REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

NEW YORK BAY PHILIPPINES, INC.,
Respondent.

CTA *EB* NO. 2364
(CTA Case No. 9669)

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NEW YORK BAY PHILIPPINES, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2366
(CTA Case No. 9669)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

Promulgated:
MAR 2 4 2022 3:50

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* are consolidated Petitions for Review,[1] filed by Commissioner of Internal Revenue ("CIR") and New York Bay Philippines, Inc. ("NYB Philippines"), assailing the Decision,[2] promulgated on 9 July 2020 ("Assailed Decision"), and Resolution,[3] promulgated on 7 October 2020 ("Assailed Resolution"), both rendered by the CTA First Division ("Court in Division"). The Assailed Decision partially granted NYBPI's claim for refund/ issuance of tax credit certificate in the amount of ₱9,582,877.37 representing its excess and unutilized input VAT attributable to zero-rated sales for the four quarters of calendar year ("CY") 2015. The Assailed Decision was affirmed in the Assailed Resolution.

The Parties

NYB Philippines is a corporation duly organized and existing under the laws of the Philippines with principal place of business at Unit 2102, 21st Floor Antel Global Corporate Center, Julia Vargas Avenue, Pasig City.[4]

Respondent is the duly appointed CIR empowered to perform the duties of said office including, among others, the power to decide, approve and grant claims for refund or tax credit of erroneously paid or overpaid taxes, as provided by law.[5]

The Facts

The antecedent facts as found by the Court in Division[6] and as culled from the records of the case are as follows:

Based on NYB Philippines' Amended Article of Incorporation, NYB Philippines is a financial holding company organized with the following purpose:

> "To acquire by purchase, exchange, assignment, gift or otherwise, and to hold, own and use for investment or otherwise, and to sell, assign, transfer, exchange, lease, let, develop, mortgage, pledge, traffic, deal in and with and otherwise operate, enjoy and dispose of any and all properties and assets of every kind and description and wherever situated, as and to the extent permitted by law, including but not limited to, real estate, whether

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1 *EB* Records (CTA *EB* Case No. 2364), pp. 5-57, with annexes; *EB* Records (CTA *EB* Case No. 2366), pp. 1-63, with annexes.
2 Division Records Vol. 2, pp. 536-564.
3 *Id.*, pp. 608-612.
4 Joint Stipulation of Facts and Issues ("JSFI"), dated 12 January 2018, as approved and adopted in the Pre-Trial Order, promulgated on 19 January 2018, Division Records Vol. 1, pp. 252-260.
5 *Ibid.*
6 *See* Assailed Decision, promulgated on 9 July 2020, Division Records Vol. 2, pp. 536-564.

> improved or unimproved, and any interest or right therein, as well as building, tenements, warehouses, factories, edifices and structures and other improvements, and bonds, debentures, promissory notes, shares of capital stock, or other securities or obligations, created, negotiated or issued by any corporation, association, or other entity, foreign or domestic, and while the owner, holder or possessor thereof, to exercise all the right, powers and privileges of ownership or any interest therein, including the right to receive, collect and dispose of, any and all rentals, dividends, interests and income derived therefrom, and the right to vote on any proprietary or other interest, on any shares of the capital stock, and upon any bonds, debentures or other securities, having voting power, so owned or held provided that the Corporation shall not engage in mining, and provided further that it shall not engage in the business of an open-end investment company as defined in the Investment Company Act (Republic Act No. 2629), without first complying with the applicable provisions of the said Act, without necessarily engaging in stock brokerage or dealership in securities."[7]

NYB Philippines is registered with the Bureau of Internal Revenue ("BIR") Revenue District Office ("RDO") No. 43 as a VAT taxpayer in accordance with ***Sec. 236 of the National Internal Revenue Code of 1997*** ("Tax Code") with Tax Identification No. 000-217-994-000.[8] NYB Philippines' line of business per its Certificate of Registration is "financial holding company activities."[9]

During the four quarters of CY 2015, NYB Philippines rendered services in the Philippines to non-resident foreign corporations not engaged in business in the Philippines, the consideration for which were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of Bangko Sentral ng Pilipinas.[10]

NYB Philippines filed the following quarterly VAT returns for the four quarters of CY 2015 through the BIR's Electronic Filing and Payment System (eFPS):

Period Covered	***Return***	***Date Filed***
1st Quarter 2015	Original[11]	24 April 2015
	Amended[12]	2 February 2016
2nd Quarter 2015	Original[13]	24 July 2015
3rd Quarter 2015	Original[14]	23 October 2015
	Amended[15]	23 November 2015

[7] JSFI, dated 12 January 2018, as approved and adopted in the Pre-Trial Order, promulgated on 19 January 2018, Division Records Vol. 1, pp.252-260.
[8] Exhibit "P-2", *id.*, p. 383; JSFI, dated 12 January 2018, as approved and adopted in the Pre-Trial Order, promulgated on 19 January 2018.
[9] Exhibit "P-2", *id.*, p. 383.
[10] *See* Assailed Decision, promulgated on 9 July 2020, Division Records Vol. 2, pp. 536-564.
[11] Exhibit "P-3", Division Records Vol. 1, pp. 384-385.
[12] Exhibit "P-4", *id.*, pp. 386-387.
[13] Exhibit "P-5", *id.*, pp. 388-389.
[14] Exhibit "P-6", *id.*, pp. 390-391.
[15] Exhibit "P-7", *id.*, pp. 392-393.

4th Quarter 2015	Original[16]	22 January 2016
	Amended[17]	23 March 2016

Based on abovementioned Final/ Amended Quarterly VAT Returns, NYB Philippines reported gross receipts in the aggregate amount of **₱631,162,185.35**, which consisted of VAT zero-rated sales and sales subject to 12% VAT. NYB Philippines likewise reported an output tax liability of ₱10,650.21. The details follow:

Period Covered	**Zero-Rated Receipts**	**Taxable Receipts**	**Total Receipts**	**Output Tax Due**
1st Quarter 2015	₱ 221,960,618.05	₱ -	₱ 221,960,618.05	₱ -
2nd Quarter 2015	142,255,253.84	-	142,255,253.84	-
3rd Quarter 2015	164,474,999.06	-	164,474,999.06	-
4th Quarter 2015	102,382,562.61	88,751.79	102,471,314.40	10,650.21
TOTAL	**₱ 631,073,433.56**	**₱ 88,751.79**	**₱ 631,162,185.35**	**₱10,650.21**

Within the same period, NYB Philippines applied a portion of its input tax credits as payment for its output tax of ₱10,650.21 and deducted therefrom the amount of ₱342,228.84 representing input tax on purchases of capital goods exceeding ₱1 million deferred for the succeeding period.[18] Hence, it had excess and unutilized input VAT in the amount of **₱46,835,732.67** allegedly attributable to its zero-rated sales for the four (4) quarters of CY 2015, which were not applied against any output tax during the succeeding taxable periods.[19]

On 29 March 2017, NYB Philippines filed with BIR RDO No. 43 an administrative claim for refund with attached Application for Tax Credits/ Refunds (BIR Form No. 1914), requesting for the refund of or issuance of TCC of its alleged excess and unutilized input VAT for the four quarters of CY 2015 in the amount of ₱46,835,732.67.[20]

Due to alleged inaction, NYB Philippines filed a Petition for Review on 25 August 2017.[21] The case docketed as CTA Case No. 9669 was initially raffled to the CTA Second Division.[22]

[16] Exhibit "P-8", *id.*, pp. 394-395.
[17] Exhibit "P-9", *id.*, pp. 396-397.
[18] *Ibid; See also* Assailed Decision, promulgated on 9 July 2020, Division Records Vol. 2, pp. 536-564.
[19] *Ibid.*
[20] Exhibits "P-18" and "P-20", Division Records Vol. 1, pp. 414-415 and p. 417.
[21] *See* par. 15, Petition for Review, *id.*, p. 14.
[22] *Id.*, pp. 56-57.

In his Answer,[23] the CIR prayed for the dismissal of the Petition for Review for failure of NYB Philippines to substantiate its claim for refund of alleged excess and unutilized input VAT on purchases of goods and services attributable to zero-rated sales for the four (4) quarters of CY 2015. The CIR argued that in claims for refund, the taxpayer has the burden of proof and must adduce the required documents under the law, rules, and regulations. Specifically, NYB Philippines must prove that its sale of services qualified as VAT zero-rated pursuant to ***Sec. 108 (B) (2) of the Tax Code, as amended.*** It must comply with the parameters laid down under ***Sec. 110 (B) of the Tax Code, as amended***, as well as the substantiation requirements under ***Sec. 113 of the same Code*** and ***Sec. 4.108-5 (a) of Revenue Regulations ("Rev. Regs.") No. 16-2005***. It must also establish compliance with the substantiation of input tax credits under ***Sec. 4.110-8-5 (a) of Rev. Regs. No. 16-05, as amended***, and those under ***Revenue Memorandum Order ("RMO") No. 53-98***.

After the Pre-Trial Conference on 23 November 2017,[24] the parties filed their Joint Stipulation of Facts and Issues ("JSFI")[25] on 12 January 2018, which was approved and adopted in the Pre-Trial Order issued on 19 January 2018.[26]

During trial, NYB Philippines' presented two witnesses, namely:

(i) **Ma. Victoria Cruz,**[27] NYB Philippines' Senior Accounting Manager, who testified on the nature of NYB Philippines' business as well as on the incidents relative to the claim VAT refund/ issuance of TCC for CY 2015; and

(ii) **Madonna Mia S. Dayego,**[28] the Court-commissioned ICPA, who testified on the procedures conducted in the audit and evaluation of NYB Philippines' documents in support of the claim for VAT refund/issuance of TCC for CY 2015 as well as her findings and observations.

After its Formal Offer of Evidence,[29] NYB Philippines rested its case.[30]

Thereafter, CIR presented his lone witness, Revenue Officer **Susan Abesamis,**[31] who identified the BIR docket and testified on the result of her audit investigation of NYB Philippines' deficiency assessment for CY 2015.

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[23] *Id.*, pp. 62-66.
[24] *Id.*, pp. 67-68.
[25] *Id.*, pp. 252-260.
[26] *Id.*, pp. 263-269.
[27] Exhibits "P-25" and "P-25-a", *id.* pp. 90-204.
[28] Exhibits "P-28" and "P-28-a", *id.*, pp. 292-308.
[29] *Id.*, pp. 336-368.
[30] *Id.*, pp. 471-472.
[31] Exhibits "R-4" and "R-4-a", *id.*, pp. 80-86.

After his Formal Offer of Evidence,[32] the CIR rested its case.[33]

In the meantime, the case was transferred to the CTA First Division pursuant to ***CTA Administrative Circular No. 02-2018***.[34]

NYB Philippines filed its Memorandum[35] through registered mail on 25 March 2019. The CIR did not file a Memorandum despite order.[36] Accordingly, CTA Case No. 9669 was submitted for decision on 10 April 2019.[37]

Thus, on 9 July 2020, the Court in Division rendered the Assailed Decision,[38] partially granting NYB Philippines' claim for refund/ issuance of TCC. The dispositive portion of the Assailed Decision reads:

> "**WHEREFORE**, the instant Petition for Review filed by petitioner New York Bay Philippines, Inc., on August 25, 2017, is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **DIRECTED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner New York Bay Philippines, Inc. the amount of **₱9,582,877.37**, representing its excess and unutilized input VAT attributable to its zero-rated sales for the four (4) quarters of CY 2015.
>
> **SO ORDERED.**"

NYB Philippines received the Assailed Decision on 14 July 2020,[39] while the CIR received the Assailed Decision through the BIR Litigation Division on 15 July 2020.[40]

On 28 July 2020, NYB Philippines filed a Motion for Partial Reconsideration[41] of the Assailed Decision moving for the Court in Division to reconsider the denial of its claim for refund insofar as the remaining portion of ₱37,252,855.30. It argued that the Court in Division erred in its conclusion that NYB Philippines failed to prove that the services rendered to **TF International** were not in the same category as "*processing, manufacturing, or repacking of goods*" and that services were not performed in the Philippines.

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[32] *Id.*, pp. 475-477
[33] *Id.*, pp. 488-490.
[34] *Id.*, pp. 478-479.
[35] *Id.*, pp. 497-530.
[36] Division Records Vol. 2, p. 533.
[37] *Id.*, pp. 534-535.
[38] *Id.*, pp. 536-564.
[39] *Id.*, p. 537.
[40] *Id.*, p. 536.
[41] *Id.*, pp. 565-582.

The CIR filed his Motion for Reconsideration[42] of the Assailed Decision, arguing mainly that the Court in Division erred in giving due course to the Petition for Review. The CIR also explained that ***Sec. 112(C) of the Tax Code*** provides that he has 120 days from the date of submission of complete documents within which to deny the claim. He insisted that NYB Philippines failed to submit complete supporting documents in the administrative claim for refund/ issuance of TCC and that its claim should thus be denied.

On 7 October 2020, the Court in Division rendered the Assailed Resolution[43] denying both motions for reconsideration for failure to raise substantial arguments to warrant reconsideration of the Assailed Decision.

The CIR and NYB Philippines received the Assailed Resolution on 13 October 2020[44] and 16 October 2020,[45] and respectively.

On 28 October 2020, the CIR filed a Motion for Extension of Time to File Petition for Review,[46] which was granted in the Court *En Banc's* Resolution, dated 3 November 2020.[47] Then, on 11 November 2020, the CIR filed a Petition for Review with Notice of Change of Address,[48] docketed as CTA *EB* No. 2364, with NYB Philippines' Comment, filed on 15 January 2021.[49]

Meanwhile, on 3 November 2020, NYB Philippines filed a Petition for Review,[50] docketed as CTA *EB* No. 2366, without the CIR's comment despite notice.[51]

On 9 March 2021, the Court *En Banc* issued a Resolution[52] submitting the consolidated cases CTA *EB* Case Nos. 2364 & 2366 for decision.

Hence, this Decision.

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[42] Division Records Vol. 1, pp. 583-588.
[43] Division Records Vol. 2, pp. 608-612
[44] *Id.*, p. 608.
[45] *Id.*, p. 609.
[46] *EB* Records (CTA *EB* Case No. 2364), pp. 1-3.
[47] *Id.*, p. 4.
[48] *Id.*, pp. 5-57.
[49] *Id.*, pp. 62-78.
[50] *EB* Records (CTA *EB* Case No. 2366), pp. 1-63.
[51] *EB* Records (CTA *EB* Case No. 2364), p. 79.
[52] *Id.*, pp. 80-82.

<u>Issues</u>[53]

The issues submitted for the Court *En Banc's* resolution are the following:

(i) Whether the Court in Division had jurisdiction over the claim for refund; and

(ii) Whether the services rendered by NYB Philippines to TF International qualify for VAT zero-rating, particularly, whether services rendered were not in the same category as *"processing, manufacturing, or repacking of goods"* and that services were not performed in the Philippines.

<u>Arguments of the Parties</u>

<u>CTA *EB* Case No. 2364</u>

In his Petition for Review, the CIR reiterates that the Court in Division erred in giving due course to the Petition for Review, citing ***Sec. 112 (C) of the Tax Code, as amended, Item II, par. 1 and, Item 1, par. 2 of RMC 54-2014.***[54] The CIR generally alleges that NYB Philippines failed to submit complete supporting documents at the administrative level and thus, its claim should be denied.

In its Comment,[55] NYB Philippines manifests that the sole ground relied upon by the CIR in seeking reversal of the Assailed Decision and Assailed Resolution is a mere reiteration of his argument in the Motion for Reconsideration filed before the Court in Division. As such, it deserves scant consideration as it has already been judiciously considered and passed upon by the Court in Division in the Assailed Resolution.

In any case, NYB Philippines submits the following arguments to show that the CIR's argument lacks factual or legal basis: (i) there is no basis for CIR to argue that NYB Philippines failed to submit complete supporting documents together with its administrative claim for refund; (ii) assuming, for the sake of argument, that NYB Philippines failed to submit complete supporting documents, it was incumbent upon the CIR to deny the administrative claim for refund within the 120-day reglementary period pursuant to ***Sec. 112(C) of the Tax Code, as amended*** and ***RMC No. 54-2014;***

[53] *See* Issues, Petition for Review with Notice of Change of Address, *Id.*, p. 7; *see* Assignment of Error and Summary of Arguments, Petition for Review, *EB* Records (CTA *EB* Case No. 2366), pp. 6-8.
[54] *See* Discussion, Petition for Review with Notice of Change of Address, *EB* Records (CTA *EB* Case No. 2364), pp. 8-9.
[55] *Id.*, pp. 62-78.

and (iii) the Court *En Banc* has held that the non-submission of complete supporting documents at the administrative level is not fatal to the taxpayer's judicial claim and that the Court is not barred from receiving, evaluating, and appreciating evidence submitted before it.

<u>CTA *EB* Case No. 2366</u>

NYB Philippines assails the Court in Division's partial denial of its input VAT refund claim related to its sales to **TF International** on the ground that there was no proof that: (i) the services rendered in favor of TF International were not in the same category as "*processing, manufacturing or repacking of goods*" and (ii) the services rendered to **TF International** were "performed in the Philippines."[56]

NYB Philippines prays for the Court *En Banc* to revisit submitted evidence and to reverse the Assailed Decision insofar as it denied NYB Philippines' claim for refund of the amount of ₱37,252,855.30 based on the following grounds:

(i) The Service Agreement between NYB Philippines and its parent company, Trans-Fast Remittance LLC ("**TF Remittance**") *(Exhibit P-31-1)* and the Addenda to the agreement from 2008 to 2014 *(Exhibits P-31-2 to P-31-8)* cover NYB Philippines' sales of services to both **TF Remittance** and **TF International**;

(ii) Even assuming for the sake of argument that the Service Agreement *(Exhibit P-31-1)* and the Addenda to the Agreement *(Exhibits P-31-2 to P-31-8)* cover only NYB Philippines' transactions with TF Remittance, the records of this case is replete with evidence proving that: (1) the services rendered by NYB Philippines to TF International were not in the same category as "*processing, manufacturing or repacking of goods*" and (2) the services rendered in favor of TF International were performed in the Philippines

(iii) While the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund, NYB Philippines has sufficiently discharged its burden under the law and pertinent rules and regulations.

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[56] *See* Assignment of Error, Summary of Arguments, and Discussion, *EB* Records (CTA *EB* Case No. 2366), pp. 6-23.

The Ruling of the Court *En Banc*

The Court *En Banc* finds merit in NYB Philippines' Petition for Review. Meanwhile, the CIR's Petition for Review is found to be bereft of merit.

The Court in Division had jurisdiction over the claim for refund.

The issue and argument relied upon by the CIR in CTA *EB* No. 2364 is a mere reiteration of the argument raised in the CIR's Motion for Reconsideration, which has been adequately considered and passed upon by the Court in Division in the Assailed Resolution. Nonetheless, the Court *En Banc* shall resolve.

Sec. 112(C) of the Tax Code, as amended, provides that the CIR has 120 days from the date of submission of complete documents in support of the administrative claim for refund within which to grant or deny the same:

> "SEC. 112. Refunds or Tax Credits of Input Tax. –
>
> (A) ...
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.*— In proper cases, the **Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty <u>(120) days from the date of submission of compete documents in support of the application</u>** filed in accordance with Subsections (A) and (B) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals." (Emphasis and underscoring, Ours.)

In the case of ***Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue***,[57] the Supreme Court was confronted with a similar issue on the determination of when the submission of documents is deemed "completed" for purposes of determining the running of the 120-day period. It summarized the old rule in this wise:

[57] G.R. No. 207112, 8 December 2015.

> "To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120-day period allowed to the CIR begins to run from the date of filing.
>
> In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112 (A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected."

The ***Pilipinas Total Gas Case*** also elucidated that for administrative claims for refund filed after 11 June 2014 (date of effectivity of ***RMC No. 54-2014***), such as in the present case, the 120-day period is reckoned from the date of filing of the administrative claim as the taxpayer is barred from submitting additional documents after filing the administrative claim:

> "It bears mentioning at this point that the foregoing summation of the rules *should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014*, such as the claim at bench. As it now stands, RMC 54-2014 dated June 11, 2014 mandates that:
>
>> "The application for VAT refund/tax credit must be accompanied by complete supporting documents as enumerated in Annex "A" hereof. In addition, the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents (Annex B). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (i.e., at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.
>>
>> Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant."

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

The current rule barring submission of additional documents applies to the present case since the administrative claim for refund was filed on 29 March 2017,[58] which is beyond the cut-off date of 11 June 2014.

As found by the Court in Division, NYB Philippines seasonably filed its judicial claim for refund/TCC on 25 August 2017. Pertinent dates are summarized as follows:

Period (CY 2015)	Date of filing of administrative claim	End of 120-day period for BIR Commissioner to act on the administrative claim	End of 30-day period to file judicial claim	Date of filing of Petition for Review
1st Quarter 2nd Quarter 3rd Quarter 4th Quarter	29 March 2017	27 July 2017	26 August 2017	25 August 2017

Moreover, at the time of filing of administrative claim with BIR RDO No. 43, NYB Philippines also submitted a Sworn Certification[59] executed by its Senior Accounting Manager, **Ma. Victoria Cruz**, certifying that the documents submitted are complete and that those are the only documents that will be presented in support of the claim. She also testified on the alleged inaction of the CIR in this wise:[60]

Q43:	What happened, if any, after the Company filed its administrative claim for refund with the BIR, RDO No. 43?
A:	The BIR did not act on the Company's administrative claim for refund despite submission of all supporting documents on March 29, 2017. In view of this, the Company was constrained to file a judicial claim for refund with the Court of Tax Appeals (CTA) on August 25, 2017.

In any case, the non-submission of complete supporting documents at the administrative level is not fatal to NYB Philippines' judicial claim for refund as the Court of Tax Appeals is not limited by evidence presented at the administrative level.[61] The taxpayer-claimant may present new and additional

[58] Exhibits "P-18" and "P-20", Division Records Vol. 1, pp. 414-415 and p. 417.
[59] Exhibit "P-19", *Id.*, p. 416.
[60] Exhibits "P-25" and "P-25-1", *Id.*, p. 101.
[61] Philippine Airlines, Inc. v. Commissioner of Internal Revenue, G.R. No. 206079-80 and 206309, 17 January 2018.

evidence to the CTA to support its case for tax refund.[62] Stated otherwise, the CTA may consider all evidence submitted, even those not submitted to the CIR at the administrative level. Thus, it was held in ***Commissioner of Internal Revenue v. Univation Motor Philippines, Inc.***:[63]

> "The law creating the CTA specifically provides that proceedings before it shall **not be governed strictly by the technical rules of evidence.** The **paramount consideration remains the ascertainment of truth**. Thus, the CTA is **<u>not limited</u> by the evidence presented in the administrative claim in the Bureau of Internal Revenue**. The claimant **may present new and additional evidence** to the CTA to support its case for tax refund.
>
> Cases filed in the CTA are **litigated de novo** as such, respondent "should prove every minute aspect of its case by presenting, formally offering and submitting x x x to the Court of Tax Appeals all evidence x x x required for the successful prosecution of its administrative claim." Consequently, the **CTA <u>may give credence to all evidence presented by respondent</u>, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.**" (Citations omitted; emphasis and underscoring, Ours.)

Based on the foregoing, the CIR's argument that NYB Philippines failed to submit complete supporting documents contrary to ***Sec. 112(C) of the Tax Code, as amended*** and ***RMO No. 54-2014*** has no legal and factual basis.

<u>The burden of proof required in tax refunds (or tax credits) is mere preponderance of evidence.</u>

Before delving into NYB Philippines' prayer for the Court *En Banc* to revisit the evidence presented, the Court shall first discuss the burden of proof required in tax refund cases.

Like any other ordinary civil case, a judicial claim for refund before the Court of Tax Appeals necessitates a mere of preponderance of evidence. This is in accordance with ***Section 1, Rule 133 of the Rules of Civil Procedure***, which has suppletory application to the ***Revised Rules of the Court of Tax Appeals***.[64]

The case of ***Commissioner of Internal Revenue v. Fortune Tobacco Corporation***[65] explains that tax refunds are not founded principally on legislative grace and, thus, only require preponderance of evidence:

[62] G.R. No. 206079-80 and 206309, 17 January 2018.
[63] G.R. No. 231581, 10 April 2019.
[64] Sec. 3, Rule 1, A.M. No. 05-11-07-CTA Revised Rules of the Court of Tax Appeals, as Amended.
[65] G.R. Nos. 167274-75, 21 July 2008.

> "Tax exemption is a result of legislative grace. And he who claims an exemption from the burden of taxation must justify his claim by showing that the legislature intended to exempt him by words too plain to be mistaken. The rule is that tax exemptions must be strictly construed such that the exemption will not be held to be conferred unless the terms under which it is granted clearly and distinctly show that such was the intention.
>
> A claim for tax refund may be based on statutes granting tax exemption or tax refund. In such case, the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, a legislative grace, which cannot be allowed unless granted in the most explicit and categorical language. The taxpayer must show that the legislature intended to exempt him from the tax by words too plain to be mistaken.
>
> Tax refunds (or tax credits), on the other hand, are not founded principally on legislative grace but on the legal principle which underlies all quasi-contracts abhorring a person's unjust enrichment at the expense of another. The dynamic of erroneous payment of tax fits to a tee the prototypic quasi-contract, *solutio indebiti*, which covers not only mistake in fact but also mistake in law.
>
> The Government is not exempt from the application of *solutio indebiti*. Indeed, the taxpayer expects fair dealing from the Government, and the latter has the duty to refund without any unreasonable delay what it has erroneously collected. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, **it must hold itself against the same standard in refunding excess (or erroneous) payments of such taxes**. It should not unjustly enrich itself at the expense of taxpayers. And so, **given its essence, a claim for <u>tax refund necessitates only preponderance of evidence</u> for its approbation like in any other ordinary civil case.**
>
> Under the Tax Code itself, apparently in recognition of the pervasive quasi-contract principle, a claim for tax refund may be based on the following: (a) erroneously or illegally assessed or collected internal revenue taxes; (b) penalties imposed without authority; and (c) any sum alleged to have been excessive or in any manner wrongfully collected."
> (Emphasis and underscoring, Ours.)

The above ruling in ***Fortune Tobacco Case*** was reiterated in the more recent case of ***Commissioner of Internal Revenue v. San Miguel Corp.***[66]

Relevant thereto, preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the terms "greater weight of the evidence" or "greater weight of the credible evidence."[67] It is evidence which is more convincing to the court as worthy of belief over that which is offered in opposition thereto.[68]

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[66] G.R. Nos. 180740 & 180910, 11 November 2019.
[67] Auro v. Yasis, G.R. No. 246674, 30 June 2020 *citing* Castillo v. Salvador, G.R. No. 191240, 30 July 2014 and Encinas v. National Bookstore, Inc. G.R. No. 162704, 19 November 2004.
[68] *Ibid*

Guided by the foregoing, the Court shall revisit the submitted evidence.

NYB Philippines sufficiently established that sales to TF International qualify for VAT zero-rating.

The Assailed Decision ruled that NYB Philippines failed to establish compliance with the first requisite (NYB Philippines is engaged in zero-rated sale of services to non-resident foreign entities) insofar as **TF International** is concerned. It faults NYB Philippines for failure to present proof that: (1) services rendered in its favor were not in the same category as "processing, manufacturing or repacking of goods"; and (2) that services were performed in the Philippines.

After a second hard look at records of the case, the Court finds that the Addenda to the Service Agreement between **TF Remittance** and NYB Philippines, indeed, refer to the extension of the Service Agreement to **TF International** (initially referred to as Trans-Fast FZE) as follows:

(1) ***Exhibit "P-31-4"***: "[F]or each order originating from the Middle East and paid out in the Philippines in local currency or in US dollars by New York Bay Philippines, Trans-Fast FZE, shall pay NYBP (NYB Philippines) a fee of USD 2.30"

(2) ***Exhibit "P-31-5"***: "[F]or each order originating from the USA, Canada, Europe, Israel and paid out in the Philippines in local currency or in US dollars by New York Bay Philippines (NYBP), Trans-Fast Remittance LLC and Trans-Fast FZE, shall pay NYBP a fee of USD 2.55"

(3) ***Exhibit "P-31-6"***: "[F]or each order originating from the USA, Canada, Europe, Israel and paid out in the Philippines in local currency or in US dollars by New York Bay Philippines (NYBP), Trans-Fast Remittance LLC and Trans-Fast FZE, shall pay NYBP a fee of USD 2.25"

(4) ***Exhibit "P-31-7"***: "[F]or each order originating from the Middle East and paid out in the Philippines in local currency or in US dollars by New York Bay Philippines, Trans-Fast Remittance LLC and Trans-Fast FZE, shall pay NYBP a fee of USD 2.00"

(5) ***Exhibit P-31-8***: "The undersigned parties hereby clarifies that the complete name of Trans-Fast FZE is Trans Fast International FZ LLC. In this regard, the parties hereby agree to revise the name

"Trans-Fast FZE" in the original agreement to reflect "Trans-Fast International FZ LLC" as the true and actual name of the company."

In relation to ***Exhibit "P-31-8"***, above, clarifying the complete name of TF International, the Court in Division similarly found that **TF International** is a non-resident foreign corporation not engaged in business in the Philippines upon the showing of: (1) SEC Certificate of Non-Registration of Company;[69] and (2) Memorandum of Association and Amended Articles of Incorporation.[70]

From the foregoing, the greater weight of evidence leans towards the finding that the terms in the Service Agreement (between **TF Remittance** and NYB Philippines) similarly applies to **TF International** pursuant to the Addenda *(Exhibits "P-31-4" to "P-31-8").* The Court notes that Exhibits "P-31-4" to "P-31-8" were admitted in evidence without any objection from the CIR.[71]

As such, the Court in Division's finding that sales to **TF Remittance** satisfy all the requirements for VAT zero-rating also applies to **TF International**. The Court in Division held in the Assailed Decision that:

> "As to the first requisite, it was established that petitioner entered into Service Agreement with Trans-Fast Remittance LLC whereby the latter appointed petitioner as its correspondent **for the payment of remittances in connection with its Business (transmission of money on behalf of third parties in the United States and abroad) in favor of beneficiaries in the "Location."** As stated in the Agreement, Trans-Fast Remittance LLC shall collect funds from remitters in the United States of America and/or the countries where it conducts Business and shall execute Transactions (payment of remittances in connection with the Business) for the transmission of such funds to beneficiaries in the "Location" through petitioner's facilities.
>
> Evidently, insofar as Trans-Fast Remittance LLC is concerned, petitioner was able to comply with the first requisite, as the **services rendered by petitioner to the latter were <u>not in the same category as "processing, manufacturing or repacking of goods</u>" <u>and</u>** that **the term "<u>Location</u>" was referred to in the Agreement as the "<u>Philippines</u>," indicating that services were performed or rendered in the Philippines**."
> (Emphasis and underscoring, Ours.)

To recall, the Court in Division denied VAT zero-rating to **TF International** for failure to satisfy the two requisites: (1) services rendered in its favor were not in the same category as "processing, manufacturing or repacking of goods;" and (2) services were performed in the Philippines. Given that the Service Agreement to **TF Remittance** extends to **TF**

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[69] Exhibit "P-23", Division Records Vol. 1, p. 465.
[70] Exhibit "P-22", *Id.*, pp. 448-464.
[71] Resolution dated 5 September 2018, *Id.*, pp. 470-471.

International pursuant to the Addenda, the relevant provisions in the Service Agreement, insofar as it proves that services rendered are not in the same category as "processing, manufacturing or repacking of goods" and that services were performed in the Philippines, also apply to **TF International**.

Records are replete with evidence that sales to TF International qualify for VAT zero-rating.

Even assuming that the Service Agreement covers only transactions with **TF Remittance**, records are replete with other pieces of evidence proving that services rendered to **TF International**: (1) were not in the same category as "processing, manufacturing or repacking of goods"; and (2) were performed in the Philippines.

The following are the indicators that the nature of services rendered by NYB Philippines to its customers, such as **TF International**, is not in the same category as "processing, manufacturing, or repacking of goods."

First, NYB Philippines' **Certificate of Registration**[72] with the BIR shows that it's Line of Business/ Industry is listed as "6694 Financial Holding Company Activities."

Second, the **Amended Articles of Incorporation** of NYB Philippines show that the nature of services it renders to customers, such as **TF International**, falls in the category of financial holding activities. Its primary purpose, based on the Amended Articles of Incorporation, is as follows:

> "To acquire by purchase, exchange, assignment, gift or otherwise, and to hold, own and use for investment or otherwise, and to sell, assign, transfer, exchange, lease, let, develop, mortgage, pledge, traffic, deal in and with and otherwise operate, enjoy and dispose of any and all properties and assets of every kind and description and wherever situated, as and to the extent permitted by law, including but not limited to, real estate, whether improved or unimproved, and any interest or right therein, as well as building, tenements, warehouses, factories, edifices and structures and other improvements, and bonds, debentures, promissory notes, shares of capital stock, or other securities or obligations, created, negotiated or issued by any corporation, association, or other entity, foreign or domestic, and while the owner, holder or possessor thereof, to exercise all the right, powers and privileges of ownership or any interest therein, including the right to receive, collect and dispose of, any and all rentals, dividends, interests and income derived therefrom, and the right to vote on any proprietary or other interest, on any shares of the capital stock, and upon any bonds, debentures or other securities, having voting power, so owned or held provided that the Corporation shall not engage in mining, and provided further that it shall

[72] Exhibit "P-2", *Id.*, p. 383.

not engage in the business of an open-end investment company as defined in the Investment Company Act (Republic Act No. 2629), without first complying with the applicable provisions of the said Act, without necessarily engaging in stock brokerage or dealership in securities."[73]

The Amended Articles of Incorporation was identified during the presentation of NYB Philippines' witness, **Ma. Victoria Cruz**,[74] its Senior Accounting Manager, who further testified on the nature of NYB Philippines' financial holding activities in this manner:

> Q5: What is the nature of NYBP's business?
>
> A: The Company is a domestic corporation duly organized and existing under the laws of the Philippines which is authorized to engage in the following activities: "[t]o acquire by purchase, exchange assignment, gift or otherwise, and to hold, own and use for investment or otherwise, and to sell, assign, transfer, exchange, lease, let, develop, mortgage, pledge, traffic, deal in and with and otherwise operate, enjoy and dispose of any and all properties and assets of every kind and description and whenever situated, as and to the extent permitted by law.
>
> The Company is also engaged in **financial holding activities**, particularly the business of a **remittance service provider**.
>
> Q6: What proof do you have, if any, that the Company is authorized to engage in the activities you mentioned earlier?
>
> A: The Company's Certificate of Filing of Amended Articles of Incorporation (AOI) with attached AOI issued by the Securities and Exchange Commission (SEC) on January 29, 2002.
>
> Q7: If I show you copies of the Company's Certificate of Filing of Amended AOI with attached AOI, would you be able to identify the same?
>
> A: Yes.
>
> Q8: I am showing you a document which was pre-marked as **Exhibit "P-1."** What relation does this document have with your previous statement?
>
> A: This is a certified true copy of the Company's Certificate of Filing of mended AOI with attached AOI issued by the SEC on January 29, 2002
>
> ...
>
> Q12: You mentioned that the Company acts as a remittance service provider. What does being a "remittance service provider" entail?
>
> A: **As a remittance service provider**, the Company **utilizes and offers as services to its non-resident clients alternative delivery channels**, including door-to-door, deposit to commercial bank account, pick-up from pawnshops and commercial and rural banks, credit cash cards and bills payment.

(Emphasis and underscoring, Ours.)

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[73] Exhibit "P-1", *Id.*, pp. 371-372.
[74] Exhibits "P-25" and "P-25-a", *Id.*, pp. 90-204.

No cross examination was conducted on Ma. Victoria Cruz,[75] and no clarificatory questions were propounded.[76]

Third, Note 1 (Corporate Information) of NYB Philippines' **Audited Financial Statements** states that the Company is engaged in "providing services to a money remittance business either by electronic bank transfers, door-to-door, and other kinds of fund transfer."[77] Note 1 further states that NYB Philippines is 98% owned by Trans-Fast Remittance, LLC (i.e. **TF Remittance)**, its parent company incorporated under the laws of the United States of America.

A further perusal of NYB Philippines' "Statement of Profit or Loss and Other Comprehensive Income"[78] for CY 2015 shows that income derived from the conduct of business is in the form of Service Revenue. There is no indication that NYB Philippines' earned other forms of income from "processing, manufacturing, or repacking of goods" during the relevant calendar year.

The **BIR Certificate of Registration, Amended Articles of Incorporation, Audited Financial Statements,** were identified by NYB Philippines' witness, **Ma. Victoria Cruz,**[79] and offered and admitted in evidence without any objection from the CIR.

All these pieces of evidence, taken together with the observation of the court-commissioned ICPA that NYB Philippines is engaged in financial holding activities, particularly the business of remittance service provider,[80] offer convincing proof that the services rendered by NYB Philippines to its customers, such as **TF International,** pertain to financial holding activities which is not within the same category as "processing, manufacturing, or repacking of goods."

Meanwhile, the following can be found in the records of the case showing that services rendered by NYB Philippines to the parent company (i.e. **TF Remittance)** and its affiliates (i.e. **TF International)** pursuant to the Service Agreement were performed in the Philippines.

First, Note 14 (Related Party Transactions) of the **Audited Financial Statements** states that NYB Philippines entered into a Service Agreement with **TF Remittance** which took effect 5 March 2010. Among the salient features of the Service Agreement is that NYB Philippines "guarantees full

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[75] *See* TSN dated 29 January 2018, p. 5.
[76] *Ibid.*
[77] Exhibit "P-34-2 7/50", USB.
[78] Exhibit "P-34-2(4/50)", USB.
[79] Exhibits "P-25" and "P-25-a", Division Records Vol. 1, pp. 90-204.
[80] *See* Nature of Business, ICPA Report, Exhibit "P-26", p. 4.

performance under the terms of said agreement including, but not limited to, carrying out the payment proceeds to the designated beneficiaries in the Philippines."[81]

It is also clear from Note 14 that payout of remittances are conducted in the Philippines: "Service agreements with Parent Company [**TF Remittance**] and an affiliate [**TF International**] under common control ("Affiliate"), whereas the Company will receive an agreed fixed fee for each transaction order originating from the USA, Canada, Europe, Israel, Middle East and paid out in the Philippines in local currency or in US dollars processed in the Philippines effective January 2012 and July 2011, respectively."[82]

Second, after obtaining an understanding of the nature of NYB Philippines' business, the ICPA reported that: "in the normal course of business, individuals (senders) residing in another country such as USA, Canada, Europe, Israel and Australia that would like to send funds/ money to residents of the Philippines, will go to the office of the Parent Company [**TF Remittance**] or to any of the offices of the Parent Company's licensed Remittance Agents (the "Agents") in their area. On the other hand, senders based in Gulf Cooperative Countries (GCC) will visit any of the Affiliate Company's [**TF Remittance**] licensed Exchange Houses in order to send funds/ money to residents of the Philippines. All of the Parent Company's Affiliate Company's Agents, licensed money transfer companies or operators, and Exchange Houses (individually and collectively referred to as the "Partner/s" have signed a service agreement with the Parent Company and/or Affiliate Company allowing each Partner to use their network, products, and services as well as the Parent Company's remittance system (referred herewith as "Trans-Fast System"). All transactions collected by Partners will be transmitted as Payment Instructions or Orders through the Trans-Fast System."[83]

It appears, then, that **TF Remittance** and **TF International** receive requests from individual senders abroad to send funds to the Philippines and forward these to NYB Philippines. NYB Philippines, upon receipt of the requests, processes them and remits the funds either in local currency or US dollars to the recipients in the Philippines.

It is thus sufficiently proven that sales to **TF International** are not in the same category of "processing, manufacturing, or repacking of goods" and that services were performed in the Philippines. The submitted evidence more than establishes NYB Philippines' *prima facie* right to refund necessary to shift the burden of evidence to the CIR. Significantly, it was held in ***Republic***

[81] *See* par. (1)(iii)(1), Note 14, Exhibit "P-34-2 (35.50)".
[82] *See* par. (a)(i), Note 14, Exhibit "P-34-2 (35/50)".
[83] ICPA Report, "Exhibit P-26", p. 4.

v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)[84] that when the taxpayer is able to establish *prima facie* its right to refund by testimonial and object evidence, the BIR should present rebuttal evidence to shift the burden back to the taxpayer-claimant. However, in this case, the CIR did not present any contradictory evidence to shift the burden back to NYB Philippines.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review filed by Commissioner of Internal Revenue is hereby **DENIED**. Meanwhile, the Petition for Review filed by New York Bay Philippines, Inc. is hereby **GRANTED.** Accordingly, the case is **REMANDED** to the Court of Tax Appeals First Division for the proper determination of the refundable amount.

Meanwhile, the Commissioner of Internal Revenue's Notice of Change of Address is **NOTED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

J. C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ON LEAVE
ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[84] G.R. No. 188016, 14 January 2015.

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution*, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice