REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AVALOQ PHILIPPINES OPERATING HEADQUARTERS, *Petitioner,*	**CTA CASE NO. 10491**
	Members:
-versus-	**RINGPIS-LIBAN**, *Chairperson,* **MODESTO-SAN PEDRO**, *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 2 0 2025

x--x
1:30 p.m.

DECISION

RINGPIS-LIBAN, *J*.:

THE CASE

The *Petition for Review* prays that judgment be rendered ordering respondent to refund in favor of petitioner the amount of ₱4,351,724.28, representing petitioner's unutilized and/or excess input value-added tax (VAT) attributable to its zero-rated sales for the 3rd and 4th quarters of calendar year (CY) 2018 or the period from July 1, 2018 to December 31, 2018.[1]

THE PARTIES

Petitioner is a regional operating headquarter (ROHQ) of Avaloq Group AG (Head Office), a company organized and existing under the laws of

[1] Statement of the Case, Pre-Trial Order dated April 19, 2022, Docket – Vol. II, p. 543.

Switzerland[2] and licensed to transact business in the Philippines by the Securities and Exchange Commission (SEC).[3] It is primarily engaged in general administration and planning, business planning and coordination, sourcing/procurement of raw materials and components, corporate finance advisory services, marketing control and sales promotion, training and personnel management, logistics services, research and development, technical support and maintenance, data processing and communication, and business development.[4]

Petitioner is also registered with Bureau of Internal Revenue (BIR), Revenue District Office No. 050, under Taxpayer's Identification Number (TIN) 008-637-771-000.[5]

On the other hand, respondent is the Commissioner of the BIR vested by law to enforce and implement the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, as well as related statutes and their implementing rules and regulations. Respondent holds office at BIR National Office Building, BIR Road, Diliman, Quezon City.[6]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

For the 3rd and 4th quarters of CY 2018, petitioner filed its amended *Quarterly VAT Returns* (BIR Form No. 2550Q) on September 28, 2020.[7]

On September 30, 2020, petitioner's letter request for the refund and/or issuance of tax credit certificate was received by the BIR.[8] On the same date, the BIR received petitioner's *Application for Tax Credits/Refunds* (BIR Form No. 1914), applying for the refund or tax credit of input tax for the period from July 1, 2018 to December 31, 2018, amounting to ₱4,351,724.28.[9]

On March 18, 2021, petitioner received the letter dated December 14, 2020 from the BIR's Assessment Service, denying its application for the refund

[2] Par. 1.a, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 513; Exhibit "P-1", Docket – Vol. II, pp. 659 to 669; and Exhibit "P-2", BIR Records (Exhibit "R-4"), p. 255.
[3] Par. 1.b, Stipulation of Facts, JSFI, Docket – Vol. I, p. 513.
[4] Par. 1.c, Stipulation of Facts, JSFI, Docket – Vol. I, p. 514.
[5] Par. 1.d, Stipulation of Facts, JSFI, Docket – Vol. I, p. 514; Exhibit "P-3", Docket – Vol. II, p. 671.
[6] Par. 1.f, Stipulation of Facts, JSFI, Docket – Vol. I, p. 514.
[7] Exhibits "P-4" and "P-5", Docket – Vol. II, pp. 672 to 675.
[8] Refer to par. 1.e.1, Stipulation of Facts, JSFI, Docket – Vol. I, p. 514.
[9] Exhibit "P-27", Docket – Vol. II, p. 997. Refer also to par. 1.e.2, Stipulation of Facts, JSFI, Docket – Vol. I, p. 514.

of its accumulated (excess and unutilized) input VAT for 3rd and 4th quarters of CY 2018.[10]

PROCEEDINGS BEFORE THIS COURT

Following the denial of its administrative claim, petitioner filed the present *Petition for Review* on March 19, 2021.[11] The case was raffled to this Court's Third Division.

After being granted an extension of time by the Court,[12] respondent filed an *Answer (Re: Petition for Review dated 19 March 2021)* on October 25, 2021,[13] interposing the following special and affirmative defenses, to wit: (1) petitioner cannot cure its failure to submit documents to the administrative level by filing the said documents before this Court; (2) petitioner failed to substantiate its claim for refund, and hence, must be denied; and (3) tax refunds are strictly construed against the taxpayer and in favor of the government.

Respondent transmitted the *BIR Records* of the case on December 15, 2021.[14]

The Pre-Trial Conference was set and held on March 10, 2022.[15] Prior thereto, *Respondent's Pre-Trial Brief* was filed on December 16, 2021,[16] while the *Pre-Trial Brief (of Petitioner Avaloq Philippines Operating Headquarters)* was submitted on March 8, 2022.[17]

On March 24, 2022, the parties submitted their *Joint Stipulation of Facts and Issues*,[18] which was admitted and approved in the Resolution dated March 30, 2022,[19] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order was subsequently issued on April 19, 2022.[20]

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[10] Exhibit "P-28", Docket – Vol. II, pp. 999 to 1007. Refer also to par. 1.e.3, Stipulation of Facts, JSFI, Docket – Vol. I, p. 514.
[11] Docket – Vol. I, pp. 8 to 20.
[12] *Motion for Extension of Time to File Answer*, Docket – Vol. I, pp. 450 to 452; Resolution dated July 29, 2021, Docket – Vol. I, p. 456.
[13] Docket – Vol. I, pp. 457 to 466.
[14] *Compliance* dated December 15, 2021, Docket – Vol. I, pp. 475 to 477.
[15] Notice of Pre-Trial Conference dated November 19, 2021, Docket – Vol. I, pp. 473 to 474; Minutes of the hearing held on, and Order dated, March 10, 2022, Docket – Vol. I, pp. 509, and 511 to 512, respectively.
[16] Docket – Vol. I, pp. 491 to 493.
[17] Docket – Vol. I, pp. 496 to 507.
[18] Docket – Vol. I, pp. 513 to 519.
[19] Docket – Vol. I, pp. 540 to 541.
[20] Docket – Vol. II, pp. 543 to 550.

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

Petitioner offered the testimonies of the following witnesses, namely: (1) Ms. Mary Lalaine V. Munar,[21] petitioner's Accountant; and (2) Ms. Krista V. Bambao,[22] the Court-commissioned Independent Certified Public Accountant (ICPA).[23]

The *Report* of the ICPA was submitted on June 27, 2022.[24]

On August 16, 2022, petitioner filed its *Formal Offer of Evidence with Motion with Leave of Court to Allow Correction of Exhibit Markings/Reference,*[25] to which respondent filed his *Comment (Re: Formal Offer of Evidence dated 16 August 2022)* on August 18, 2022.[26] In the Resolution dated October 5, 2022,[27] the Court granted petitioner's motion to allow correction of exhibit marking on the Judicial Affidavit of Ms. Mary Lalaine V. Munar and her signature thereon from Exhibit "P-28" to Exhibit "P-33" and Exhibit "P-28-1" to Exhibit "P-33-1", respectively, was; and admitted all of petitioner's offered exhibits.

For his part, respondent offered the testimony of Revenue Officer Eufemia Mylene N. Mabingnay.[28]

On November 10, 2022, respondent filed his *Formal Offer of Evidence,*[29] to which petitioner submitted its *Comment on the Respondent's Formal Offer of Exhibits* on November 15, 2022.[30] In the Resolution dated December 13, 2022,[31] the Court admitted all of respondent's exhibits.

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[21] Exhibit "P-28" (Docket – Vol. I, pp. 110 to 123), which was remarked as Exhibit "P-33" (Refer to the Resolution dated October 5, 2022, Docket – Vol. II, pp. 1015 to 1018); Minutes of the hearing held on, and Order dated, July 28, 2022, Docket – Vol. II, pp. 641 to 643.

[22] Exhibit "P-34", Docket – Vol. II, pp. 604 to 640; Minutes of the hearing held on, and Order dated, July 28, 2022, Docket – Vol. II, pp. 641 to 643.

[23] *Oath of Commission* dated May 26, 2022, Docket – Vol. II, p. 559; Minutes of the hearing held on, and Order dated, May 26, 2022, Docket – Vol. II, pp. 558, and 560 to 561, respectively.

[24] Exhibit "P-35", Docket – Vol. II, pp. 563 to 598.

[25] Docket – Vol. II, pp. 644 to 656.

[26] Docket – Vol. II, pp. 1010 to 1012.

[27] Docket – Vol. II, pp. 1015 to 1018.

[28] Exhibit "R-5", Docket – Vol. I, pp. 483 to 488; Minutes of the hearing held on, and Order dated, October 25, 2022, Docket – Vol. II, pp. 1019 to 1021.

[29] Docket – Vol. II, pp. 1025 to 1027.

[30] Docket – Vol. II, pp. 1029 to 1030.

[31] Docket – Vol. II, pp. 1033 to 1034.

Thereafter, on January 31, 2023, respondent filed a *Manifestation*,[32] stating that he is adopting the arguments he raised in his *Answer* as his *Memorandum*, on account that he has already fully discussed all his arguments in the said *Answer*.

On February 1, 2023, petitioner filed its *Memorandum with Motion for Leave of Court to Reopen the Case for Presentation of Additional Evidence and Allow Conditional Recall of Witness (of Avaloq Philippines Operating Headquarters)*.[33] Respondent then filed his *Comment and Opposition (Re: Petitioner's Memorandum with Motion for Leave of Court to Reopen the Case for Presentation of Additional Evidence and Allow Conditional Recall of Witness dated 01 February 2023)* on March 17, 2023.[34] In the Resolution dated May 26, 2023,[35] the Court resolved to grant petitioner's motion to present additional evidence, and to recall its witness to testify thereon.

Subsequently, the present case was transferred to this Court's Second Division per *Resolution* dated June 7, 2023.[36]

Petitioner's Accountant, Ms. Mary Lalaine V. Munar, was recalled to the witness stand on August 15, 2023.[37] On August 29, 2023, petitioner filed its *Compliance with Submission*, with attached *Supplemental Formal Offer of Evidence*,[38] to which respondent filed his *Comment (Re: Supplemental Formal Offer of Evidence dated 24 August 2023)* on August 30, 2023.[39] In the Resolution dated November 17, 2023,[40] the Court admitted petitioner's additional offered exhibits.

Considering respondent's *Manifestation* that he is adopting the arguments he raised in his *Answer* as his *Memorandum*,[41] and the submission of petitioner's *Supplemental Memorandum (of Avaloq Philippines Operating Headquarters)*,[42] appended to the *Motion with Leave of Court to Admit Attached Supplemental Memorandum (of Avaloq Philippines Operating Headquarters)*,[43] the present case was submitted for decision through the Minute Resolution dated February 8, 2024.[44]

Hence, this Decision.

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[32] Docket – Vol. II, pp. 1035 to 1037.
[33] Docket – Vol. II, pp. 1039 to 1095.
[34] Docket – Vol. II, pp. 1135 to 1145.
[35] Docket – Vol. II, pp. 1149 to 1150.
[36] Notice, Docket – Vol. II, p. 1150-B.
[37] Exhibit "P-285", Docket – Vol. III, pp. 1155 to 1161; Minutes of the hearing held on, and Order dated, August 15, 2023, Docket – Vol. III, pp. 1299 to 1301.
[38] Docket – Vol. III, pp. 1308 to 1315.
[39] Docket – Vol. III, pp. 1442 to 1444.
[40] Docket – Vol. III, pp. 1450 to 1453.
[41] Docket – Vol. III, pp. 1454 to 1456.
[42] Docket – Vol. III, pp. 1462 to 1478.
[43] Docket – Vol. III, pp. 1458 to 1461.
[44] Docket – Vol. III, p. 1568.

THE STIPULATED ISSUE

The parties submit the following issue for this Court's resolution, to wit:

> "Whether the Petitioner is entitled to a tax refund amounting to Pesos: **Four Million Three Hundred Fifty-One Thousand Seven Hundred Twenty-Four and 28/100 (₱4,351,724.28)** representing its excess and/or unutilized input vat credits attributable to its zero-rated sales for the covered period."[45]

Petitioner's arguments:

Petitioner argues that it sufficiently established all the elements or requisites for its entitlement to its claim for the refund of its excess input VAT attributable to its zero-rated sales for the covered period; that it is a VAT-registered entity as required under Section 112(A) of the Tax Code, as amended; that the administrative and judicial claims for refund were filed within the prescriptive period provided under the pertinent provisions of the Tax Code and its implementing rules and regulations; that it was engaged in zero-rated transactions as required under the Tax Code, as amended, as well as its pertinent regulations, and the sales were paid for in acceptable foreign currency exchange via intercompany offsetting agreement and have been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP); that its foreign clients are *non-resident foreign corporations* (NRFCs) doing business outside of the Philippines; that its provision of services to its foreign clients were billed and paid for in acceptable foreign currency in accordance with BSP rules and regulations; that said services to its foreign clients were all rendered in the Philippines; that the input taxes due from its purchases of goods and services directly attributable to zero-rated sales were duly supported by VAT invoices or official receipts (ORs); and that the claimed input VAT payments were not applied against any output tax in the succeeding periods.

Respondent's counter-arguments:

Respondent contends that petitioner cannot cure its failure to submit documents to the administrative level by filing the said documents before this Court; that petitioner failed to substantiate its claim for refund, and hence, must be denied; and that tax refunds are strictly construed against the taxpayer and in favor of the government.

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[45] Stipulation of the Issue, JSFI, Docket – Vol. I, p. 514.

THE COURT'S RULING

The present *Petition for Review* must be denied.

Requisites for the grant of a refund or issuance of a tax credit certificate under the law.

Section 112 (A) and (C) of the NIRC of 1997, as amended by Republic Act (RA) No. 10963[46] [otherwise known as the Tax Reform for Acceleration and Inclusion Act (TRAIN law)], provides 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 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.

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[46] 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.

> 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."

Based on the provision above, jurisprudence has laid down requisites with which the taxpayer-applicant must comply to successfully obtain a credit or refund of input VAT, to wit:

<u>As to the timeliness of the filing of the administrative and judicial claims</u>:

1. The refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[47]

2. In case of full or partial denial of the refund claim rendered within a period of ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision;[48]

<u>With reference to the taxpayer's registration with the BIR</u>:

3. The taxpayer is a VAT-registered person;[49]

<u>In relation to the taxpayer's output VAT</u>:

4. The taxpayer is engaged in zero-rated or effectively zero-rated sales;[50]

5. For zero-rated sales under Section 106(A)(2)(1) and (2);

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

[48] 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.

[49] *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. vs. Commissioner of Internal Revenue*, supra.

[50] *Ibid.*

106(B); [51] and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the BSP rules and regulations;[52]

As regards the taxpayer's input VAT being refunded:

6. The input taxes are not transitional input taxes;[53]

7. The input taxes are due or paid;[54]

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;[55] and

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[51] Section 106(B) cited in Section 112(A) of NIRC of 1997 (RA No. 8424) was later amended by RA No. 9337 to pertain to Section 106(A)(2)(b). Accordingly, Section 112(A), as amended by RA No. 9337, 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 or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales." (*Emphasis supplied*)

However, in view of the amendments introduced by RA No. 10963, Section 106(A)(2)(b) is now deleted.

[52] *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. vs. Commissioner of Internal Revenue*, supra.

[53] *Ibid.*

[54] *Ibid.*

[55] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue, supra.*

9. The input taxes have not been applied against output taxes during and in the succeeding quarters.[56]

In addition, in claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the NIRC and other implementing rules and regulations.[57] Thus, petitioner's compliance with all the VAT invoicing requirements is required to be able to file a claim for input taxes attributable to zero-rated sales.[58] The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[59] Moreover, it must be pointed out that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[60]

Strict compliance with substantiation and invoicing requirements is necessary considering the nature of VAT and its system of tax credit method, where tax payments are based on output and input taxes and where the seller's output tax becomes the buyer's input tax that is available as tax credit or refund in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates computation of tax credits, and provides accurate audit trail or evidence for BIR monitoring purposes.[61]

Furthermore, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[62] Thus, petitioner must show compliance with each of the foregoing requisites and invoicing requirements. As a corollary, the absence of *any* of the said requisites is a *valid* ground to *deny* the refund claim.

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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. vs. Commissioner of Internal Revenue*, supra.

[57] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.

[58] *JRA Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.

[59] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.

[60] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

[61] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, supra.

[62] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

Petitioner timely filed its administrative and judicial claims for input VAT refund.

The *first* requisite provided in Section 112(A) of the NIRC of 1997, as amended, commands the taxpayer to file an administrative claim for input VAT refund within two (2) years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the 3rd to 4th quarters of CY 2018. Counting two (2) years from the close of the subject taxable quarters, petitioner had until the following respective dates to file its administrative claim, *viz*:

Period Covered (2018)	Close of Taxable Quarter	Last Day to File Administrative Claim for Refund
3rd Quarter	September 30, 2018	September 30, 2020
4th Quarter	December 31, 2018	December 31, 2020

Considering that petitioner's *administrative* claim for the 3rd and 4th quarters of 2018 was filed on September 30, 2020,[63] the same was timely made.

The *second* requisite stated in Section 112(C) of the NIRC of 1997, as amended, grants the BIR a period of ninety (90) days from date of submission of the official receipts or invoices and other supporting documents, to decide on the taxpayer's administrative claim for input VAT refund, in turn, the taxpayer may appeal to the Court within thirty (30) days from receipt of the decision denying its claim or after the lapse of the said ninety (90)-day period.

Petitioner's administrative claim was filed on September 30, 2020.

As a general rule, respondent has ninety (90) days from September 30, 2020, or until December 29, 2020, within which to act on said claim. Because of the Covid-19 pandemic, however, Revenue Regulations No. 27-2020 was issued pursuant to Republic Act No. 11494 or the "Bayanihan to Recover As One Act". Section 4 of Revenue Regulations No. 27-2020 suspended the processing of VAT refund from September 11, 2020 to December 19, 2020, thus:

> "SECTION 4. *Processing of VAT Refunds.* — The 90-day processing of VAT refund claims pursuant to Section 112 (C) of the Tax Code of 1997, as amended, is hereby suspended during the effectivity of

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[63] Refer to pars. 1.e.1 and 1.e.2, Stipulation of Facts, JSFI, Docket – Vol. I, p. 514; Exhibit "P-27", Docket – Vol. II, pp. 997.

> R.A. No. 11494[64] or until the next adjournment of the Eighteenth Congress on December 19, 2020."

Therefore, because of the suspension from September 11, 2020 to December 19, 2020, respondent could *not* act on the claim filed on September 30, 2020. Respondent could only act on the same within 90 days after the period of suspension, or *beginning December 20, 2020 until March 20, 2021.*

Notably, the BIR through Assistant Commissioner Maria Luisa I. Belen, issued the letter of denial dated December 14, 2020 during the period of suspension, which was received by petitioner on March 18, 2021.[65] Thus, respondent is deemed to have acted on petitioner's administrative claim within the ninety (90)-day period, if the Court were to consider either the issuance of the denial on December 14, 2020 or its receipt on March 18, 2021.

Counting thirty (30) days from petitioner's *receipt* of the denial on March 18, 2021, petitioner had until April 17, 2021 to appeal its claim for refund before this Court. Since this *judicial* claim was also filed on March 19, 2021,[66] the same was likewise timely made and the Court is clothed with jurisdiction to take cognizance of the case.

Therefore, petitioner has shown compliance with the above-stated *first* and *second* requisites.

Petitioner is a VAT-registered entity.

Petitioner also fulfilled the *third* requisite given that it is duly registered with the BIR as a VAT taxpayer under TIN 008-637-771-000.[67]

However, petitioner failed to establish that it was engaged in 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 that for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2) of the NIRC of

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[64] Republic Act No. 11494 or the "Bayanihan to Recover As One Act" was signed into law on September 11, 2020.

[65] Par. 1.e.3, Stipulation of Facts, JSFI, Docket – Vol. I, p. 514; Exhibit "P-28", Docket – Vol. II, pp. 999 to 1007; Exhibit "R-3", BIR Records (Exhibit "R-4"), pp. 399 to 400.

[66] Docket – Vol. I, pp. 8 to 20.

[67] Par. 1.d, Stipulation of Facts, JSFI, Docket – Vol. I, p. 514; Exhibit "P-3", Docket – Vol. II, p. 671.

1997, as amended, the acceptable foreign currency exchange proceeds thereof have been duly accounted for in accordance with BSP rules and regulations.

In this case, petitioner claims that it is engaged in zero-rated transactions as required under Section 108(B)(2) of the NIRC of 1997, as amended, which 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 of goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> (2) **Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);**" *(Emphases added)*

As can be seen from the foregoing provision, certain essential elements must be present for a sale or supply of services to be subject to the VAT rate of 0%, to wit:

a. 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;[68]

b. The services fall under any of the categories under Section 108(B)(2),[69] or simply, the services rendered should be other than "*processing, manufacturing or repacking goods*";[70]

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[68] *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.

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

[70] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007.

c. The services must be performed in the Philippines[71] by a VAT-registered person; *and*,

d. The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[72]

For the *first* essential element, in order to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by **both** a *Certification of Non-Registration of Corporation/Partnership* issued by the Philippine SEC, **and** proof of incorporation/registration in a foreign country (*e.g.*, Articles/Certificate of Incorporation/Registration and/or Tax Residence Certificate). The former establishes that the recipient of the service has *no* registered business in the Philippines, and that it is *not* engaged in trade or business within the Philippines; while the latter proves that the said recipient of the service is indeed foreign. The said documents have been consistently required by this Court, for purposes of the said *first* essential element. In fact, in *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*,[73] the Supreme Court affirmed the necessity of presenting the said documents in this wise:

> "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[74] 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 ROHQs burden to distinguish among their clients' nationalities and actual places of business operations and establish that they area 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.

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

[72] *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.*

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

[74] That is, "Nonresident foreign corporation".

> 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 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 added)*

Based on the documents submitted, the following clients of petitioner can be considered NRFCs doing business outside the Philippines in compliance with the *first* essential element, to wit:

NAME OF COMPANY	PROOF OF FOREIGN INCORPORATION/ REGISTRATION (Exhibit No.)	SEC CERTIFICATION OF NON-REGISTRATION (Exhibit No.)
Avaloq Australia Pty Ltd.	"P-14"[75]	"P-14-1"[76]
Avaloq Asia Pacific Pte Ltd.	"P-15"[77]	"P-15-1"[78]
Avaloq Licence AG	"P-16"[79]	"P-16-1"[80]
Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd.	"P-17"[81]	"P-17-1"[82]
Avaloq Sourcing (Switzerland & Liechtenstein) SA	"P-18"[83]	"P-18-1"[84]
Avaloq Sourcing (Europe) AG	"P-77"[85]	"P-19-1"[86]
Avaloq UK Limited	"P-20"[87]	"P-20-1"[88]

[75] Docket – Vol. II, pp. 690 to 736.
[76] BIR Records (Exhibit "R-4"), p. 224.
[77] Docket – Vol. II, pp. 739 to 773.
[78] BIR Records (Exhibit "R-4"), p. 225.
[79] Docket – Vol. II, pp. 775 to 786.
[80] BIR Records (Exhibit "R-4"), p. 226.
[81] Docket – Vol. II, pp. 804 to 839.
[82] BIR Records (Exhibit "R-4"), p. 220.
[83] Docket – Vol. II, pp. 841 to 857.
[84] BIR Records (Exhibit "R-4"), p. 219.
[85] USB (Exhibit "P-35-1").
[86] BIR Records (Exhibit "R-4"), p. 223

Avaloq Evolution AG	"P78"[89]	"P-79"[90]

As to the *second* essential element, petitioner must prove that the services to these clients fall within the scope of *"services other than processing, manufacturing or repacking goods."* From the *General Framework Services Agreement* presented by petitioner, the following are included in the definition of "services", *viz.*:[91]

- Preparation of analyses
- Making of status quo analyses
- Consulting
- Preparation of concepts
- Documentation
- Promotion of products and services
- Sub-project management
- Training and support in training services
- Support in implementation services
- Support in parametrization services
- Support in maintenance services
- Support with and coordination of Global Processing Network projects
- Coordination
- Audits
- Support in acceptance

Moreover, *Exhibit 1* attached to the *Contract Software Research & Development Agreement* executed between petitioner and Avaloq Licence AG provides that the R&D Activities shall consist of the following:[92]

- Software Development
- Software Architecture and Concepts
- Testing
- Business Analysis
- Functionality Deployment
- Product customization and parametrization
- Integration of third-party software
- Cooperation with third parties in specific research projects

Clearly, the foregoing services rendered by petitioner to the aforementioned NRFCs cannot be considered *processing, manufacturing or repacking goods.* Hence, the *second* essential element was satisfied.

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[87] Docket – Vol. II, pp. 868 to 897.
[88] BIR Records (Exhibit "R-4"), p. 221.
[89] USB (Exhibit "P-35-1").
[90] USB (Exhibit "P-35-1").
[91] Exhibit "P-21", Docket – Vol. II, p. 912.
[92] Exhibit "P-22", Docket – Vol. II, p. 937.

Moving on to the *third* essential element, petitioner must show that the subject services were performed in the Philippines by a VAT-registered person.

A reading of the above *agreements* reveals that the same lacks any indication that the services were performed in the Philippines. This observation was also confirmed by the ICPA in her *Report* as follows:[93]

> "4. In addition to the above-enumerated documents, the following agreements were evaluated during my review to ascertain xxx, the location where the services were provided xxx:
>
> a. General Framework Services Agreement ('GFSA') (Exhibit P-21 as marked by counsel of Petitioner)
>
> xxx xxx xxx
>
> - Location Where the Services were Provided - Not specified
>
> b. Contract of Software Research & Development Agreement ('Contract R&D Agreement') (Exhibit P-22 as marked by counsel of Petitioner)
>
> xxx xxx xxx
>
> - Location where the services were provided - Not specified"

However, a clarification was made by the petitioner's Accountant, Ms. Mary Lalaine V. Munar, in her *Supplemental Judicial Affidavit*,[94] thus:

> "3. Q: Can you please elaborate your statement that '*Petitioner's provision of services to its non-resident foreign affiliates were all rendered in the Philippines*'?
>
> A: As previously mentioned in my Judicial Affidavit, Petitioner is the regional operating headquarter ('ROHQ') of Avaloq Group AG, a multinational company organized and existing under the laws of Switzerland. Further, Avaloq Philippines Operating Headquarters was established to provide general administration and planning, business planning and coordination, training and personnel management, logistic services, technical support and maintenance, data processing and communication, and business development to its foreign affiliates. **Being situated in the Philippines, Petitioner's provision of services to its non-resident foreign affiliates were all rendered in the Philippines**.
>
> 4. Q: Ms. Witness, what proof, if any, would support your statement that '*Petitioner's provision of services to its non-resident foreign affiliates were all*

[93] Exhibit "P-35", Docket – Vol. II, pp. 569 to 571.
[94] Exhibit "P-285", Docket – Vol. III, pp. 1155 to 1161.

rendered in the Philippines'?

A: I have here our extracted logs in our ProTime monitoring software or our performance time entry, which we use to attribute our presence time in a specific project. This includes the location of the service, the non-resident affiliate to whom it was rendered, the month when the service was rendered and the corresponding time charges.

Our services being rendered in the Philippines is established through our extracted ProTime logs for July to December 2018. Column K of the said document indicates the location of service for the covered period.

Based on Section 4.2.1 of our ProTime – Employee Booking Guidelines the symbol "AA" signifies that the location of service is in the Domestic Country of the company rendering the service. However, in practice, the same may be replaced with the letter symbols of the country (e.g., 'PH')

Correlating Column C and Column K of ProTime logs for July to December 2018, it is shown that the services rendered for the covered period were rendered in the Philippines.

xxx

Lastly, as an ROHQ, Petitioner is an entity which is only taxable for its income from sources within the Philippines. Hence, it would not have declared such an amount of income if its services were not rendered here. There is simply no incentive for Petitioner to declare the same if it were not rendered domestically because it would only result in the imposition of income.

xxx

7. Q: Considering that the regional operating headquarters is operating here in the Philippines and its clients are based abroad, how does Petitioner render its services to its foreign clients?

A: As Petitioner is a software company, which provides services through software maintenance, support, and bug-fixing, it renders its services through phone calls, emails, online meetings, and other electronic means."

To bolster its position, petitioner also offered the *Extracted ProTime Logs for 2018*[95] as well as the corresponding *ProTime Employee Guidelines*[96] being referred to in the testimony of Ms. Munar.

Considering the foregoing explanation of petitioner's witness, coupled with the documentary evidence presented, petitioner was able to prove that the subject services were actually performed in the Philippines. Accordingly, the said *third* essential element was fulfilled by petitioner.

[95] Exhibit "P-278", Docket – Vol. III, pp. 1316 to 1345.
[96] Exhibit "P-279", Docket – Vol. III, pp. 1346 to 1362.

However, before delving into the *fourth* essential element, which corresponds to the *fifth* requisite that requires that for zero-rated sales under Section 108(B)(2) of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations, it is equally important to consider that the VAT zero-rated sales, to which the foreign currency remittances correspond, must be duly supported by VAT zero-rated ORs in accordance with the pertinent invoicing requirements, containing all the required information under Section 113(A) and (B) of the NIRC of 1997, as amended, and as implemented by Section 4.113-1(A) and (B) of Revenue Regulations (RR) No. 16-2005, as amended. Further, the sales invoices (SIs) and ORs must be duly registered with the BIR as prescribed under Section 237, in relation to Section 238 of the Tax Code.

In its amended *Quarterly Value-Added Tax Returns* (BIR Form No. 2550-Q) for the 3rd and 4th quarters of CY 2018, petitioner reported total zero-rated sales of ₱172,535,079.34, broken down as follows:

CY 2018	Zero-rated Sales	Exhibit Reference
3rd Quarter	86,742,918.07	"P-4", Line 17[97]
4th Quarter	85,792,161.27	"P-5", Line 17[98]
Total	**172,535,079.34**	

Since these reported sales are in the nature of sales of services under Section 108(B)(2) of the NIRC of 1997, as amended, petitioner is required to issue BIR-registered VAT ORs for the foreign currency proceeds of each sales transaction, the information contained therein must be in compliance with the applicable provisions previously cited, such as the word "zero-rated", and the taxpayer's TIN-VAT number.

In this case, petitioner submitted the ORs[99] with attached billing invoices,[100] issued to its clients, as well as the Schedule of Sales,[101] to support its zero-rated sales for the 3rd and 4th quarters of CY 2018.

An examination of the foregoing documents shows that petitioner's zero-rated sales in the amount of ₱177,798,582.34 are duly substantiated with valid ORs, as detailed below:

[97] Docket – Vol. II, p. 672.
[98] Docket – Vol. II, p. 674.
[99] Exhibits "P-41" to "P-58", USB (Exhibit "P-35-1").
[100] Exhibits "P-59" to "P-76", USB (Exhibit "P-35-1").
[101] Annex 1, ICPA Report (Exhibit "P-35"), USB (Exhibit "P-35-1").

Client Name	Exhibit No.	OR No.	OR Date	Amount per OR in US$	Amount per OR in PhP
Avaloq Sourcing (Switzerland & Liechtenstein) SA	"P-41"	037	20 July 2018	78,229.18	4,172,335.05
Avaloq License AG	"P-42"	038	20 July 2018	1,391,625.05	74,221,997.00
Avaloq Asia Pacific Pte Ltd	"P-43"	039	23 July 2018	8,398.44	447,929.00
Avaloq Australia Pty Ltd	"P-44"	040	23 July 2018	14,356.98	765,726.00
Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd	"P-45"	041	23 July 2018	10,353.79	552,217.00
Avaloq Sourcing (Europe) AG	"P-46"	042	1 August 2018	95,706.11	5,000,275.78
Avaloq Sourcing (Europe) AG	"P-47"	043	1 August 2018	67,433.26	3,596,537.00
Avaloq Sourcing (Europe) AG	"P-48"	044	1 August 2018	55,989.31	2,986,177.00
Avaloq Evolution AG	"P-49"	045	30 September 2018	4,921.43	263,226.62
			Sub-total 3rd Quarter	***1,727,013.55***	***92,006,420.45***
Avaloq Asia Pacific Pte Ltd	"P-50"	046	16 October 2018	6,275.59	339,610.76
Avaloq Australia Pty Ltd	"P-51"	047	16 October 2018	21,045.07	1,138,878.00
Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd	"P-52"	048	16 October 2018	20,031.67	1,084,037.00
Avaloq UK Limited	"P-53"	049	16 October 2018	14,209.01	768,937.00
Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd	"P-54"	050	16 October 2018	252,755.25	13,678,141.00
Avaloq Sourcing (Switzerland & Liechtenstein) SA	"P-55"	051	16 October 2018	102,362.70	5,539,475.13
Avaloq Licence AG	"P-56"	052	16 October 2018	1,026,156.72	55,531,650.00
Avaloq Sourcing (Europe) AG	"P-57"	053	1 December 2018	79,953.97	4,326,801.00
Avaloq Sourcing (Europe) AG	"P-58"	054	1 December 18	62,543.84	3,384,632.00
			Sub-total 4th Quarter	***1,585,333.82***	***₱ 85,792,161.89***
				TOTAL	**₱177,798,582.34**

Notwithstanding the foregoing conclusion, petitioner still *fell short* in proving that the corresponding payments thereof were inwardly remitted thru the Philippine banking system and duly accounted for in accordance with the BSP rules and regulations, as enunciated in the above-stated *fourth* essential element and *fifth* requisite.

According to petitioner, the supply of services to its non-resident foreign clients were paid for in acceptable foreign currency via intercompany offsetting arrangement.[102]

Notably, offsetting arrangements are recognized by the BIR as an alternative to proof of foreign currency inward remittances. In Revenue Memorandum Circular (RMC) No. 42-2003 dated July 15, 2003,[103] the documents required in an offsetting arrangement were enumerated, *viz*:

> "Q-8 With the full liberalization of the BSP rules on foreign exchange and trade transactions (CB Circular No. 1389 dated April 13, 1993 enunciated in RMC No. 57-97), the BIR requirement for full documentation of proofs of inward remittances of export proceeds should no longer be enforced. Accordingly, what should be the acceptable documentary requirements in the processing of claims for TCC/refund, specifically on offsetting arrangements?
>
> A-8: In the case of offsetting arrangements, the following documents should be required:
>
> a. Import documents which created liability accounts in favor of the foreign parent or affiliated company;
> b. Other contracts with the foreign or affiliated company that brought about the liabilities which were offset against receivables from export sales;
> c. Evidence of proceeds of loans, in case the claimant has received loans or advances from the foreign company;
> d. Documents or correspondence regarding offsetting arrangements;
> e. Confirmation of the offsetting arrangements by the heads of the business organizations involved;
> f. Documents to prove actual export of goods;
> g. Documents to prove that the sales are zero-rated sales."

As can be seen from the provision of RMC No. 42-2003, the submission of proof of inward remittances of foreign currency payments for export sales was relaxed where there are offsetting arrangements as these do not entail inward remittances. In such cases, the above-enumerated documents are acceptable pieces of documentary evidence proving the payment in foreign currency accounted for in accordance with BSP rules and regulations.

In the *Judicial Affidavit* of petitioner's witness, Ms. Mary Lalaine V. Munar,[104] she explained the process by which said offsetting arrangement was being implemented, thus:

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[102] Par. 49, Discussions/Arguments, *Memorandum with Motion with Leave of Court to Reopen the Case for Presentation of Additional Evidence and Allow Conditional Recall of Witness*, Docket – Vol. II, p. 1058.

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

[104] Exhibit "P-28" (Docket – Vol. I, at pp. 118 to 120), which was remarked as Exhibit "P-33" (Refer to the Resolution dated October 5, 2022, Docket – Vol. II, pp. 1015 to 1018).

"28. Q: Ms. Munar, do you know how Petitioner bills its foreign affiliates for the services rendered?

A: Yes. The 'General Framework Services Agreement' that shows the guidelines for the provision of services between the affiliates of Avaloq Group AG, and the 'Short Term Credit Facility Agreement' would explain how Avaloq PH bills its foreign affiliates.

The invoices billed by Petitioner are collected/offset against the loan payable to Avaloq Group AG. Based on the General Framework Services Agreement, the offsetting process of the receivables and payables of the Petitioner are as follows:

a. Avaloq PH maintains a current account, in which the funding of Avaloq Group AG is being remitted pursuant to a Short-Term Credit Facility Agreement;

b. For the collection of intercompany invoices billed by Avaloq PH to its affiliates, these are collected/offset through this account.

To illustrate, whenever we obtain a 'loan' from our head office – Avaloq Group AG, which is basically the funding we receive monthly, the funding/cash remitted is credited to Avaloq Group AG current account. The amount receivable from the invoices billed for the services rendered to the affiliates of Avaloq PH will be debited or offset against this same account.

xxx

31. Q: Ms. Munar, how did Petitioner collect/offset the intercompany services billed against the loan payable to Avaloq Group AG pursuant to the Short-Term Credit Facility?

A: Under the Short-Term Credit Facility, Petitioner is entitled to request for a loan in the form of advance and/or overdraft from Avaloq Group AG. The loan amount, which varies depending on the financial necessity of the Petitioner to support its operations, are remitted by Avaloq Group AG in foreign currency denominated. The remitted amount forms part of the loan payable of Petitioner which are then offset against the intercompany invoices billed to the foreign affiliates of Avaloq PH.

32. Q: What proof, if any, do you have to support your statement that the funds were in foreign currency?

A: The Bank Statements issued by the Bank of the Philippine Islands showing the credit of foreign currency to our current account.

33. Q: Ms. Munar, in your Answer to Question No. 28, what proof do you have to show that the intercompany services billed by Petitioner to its foreign affiliates are collected/offset against the loan payable to Avaloq Group AG?

A: The transactions that can be identified in the Avaloq Group AG Current Account, Schedule of Offsetting of Receivables."

In essence, petitioner receives foreign currency funding from its parent company which is recorded and treated in its books as loan payable to Avaloq

Group AG. From this loan, petitioner offsets all of the receivables it earns and becomes entitled to, for the services rendered to the affiliates of Avaloq Group AG.

To support its assertion, petitioner presented documentary proof, such as *Short-Term Credit Facility Agreement*,[105] *Bank Statements* issued by the Bank of the Philippine Islands,[106] *Avaloq Group AG Current Account*,[107] and *Schedule of Offsetting of Receivables*.[108]

While an examination of the *Short-Term Credit Facility Agreement*[109] executed by and between Avaloq Group AG and its various affiliates, including petitioner, validates petitioner's claim of having loan transactions in US Dollars with Avaloq Group AG, the same agreement failed to show that such advances from Avaloq Group AG can be the subject of set-off as payment for the receivables earned by petitioner from its sale of services to other affiliates. Suffice it to say, petitioner should have presented additional corroborating documentary evidence on this matter.

First, the *Short-Term Credit Facility Agreement* is an undertaking between Avaloq Group AG, as the primary party and lender, and each affiliate, as a borrower. Thus, it does not include loan agreement between one affiliate and another affiliate.

Second, the said agreement does *not* provide for an offsetting arrangement between Avaloq Group AG's advances to petitioner and the latter's receivables from Avaloq Group AG's affiliates. It would be erroneous to construe paragraph "12. Set Off Balances"[110] of the agreement[111] as authorizing offsetting arrangement between affiliates given that such provision contemplates a set-off of credits between the lender-parent company and borrower-affiliate.

Third, Avaloq Group AG is a distinct legal entity from its affiliates so that the right of offset between petitioner and other affiliates cannot presumed. If there is indeed an offsetting arrangement among Avaloq Group AG *affiliates*, the same should have been covered by a separate agreement executed between and among them. Unfortunately, petitioner failed to submit evidence of this separate agreement.

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[105] Exhibit "P-23", Docket – Vol. II, pp. 952 to 967.
[106] Exhibit "P-24", BIR Records (Exhibit "R-4"), pp. 33 to 53.
[107] Exhibit "P-25", Docket – Vol. II, pp. 989 to 990.
[108] Exhibit "P-25-1", Docket – Vol. II, pp. 991.
[109] Exhibit "P-23", Docket – Vol. II, pp. 952 to 967.
[110] "12. Set-Off Balances - Both parties authorize each other to set-off any credit balance in any currency to which it is entitled on any account in satisfaction of any sum due and payable under this Agreement but unpaid. xxx."
[111] Exhibit "P-23", Docket – Vol. II, p. 961.

For these reasons, petitioner was *not* able to establish before this Court that there exists a valid *offsetting arrangement* in the present case that may serve as an alternative to actual inward remittance of foreign currency in consideration for the services it rendered to the aforementioned NRFCs. Consequently, petitioner failed to prove that is engaged in zero-rated sales of services under Section 108 (B)(2) of the NIRC of 1997, as amended.

But even granting that the subject agreement adduced by petitioner is sufficient to prove that a valid offsetting arrangement between petitioner and Avaloq Group AG's affiliates was authorized in this case, petitioner must still establish the actual details of offsetting that occurred between petitioner's receivables from its sales of service to Avaloq Group AG's affiliates and the advances made by Avaloq Group AG. Petitioner avers that it accomplished this by offering in evidence the *Schedule of Offsetting of Receivables*,[112] pertinent details of which are excerpted below:

Exhibit No.	O.R. No.	O.R. Date	Nature of Transaction	Name of Customer	Amount Collectible by Avaloq PH / Receivable by Group Account (in FC)	Withdrawal from Group Account and Deposit to Avaloq PH's BPI-FCDU Passbook Savings	Interest (Withholding Tax)	Group Account Balance	Bank	Date
								157,072.43		
"P-41"	37	20 July 2018	Sale of Services	Avaloq Sourcing (Switzerland & Liechtenstein) SA	78,229.18			235,301.61		
"P-42"	38	20 July 2018	Sale of Services	Avaloq License AG	1,391,625.05			1,626,926.66		
"P-43"	39	23 July 2018	Sale of Services	Avaloq Asia Pacific Pte Ltd.	8,398.44			1,635,325.10		
"P-44"	40	23 July 2018	Sale of Services	Avaloq Australia Pty Ltd.	14,356.98			1,649,682.08		
"P-45"	41	23 July 2018	Sale of Services	Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd.	10,353.79			1,660,035.87		
"P-46"	42	1 August 2018	Sale of Services	Avaloq Sourcing (Europe) AG	95,706.11			1,755,741.98		
"P-47"	43	1 August 2018	Sale of Services	Avaloq Sourcing (Europe) AG	67,433.26			1,823,175.24		
"P-48"	44	1 August 2018	Sale of Services	Avaloq Sourcing (Europe) AG	55,989.31			1,879,164.55		
Withdrawal from Group Account and Deposit to Avaloq PH's BPI-FCDU Passbook Savings						400,000.00		1,479,164.55	BPI	3 July 2018
Withdrawal from Group Account and Deposit to Avaloq PH's BPI-FCDU Passbook Savings						400,000.00		1,079,164.55	BPI	4 Sept 2018
Withdrawal from Group Account and Deposit to Avaloq PH's BPI-FCDU Passbook Savings						400,000.00		679,164.55	BPI	4 Sept 2018
"P-49"	45	30 September 2018	Management Recharged at cost (No Mark-up)	Avaloq Evolution AG	4,921.43			684,085.98		
			Interest				10,158.42	694,244.40		
Withdrawal from Group Account and Deposit to Avaloq PH's BPI-						600,000.00		94,244.40	BPI	12

[112] Exhibit "P-25-1", Docket – Vol. II, pp. 991.

Exhibit No.	O.R. No.	O.R. Date	Nature of Transaction	Name of Customer	Amount Collectible by Avaloq PH / Receivable by Group Account (in FC)	Withdrawal from Group Account and Deposit to Avaloq PH's BPI-FCDU Passbook Savings	Interest (Withholding Tax)	Group Account Balance	Bank	Date
								157,072.43		
"P-41"	37	20 July 2018	Sale of Services	Avaloq Sourcing (Switzerland & Liechtenstein) SA	78,229.18			235,301.61		
"P-42"	38	20 July 2018	Sale of Services	Avaloq License AG	1,391,625.05			1,626,926.66		
"P-43"	39	23 July 2018	Sale of Services	Avaloq Asia Pacific Pte Ltd.	8,398.44			1,635,325.10		
"P-44"	40	23 July 2018	Sale of Services	Avaloq Australia Pty Ltd.	14,356.98			1,649,682.08		
FCDU Passbook Savings										October 2018
"P-50"	46	16 October 2018	Sale of Services	Avaloq Asia Pacific Pte Ltd.	6,275.59			100,519.99		
"P-51"	47	16 October 2018	Sale of Services	Avaloq Australia Pty Ltd.	21,045.07			121,565.06		
"P-52"	48	16 October 2018	Sale of Services	Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd.	20,031.67			141,596.73		
"P-53"	49	16 October 2018	Sale of Services	Avaloq UK Limited	14,209.01			155,805.74		
"P-54"	50	16 October 2018	Sale of Services	Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd.	252,755.25			408,560.99		
"P-55"	51	16 October 2018	Sale of Services	Avaloq Sourcing (Switzerland & Liechtenstein) SA	102,362.70			510,923.69		
"P-56	52	16 October 2018	Sale of Services	Avaloq Sourcing (Europe) AG	1,026,156.72			1,537,080.41		
Withdrawal from Group Account and Deposit to Avaloq PH's BPI-FCDU Passbook Savings						400,000.00		1,137,080.41	BPI	23 Nov 2018
"P-57"	53	1 December 2018	Sale of Services	Avaloq Sourcing (Europe) AG	79,953.97			1,217,034.38		
"P-58"	54	1 December 2018	Sale of Services	Avaloq Sourcing (Europe) AG	62,543.84			1,279,578.22		
Withdrawal from Group Account and Deposit to Avaloq PH's BPI-FCDU Passbook Savings						300,000.00		979,578.22	BPI	12 Decem-ber 2018
				Total	**3,312,347.37**	**2,500,000.00**				

An examination of the above *Schedule of Offsetting of Receivables* reveals that there were five (5) withdrawals from Avaloq Group Account which were alleged to have been subsequently deposited to petitioner's BPI-FCDU Passbook Savings in the total amount of US$2,500,000.00. However, these amounts indicated in the schedule as withdrawals could *not* be traced from the BPI Bank Statements.[113] Moreover, the schedule, standing alone, is self-serving, and thus, lacks probative value to prove that indeed such withdrawals were meant as payment for services rendered by petitioner. Needless to state, one can simply prepare a *Schedule of Offsetting of Receivables* to show the supposed offsetting, without the actual occurrence of such event.

[113] Exhibit "P-24", BIR Records (Exhibit "R-4"), pp. 33 to 53.

Also, despite providing documentation, such as *Drawdown Requests*[114] and *Apostilled English-translated debit advice*[115] issued by Credit Suisse (Schweiz) AG to demonstrate the transfer of funds from the Avaloq Group Account to the account of petitioner, the latter was *unable* to prove that these sums were in payment for the services it provided to its clients.

Verily, since the supposed offsetting arrangement was *not* convincingly established, it cannot be said that petitioner has shown compliance with the said *fourth* essential element and *fifth* requisite that requires that for zero-rated sales under Section 108(B)(2) of the NIRC of 1997, as amended.

Petitioner has fallen short in establishing that its sales of services qualify for VAT zero-rating under said provision. To be sure, it is only when the sales of a VAT-registered person are zero-rated or effectively zero-rated that such person may have the option of applying for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales.[116]

Considering petitioner's failure to establish its zero-rated or effectively zero-rated sales for the 3rd and 4th quarters of CY 2018, the present *Petition for Review* must necessarily fail. Correspondingly, it becomes unnecessary to look into petitioner's compliance with the remaining requisites.

As final note, it is the taxpayer-claimant that has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[117] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[118] Thus, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[119] Strict adherence to the conditions prescribed by law is required of the taxpayer.[120]

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[114] Exhibit "P-81 to P-86".

[115] Exhibit "P-87 to P-92".

[116] *Coca-Cola Bottlers Philippines, Inc. vs Commissioner of Internal Revenue,* G.R. No. 222428, July 19, 2018.

[117] *Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.

[118] *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, June 25, 1999.

[119] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015, *citing J.R.A. Philippines, Inc. vs. CIR*, G.R. No. 171307, August 28, 2013.

[120] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019.

WHEREFORE, in light of the foregoing disquisition, the present *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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