CTA Form No. 8

19-000510-0072

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10192

AMMEX I-SUPPORT CORPORATION,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village, Makati City

ATTY. CARL FITRI A. HUSSIN
ATTY. MONICA M. SARMIENTO
Bureau of Internal Revenue
Legal Division, Revenue Region 8A
36/F, Export Bank Plaza Bldg.
Sen. Gil Puyat Avenue cor. Chino Roces Avenue
Makati City

MASANGCAY RENEGADO & PARTNERS LAW
Unit S104, 1st Podium Level, Avida Cityflex Tower Soho
7th Avenue corner Lane T. Street
Bonifacio Global City, Taguig City

GREETINGS:

You are hereby notified by these presents that on **April 15, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **April 16, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special First Division

AMMEX I-SUPPORT CORPORATION, Petitioner,	**CTA Case No. 10192**
	Present:
- versus -	**DEL ROSARIO,** *P.J. & Chairperson,* **MANAHAN,** and **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 15 2024 1:20PM

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed by petitioner Ammex I-Support Corporation on October 18, 2019, pursuant to Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 10963, known as the Tax Reform for Acceleration and Inclusion (TRAIN), seeking to reverse and set aside the decision of respondent Commissioner of Internal Revenue (CIR) rendered through his authorized representative, denying petitioner's claim for value-added tax (VAT) refund in the total amount of ₱1,000,693.06 attributable to its zero-rated sales of service.

THE PARTIES

Petitioner is a corporation organized and existing under the laws of the Philippines with business address at 701-703 Pearlbank Centre, 146 Valero St., Salcedo Village, Makati City. Petitioner is a VAT-registered entity.[1]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) with principal office address at the 5th Floor, Bureau of

[1] Par. 1 and 5, *Stipulated Facts, Joint Stipulation of Facts & Issues (JSFI)*, CTA Docket, Vol. III, pp. 1351 to 1352.

Internal Revenue (BIR), National Office Building, Agham Road, Diliman, Quezon City.[2]

THE FACTS

On December 21, 2017, petitioner filed its application for refund of unutilized input VAT in the total amount of ₱1,000,693.06 for the fourth (4th) quarter of TY 2015 before BIR Revenue District Office No. 50-South Makati.[3]

On September 18, 2019, petitioner received the VAT Refund Notice[4] dated August 28, 2019 from the BIR denying its application for VAT refund due to lack of legal and factual basis.[5]

Petitioner then filed on October 18, 2019 the present Petition for Review, contending that the denial of its application for VAT refund should be reversed and set aside for utter lack of merit.[6]

Summons was served on respondent on November 14, 2019.[7] Subsequently, respondent filed a "Motion for Extension of Time to File an Answer"[8] which was granted by the Court in an Order[9] dated December 4, 2019. Thus, respondent was given until January 2, 2020 within which to file his Answer.

However, records show that respondent failed to file his Answer within the given period.[10]

Eventually, respondent's Answer (With Special and Affirmative Defenses)[11] was filed via registered mail on January 28, 2020. The same was received by the Court on February 6, 2020.

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[2] Par. 3, Stipulated Facts, JSFI, CTA Docket, Vol. III, p. 1351.
[3] Par. 6, Stipulated Facts, JSFI, CTA Docket, Vol. III, p. 1352.
[4] CTA Docket, Vol. I, pp. 24 to 26.
[5] Par. 7, Stipulated Facts, JSFI, CTA Docket, Vol. III, p. 1352.
[6] Par. 1, *Arguments/Grounds in Support of the Petition*, Petition for Review, CTA Docket, Vol. I, p. 9.
[7] CTA Docket, Vol. I, p. 414.
[8] CTA Docket, Vol. I, pp. 415 to 417.
[9] CTA Docket, Vol. I, p. 419.
[10] Records Verification dated January 30, 2020, CTA Docket, Vol. I, p. 421.
[11] CTA Docket, Vol. I, pp. 422 to 428.

On February 7, 2020, respondent filed a "Motion to Admit Answer filed on 28 January 2020."[12] In a Resolution[13] dated May 27, 2020, the Court granted petitioner ten (10) days within which to file its comment/opposition to the aforementioned Motion. Respondent's "Motion to Admit Answer filed on 28 January 2020" was thereafter granted *sans* petitioner's comment, and respondent's Answer was admitted in a Resolution dated October 16, 2020.[14]

In his Answer, respondent interposed the following special and affirmative defenses:

> (i) Taxes paid and collected are presumed to have been made in accordance with laws and regulations. Therefore, the same are not creditable or refundable;
>
> (ii) It is imperative for petitioner to prove compliance with the requirements of law with regard to claims for tax credit/refund;
>
> (iii) In order for the supply of services to be considered VAT zero-rated, the mandatory requirements under Section 108(B)(2) of the NIRC, as amended, must be complied with; and,
>
> (iv) Petitioner failed to establish entitlement to VAT refund as its claim lacks factual and legal basis.

The Pre-Trial Brief [For the Petitioner] was filed on January 28, 2021,[15] while respondent filed his Pre-Trial Brief on February 3, 2021.[16]

The Pre-Trial Conference was held on February 4, 2021.[17]

Thereafter, the parties filed their Joint Stipulation of Facts & Issues[18] on February 24, 2021, which was approved in the Order dated March 8, 2021.[19] In the same Order, the Pre-Trial was deemed terminated. Subsequently, the Pre-Trial Order was issued on May 20, 2021.[20]

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[12] CTA Docket, Vol. I, pp. 430 to 434.
[13] CTA Docket, Vol. I, pp. 453.
[14] CTA Docket, Vol. I, p. 455.
[15] CTA Docket, Vol. II, pp. 871 to 878.
[16] CTA Docket, Vol. II, pp. 1281-1286.
[17] Order, CTA Docket, Vol. III, pp. 1302 to 1304.
[18] CTA Docket, Vol. III, pp. 1351 to 1352.
[19] CTA Docket, Vol. III, p. 1356.
[20] CTA Docket, Vol. III, pp. 1406 to 1414.

During trial, petitioner presented the testimonies of Ms. Lhyric C. Gomez, petitioner's Finance Manager,[21] and Mr. Lorenz Samuel D. Gomez, the Independent Certified Public Accountant (ICPA).[22]

Petitioner filed its Formal Offer of Documentary Exhibits[23] on March 11, 2022, with respondent's comment thereon filed on March 25, 2022.[24] In a Resolution[25] dated June 3, 2022, the Court admitted petitioner's exhibits except for Exhibits "P-4", "P-7" to "P-33", "P-35" to "P-39", "P-41" to "P-293", and "P-296" for failure to submit the duly marked exhibits and for failure to present originals thereof for comparison; and Exhibits "P-34" and "P-40" for failure to present originals for comparison.

Respondent, on the other hand, presented the testimony of Revenue Officer (RO) Lilian Mae A. Garcia.[26] Respondent's Formal Offer of Evidence[27] was filed with the Court on August 18, 2022, without petitioner's comment per Records Verification[28] dated September 8, 2022. The Court admitted all of respondent's exhibits as per Resolution dated October 19, 2022.[29]

Petitioner filed its Memorandum on March 27, 2023[30] while respondent filed his Memorandum on March 29, 2023.[31]

Thereafter, this case was submitted for decision in a Minute Resolution dated April 18, 2023.[32]

ISSUE

The parties jointly stipulated the following issue to be tried and resolved:

> Whether petitioner is entitled to a refund of its alleged unutilized input taxes on local purchases of goods and

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[21] Exhibit "P-297", CTA Docket, Vol. II, pp. 473 to 486.
[22] CTA Docket, Vol. III, pp. 1415 to 1421.
[23] CTA Docket, Vol. IV, pp. 1666 to 1687.
[24] CTA Docket, Vol, IV, pp. 2076 to 2081.
[25] CTA Docket, Vol. IV, pp. 2090 to 2095.
[26] Exhibit "R-7", CTA Docket, Vol. III, pp. 1306 to 1317.
[27] CTA Docket, Vol. IV, pp. 2109 to 2113.
[28] CTA Docket, Vol. IV, p. 2115.
[29] CTA Docket, Vol. IV, pp. 2119 to 2120.
[30] CTA Docket, Vol. IV, pp. 2121 to 2140.
[31] CTA Docket, Vol. IV, pp. 2142 to 2153.
[32] CTA Docket, Vol. IV, p. 2156.

services in the aggregate amount of ₱1,000,693.06, covering the fourth (4th) quarter of TY 2015.[33]

PETITIONER'S ARGUMENTS

In support of its judicial claim for refund, petitioner advances the following arguments:

1. Contrary to the VAT Notice, it has no delinquent accounts as verified in the delinquency verification report;

2. The amount of input VAT being claimed for refund has been duly deducted in its VAT returns;

3. It is entitled to the refund of its unutilized input taxes attributable to its zero-rated sales/receipts for the first quarter of TY 2016;

4. Its clients are companies engaged in business conducted outside the Philippines, or non-resident entities that are not engaged in business in the Philippines, and are outside the Philippines when its services were rendered;

5. It is a VAT-registered entity and is engaged in zero-rated sales;

6. The input taxes are due or paid and have not been applied against output taxes during the first quarter of TY 2016 and in the succeeding quarters;

7. The input taxes being claimed are attributable to zero-rated sales and are not transitional input taxes; and,

8. The services were paid in acceptable foreign currency and have been duly accounted for in accordance with *Bangko Sentral ng Pilipinas* rules and regulations.[34]

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[33] *Stipulated Issue, JSFI,* CTA Docket, Vol. III, p. 1352.
[34] *Supra*, Note 30.

RESPONDENT'S ARGUMENTS

On the other hand, respondent counter-argues the following:

1. The Court of Tax Appeals (CTA) has no jurisdiction to entertain the present Petition for Review for being filed out of time;

2. Assuming that the CTA has jurisdiction to entertain the petition, the same must be denied as petitioner failed to prove that the recipient of its services are foreign corporations doing business outside the Philippines; and,

3. Tax refunds are construed *strictissimi juris* against the taxpayer, hence, entitlement to tax refund must be duly proven.[35]

THE COURT'S RULING

Claim for refund or credit of input tax attributable to zero-rated or effectively zero-rated sales is governed by Section 112(A) and (C) of the NIRC of 1997, as amended, to wit:

> "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

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[35] *Supra*, Note 31.

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108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

xxx xxx xxx

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

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within (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.

xxx xxx xxx"

Based on the foregoing, in order for a claim for tax refund or tax credit to prosper, the following requisites must concur:

1) The claim must be filed within the prescribed periods, both in the administrative and judicial levels;

2) The taxpayer-claimant must be VAT-registered;

3) There must be zero-rated or effectively zero-rated sales;

4) Input VAT were incurred or paid;

5) Such input VAT are attributable to zero-rated or effectively zero-rated sales; and,

6) Said input VAT were not applied against any output VAT liability.

Petitioner's judicial claim for refund was belatedly filed

Respondent argues that the present petition was belatedly filed or filed beyond the mandatory 120+30 day period. Allegedly, petitioner should have filed its judicial claim for refund with the CTA within 30 days from the lapse of the 120-day period from the date of filing of administrative claim. According to respondent, failure on his part to act on the application within the 120-day period is deemed a denial, which must then be elevated to the CTA within 30 days from the lapse of the 120-day period.

The administrative claim subject of this Petition for Review was filed on December 21, 2017, before the effectivity of the TRAIN Law on January 1, 2018. The prevailing rule then anent a claim for refund or issuance of a tax credit certificate of input VAT, including the taxpayer's remedy to appeal to the CTA the adverse decision or the inaction of the CIR, was laid down in Section 112(A) and (C) of the NIRC of 1997, as amended, which provides:

> SEC. 112. Refunds or Tax Credits of Input Tax. –
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: xxx
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within **one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the 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**." *(Boldfacing supplied)*

Prior to the effectivity of the TRAIN Law, the rule is that the CIR is given 120 days within which to grant or deny a claim for refund. Upon receipt of the CIR's decision or ruling denying the said claim, or upon expiration of the 120-day period without action from the CIR, the taxpayer has thirty (30) days within which to file a petition for review with the CTA.[36]

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[36] *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017.

The judicial claim shall be filed within a period of thirty (30) days after receipt of the decision of the CIR or after the expiration of the 120-day period, **whichever is sooner**.[37]

Petitioner's administrative claim was filed on December 21, 2017. Counting 120 days therefrom, respondent had until April 20, 2018 within which to decide on the claim for refund. As no decision was issued within the said period, petitioner then had 30 days from April 20, 2018 or until May 21, 2018,[38] within which to file its judicial claim. Hence, the present petition was **belatedly filed on October 18, 2019.**

Even assuming that the Petition for Review was filed on time, the same would still be denied.

Petitioner is a VAT-registered entity

The Certificate of Registration[39] issued by the BIR discloses Tax Identification Number (TIN): 246-226-340-00000 assigned to petitioner. It also indicates the different tax types for which petitioner is registered, including value-added tax. Verily, petitioner has duly proven that it is a VAT-registered person.

Petitioner failed to prove that its sales were zero-rated

Section 108 of the NIRC of 1997, as amended, provides:

> "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:
>
> xxx xxx xxx
>
> (2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted

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[37] *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016.
[38] May 20, 2018 (the 30th day) fell on a Sunday. The next working day was May 21, 2018.
[39] Exhibit "P-5", CTA Docket, Vol. IV, p. 1711.

> **outside the Philippines or to a non-resident 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*; xxx" (*Boldfacing supplied*)

Zero-rated sales are, for all intents and purposes, subject to VAT, only that the rate imposed upon them is 0%.[40] A sale shall qualify for zero percent (0%) VAT rate under Section 108(B)(2) of the NIRC, as amended, only upon the concurrence of the following requisites:

1) The services rendered should be other than "processing, manufacturing or repacking goods";[41]

2) The services must be performed in the Philippines by a VAT-registered person;[42]

3) The recipient of the services is a foreign corporation doing business outside the Philippines, or is a non-resident person not engaged in business who is outside the Philippines when the services were performed;[43] and,

4) The payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules.[44]

1. *Petitioner rendered "services other than processing, manufacturing or repacking goods"*

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[40] *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*, G.R. No. 234445, July 15, 2020.

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

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

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

[44] *Supra*, Note 41.

Petitioner submitted its Articles of Incorporation[45] which provides that the primary purpose of the corporation is "to engage in business process outsourcing using computer based IT enabled systems to service the needs of global clients."

Given this primary purpose, it is clear that the service petitioner renders is "other than processing, manufacturing or repacking goods," as required by Section 108(B)(2).

2. *Petitioner established that the service it rendered was performed in the Philippines*

An examination of the records of the case reveals that petitioner did not submit in evidence any Service Agreement or document that would prove that the service it rendered for its clients was performed in the Philippines.

Nonetheless, petitioner's witness, Ms. Lhyric C. Gomez, in her Judicial Affidavit,[46] stated that petitioner renders its service in its head office in Makati City, *viz*:

> "Q37: Ms. Witness, you also mentioned that Petitioner caters to Non-Resident, or Foreign clienteles, where and how does Petitioner render its services?
>
> A37: Petitioner is registered as "*engaged in business process outsourcing using computer based IT enabled systems to service the needs of global clients.*" As such, it renders its services here in our head office, 701-703 Pearlbank Centre, 146 Valero St., Salcedo Village, Makati City."

The uncontroverted testimony of Ms. Gomez is sufficient to establish that petitioner has complied with the second requirement for VAT Zero-rating.

3. *Petitioner failed to prove that its clients were nonresident foreign corporations (NRFC) doing business outside the Philippines*

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[45] Exhibit "P-3", Docket, Vol. IV, pp. 1695 to 1700.
[46] Exhibit "P-297", Docket, Vol. II, pp. 473 to 486.

To recall, BIR Regional Director (RD) Maridur V. Rosario denied petitioner's claim for VAT refund in the VAT Refund Notice[47] dated August 28, 2019, *viz*:

> "4. Records of your case also shows that despite the fact that you submitted the Certificate of Non-Registration issued by the Security and Exchange Commission (SEC) to prove that services rendered were actually rendered to Foreign Entities not doing business in the Philippines pursuant to Section 108(B)(2) of the Tax Code, still the documents presented fall short as no duly Consularized Certificate of Foreign Registration/ Incorporation/ Association have been furnished in addition to the aforesaid SEC Certificate.
>
> Accordingly, your failure to provide the aforesaid Certificate warrants the denial of your case. xxx"

Clearly, petitioner was able to submit to the BIR **only the Certificates of Non-Registration** of its clients.

In its Petition for Review, petitioner argues that the requirement of consularized certificate of foreign registration/incorporation/ association should not be strictly applied in its case because of the following reasons:

1. The consularized document was not one of the requirements at the time of filing of the application for VAT refund;
2. The requirement for consularized documents was superseded by the effectivity of the Apostille convention, to which the Philippines is a signatory;
3. At the time petitioner applied for refund, petitioner could no longer contact its foreign clients; and,
4. In its Petition for Review, petitioner attached "some of the duly consularized certificate of foreign registration, Apostilled foreign company documents, and copies of foreign registration of Petitioner's clients, to prove their existence and registered place of operation."

Petitioner's stance must fail.

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[47] *Supra*, Note 4.

To qualify for VAT zero-rating, the claimant of the refund must satisfactorily establish that its client is a nonresident foreign corporation. To do so, the following must be proven: 1) the client was organized and formed under the laws of a country other than the Philippines; and, 2) the client is not engaged in trade or business in the Philippines. Such was the pronouncement of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*,[48] to wit:

> "For purposes of zero-rating under Section 108(B)(2) of the Tax Code, the claimant must establish the two components of a client's NRFC status, *viz.*: **(1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation;** and **(2) that it is not engaged in trade or business in the Philippines.** To be sure, there must, be sufficient proof of ***both*** of these components: **showing not only that the clients are foreign corporations, but also are not doing business in the Philippines**.
>
> xxx
>
> xxx To the Court's mind, the SEC Certifications of Non-Registration show that their affiliates are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines.
>
> Proof of the above-mentioned second component sets the present case apart from *Accenture, Inc. v. Commissioner of Internal Revenue* and *Sitel Philippines Corp. v. Commissioner of Internal Revenue*. In these cases, the claimants similarly presented SEC Certifications and client service agreements. However, the Court consistently ruled that documents of this nature only establish the *first* component (*i.e.*, that the affiliate is foreign). The absence of any other competent evidence (*e.g.*, articles of association/certificates of incorporation) proving the *second* component (*i.e.*, that the affiliate is not doing business here in the Philippines) shall be fatal to a claim for credit or refund of excess input VAT attributable to zero-rated sales. *(Boldfacing supplied)*

Thus, to come within the purview of Section 108(B)(2), **it is not enough that the recipient of the service be proven to be a foreign corporation; rather, it must be specifically proven to be a nonresident foreign corporation**,[49] not engaged in trade or business in the Philippines.

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[48] G.R. No. 234445, July 15, 2020.
[49] *Accenture, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012.

To prove the foregoing, the taxpayer-claimant must present the following:

1. SEC Certificate of Non-Registration of Corporation/ Partnership; **AND**

2. Proof of Certificate/ Articles of Foreign Incorporation/ Association.

In *Commissioner of Internal Revenue vs. Macquarie Offshore Services Pty., Ltd. Philippine Branch*[50] *(Macquarie)*, the Supreme Court explained the significance of the SEC Certifications of Non-Registration and the articles of association/certificates of incorporation of the claimant's nonresident foreign clients, *viz.*:

> "xxx **To the Court's mind, the SEC Certifications of Non-Registration show that their affiliates are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines.**
>
> Proof of the above-mentioned second component sets the present case apart from *Accenture, Inc. v. Commissioner of Internal Revenue* and *Sitel Philippines Corp. v. Commissioner of Internal Revenue.* In these cases, the claimants similarly presented **SEC Certifications** and client service agreements. However, the Court consistently ruled that documents of this nature **only establish the *first* component (*i.e.*, that the affiliate is foreign). The absence of any other competent evidence (*e.g.*, articles of association/certificates of incorporation) proving the *second* component (*i.e.*, that the affiliate is not doing business here in the Philippines) shall be fatal to a claim** for credit or refund of excess input VAT attributable to zero-rated sales. *(Boldfacing supplied)*

Based on these jurisprudential requirements, it is undisputed that the aforementioned documents must be presented in order to establish the zero-rating of sales of the claimant under Section 108(B)(2) of the NIRC, as amended.

Clearly, the BIR correctly denied petitioner's claim for refund for its failure to submit the Certificate of Foreign Registration/ Incorporation/Association of petitioner's clients.

The issue that the Court must address is whether or not petitioner is allowed to submit new additional documents before the CTA to prove

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[50] *Notice*, G.R. No. 225169, October 6, 2021.

that its clients are nonresident foreign corporation not engaged in business in the Philippines.

Republic Act (RA) No. 1125, as amended, reads:

> "Section 8. *Court of record; seal; proceedings.* – **The Court of Tax Appeals shall be a court of record** and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence." *(Boldfacing supplied)*

In *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue,*[51] the Supreme Court clarified that a party-litigant may present new and additional evidence to the CTA to prove every aspect of its case, *viz.:*

> "The Commissioner contends that PAL failed to present several of its documentary evidence before the Bureau of Internal Revenue during the administrative level. Thus, she claims that the new evidence that petitioner presented in the Court of Tax Appeals should not have been considered because trial *de novo* in the Court of Tax Appeals must be limited to the evidence shown in the administrative claim.
>
> This Court rules that the Court of Tax Appeals is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the Court of Tax Appeals to support its case for tax refund.
>
> Section 4 of the National Internal Revenue Code states that the Commissioner has the power to decide on tax refunds, but his or her decision is subject to the exclusive appellate jurisdiction of the Court of Tax Appeals:
>
> xxx xxx xxx
>
> **The power of the Court of Tax Appeals to exercise its appellate jurisdiction does not preclude it from considering evidence that was not presented in the administrative claim in the Bureau of Internal Revenue.** Republic Act No. 1125 states that the Court of Tax Appeals is a court of record:
>
>> Section 8. Court of record; seal; proceedings. – The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It

[51] G.R. Nos. 206079-80 and 206309, January 17, 2018.

> shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.
>
> As such, parties are expected **to litigate and prove every aspect of their case anew and formally offer all their evidence.** No value is given to documentary evidence submitted in the Bureau of Internal Revenue unless it is formally offered in the Court of Tax Appeals. Thus, the review of the Court of Tax Appeals is not limited to whether or not the Commissioner committed gross abuse of discretion, fraud, or error of law, as contended by the Commissioner. As evidence is considered and evaluated again, the scope of the Court of Tax Appeals' review covers factual findings." *(Boldfacing supplied)*

Without a doubt, cases filed before the CTA are litigated *de novo* and party-litigants must prove every minute aspect of their cases. Simply put, the Court is not precluded from admitting evidence not previously presented at the administrative level.

In the present case, petitioner offered the consularized certificates of foreign registration (Exhibits "P-67" to "P-71"), as well as the SEC Certificates of Non-Registration (Exhibits "P-47" to "P-66") to prove that the client base of petitioner refers to nonresident foreign entities and the services were rendered outside the Philippines.

In the Resolution dated June 3, 2022,[52] however, the Court **denied the admission** of the aforesaid exhibits offered by petitioner for its failure to submit the duly marked exhibits and to present the originals thereof for comparison. Petitioner did not move for the reconsideration of said denial nor did it proffer any explanation for its failure to submit the denied exhibits or to present the originals thereof.

Considering that Exhibits "P-47" to "P-71" were denied admission in evidence, the Court cannot consider the same for purposes of determining whether petitioner's clients are nonresident foreign corporations, not engaged in trade or business in the Philippines. The absence of any evidence proving that petitioner's clients are nonresident foreign corporations not engaged in trade or business in the Philippines is fatal to its claim.

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[52] *Supra*, Note 25.

In the case of *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue,*[53] the Supreme Court sustained the CTA's denial of the taxpayer's claim for refund and emphasized that strict adherence to the conditions prescribed by the law is required of the taxpayer for the grant of tax refund, *viz.:*

> "On a final note, the Court reiterates its consistent ruling that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit. xxx"

As petitioner was not able to establish the existence of zero-rated sales during the period claimed, which is a *sine qua non* condition for the grant of refund under Section 112 of the NIRC, the same is fatal to petitioner's claim for refund. Indeed, it is clear that petitioner was unable to establish its claim. Thus, the Court will no longer belabor on the other requisites for refund.

WHEREFORE, premises considered, the present Petition for Review filed by petitioner Ammex I-Support Corporation on October 18, 2019 is **DISMISSED**. Accordingly, respondent's denial of petitioner's claim for tax refund is **AFFIRMED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

[53] G.R. No. 222428, February 19, 2018.

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 case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice