-quoted Section 112(C) of the NIRC, as amended.

Such being the case, from the filing of petitioner's administrative claim on March 28, 2018, respondent had ninety (90) days or until June 27, 2018, to act on the said claim.

Notably, respondent is deemed to have acted on petitioner's administrative claim within the said ninety (90)-day period from March 28, 2018, when petitioner received respondent's Letter of Denial dated May 30, 2018, signed by Assistant Commissioner Teresita M. Dizon, on June 27, 2018.[64] Counting thirty (30) days from petitioner's receipt of the said letter, it had until July 27, 2018 within which to appeal its claim for refund before this Court. Since the present judicial claim was timely filed on July 24, 2018,[65] this Court is clothed with jurisdiction to take cognizance of the present case.

Hence, petitioner has complied with the *first* and *second* requisites.

3rd Requisite: Petitioner is a VAT-registered entity.

The parties stipulated that petitioner is registered with the Large Taxpayers Services under BIR Revenue District Office No. 126, as shown by its Certificate of Registration No. 8RC0000525020.[66] With this admission,

[63] Exhibits "P-11" and "P-12".
[64] Par. 1(d), Stipulation of Facts, JSFI, Docket – Vol. 4, p. 1635; Exhibit "P-16".
[65] Docket – Vol. 1, pp. 10 to 24.
[66] Par. 2(b), Stipulation of Facts, JSFI, Docket – Vol. 4, p. 1635.

respondent is deemed to have admitted the existence and authenticity of such certificate of registration with the BIR albeit only the provisionally marked exhibit was presented by petitioner. In *Bayas and Matuday vs. The Sandiganbayan,*[67] the Supreme Court held that stipulations are valid and binding. Once the stipulations are reduced into writing and signed by the parties and their counsels, they become binding on the parties who made them. They become judicial admissions of the fact or facts stipulated.

Thus, while We were constrained to deny petitioner's BIR Certificate of Registration due to its failure to submit the duly marked certified true copy,[68] the contents of the provisionally marked exhibit thereof,[69] attached to the records of this case, were considered by this Court in view of the above-stated stipulation of the parties. Undisputedly then, petitioner fulfilled the *third* requisite.

4th and 5th Requisites: Petitioner had zero-rated sales or effectively zero-rated sales.

The *fourth* and *fifth* requisites mandate that the taxpayer be engaged in zero-rated or effectively zero-rated sales and for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2), and that the acceptable foreign currency exchange proceeds thereof have been duly accounted for in accordance with BSP rules and regulations.

In its originally filed Quarterly Value-Added Tax Returns (BIR Form No. 2550-Q) for the 1st to 4th quarters of calendar year 2016,[70] petitioner reported total sales of ₱3,657,414,971.20, which included zero-rated sales of ₱3,549,857,592.33, broken down as follows:

Period (2016)	VATable Sales	Zero-rated Sales	Total Sales
1st quarter	₱ 14,928,221.69	₱ 848,398,915.01	₱ 863,327,136.70
2nd quarter	35,843,258.51	844,829,808.89	880,673,067.40
3rd quarter	26,696,583.12	856,327,832.38	883,024,415.50
4th quarter	30,089,315.56	1,000,301,036.05	1,030,390,351.61
Total	**₱107,557,378.88**	**₱3,549,857,592.33**	**₱3,657,414,971.21**

However, on October 17, 2016, petitioner filed its amended Quarterly Value-Added Tax Return for the 2nd quarter of calendar year 2016, in which it declared input tax carried over from previous period in a decreased amount of ₱88,116,966.69.[71]

67 G.R. No. 143689-91, November 12, 2002.
68 Commissioner's Report dated March 2, 2021, Docket – Vol. 5, pp. 2156 to 2157; and Resolution dated March 11, 2022, Docket – Vol. 5, pp. 2499 to 2506.
69 Exhibit "P-3".
70 Exhibits "P-5" to "P-8".
71 Exhibit "P-123", Line 20A, USB.

Nevertheless, petitioner's reported total VATable sales, total zero-rated sales and total sales for the the 1st to 4th quarters of calendar year 2016 in the amounts of ₱107,557,378.88, ₱3,549,857,592.33, and ₱3,657,414,971.21, respectively, remain the same.

Petitioner claims that the foregoing zero-rated sales are derived from the sale of services to the following NRFCs,[72] the consideration for which were allegedly paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of BSP, to wit:

1. JH FUNDS
2. JOHN HANCOCK LIFE INSURANCE COMPANY
3. MAM US LLC
4. MANULIFE (INTERNATIONAL) LTD
5. MANULIFE (VIETNAM) LIMITED
6. MANULIFE ASSET MANAGEMENT (HONG KONG) LIMITED
7. MANULIFE ASSET MANAGEMENT (SINGAPORE) PTE. LTD.
8. MANULIFE ASSET MANAGEMENT (VIETNAM)
9. MANULIFE ASSET MANAGEMENT LIMITED (MUTUAL FUNDS)
10. MANULIFE ASSET MANAGEMENT MALAYSIA
11. MANULIFE BANK
12. MANULIFE FINANCIAL ASIA LIMITED
13. MANULIFE INFORMATION & TECHNOLOGIES SERVICES (CHENGDU)
14. MANULIFE INSURANCE BERHAD (MALAYSIA)
15. MANULIFE INSURANCE BERHAD (RAS MY)
16. MANULIFE JAPAN
17. MANULIFE SINGAPORE PTE LTD REG NO. 198002116D
18. MANULIFE TECHNOLOGY & SERVICES SDN BHD
19. MANULIFE THAILAND
20. MANULIFE-SINOCHEM LIFE INSURANCE CO., LTD.
21. PT. ASURANSI JIWA MANULIFE INDONESIA
22. PT. MANULIFE ASET MANAJEMEN INDONESIA
23. THE MANUFACTURERS' LIFE INSURANCE COMPANY

Relative to the foregoing zero-rated sales, Section 108(B)(2) of the NIRC of 1997, as amended, reads 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

[72] Exhibit "P-30"; Par. 9, IV. Facts, *Petition for Review*, Docket – Vol. 1, p. 18.

> 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 added)*

Based on the foregoing provisions, 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;[73]

2. The services fall under any of the categories under Section 108(B)(2),[74] or simply, the services rendered should be other than *"processing, manufacturing or repacking goods"*;[75]

3. The services must be performed in the Philippines[76] 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.[77]

As to the *first* essential element, as discussed earlier, to prove that its clients are NRFCs for purposes of VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended, petitioner must prove that: (1) the client was established under the laws of a foreign country; and, (2) it is *not* engaged in trade or business in the Philippines. To be sure, there must be sufficient proof

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[73] *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.

[74] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

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

[76] *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.*

[77] *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.*

of both of these requirements to establish that the clients are foreign corporations *and* are not doing business in the Philippines.[78]

Thus, petitioner must submit for its NRFC clients *both*: (1) the SEC Certificate of Non-Registration of Corporation/Partnership; *and* (2) Proof of Certificate/Articles of Foreign Incorporation/Association showing the state/province/country where the entity was organized.

To be sure, the SEC Certificate of Non-Registration shows that the foreign client is not engaged in trade or business in the Philippines. On the other hand, the Certificate/Articles of Foreign Incorporation/Association proves that the client was established under the laws of a foreign country. Together, these two (2) documents prove the two (2) requisites necessary to establish the NRFC status of a client.

In this case, the following table shows whether petitioner complied with the *first* essential element as it presented evidence of the said SEC Certificate of Non-Registration and Certificates of Registration/ Foreign Incorporation/ Association for each of the recipients of the services rendered by petitioner:

	Client's Name	**SEC Certification of Non-Registration (Exhibit Nos.)**	**Certificate/ Articles of Incorporation/ Registration (Exhibit Nos.)**
1	JH Funds	"P-81"	**None**
2	John Hancock Life Insurance Company	"P-36"	"P-35"
3	MAM US LLC	"P-85"	**None**
4	Manulife (International) Ltd	"P-39"	"P-38" to "P-38-d"
5	Manulife (Vietnam) Limited	"P-88"	**None**
6	Manulife Asset Management (Hong Kong) Limited	"P-43"	"P-42" to "P-42-a"
7	Manulife Asset Management (Singapore) Pte. Ltd.	**None**	**None**
8	Manulife Asset Management (Vietnam)	"P-51"	"P-50"
9	Manulife Asset Management Limited (Mutual Funds)	"P-79-a"	**None**
10	Manulife Asset Management Malaysia	**None**	**None**
11	Manulife Bank	"P-53-a"	**None**
12	Manulife Financial Asia Limited	"P-56-a"	"P-56"
13	Manulife Information & Technologies Services (Chengdu)	"P-58"	**None**
14	Manulife Insurance Berhad (Malaysia)	"P-60"	"P-131"[79]
15	Manulife Insurance Berhad (RAS MY)	"P-91"	**None**
16	Manulife Japan	"P-62-a"	**None**
17	Manulife Singapore Pte Ltd Reg No. 198002116D	"P-65"	"P-64" to "P-64-b"
18	Manulife Technology & Services Sdn Bhd	"P-77"	**None**

[78] *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*, G.R. No. 234445, July 15, 2020.
[79] Please refer to the USB.

19	Manulife Thailand	"P-94"	**None**
20	Manulife-Sinochem Life Insurance Co., Ltd.	"P-67"	**None**
21	Pt. Asuransi Jiwa Manulife Indonesia	"P-69"	**None**
22	Pt. Manulife Aset Manajemen Indonesia	"P-71"	**None**
23	The Manufacturer's Life Insurance Company	"P-75"	**None**

On the basis of the foregoing, only the following clients of petitioner can be considered NRFCs, to wit:

Client's Name	**SEC Certification of Non-Registration**	**Certificate/ Articles of Incorporation/ Registration**
John Hancock Life Insurance Company	"P-36"	"P-35"
Manulife (International) Ltd	"P-39"	"P-38 to P-38-d"
Manulife Asset Management (Hong Kong) Limited	"P-43"	"P-42 to P-42-a"
Manulife Asset Management (Vietnam)	"P-51"	"P-50"
Manulife Financial Asia Limited	"P-56-a"	"P-56"
Manulife Insurance Berhad (Malaysia)	"P-60"	"P-131"
Manulife Singapore Pte Ltd Reg No. 198002116D	"P-65"	"P-64" to "P-64-b"

Relative to the *second* essential element in order for the foregoing clients to be considered as NRFCs, only the following have Service Agreements with petitioner, to wit:

1. *Services Agreement* made on October 25, 2007 which shall remain in force until terminated in accordance with its terms, and *Addendum to Service Agreement* dated October 31, 2007 which is deemed to have commenced on May 1, 2006 and shall continue thereafter until terminated in accordance with its terms, between *John Hancock Life Insurance Company (U.S.A.)* and petitioner;[80]

2. Business Processing Services Agreement between *Manulife (International) Limited* and petitioner made on April 10, 2006 and shall remain in force until terminated in accordance with its terms;[81]

3. Services Agreement between *Manulife Asset Management (Vietnam) Company Limited* and petitioner made on May 3, 2012 and shall remain in force until terminated in accordance with its terms;[82]

4. Master Administrative Services Agreement and Service Level Agreement between *Manulife Financial Asia Limited* and

[80] Exhibits "P-32 to P-32-e" and "P-33 to P-33-c".
[81] Exhibits "P-37 to P-37-d".
[82] Exhibits "P-49 to P-49-d".

petitioner made on November 16, 2015 and shall remain in force until terminated in accordance with its terms;[83]

5. Services Agreement between *Manulife Insurance Berhad (Malaysia)* and petitioner made on April 23, 2010 and shall remain in force for a period of one (1) year and shall automatically renew for successive one (1) year periods unless terminated earlier in accordance with the provisions thereof;[84] and

6. Master Services Agreement between *Manulife Singapore Pte. Ltd.* and petitioner made on July 2, 2012 and shall remain in force until terminated in accordance with its terms.[85]

Notably, these Service Agreements provide that petitioner shall furnish, in general, administrative and other business processing services to support the operations of the above-stated clients. Certainly, the services it renders are not in the same category as *"processing, manufacturing or repacking of goods"*, hence, petitioner satisfactorily complied with the *second* essential element.

Anent the *third* essential element, it was determined that the aforementioned Service Agreements have provision as to where the services are to be performed by petitioner, *i.e.,* in the Philippines, except for the Master Administrative Services Agreement and Service Level Agreement between Manulife Financial Asia Limited and petitioner.

Nevertheless, petitioner's Finance Director, Mr. Iñigo P. Garcia, testified through his Sworn Statement as follows:

> "18. Q: How does MDSI [petitioner] render services to these foreign clients?
>
> A: Each foreign client transfers its business processes to MDSI. The scope and extent of the transferred business processes are embodied in the service contracts typically, but not always, denominated as 'Master Agreement' (or MSA) or 'Service Level Agreement' (or SLA). For each client, one or more SLAs can be executed, depending on the business process or processes transferred to MDSI.
>
> Once the Agreements are implemented, MDSI regularly reports to the foreign client its output and performance. All of MDSI's services are conducted in-house through the aid of telecommunications devices and computers. None of its services are performed outside of its premises." *(Underscoring added)*

[83] Exhibits "P-54 to P-54-d" and "P-55 to P-55-b".
[84] Exhibits "P-59 to P-59-g".
[85] Exhibits "P-63 to P-63-d".

In view thereof, petitioner has shown compliance with the *third* essential element, again insofar as the specifically identified NRFCs are concerned.

As regards the *fourth* essential element and in relation to the *fifth* requisite[86] for the granting of the input VAT refund, petitioner presented an electronic copy of its bank statements for the months of January to December 2016 issued by Citibank[87] and the Summary of Inward Remittances per Bank Statements for calendar year 2016,[88] purportedly showing the foreign currency remittances of its clients to petitioner.

However, it is equally important to consider that the VAT zero-rated sales, to which the said foreign currency remittances correspond, must be duly supported by VAT zero-rated official receipts (ORs) in accordance with Section 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, 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:
>
> (a) The amount of the tax shall be shown as a separate item in the invoice or receipt;
>
> xxx xxx xxx

---

[86] For zero-rated sales under Sections 106 (A)(2)(1) and (2); 106 (B); and 108 (B)(1) and (2) of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations.

[87] Exhibits "P-111" to "P-122", USB.

[88] Annex B of the Final ICPA Report dated May 10, 2021 (Exhibit "P-101-2"), Docket – Vol. 5, pp. 2215 to 2216.

(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;

xxx xxx xxx

(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 (1,000) 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." *(Underscoring added)*

Section 4.113-1(A)(2), B(1) and (2)(c) of Revenue Regulations (RR) No. 16-2005, as amended, which implements the foregoing, also states:

"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; an

(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;

xxx xxx xxx

(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;

N

(d) In the case of sales in the amount of one thousand pesos (1,000.00) 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." *(Underscoring added)*

To support its zero-rated sales of services, petitioner submitted the VAT zero-rated ORs[89] issued to its clients for calendar year 2016, which were examined by the Court-commissioned ICPA.

Per the ICPA's examination, out of the reported zero-rated sales of ₱3,549,857,592.33, the amount of ₱1,285,176,757.55, broken down below, pertained to sales of services to the following clients considered NRFCs doing business outside the Philippines:

Name of Client	Summary of VAT Zero-Rated ORs issued to NRFC[90]	Amount
John Hancock Life Insurance Company (USA)	Annex A-2	₱ 1,183,516,727.98
Manulife Financial Asia Limited	Annex A-3	55,507,714.39
Manulife (International) Ltd	Annex A-5	42,718,437.80
Manulife Singapore Pte Ltd	Annex A-6	2,487,136.82
Manulife Insurance Berhad (Malaysia)	Annex A-9	632,805.39
Manulife Asset Management (Vietnam) Company Limited	Annex A-10	313,935.17
	Total	**₱1,285,176,757.55**

Upon verification, the amount of ₱1,285,176,757.55 was found to be duly substantiated by VAT zero-rated ORs, which were compliant with the invoicing requirements.

However, a scrutiny of the Summaries of VAT Zero-Rated ORs issued to NRFCs and the Summary of Inward Remittances per Bank Statements for calendar year 2016 reveals that out of the substantiated sales of ₱1,285,176,757.55, the amount of ₱3,446,024.47, as detailed hereunder, has no proof of payment in acceptable foreign currency accounted for in accordance with rules and regulations of the BSP as the same cannot be traced to the inward remittances per bank statements:

[89] Exhibit "P-110", USB.

[90] Final ICPA Report dated May 10, 2021 (Exhibit "P-101-2"), Docket – Vol. 5, pp. 2205 to 2206, 2208 to 2209 and 2212 to 2213.

Name of Client	ORs Exhibit No.	Doc No.	Gross Amount (in US$)	Amount (in Ph₱)[91]	Exhibit Reference per "Summary of Inward Rem. per Bank Statements for CY 2016"[92]
Manulife (International) Ltd	"P-110" (page 40 of 50)	5434	58,082.04	2,890,626.97	"P-122" (page 2 of 5)
Manulife Singapore Pte Ltd	"P-110" (page 38 of 50)	5432	11,175.00	555,397.50	"P-122" (page 2 of 5)
Total			**69,257.04**	**3,446,024.47**	

While there are exhibit references (to bank statements) indicated per the Summary of Inward Remittances per Bank Statements for calendar year 2016 for the sales in the amounts of US$58,082.04 and US$11,175.00, the bank statement, however, shows that the amount of US$58,082.04 actually pertains to Manulife Singapore Pte Ltd while the amount of US$11,175.00 actually pertains to Manulife Life Insurance Company. Thus, since no inward remittances in the amounts of US$58,082.04 and US$11,175.00 can be traced to the bank statements as coming from Manulife (International) Ltd and Manulife Singapore Pte Ltd, respectively, the same cannot qualify for VAT zero-rating.

Hence, only the sales of services in the amount of ₱1,281,730,733.08, as computed below, satisfied the *fourth* essential element and the *fifth* requisite, *i.e.,* the sales were paid for in acceptable foreign currency and accounted for in accordance with BSP rules and regulations:

Substantiated Zero-Rated Sales to NRFC	₱ 1,285,176,757.55
Less: Sales not traced to inward remittance	3,446,024.47
Valid Zero-Rated Sales	**₱ 1,281,730,733.08**

Thus, under the *fourth* requisite, petitioner was able to establish that its sales of services to NRFCs for the calendar year 2016, in the aggregate amount of ₱1,281,730,733.08, qualify for VAT zero-rating as provided in Section 108(B)(2) of the NIRC of 1997, as amended.

6th Requisite: The input taxes being claimed do not appear to be transitional input taxes.

In its *Petition for Review,*[93] petitioner alleged to have generated total input VAT in the amount of ₱109,182,169.66 for calendar year 2016, out of which the amount of ₱96,275,284.20 is the subject of the claim for refund, as shown below:

[91] Converted based on rates per PDS as used by ICPA in Summary of VAT Zero-Rated ORs issued to these NRFCs.
[92] Annex B of the Final ICPA Report dated May 10, 2021 (Exhibit "P-101-2"), Docket – Vol. 5, p. 2215
[93] Docket – Vol. 1, pars. 10.1 and 10.2, p. 14.

Period (2016)	Capital goods not exceeding ₱1Million	Amortization of capital goods exceeding ₱1Million	Domestic purchases of goods other than capital goods	Domestic purchase of services	TOTAL
1st quarter	₱104,991.08	₱ 3,250,029.87	₱ 791,855.21	₱11,196,822.74	₱ 15,343,698.90
2nd quarter	312,731.85	3,441,778.28	1,215,295.11	23,282,949.77	28,252,755.01
3rd quarter	260,078.79	4,068,011.56	1,453,549.39	20,309,950.53	26,091,590.27
4th quarter	258,346.61	4,232,545.53	820,778.29	34,182,455.05	39,494,125.48
TOTAL	936,148.33	14,992,365.24	4,281,478.00	88,972,178.09	**₱109,182,169.66**
Less: Total Output VAT for calendar year 2016					12,906,885.46
Unutilized Input VAT claim					**₱96,275,284.20**

However, its Quarterly VAT Returns for the four (4) quarters of calendar year 2016 show that the total input VAT from domestic purchases of goods and services declared by petitioner amounted to only ₱109,137,383.76, which, when offset against the output VAT of ₱12,906,885.46, would result to an unutilized input VAT amount of only ₱96,230,498.30, as shown below:

	1st quarter[94]	2nd quarter[95]	3rd quarter[96]	4th quarter[97]	Total
Input Tax Deferred on Capital Goods Exceeding ₱1Million from Previous Quarter	₱ 37,277,073.00	₱ 34,496,866.65	₱ 37,216,982.61	₱ 46,406,175.14	₱ 155,397,097.40
Add: Input Tax on Purchase of Capital Goods exceeding ₱1Million	469,823.49	6,161,894.20	13,257,204.06	3,198,525.91	23,087,447.66
Less: Input Tax on Purchase of Capital Goods exceeding ₱1Million deferred for the succeeding period	34,496,866.66	37,216,982.74	46,406,175.09	45,372,155.52	163,492,180.01
Amortized Input Tax	**₱ 3,250,029.83**	**₱ 3,441,778.11**	**₱ 4,068,011.58**	**₱ 4,232,545.53**	**₱ 14,992,365.05**
Current Input Taxes:					
On Purchase of Capital Goods not exceeding ₱1Million	₱ 104,991.08	₱ 312,731.85	₱ 260,078.79	₱ 258,346.61	₱ 936,148.33
On Domestic Purchases of Goods Other than Capital Goods	791,855.21	1,215,295.11	1,453,549.39	820,778.29	4,281,478.00
On Domestic Purchase of Services	11,196,822.74	23,282,949.77	20,265,164.82	34,182,455.05	88,927,392.38
Total Current Input Taxes	**₱12,093,669.03**	**₱24,810,976.73**	**₱21,978,793.00**	**₱35,261,579.95**	**₱ 94,145,018.71**
Total Input Taxes for the period	**₱15,343,698.86**	**₱28,252,754.84**	**₱26,046,804.58**	**₱39,494,125.48**	**₱109,137,383.76**
Less: Output VAT	1,791,386.60	4,301,191.02	3,203,589.97	3,610,717.87	12,906,885.46
Excess Input VAT	**₱13,552,312.26**	**₱23,951,563.82**	**₱22,843,214.61**	**₱35,883,407.61**	**₱ 96,230,498.30**

Inasmuch as only the input VAT worth ₱96,230,498.30 was declared in the VAT Returns, out of the unutilized input VAT claim of ₱96,275,284.20, and that the difference thereon in the amount of ₱44,785.90 was not supported or reconciled, the determination of the refundable amount shall be confined to the declared unutilized input VAT claim of ₱96,230,498.30.

[94] Exhibit "P-5", Expanding brown envelope labelled as "Marked Exhibits (Envelope 1 of 2)".
[95] Exhibit "P-123".
[96] Exhibit "P-7", Expanding brown envelope labelled as "Marked Exhibits (Envelope 1 of 2)".
[97] Exhibit "P-8", *Id.*

The claimed input taxes do not appear to be transitional input taxes, as understood under Section 111(A) of the NIRC of 1997, as amended, to wit:

> "SEC. 111. *Transitional/Presumptive Input Tax Credits.* –
>
> (A) *Transitional Input Tax Credits.* – A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of any inventory according to the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be allowed input tax on her beginning inventory of goods, materials and supplies equivalent to two percent (2%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax."

Parenthetically, transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisitions of their beginning inventory of goods, materials and supplies. During the period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer.[98]

Since there is no showing that the above-stated input VAT is transitional input VAT, petitioner has complied with the *sixth* requisite for the grant of an input VAT refund.

7th Requisite: A portion of the input taxes being claimed were due or paid.

Anent the *seventh* requisite in claiming VAT refund, it is important for petitioner to provide supporting documents to prove that the input taxes claimed during the calendar year 2016 are actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, which provides that:

> "SEC. 110. *Tax Credits.* –
>
> (A) *Creditable input Tax.* –
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against output tax:
>
> (a) Purchase or importation of goods:
>
> (i) For sale; or

[98] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 158885 and 170680, April 2, 2009.

(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or

(iii) For use as supplies in the course of business; or

(iv) For use as materials supplied in the sale of service; or

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

(b) Purchase of services on which a value-added tax has actually been paid.

(2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

xxx xxx xxx

Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (₱1,000,000.00): *Provided, however,* That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, finally,* That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee, or licensee upon payment of the compensation, rental, royalty or fee."

The above provisions are implemented by Sections 4.110-1 to 4.110-3 of RR No. 16-2005, to wit:

"SECTION. 4.110-1. *Credits for Input Tax.* – 'Input tax' means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the Tax Code.

It includes input taxes which can be directly attributed to transactions subject to the VAT plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.

Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Secs. 113 and 237 of the Tax Code shall be creditable against the output tax:

(a) Purchase or importation of goods

(1) For sale;

(2) For conversion into or intended to form part of a finished product for sale, including packaging materials; or

(3) For use as supplies in the course of business; or

(4) For use as raw materials supplied in the sale of services; or

(5) For use in trade or business for which deduction or depreciation or amortization is allowed under the Tax Code,

(b) Purchase of real properties for which a VAT has actually been paid;

(c) Purchases of services in which a VAT has actually been paid;"

"SECTION 4.110-2. *Persons Who Can Avail of the Input Tax Credit.* – The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:

xxx xxx xxx

(b) To the purchaser of the domestic goods or properties upon consummation of the sale; or

(c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee."

"SECTION 4.110-3. *Claim for Input Tax on Depreciable Goods.* – Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million Pesos (P1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:

(a) If the estimated useful life of a capital good is five (5) years or more – The input tax shall be spread evenly over a period of sixty (60) months and the claim for input tax credit will commence in the calendar month when the capital good is acquired. The total input taxes on purchases or importations of this type of capital goods shall be divided by 60 and the quotient will be the amount to be claimed monthly.

(b) If the estimated useful life of a capital good is less than five (5) years – The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of the capital good. The claim for input tax credit shall commence in the calendar month that the capital goods were acquired.

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed One million pesos (₱1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition.

Capital goods or properties refers to goods or properties with estimated useful life greater than one (1) year and which are treated as depreciable assets under Sec. 34(F) of the Tax Code, used directly or indirectly in the production or sale of taxable goods or services.

The aggregate acquisition cost of a depreciable asset in any calendar month refers to the total price, excluding the VAT, agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired in installment for an acquisition cost of more than ₱1,000,000.00, excluding the VAT, will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed ₱1,000,000.00.

xxx xxx xxx

If the depreciable capital good is sold/transferred within a period of five (5) years or prior to the exhaustion of the amortization input tax thereon, the entire unamortized input tax on the capital goods sold/transferred can be claimed as input tax credit during the month/quarter when the sale or transfer was made but subject to the limitation prescribed under Sec. 4.110-7 of these Regulations."

Further, Section 4.110-8 of RR No. 16-2005 provides for the substantiation requirements of input tax credits, as follows:

"SEC. 4.110-8. *Substantiation of Input Tax Credits.* –

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

xxx xxx xxx

(2) For the domestic purchase of goods and properties – invoice showing the information required under Secs. 113 and 237 of the Tax Code.

xxx xxx xxx

(4) For the purchase of services – official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code."

It is categorically mentioned in the above provisions that in order to be entitled to input tax credits, the same must be evidenced by VAT invoices (for domestic purchases of goods) or ORs (for domestic purchases of services) issued in accordance with Section 113 of the NIRC of 1997, as amended, as quoted earlier.

Furthermore, the sales invoices and ORs must be duly registered with the BIR pursuant to Section 237, in relation to Section 238, both of the NIRC of 1997, as amended, which respectively provide:

> "SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: x x x"
>
> "SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

The invoicing requirements for a VAT-registered taxpayer as provided in the NIRC and the Revenue Regulations are clear. It is reasonable and must be strictly complied with, as it is the only way to determine the veracity of the claim.[99]

In support of its reported input VAT of ₱109,137,383.76 from its domestic purchases of goods and services, petitioner submitted various supporting documents,[100] which were examined by the Court-commissioned ICPA.

Based on the findings of the ICPA, the input VAT in the aggregate amount of ₱49,985,791.85, as detailed below, are disallowed for failure to meet the substantiation and invoicing requirements earlier quoted:

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[99] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011.

[100] Exhibits "P-137-1" to "P-137-299", "P-138-1" to "P-138-646", "P-139-1" to "P-139-32", "P-140-1" to "P-140-68" and "P-141-1" to "P-141-90" except for the denied Exhibits.

Particulars	Reference to Final ICPA Report[101]	Input VAT
Purchases of goods other than capital goods		
Purchases of goods supported by documents other than original invoices	Annex E-3	₱ 692,555.20
Purchases of services reported as purchases of goods supported by documents other than original ORs	Annex E-4	21,955.20
Purchases of goods supported by original invoices where the quantity, unit cost, description of the goods, tax base and/or amount of VAT is not separately indicated/incomplete and/or improperly presented	Annex E-7	22,374.21
Purchases of services reported as purchases of goods supported by original ORs where amount of VAT is incorrectly computed and nature of service/payment is not indicated	Annex E-8	1,310.36
Purchases of goods supported by original invoices where the name, TIN and/or registered address are not indicated, incorrect, incomplete and/or unreadable	Annex E-9	553,541.43
Purchases of services reported as purchases of goods supported by original ORs where nature of service/payment is not indicated	Annex E-11	3,954.80
Purchases of goods supported by original invoices where erasures/alterations are not countersigned and/or do not have notarized statements	Annex E-12	2,734.19
Purchases of goods without supporting documents	Annex E-15	658,867.76
Purchases of services		
Purchases of services supported by non-VAT ORs	Annex F-2	137,086.39
Purchases of services supported by documents other than original VAT ORs	Annex F-3	2,181,146.34
Purchase of goods reported as purchase of services supported by documents other than original invoices	Annex F-4	76,950.00
Purchases of services supported by original ORs where amount of VAT is not separately indicated	Annex F-7	2,756.78
Purchases of services supported by original ORs where name, TIN, address and/or nature of services is not indicated, incorrect, incomplete or unreadable	Annex F-8	13,856,656.84
Purchases of goods reported as purchases of services supported by original invoices where name, TIN and/or address is not indicated, incorrect or incomplete	Annex F-9	5,328.14
Purchases of services supported by original ORs where nature of service/payment is not indicated and/or incorrect	Annex F-10	605,973.93
Purchases of services supported by original ORs with erasures and/or alterations which cannot be ascertained if made by authorized personnel from the supplier/made without authority	Annex F-11	820,870.63
Purchases of services without supporting documents	Annex F-14	15,614,597.99
Purchases of capital goods not exceeding ₱1 million		

[101] Exhibit "P-101-2" (soft copies in USB).

Purchases of capital goods supported by original invoices whose aggregate cost exceeded ₱1 million during the month but reported as "capital goods not exceeding ₱1 million" in the vat return and not subjected to amortization (unamortized portion)	Annex H-2	143,282.80[102]
Domestic purchase of capitalizable services (labor component) not supported by VAT OR	Annex H-3	3,311.52
Purchases of capital goods supported by documents other than original invoices	Annex H-4	105,766.59
Domestic purchase of capitalizable services not exceeding ₱1 million supported by VAT OR where address and nature of services are not indicated for the 3rd quarter of CY 2016	Annex H-6	36,078.28
Domestic purchases of capitalizable services not exceeding ₱1 million supported by VAT ORs where nature of services is not indicated	Annex H-7	314,969.97
Unsupported purchases	Annex K-1	157,151.99
Purchases of capital goods exceeding ₱1 million		
Amortization of input VAT on purchases of capital goods exceeding ₱1 million prior to CY 2016 without supporting documents	Exhibit P-143	12,631,113.23
Purchases of capital goods exceeding ₱1 million not supported by original VAT sales invoices	Annex I-3	158,189.09
Purchases of capital goods exceeding ₱1 million supported by original VAT sales invoices where the name, TIN and/or address is not indicated, incomplete or incorrect	Annex I-5	94,775.27
Purchases of capitalizable services exceeding ₱1 million supported by original VAT ORs where the name, TIN, address and/or nature of services/payment is not indicated, incomplete or incorrect	Annex I-6	408,475.54
Purchases of capitalizable services exceeding ₱1 million supported by original VAT ORs where nature of services/payment is not indicated	Annex I-7	160,975.94
Purchases of capital goods exceeding ₱1 million supported by original foreign currency but peso equivalent cannot be determined and address is incorrect and/or incomplete	Annex I-8	285,656.14

[102] Computation of adjusted unamortized portion of ₱143,282.80:

Total Unamortized Input VAT per Annex H-2						₱144,032.45
Less: One month amortization of input VAT on purchases with incorrect remaining life used in computing unamortized amount:						
Name of Supplier	Date of Purchase	Remaining life (in mos.) as of 12/31/16 per Annex H-2 [a]	Remaining life (in mos.) as of 12/31/16 as should be [b]	Difference (in mos.) [c=a-b]	Monthly Input VAT Amortization per Annex H-2	
MICRODATA SYSTEMS AND MANAGEMENT, INC	May 20, 2016	53	52	1	₱714.29	
CWC INTERNATIONAL CORP.	August 24, 2016	56	55	1	35.36	
Total					₱749.65	749.65
Actual Unamortized Input VAT						**₱143,282.80**

Purchases of capital goods exceeding ₱1 million without supporting documents	Annex I-9	227,385.39
Rounding off differences – Q2 and Q3	Page 17	(0.09)
Total		**₱49,985,791.85**

In addition to the above disallowances, further verification reveals that the input VAT amounting to ₱19,050,844.39 should be disallowed for the grounds stated hereunder:

Name of Supplier	Exhibit No.	Doc. No.	Input VAT
Input VAT on purchases of noncapital goods supported by VAT invoices but with unreadable details			
PHILIPPINE FOODSERVICE GROUP CORP	"P-137-59"	000006021	₱ 9,428.57
SAN MIGUEL FOODS INC.	"P-137-127"	1121-11678836	35,357.14
PHILIPPINE VENDING CORPORATION	"P-137-166"	000015488	17,812.13
Input VAT on purchases of noncapital goods supported by VAT invoices with incomplete date/without date/dated outside the period of claim and/or the TIN or address of petitioner was not indicated			
CONTRADE INTEGRATED DEPOT, INC.	"P-137-120"	37974	4,863,05
FOTOLINE EXPRESS, INC.	"P-137-121"	041336	158.57
JEBSEN AND JESSEN COMMUNICATIONS (P) INC.	"P-137-122"	3085014371	2,547.36
JEBSEN AND JESSEN COMMUNICATIONS (P) INC.	"P-137-123"	3085014372	27,318.24
ROBINSONS SUPERMARKET CORPORATION	"P-137-124"	0016039	6,043.29
SAN MIGUEL FOODS INC.	"P-137-125"	1121-11677206	35,357.14
SAN MIGUEL FOODS INC.	"P-137-128"	1121-11678042	28,285.71
CARE 1ST CORPORATION	"P-137-132"	016283	187.50
MAXITECH MANUFACTURING, INC.	"P-137-134"	9990	1,782.86
ACCENT MICRO TECHNOLOGIES INC.	"P-137-141"	197724	4,928.57
ACCENT MICRO TECHNOLOGIES INC.	"P-137-142"	198135	5,585.14
ROSE PHARMACY, INC.	"P-137-168"	3712-L-0040852	803.25
Input VAT on purchases of noncapital goods supported by documents other than VAT invoice			
SANCHEZ, MICHAEL JEROME G. (SWEET INCANTATIONS CONFECTIONERY)	"P-137-135"	0072	994.50
GB DISTRIBUTORS INC.	"P-137-148"	1020255694	87,353.57
SISON, ALLEINIE O. (STAPLES EVENTS SERVICES)	"P-137-172"	0152	589.29
Input VAT on purchases of services reported as purchases of noncapital goods supported by VAT ORs but the nature of services and/or the TIN and/or address of petitioner was/were not indicated			
FLYING COLORS DIGITAL IMAGING CENTRE CO.	"P-137-171"	1138	240.00
CALVELO ENGINEERED SYSTEMS	"P-137-173"	2261	2,448.60
ARKIGRAFIX CORPORATION	"P-137-174"	8161	3,358.93
ARKIGRAFIX CORPORATION	"P-137-175"	8162	1,853.57
CEBU GRAPHICSTAR IMAGING CORP.	"P-137-176"	60545	225.00
CEBU GRAPHICSTAR IMAGING CORP.	"P-137-177"	60544	935.57
QUALIPRINT INC.	"P-137-178"	16832	482.14
ARKIGRAFIX CORPORATION	"P-137-258"	7728	236.25
FLYING COLORS DIGITAL IMAGING CENTRE CO.	"P-137-259"	1168	15,974.40
PROGRESSIVE PRINTING PALACE, INC.	"P-137-260"	10416	851.79
PROGRESSIVE PRINTING PALACE, INC.	"P-137-261"	10432	2,839.29
QUALIPRINT INC.	"P-137-262"	16573	482.14

QUALIPRINT INC.	"P-137-263"	16600	723.21
ARKIGRAFIX CORPORATION	"P-137-264"	7850	455.36
ARKIGRAFIX CORPORATION	"P-137-265"	7990	455.36
CEBU GRAPHICSTAR IMAGING CORP.	"P-137-266"	59261	600.00
EPAGES MARKETING CORP	"P-137-267"	0365	192.86
PROGRESSIVE PRINTING PALACE, INC.	"P-137-268"	10446	385.71
QUALIPRINT INC.	"P-137-269"	16693	482.14
ARKIGRAFIX CORPORATION	"P-137-270"	8083	2,892.86
ARKIGRAFIX CORPORATION	"P-137-271"	8146	448.39
JADA INFINITE WORKFORCE SERVICES INC.	"P-137-272"	000063	5,340.11
JOLLIBEE FOODS CORPORATION	"P-137-273"	0000081219	6,240.15
JOLLIBEE FOODS CORPORATION	"P-137-274"	0000081218	353.57
JOLLIBEE FOODS CORPORATION	"P-137-275"	0000081217	977.46
ARKIGRAFIX CORPORATION	"P-137-277"	8181	8,142.86
CEBU GRAPHICSTAR IMAGING CORP.	"P-137-278"	60546	969.60
JOLLIBEE FOODS CORPORATION	"P-137-279"	0000097715	347.36
JOLLIBEE FOODS CORPORATION	"P-137-280"	0000100189	3,440.57
JOLLIBEE FOODS CORPORATION	"P-137-281"	0000100188	330.00
JOLLIBEE FOODS CORPORATION	"P-137-282"	0000100191	330.00
THE NEW ALBERGUS INC.	"P-137-284"	57856	2,916.96
Input VAT on purchases of services supported by VAT ORs but input VAT amounts per OR are lower than the amounts per claim (Overclaimed input VAT)			
TWC BUILDING ADMINISTRATION INC. [₱480,427.20 per claim less ₱458,979.56 per VAT OR]	"P-138-30"	0053	21,447.64
DALOCANOG, ROMEO T. (ROMSTREL GENERAL MERCHANDISE) [₱1,534.29 per claim less ₱1,506.89 per VAT OR]	"P-138-37"	1633	27.40
FIRST COMMONWEALTH HOTEL CORP. [₱7,071.43 per claim less ₱6,769.23 per VAT OR]	"P-138-38"	10879	302.20
UP NORTH PROPERTY HOLDINGS INC. [₱4,153,427.51 per claim less ₱1,024,264.24 per VAT OR]	"P-138-98"	15655	3,129,163.27
SEBASTIEN HOTEL INC. [₱13,660.71 per claim less ₱13,475.32 per VAT OR]	"P-138-106"	665	185.39
ALI PROPERTY PARTNERS CORP [₱3,995,708.91 per claim less ₱1,012,850.30 per VAT OR]	"P-138-124"	0001471	2,982,858.61
Input VAT on purchases of services supported by VAT ORs but the TIN and/or address of petitioner and/or nature of service was/were not indicated			
MYNIMO INC	"P-138-66"	18594	17,955.00
RENTOKIL INITIAL (PHILIPPINES) INC.	"P-138-68"	252499	1,800.00
UPS DELBROS INTERNATIONAL EXPRESS LTD. INC	"P-138-69"	0324923	75:03
UPS DELBROS INTERNATIONAL EXPRESS LTD. INC	"P-138-70"	0324922	60.35
UPS DELBROS INTERNATIONAL EXPRESS LTD. INC	"P-138-71"	0324921	250.72
SGV & CO	"P-138-74"	MK00053821	47,520.00
POWEREDGE SOLUTIONS PHILS. INC.	"P-138-78"	1351	1,800.00
ATLANTICA FIRE SAFETY SYSTEMS, INC	"P-138-79"	6363	5,089.28
TNT EXPRESS WORLDWIDE (PHILS.), INC.	"P-138-80"	0985321	72.09

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TNT EXPRESS WORLDWIDE (PHILS.), INC.	"P-138-81"	0985322	48.06
TNT EXPRESS WORLDWIDE (PHILS.), INC.	"P-138-82"	0985320	48.06
SMS CEBU INC	"P-138-84"	32742	16,702.48
SMS CEBU INC	"P-138-85"	32741	16,590.15
BIGFOOT PROPERTIES, INC.	"P-138-86"	13753	1,271.79
NISCE MAMURIC GUINTO RIVERA AND ALCANTARA	"P-138-89"	0012264	600.00
DELSAN OFFICE SYSTEMS CORPORATION	"P-138-93"	0094350	6,636.53
SMS CEBU INC	"P-138-94"	33303	17,248.80
NISCE MAMURIC GUINTO RIVERA AND ALCANTARA	"P-138-96"	12265	600.00
MANILA BULLETIN PUBLISHING CORPORATION	"P-138-99"	318655	2,142:86
WIZARDSGROUP, INC.	"P-138-100"	3310	1,958.04
SMS CEBU INC	"P-138-104"	33304	17,803.36
JOE RILEY & ASSOCIATES INC.	"P-138-107"	363	88,664.40
SUNSTAR PUBLISHING INC.	"P-138-108"	694368	2,889.15
ISLAND STAY INC	"P-138-109"	14119	28,438.39
HUMAN CAPITAL ASIA INC.	"P-138-110"	3467	990.00
STAGES PRODUCTION SPECIALIST, INC.	"P-138-112"	4188	202,546.52
NISCE MAMURIC GUINTO RIVERA AND ALCANTARA	"P-138-113"	12516	705.48
NISCE MAMURIC GUINTO RIVERA AND ALCANTARA	"P-138-114"	12514	600.00
CONSTANTINO GUADALQUIVER & CO.	"P-138-115"	0013954	26,898.84
NISCE MAMURIC GUINTO RIVERA AND ALCANTARA	"P-138-116"	0012515	600.00
RENTOKIL INITIAL (PHILIPPINES) INC.	"P-138-117"	260994	90.00
RENTOKIL INITIAL (PHILIPPINES) INC.	"P-138-118"	260995	11,136.86
HUMAN CAPITAL ASIA INC.	"P-138-120"	3466	2,838.00
FMR CORPORATION	"P-138-122"	015884	2,700.00
NEXUS TECHNOLOGIES INC.	"P-138-126"	50708	31,071.43
ATLANTICA FIRE SAFETY SYSTEMS, INC	"P-138-128"	6505	5,089.28
CANON MARKETING (PHILIPPINES), INC.	"P-138-129"	1028224	6,044.81
TNT EXPRESS WORLDWIDE (PHILS.), INC.	"P-138-130"	1012264	567.50
TNT EXPRESS WORLDWIDE (PHILS.), INC.	"P-138-131"	1012262	671.51
TWC BUILDING ADMINISTRATION INC.	"P-138-134"	0061	148,604.06
FRM AIRCONDITIONING CORPORATION	"P-138-135"	1366	65,264.38
FRM AIRCONDITIONING CORPORATION	"P-138-136"	1365	65,264.38
SEBASTIEN HOTEL INC.	"P-138-138"	01192	3,096.43
SUNSTAR PUBLISHING INC.	"P-138-139"	697291	2,889.15
SUNSTAR PUBLISHING INC.	"P-138-140"	697292	2,889.15
ALTEO DIGITAL AN DPRINTERS INC.	"P-138-141"	5754	9,230.36
JACINTOS, SOFIA L. (2K15 MANPOWER SERVICES)	"P-138-142"	0062	2,136.62
CSC INFORMATION TECHNOLOGY (PHILIPPINES) INC.	"P-138-146"	0000538	48,067.54
CSC INFORMATION TECHNOLOGY (PHILIPPINES) INC.	"P-138-147"	0000539	1,038,160.48
BAYAN TELECOMMUNICATIONS, INC.	"P-138-631"	0159892	26,893:00
BAYAN TELECOMMUNICATIONS, INC.	"P-138-633"	0159893	26,723.52
BAYAN TELECOMMUNICATIONS, INC.	"P-138-642"	172752	67,809.28
BAYAN TELECOMMUNICATIONS, INC	"P-141-100"	0149702	26,894.34

BAYAN TELECOMMUNICATIONS, INC	"P-141-114"	0175463	92,288.62
Input VAT on purchases of services supported by VAT ORs but the input VAT amounts were not separately indicated			
RIZON PROPERTY HOLDINGS INC.	"P-138-83"	3465	14,560.71
DELSAN OFFICE SYSTEMS CORPORATION	"P-138-103"	85632	1,221.22
GLOBE TELECOM INC	"P-138-111"	3293461	837.98
RIZON PROPERTY HOLDINGS INC.	"P-138-132"	3751	18,642.86
DELSAN OFFICE SYSTEMS CORPORATION	"P-138-133"	85634	1,993.36
RIZON PROPERTY HOLDINGS INC.	"P-138-148"	3673	18,342.86
Input VAT on purchases of services supported by VAT ORs dated outside the period of claim or with unreadable date			
NISCE MAMURIC GUINTO RIVERA AND ALCANTARA	"P-138-67"	11855	600.00
MYNIMO INC	"P-138-87"	24318	2,400.00
GLOBE TELECOM INC	"P-138-144"	3191466	192.86
UP NORTH PROPERTY HOLDINGS INC.	"P-138-149"	0017889	4,203,623.41
MANILA BULLETIN PUBLISHING CORPORATION	"P-138-150"	322817	2,400.00
ALI PROPERTY PARTNERS CORP	"P-138-151"	0001540	4,146,394.54
ALI PROPERTY PARTNERS CORP	"P-138-152"	0001542	608,406.36
RIZON PROPERTY HOLDINGS INC.	"P-138-153"	3836	4,928.57
SMS CEBU INC	"P-138-154"	34546	17,848.10
TWC BUILDING ADMINISTRATION INC.	"P-138-155"	0066	128,191.46
SEBASTIEN HOTEL INC.	"P-138-156"	01640	24,960.42
SIGNUM AUDIO VISUAL	"P-138-157"	10048	20,357.14
TOTAL VENTURES INC.	"P-138-305"	6163	428,571.43
Input VAT on purchases of services supported by documents other than VAT OR			
PACIFIC CEBU RESORT INT'L. INC.	"P-138-88"	A2015-000906	24,107.14
PHILIPPINE LONG DISTANCE TELEPHONE COMPANY	"P-138-180"	PBMCR000364434	24,866.95
PHILIPPINE LONG DISTANCE TELEPHONE COMPANY	"P-138-185"	PBMCR000343739	20,980.81
PHILIPPINE LONG DISTANCE TELEPHONE COMPANY	"P-138-222"	PBMCR000369543	25,470.33
PHILIPPINE LONG DISTANCE TELEPHONE COMPANY	"P-138-223"	PBMCR000368589	21,360.35
PHILIPPINE LONG DISTANCE TELEPHONE COMPANY	"P-138-224"	PBMCR000371725	21,360.35
PHILIPPINE LONG DISTANCE TELEPHONE COMPANY	"P-138-225"	PBMCR000373524	25,575.20
PHILIPPINE LONG DISTANCE TELEPHONE COMPANY	"P-138-236"	PBMCR000375018	21,448.29
PHILIPPINE LONG DISTANCE TELEPHONE COMPANY	"P-138-237"	PBMCR000377122	26,373.63
PHILIPPINE LONG DISTANCE TELEPHONE COMPANY	"P-138-241"	PBMCR000343108	20,980.81
PHILIPPINE LONG DISTANCE TELEPHONE COMPANY	"P-138-629"	PBMCR000338443	20,754.63
PHILIPPINE LONG DISTANCE TELEPHONE COMPANY	"P-138-630"	PBMCR000338442	20,754.63
PHILIPPINE LONG DISTANCE TELEPHONE COMPANY	"P-138-632"	PBMCR000342473	21,113.87

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY	"P-138-636"	PBMCR000346951	20,344.59
PHILIPPINE LONG DISTANCE TELEPHONE COMPANY	"P-138-637"	PBMCR000350045	453,27
PHILIPPINE LONG DISTANCE TELEPHONE COMPANY	"P-138-639"	PBMCR000352579	20,779.95
PHILIPPINE LONG DISTANCE TELEPHONE COMPANY	"P-138-640"	PBMCR000356422	20,779.95
PHILIPPINE LONG DISTANCE TELEPHONE COMPANY	"P-138-641"	PBMCR000356421	20,779.95
PHILIPPINE LONG DISTANCE TELEPHONE COMPANY	"P-138-643"	PBMCR000358808	20,863.17
PHILIPPINE LONG DISTANCE TELEPHONE COMPANY	"P-138-645"	PBMCR000365947	48,818.75
PHILIPPINE LONG DISTANCE TELEPHONE COMPANY	"P-138-646"	PBMCR000367344	24,632.61
Input VAT on purchase of services supported by document with notation "THIS DOCUMENT IS NOT VALID FOR CLAIMING INPUT TAX"			
COMPUTER SUPPORT CENTER, INC.	"P-138-72"	7007	2,812.50
Input VAT on purchase of capital goods not exceeding ₱1 million supported by VAT invoice dated outside the period of claim			
ULTRA MODULAR CONCEPTS INC.	"P-139-15"	6745	33,685.71
Input VAT on purchase of capital goods not exceeding ₱1 million supported by VAT invoice but the TIN and address of petitioner were not indicated			
VILLMAN COMPUTER SYSTEM INC.	"P-139-19"	9922	8,951.14
Input VAT on purchases reported as capital goods not exceeding ₱1 million, though the month in which the same were purchased exceed ₱1 million, supported by VAT invoices but not subjected to amortization (Input VAT claimed in calendar year 2016 but for amortization in succeeding calendar years)[103]			
SOFREA FURNISHINGS	"P-139-16"	0225	25,446.42
ACCENT MICRO TECHNOLOGIES INC.	"P-139-17"	197576	8,653.95
SOFREA FURNISHINGS	"P-139-18"	273	5,205.36
Input VAT on purchase of capitalizable services not exceeding ₱1 million supported by VAT OR but the nature of service was not indicated			
BARRINGTON CARPETS INC.	"P-139-38"	0282A	7,832.16
Input VAT on purchases of capitalizable services exceeding ₱1 million supported by VAT ORs but the nature of service was not indicated			
GOUDIE ASSOCIATES MANILA LIMITED COMPANY	"P-140-25"	4771	18,772.92
DATA CENTER DESIGN CORPORATION	"P-140-30"	16858	1,607.14

[103] Detailed computation of the Input VAT amounts:

Name of Supplier	Date of Purchase	Input VAT claimed [a]	Useful Life [b]	Used life in CY 2016 [c]	Amortization during CY 2016 [d = a ÷ b x c]	Amortization for succeeding CYs [a - d]
SOFREA FURNISHINGS	March 22, 2016	₱30,535.71	60	10	₱5,089.29	₱25,446.42
ACCENT MICRO TECHNOLOGIES INC.	June 22, 2016	9,796.93	60	7	1,142.98	8,653.95
SOFREA FURNISHINGS	June 24, 2016	5,892.86	60	7	687.50	5,205.36

Input VAT on purchases of capitalizable services exceeding ₱1 million supported by documents other than VAT OR			
BARRINGTON CARPETS INC.	"P-140-26"	1848	134,400.80
BARRINGTON CARPETS INC.	"P-140-27"	2053	10,902.24
EXQUISITE INTERIOR SUPPLY CORPORATION	"P-140-32"	2895	11,142.86
		Total	**₱19,050,844.39**

In sum, out of the total reported input VAT of ₱109,137,383.76, only the amount of ₱40,100,747.52, as computed below, represents petitioner's valid input VAT due or paid for calendar year 2016, in compliance with the *seventh* requisite, computed as follows:

Total Input VAT per Quarterly VAT Returns		₱ 109,137,383.76
Less: Disallowances		
Per ICPA findings	₱49,985,791.85	
Per Court's further verification	19,050,844.39	69,036,636.24
Valid Input VAT		**₱40,100,747.52**

8th Requisite: The valid input VAT of ₱40,100,747.52 shall be proportionately allocated on the basis of sales volume.

The *eighth* requisite is to the effect that 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.

As earlier mentioned, petitioner reported zero-rated sales and taxable sale subject to 12% VAT for calendar year 2016 in the following amounts:

Vatable Sales	₱ 107,557,378.88
Zero-Rated Sales	3,549,857,592.33
Total Sales	**₱3,657,414,971.21**

Since petitioner's input VAT cannot be directly or entirely attributed to any of the sales transactions, the valid input VAT of ₱40,100,747.52 shall be allocated proportionately on the basis of the volume of its total sales, thus:

Total Vatable Sales for the period	₱ 107,557,378.88
Divided by the Total Sales for the period	3,657,414,971.21
Multiplied by Total Valid Input VAT for the period	40,100,747.52
Valid Input VAT Allocated to Total Vatable Sales	**₱ 1,179,284.09**

Total Zero-Rated Sales for the period	₱ 3,549,857,592.33
Divided by the Total Sales for the period	3,657,414,971.21
Multiplied by Total Valid Input VAT for the period	40,100,747.52
Valid Input VAT Allocated to Total Zero-Rated Sales	**₱ 38,921,463.43**

Thus, as regards petitioner's compliance with the *eighth* requisite, only the amount of ₱38,921,463.43 represents its valid input VAT attributable to total zero-rated sales for calendar year 2016.

9th Requisite: The subject input taxes were not applied against output taxes during and in the succeeding quarters.

Having determined that petitioner had valid input VAT attributable to its zero-rated sales, we now determine whether the same was not applied against its output VAT liability during and in the succeeding quarters, relative to the *ninth* requisite for the successful prosecution of an input VAT refund claim.

In the recent case of *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) vs. Commissioner of Internal Revenue*,[104] the Supreme Court *En Banc* held that the input tax attributable to zero-rated sales, may at the option of the VAT-registered taxpayer, be: (1) charged against output tax from regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety, and such option is vested with the taxpayer-claimant, to wit:

> "Thus, the input tax attributable to zero-rated sales may, **at the option of the VAT-registered taxpayer**, be: (1) charged against output tax from regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund of the issuance of tax credit certificate; **or** (2) claimed for refund or tax credit in its entirety. It must be stressed that the **remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative.** Furthermore, **the option is vested with the taxpayer-claimant**. xxx" *(Emphases added)*

Applying this pronouncement, records show that petitioner chose the *first* option, *i.e.,* its total input VAT was applied against its output VAT for calendar year 2016 and the remaining unutilized input VAT is the subject of the present claim for refund.[105] Hence, the refundable input VAT shall be computed net of output tax liability.

[104] G.R. No. 215159, July 5, 2022.
[105] See *Petition for Review,* Docket – Vol. 1, par. 10.2, p. 14.

Considering that petitioner's valid input VAT allocated to total vatable sales, in the amount of ₱1,179,284.09, is not enough to cover the output VAT liability for the said sales, in the amount of ₱12,906,885.46,[106] the valid input VAT allocated to total zero-rated sales, in the amount of ₱38,921,463.43, shall then be utilized against the remaining output VAT due of ₱11,727,601.37, resulting to an excess input VAT allocated to total zero-rated sales in the amount of ₱27,193,862.06, as computed below:

Output VAT due per Quarterly VAT Returns	₱ 12,906,885.46
Less: Valid Input VAT allocated to Vatable Sales	1,179,284.09
Output VAT still due	**₱ 11,727,601.37**

Valid Input VAT allocated to Total Zero-Rated Sales	₱ 38,921,463.43
Less: Output VAT still due	11,727,601.37
Excess Input VAT Allocated to Total Zero-Rated Sales	**₱ 27,193,862.06**

Consequently, only the remaining input VAT of ₱27,193,862.06 can be attributed to the entire zero-rated sales of ₱3,549,857,592.33 and only the excess input VAT of ₱9,818,762.53 is attributable to the valid zero-rated sales of ₱1,281,730,733.08, computed as follows:

Excess Input VAT Allocated to Total Zero-Rated Sales	₱ 27,193,862.05
Divided by the Total Zero-Rated Sales	3,549,857,592.33
Multiplied by the Valid Zero-Rated Sales	1,281,730,733.08
Excess Input VAT Attributable to Valid Zero-Rated Sales	**₱ 9,818,762.53**

Needless to state, the amount of ₱9,818,762.53 is included in the amount of ₱96,275,284.20, subject of the refund claim.

Moreover, although the claimed amount of ₱96,275,284.20 was carried-over by petitioner in its succeeding Quarterly VAT Returns,[107] the same remained unutilized until it was deducted as "VAT Refund/TCC claimed"[108] in its Quarterly VAT Return for the 1st quarter of calendar year 2018. Accordingly, the subject claim no longer formed part of the excess input VAT of ₱110,139,217.20[109] as of the end of the 1st quarter of 2018, to be carried over

[106] Breakdown of Output VAT:

Period (2016)	Quarterly VAT Return (Exhibit No.)	Output VAT
1st Quarter	"P-5"	₱ 1,791,386.60
2nd Quarter	"P-123"	4,301,191.02
3rd Quarter	"P-7"	3,203,589.97
4th Quarter	"P-8"	3,610,717.87
Total		**₱12,906,885.46**

[107] Exhibits "P-144" to "P-148", USB.
[108] Exhibit "P-148" (Line 23D), USB.
[109] Exhibit "P-148" (Line 29), USB.

to the succeeding quarters. As such, it eliminates the possibility that the excess valid input VAT of ₱9,818,762.53 would be utilized or applied against any future output tax liability for the succeeding quarters.

In fine, petitioner was able to satisfy the *ninth* requisite and has sufficiently proven its entitlement to the refund or issuance of a tax credit certificate in the amount of ₱9,818,762.53, representing excess and unutilized input VAT attributable to its zero-rated sales for the 1st to 4th quarters of calendar year 2016.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **₱9,818,762.53**, representing the latter's excess and unutilized input VAT attributable to its zero-rated sales for the 1st to 4th quarters of calendar year 2016.

SO ORDERED.

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(On Leave)

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Corazon G. Ferrer-Flores

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

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

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