20-000354-0074

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10385

UNILEVER GLOBAL SERVICES B.V. PHILIPPINES REGIONAL OPERATING HEADQUARTERS (ROHQ),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

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

ATTY. FELIX PAUL R. VELASCO III
ATTY. SYLVIA R. ALMA JOSE
ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. CLARISSA J. VIRTUDES-BABARAN
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

LEAGOGO LAW OFFICE
Unit 1908, 19th Floor, Tower 2
High Street, South Corporate Plaza
26th Street corner 11th Avenue, Bonifacio Global City
1634 Taguig City

GREETINGS:

You are hereby notified by these presents that on **January 17, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **January 20, 2025.**

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

REPUBLIC OF THE PHILIPPINES
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UNILEVER GLOBAL SERVICES B.V. PHILIPPINES REGIONAL OPERATING HEADQUARTERS (ROHQ),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. **10385**

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
JAN 17 2025; 2:30PM

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Unilever Global Services B.V. Philippines Regional Operating Headquarters [**ROHQ**] (**petitioner**) pursuant to Section 3(a)[2], Rule 8 in relation to Section 3(a)(1)[3], Rule 4 of the Revised Rules of the Court of Tax Appeals

[1] Filed on 26 October 2020, Division Docket, Volume I, pp. 14-62.

[2] **SEC. 3.** *Who may appeal; period to file petition.* —
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

[3] **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(**RRCTA**). It seeks a refund in the amount of ₱16,527,902.23, allegedly representing the disallowed portion of its unutilized input value-added tax (**VAT**) on its domestic purchases of goods and services, and importations of goods attributable to zero-rated sales for the period from 01 January 2018 to 31 December 2018 or the calendar year (**CY**) ending 31 December 2018.

PARTIES TO THE CASE

Petitioner is duly organized and existing under the laws of the Republic of the Philippines as an ROHQ.[4] It is registered with the Bureau of Internal Revenue (**BIR**) as a VAT taxpayer with Tax Identification Number (**TIN**) 009-144-459-000, as can be gleaned from its Certificate of Registration No. 9RC0000454187 dated 06 October 2015.[5] It holds its principal office at 7th Floor, Bonifacio Stopover Corporate Center, Fort Bonifacio Global City, Taguig City.[6] It is primarily engaged in providing financial and other services to its affiliates, subsidiaries, or branches in the Philippines, in the Asia-Pacific Region, and other foreign markets.[7]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**), tasked to perform the duties of his or her office, including, *inter alia*, the power to decide claims for tax refund or tax credit subject to the exclusive appellate jurisdiction of this Court, pursuant to Section 4[8] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, and Section 7(a)(1) and (2)[9] of Republic Act (**RA**) No. 1125[10], as amended by

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]

4 Exhibit "P-1", USB.
5 Exhibit "P-17", USB.
6 Petitioner's 2018 Audited Financial Statements, BIR Records, p. 57.
7 Id.
8 **SEC. 4.** *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.
9 **Sec. 7.** *Jurisdiction.* - The CTA shall exercise:
a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

RA 9282.[11] He or she holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

FACTS OF THE CASE

Petitioner avers that throughout CY 2018, it sold its services to various foreign clients. During the period in question, petitioner claims that it had excess and unutilized input VAT credits arising from its local purchases that are directly-attributable to its zero-rated sales, in the aggregate amount of ₱33,199,256.09.[12]

Under Section 112(A)[13] of the NIRC of 1997, as amended, a VAT-registered person whose sales are zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for a refund to the extent that such input tax attributable to zero-rated sales has not been applied against the output tax.

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(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial[.]

10 AN ACT CREATING THE COURT OF TAX APPEALS.

11 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

12 Paragraphs 23-24, Petition for Review, Division Docket, Volume I, pp. 19-20.

13 **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)

Thus, on 15 July 2020, petitioner filed its administrative claim for VAT Refund with the BIR-VAT Credit Audit Division (**BIR-VCAD**) through an Application for Tax Credits/Refunds (BIR Form No. 1914)[14] in which petitioner requested a refund amounting to ₱33,199,256.09, allegedly representing excess or unutilized input VAT attributable to zero-rated sales made throughout CY 2018. Along with the application, petitioner also submitted the corresponding "Revised Checklist of Mandatory Requirements on Claims for VAT Refund".[15]

Thereafter, on 25 September 2020, petitioner received a copy of the VAT Refund Notice dated 18 September 2020[16], duly signed by Maria Luisa I. Belen, then Officer-in-Charge Assistant Commissioner of the Assessment Service (**OIC-ACIR Belen**), the contents of which are as follows:

> ...
>
> This has reference to your claim for value added tax (VAT) refund covering the period from **January 01, 2018 to December 31, 2018** in the amount of Php33,199,256.09 pursuant to Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended.
>
> Please be informed that[,] upon processing of the aforementioned claim under Tax Verification Notice (TVN) No. TVN201800116305 dated July 15, 2020, the amount of input tax allowable on local purchases is Php16,671,353.86. Details are shown on the attached sheet marked as Annex 'A' and as summarized below:

VAT Refund Claimed	Php 33,199,256.09
Deductions from claim	16,527,902.23
Net Allowable VAT Refund	**Php 16,671,353.86**

> The approved report on the said claim shall be subject to post-audit by the Commission on Audit as mandated under Section 112(D) of the NIRC of 1997, as amended, and/or further audit/investigation under the directive of higher authorities. Should there be findings requiring adjustment/deduction on the amount granted, the deficiency tax or excess tax refund/credit shall be collected and/or deducted from future tax refund claim/s, if there is any.

14 Exhibit "P-9", USB.
15 Exhibit "P-8", USB.
16 Exhibit "P-11", Division Docket, Volume I, pp. 67-68.

> Moreover, please be noted that you have the judicial remedy, withing thirty (30) days form the receipt of this letter, to appeal the disallowed portion of your claim with the Court of Tax Appeals (CTA) pursuant to Section 112(C) of the same Tax Code, as amended, by R.A. No. 10963."[17]
>
> ...

PROCEEDINGS BEFORE THE COURT

On 26 October 2020, petitioner filed the instant Petition for Review.[18] It was raffled to this Court's Second Division, docketed as CTA Case No. 10385. On 03 November 2020, the Court issued Summons[19] to respondent directing him or her to submit an Answer within thirty (30) days from service. Respondent received the said Summons on 11 November 2020.[20]

On 11 December 2020, citing that respondent's counsels had yet to obtain the BIR Records for the present case (which are essential in intelligently preparing an Answer), he or she filed a "Motion for Extension of Time to File Answer"[21] asking for a period of 30 days, which the Court granted in the Order dated 14 December 2020.[22]

In the same Order[23] above, the Second Division directed respondent to deliver the present case's BIR Records to this Court. Relatedly, on 08 January 2021, respondent filed another "Urgent Motion for Extension of Time to File Answer"[24] for another 30 days, for reasons of voluminous workload coupled with the earlier lack of access to the BIR Records. The Second Division similarly granted[25] the same, and reiterated its order for respondent to transmit the BIR Records within ten (10) days from filing the Answer.

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17 Emphasis in the original text.
18 Supra at note 1.
19 Division Docket, Volume I, p. 428.
20 See Summons dated 03 November 2020, id.
21 Id., pp. 430-433.
22 Id., p. 434.
23 Id.
24 Id., pp. 435-438.
25 See Order dated 11 January 2021, id., p. 440.

On 18 February 2021, this Court received respondent's Answer[26], which the latter filed on 09 February 2021 (within the extended period granted by the Court) *via* registered mail.[27] Therein, respondent cited the following special and affirmative defenses: (1) the instant claim should be denied for petitioner's failure to substantiate its claim for refund at the administrative level; (2) petitioner failed to prove that it is entitled to the additional refund; (3) petitioner's claim should be denied for its failure to comply with the relevant mandatory invoicing requirements; and, (4) tax refunds are strictly construed against the taxpayer and in favor of the government. Respondent's Answer likewise highlighted that since a decision has been rendered in the administrative level, this Court's jurisdiction becomes strictly appellate in nature.

On 22 February 2021, the Court issued a Notice of Pre-Trial Conference[28], setting the Pre-Trial Conference on 05 April 2021.

On 03 March 2021, desiring to discuss changes brought about by the promulgation of Revenue Memorandum Order (**RMO**) No. 47-2020[29], which supposedly amends Revenue Memorandum Circular (**RMC**) No. 47-2019[30], after the filing of the present Petition, petitioner filed a "Supplement to the Petition for Review"[31] (**Supplement**) with a corresponding motion.[32] The motion asked for the Court to admit the said Supplement. Accordingly, in a Resolution dated 12 March 2021[33], the Second Division ordered respondent to comment on the said motion. Respondent, however, failed to do so within the period provided.[34]

On the intended date of the Pre-Trial Conference, this Court had been physically closed, in line with the Supreme Court's precautionary

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26 Id., pp. 445-457.
27 Id., p. 458.
28 Id., pp. 460-461.
29 Consolidated and Updated Guidelines and Procedures on the Processing of Claims for Value-Added Tax Credit/Refund Except Those Under the Authority and Jurisdiction of the Legal Group.
30 Revised Guidelines and Mandatory Requirements for the Processing and Grant of Value-Added Tax (VAT) Refund Claims Within the 90-Day Period Pursuant to Section 112 of the Tax Code of 1997, as Amended.
31 Division Docket, Volume I, pp. 467-492.
32 Petitioner's "Motion to Admit Supplement to the Petition for Review" dated 26 February 2021, id., pp. 462-466.
33 Id., Volume II, p. 522.
34 See Records Verification dated 03 June 2020, id., p. 557.

measures due to the rising number of COVID-19 cases at the time.[35] Thus, when the courts reopened on 17 May 2021, the Court rescheduled the Pre-Trial Conference to 07 July 2021.[36] Ahead of the same, that same day, petitioner filed its Pre-Trial Brief.[37]

Later, on 28 May 2021, respondent transmitted the BIR Records for the present case, consisting of one (1) folder, with documents consecutively numbered from 1 to 230.[38] The Second Division noted the same in the Minute Resolution dated 02 June 2021.[39] On 08 June 2021, respondent also filed his or her Pre-Trial Brief.[40]

On 14 June 2021, petitioner filed a Motion for Summary Judgment[41], arguing that respondent's Answer contained "mere general and wholesale denials" which failed to controvert the allegations in the Petition for Review.

Meanwhile, the Second Division issued a Resolution dated 15 June 2021 where it granted petitioner's "Motion to Admit Supplement to the Petition for Review".[42]

In another Resolution of 29 June 2021[43], the Second Division ordered respondent to file his or her comment or opposition to petitioner's Motion for Summary Judgment within five (5) days from receipt on 05 July 2021.[44] On 05 July 2021, pending respondent's action, the Second Division cancelled the Pre-Trial Conference previously set on 07 July 2021.[45] On 08 July 2021, respondent was able to file an

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35 Pursuant to Supreme Court (SC) Administrative Circular (AC) Nos. 21-2021, 22-2021, and 29-2021, the time for filing and service of pleadings and motions from 10 April 2021 to 14 May 2021 in all the courts and judicial offices in the National Capital Judicial Region and the provinces of Bulacan, Cavite, Laguna, and Rizal (NCJR+) was suspended and resumed on 17 May 2021, the first day of the physical reopening of the relevant court.

36 See Notice of Resetting dated 17 May 2021, Division Docket, Volume II, p. 524.

37 Id., pp. 525-549.

38 See Compliance dated 24 May 2021, id., p. 552.

39 Id., p. 555.

40 Id., pp. 558-561.

41 Id., pp. 563-585.

42 Supra at note 32.

43 Division Docket, Volume II, p. 590.

44 See Notice of Resolution dated 29 June 2021, id., p. 589.

45 See Order dated 05 July 2021, id., p. 591.

Opposition.[46] With this, on 27 July 2021, the Second Division submitted the Motion for Summary Judgment for resolution.[47]

On 29 September 2021, the Second Division denied petitioner's Motion for Summary Judgment.[48] It concluded that there still exists a genuine issue which is the proper subject of a full-blown trial.

Unsatisfied, on 15 November 2021, petitioner filed a Motion for Reconsideration[49] (**MR**). The Second Division then afforded respondent an opportunity to file a comment or opposition within ten (10) days from receipt.[50] Before respondent could reply, petitioner filed a "Motion to Admit"[51], asking for the admission of the attached "Supplement (to the [MR] dated 12 November 2021)"[52] (**Supplement to the MR**) on 16 December 2021. On 20 December 2021, respondent filed an "Opposition (Re: [MR])".[53] In its Resolution dated 07 February 2022[54], the Second Division ordered respondent to comment on the later Motion to Admit, though the latter was unable to do so.[55]

Thus, on 30 March 2022, the Second Division ruled on petitioner's MR (along with the Supplement to the MR), denying the same for lack of merit.[56] Having ruled on petitioner's MR (with the Supplement to the MR), the Second Division set the Pre-Trial Conference anew on 08 June 2022, in its Resolution dated 26 April 2022.[57]

At the Pre-Trial Conference which proceeded as scheduled[58], the Second Division granted the parties a twenty (20)-day period to file their Joint Stipulation of Facts and Issues (**JSFI**). During the

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46 Id., pp. 592-596.
47 See Resolution dated 27 July 2021, id., p. 600.
48 See Resolution dated 29 September 2021, id., pp. 602-607.
49 Petitioner's "Motion for Reconsideration (of the Resolution dated 29 September 2021)" dated 12 November 2021, id., pp. 608-638.
50 See Resolution dated 22 November 2021, id., p. 643.
51 Id., pp. 653-655.
52 Id., pp. 656-663.
53 Id., pp. 665-670.
54 Id., pp. 673-674.
55 See Records Verification dated 15 March 2022, id., p. 675.
56 See Resolution dated 30 March 2022, id., pp. 677-681.
57 Id., p. 683.
58 See Minutes of the Hearing and Order, both dated 08 June 2022, id., pp. 685 and 686, respectively.

conference, it also noted petitioner's manifestation that it would not be availing the services on a court-commissioned Independent Certified Public Accountant (**ICPA**) then set a series of Commissioner's Hearings for the comparison of petitioner's exhibits.[59] On 28 June 2022, the parties submitted their JSFI[60], which the Second Division approved and adopted in its Pre-Trial Order[61] on 05 July 2022, thereby terminating the pre-trial.

In the trial that ensued thereafter, petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following witnesses: (1) Mary Fritzie Gineta (**Gineta**), petitioner's Assistant Finance Manager; and, (2) Atty. Pola Lia Celina L. Lamarca (**Atty. Lamarca**), one of petitioner's counsels in the present case.

On 03 August 2022, petitioner presented Gineta's testimony.[62] As detailed in her Judicial Affidavit[63] and Supplemental Judicial Affidavit[64] (respectively dated 24 October 2020 and 28 July 2022), she testified on her knowledge and participation in relation to petitioner's administrative claim, its transactions that gave rise to its claim, and its dealings with the BIR that led to the grant of a partial refund amounting to ₱16,671,353.86. She detailed her contributions therein (in consideration of her duties and responsibilities) and described the supporting documentation that arose in the events that transpired throughout. She pointed out that petitioner's undertaking to render services is based on a general service agreement with the Unilever group, with additional specific agreements for select clients. Particularly, in her Supplemental Judicial Affidavit, she identified and authenticated documentary evidence related to her discussions.

Gineta's cross-examination revolved around the copies of petitioner's service agreements. She confirmed that she was able to produce hard copies thereof by printing out soft copies that she obtained from petitioner's digital archives. She further clarified that

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59 Id.
60 Id., pp. 688-693.
61 Id., pp. 696-700.
62 See Minutes of the Hearing and Order, both dated 03 August 2022, id., pp. 744 and 745-746, respectively.
63 Exhibit "P-50", id., Volume I, pp. 115-145.
64 Exhibit "P-51", id., Volume II, pp. 721-737.

the said archives were accessible to select employees based on their responsibilities.[65] No redirect examination followed.[66]

On 05 October 2022[67], petitioner's second and final witness, Atty. Lamarca, took the witness stand. She identified her Amended Judicial Affidavit dated 26 September 2022.[68] She testified on her participation in the administrative proceedings for petitioner's CY 2018 refund claim and identified documents which she requested from the BIR in relation to the present case.

During her cross-examination, Atty. Lamarca clarified that petitioner submitted original certificates of foreign registration with its 2017 VAT refund claim, then certified true copies with its 2018 VAT refund claim. She elucidated further that the Commission on Audit (**COA**) issued the latter documents as it had custody over the originals (as part of the process after a partial grant by the BIR in petitioner's 2017 VAT refund claim). Additionally, Atty. Lamarca emphasized that petitioner requested for consularized or apostilled certifications for all of its customers in relation to its 2018 claim. She highlighted that petitioner was willing to fully comply with the requirement, though it needed an alternative recourse to prove the fact of its customers' foreign registration, upon the consideration that not all of its customers would be able to furnish the needed certifications.[69] Atty. Lamarca did not undergo a redirect examination.[70]

On 20 October 2022, after completing the presentation of its testimonial evidence, petitioner filed its Formal Offer of Evidence[71] (**FOE**). On 04 November 2022, respondent filed his or her Comment[72] thereto, interposing objections only as to how petitioner's exhibits were identified in open court and compared with their corresponding originals.

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65 TSN dated 03 August 2022, pp. 11-12.

66 Id., p. 12.

67 See Minutes of the Hearing and Order, both dated 05 October 2022, Division Docket, Volume II, pp. 791 and 792-793, respectively.

68 Exhibit "P-54", id., pp. 761-783.

69 TSN dated 05 October 2022, p. 13-23.

70 Id., p. 24.

71 Division Docket, Volume II, pp. 794-842.

72 Respondent's "Comment (Re: Formal Offer of Evidence)" dated 04 November 2022, id., pp. 856-858.

In its Resolution dated 20 April 2023[73], the Second Division admitted all of petitioner's offered exhibits and accordingly set the initial presentation of respondent's evidence on 05 September 2023. In the meantime, on 29 May 2023, pursuant to CTA Administrative Circular No. 01-2023 dated 23 May 2023, the present case was transferred to this Court's First Division, which continued to hear the same.[74]

On 05 September 2023[75], trial continued with respondent presenting his or her lone witness, Revenue Officer Eufemia Mylene N. Mabingnay (**RO Mabingnay**), who testified through her Judicial Affidavit dated 24 November 2021.[76] She stated that: (1) she holds the position of RO II and is assigned to the Tax Audit Review Division (**TARD**); (2) her duties include the review and evaluation of tax credit or refund cases; (3) she was tasked with reviewing and evaluating petitioner's instant refund claim (along with the supporting documentation that it had submitted) for alleged unutilized input VAT; and, (4) she recommended a partial refundable amount based on her finding and informed petitioner of the issuance of a VAT Refund Notice.

On cross-examination, RO Mabingnay attested to petitioner's entitlement to the partial refund that the BIR initially granted, and thus supporting the timeliness of petitioner's administrative claim and the existence of petitioner's zero-rated sales and unutilized input taxes. She also confirmed the VCAD's manner of processing refund claims. She then concluded her testimony by confirming that RMC No. 47-2020[77] superseded RMC No. 47-2019[78] for VAT refunds, particularly in removing the requirement of submitting consularized and apostilled documents supporting the foreign registration of the taxpayer-claimant's customers.[79]

RO Mabingnay was not subjected to a redirect examination, marking the completion of her testimony and the conclusion of respondent's presentation of evidence. Thus, on 07 September 2023,

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73 Id., pp. 866-868.
74 Reorganizing the Divisions of the Court, id., p. 869.
75 See Order dated 05 September 2023, Division Docket, Volume II, pp 871-872.
76 Exhibit "R-6", id., pp. 648-652.
77 Supra at note 29.
78 Supra at note 30.
79 TSN dated 05 September 2023, pp. 7-17.

respondent filed his or her FOE.[80] Petitioner filed its Comment[81] thereto on 22 September 2023. In the Resolution dated 25 October 2023[82], the First Division admitted all of respondent's offered evidence and gave the parties 30 days from notice to file their respective memoranda.

On 06 December 2023, respondent filed his or her Memorandum.[83] Petitioner, on the other hand, was unable to do so.[84] In its stead, petitioner filed a "Motion for Additional Time to File Memorandum"[85] on 28 December 2023, though the First Division expunged the same from the case's records for being a prohibited motion.[86] Accordingly, the First Division considered the instant case submitted for decision on 17 January 2024.[87]

On 18 January 2024, petitioner filed a Memorandum[88], which the First Division noted without action in its Resolution dated 23 January 2024.[89] Aggrieved with the result, petitioner filed a "[MR] with Apologies (Re: Resolution dated 17 January 2024)" on 25 January 2024.[90] Respondent failed to comment thereon.[91] In the Resolution dated 04 April 2024,[92] the Court denied the aforementioned motion for lack of merit, and recapitulated its previous order submitting this case for decision on 17 January 2024.

On 17 May 2024, petitioner filed another "[MR] with Apologies (Re: Resolution dated 17 January 2024 and Resolution dated 4 April 2024)".[93] On 10 June 2024, respondent filed his or her Opposition[94]

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80 Division Docket, Volume II, pp. 874-877.
81 Petitioner's "Comment/Opposition to Respondent's Formal Offer of Evidence" dated 21 September 2023, id., pp. 879-887.
82 Id., pp. 893-894.
83 Id., pp. 895-902.
84 See Resolutions dated 17 January 2024, 04 April 2024, and 08 August 2024, id., pp. 908, 1094, and 1114-1116, respectively.
85 Id., pp. 904-906.
86 Id., p. 908.
87 Id.
88 Id., pp. 910-983.
89 Id., p. 996.
90 Id., pp. 998-1001.
91 See Records Verification dated 21 February 2024, id., p. 1096.
92 Id., pp. 1091-1093.
93 Id., pp. 1106-1110.
94 Respondent's "Opposition (Re: Motion for Partial Reconsideration with Apologies)" dated 10 June 2024, id., pp. 1101-1104.

thereto. Thus, in the Resolution dated 08 August 2024[95], the First Division denied petitioner's motion for lack of merit, clarifying that motions for extension of time to file pleadings, affidavits, or any other papers are prohibited motions. It added that a belatedly filed memorandum is to be treated as a mere scrap of paper. Finally, it reiterated once more its previous order submitting the case for decision on 17 January 2024.[96]

ISSUE

As gleaned from the issues the parties so stipulated[97], the main issue for this Court's determination is —

> WHETHER PETITIONER UNILEVER GLOBAL SERVICES B.V. PHILIPPINES REGIONAL OPERATING HEADQUARTERS (ROHQ) IS ENTITLED TO THE ADDITIONAL REFUND OF ITS ALLEGED UNUTILIZED INPUT VALUE-ADDED TAX (VAT) IN THE TOTAL AMOUNT OF ₱16,527,902.23 COVERING THE PERIOD FROM 01 JANUARY 2018 TO 31 DECEMBER 2018 OR THE 1ST TO 4TH QUARTERS OF THE CALENDAR YEAR (CY) ENDING 31 DECEMBER 2018.

ARGUMENTS

Petitioner contends that it was able to meet the requirements to successfully claim for refund of its unutilized input VAT.

In support of its position, it forwards the following arguments: (1) respondent's disallowance of input tax allocation on zero-rated sales due to insufficient support is improper; (2) respondent's finding of deficiency withholding VAT on interest expense paid to foreign entity is improper; (3) respondent's disallowance of a ripened portion of deferred input taxes on prior years is improper; (4) the finding of additional output tax liability on other VAT-able transactions (*i.e.* proceeds from disposal of equipment; and, rental income) is improper; and, (5) the imposition of compromise penalties for it's supposed failure to supply correct and accurate sales information in its Quarterly

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[95] Id., pp. 1114-1116.
[96] Id.
[97] See Issues to be Resolved, JSFI, id., p. 689.

VAT Return is improper and has no factual or legal basis. Accordingly, petitioner believes that the BIR's disallowances should be cancelled and added back into the refundable amount for its present claim.

Petitioner also stresses that BIR rulings and regulations should be applied retroactively when the same do not prejudice the taxpayer. Respondent, on the other hand, counters that the instant claim should be denied due to petitioner's failure to substantiate its claim for refund at the administrative level. Respondent denies that petitioner is entitled to an additional refund.

RULING OF THE COURT

Following an assiduous review of the case records, this Court finds the present Petition for Review partly meritorious.

Petitioner anchors its claim for refund on Section 110(B), in relation to Section 112(A) and (C) of the NIRC of 1997, as amended by the TRAIN Law. The said provisions read as follows:

> ...
>
> SEC. 110. *Tax Credits.* —
>
> ...
>
> (B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however,* That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.
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> ...
>
> 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.

...

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

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

...

In *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[98] (**Deutsche Knowledge Services**), the Supreme Court laid down the requisites for the entitlement to tax refund or credit of excess input VAT attributable to zero-rated sales, to wit:

...

Under Section 4.112-1(a) of Revenue Regulations No. (RR) 16-05, otherwise known as the Consolidated VAT Regulations of 2005, in relation to Section 112 of the Tax Code, a claimant's entitlement to a tax refund or credit of excess input VAT attributable to zero-rated sales hinges upon the following requisites: "(1) the taxpayer must be VAT-registered; (2) the taxpayer must be engaged

[98] G.R. No. 234445, 15 July 2020; Citations omitted.

in sales which are zero-rated or effectively zero-rated; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax."

...

Guided by the foregoing parameters, the Court shall now proceed to determine petitioner's compliance with the requisites.

FIRST (1^{ST}) REQUISITE:
PETITIONER MUST BE VALUE-ADDED TAX (VAT)-REGISTERED.

Indisputably, petitioner is a VAT-registered taxpayer with TIN 009-144-459-000, as evidenced by BIR COR No. 9RC0000454187 dated 06 October 2015.[99]

SECOND (2^{ND}) REQUISITE:
PETITIONER MUST BE ENGAGED IN SALES WHICH ARE ZERO-RATED OR EFFECTIVELY ZERO-RATED.

The 2^{nd} requisite requires that the taxpayer is engaged in zero-rated or effectively zero-rated sales and, for zero-rated sales under Sections 106(A)(2)(a)(1)[100] and 108(B)(1) and (2)[101] of the NIRC of 1997,

---

99 Exhibit "P-17", supra at note 5.

100 **SEC. 106.** *Value-Added Tax on Sale of Goods or Properties.* –

(A) *Rate and Base of Tax.* – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, value-added tax equivalent to twelve percent (12%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

...

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* - The term 'export sales' means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

...

(3) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said

as amended[102], the acceptable foreign currency exchange proceeds must have been duly accounted for in accordance with the Bangko Sentral ng Pilipinas (**BSP**) rules and regulations.

In its amended Quarterly VAT Return for the 1st to 4th quarters of CY 2018, petitioner reported total sales of ₱689,573,748.05, which included zero-rated sales of ₱601,682,148.46, as shown below:

Quarter	Total Sales/Receipts	VAT-able	Zero-Rated
1st Quarter[103]	₱234,817,584.99	₱5,310,432.00	₱229,507,152.99
2nd Quarter[104]	144,995,862.36	40,391,720.97	104,604,141.39
3rd Quarter[105]	149,648,586.08	16,655,223.31	132,993,362.77
4th Quarter[106]	160,111,714.62	25,534,223.31	134,577,491.31
Total	**₱689,573,748.05**	**₱87,891,599.59**	**₱601,682,148.46**

In this case, petitioner alleges that the amount of ₱601,682,148.46 it treated as zero-rated sales/receipts pertain to its sales of services to its affiliates belonging to the Unilever Group which are non-resident foreign corporations (**NRFCs**) doing business outside the Philippines. Petitioner puts forward that such services which were paid for in foreign currency and inwardly remitted in accordance with BSP rules and regulations, and are thus subject to zero percent (0%) VAT under Section 108(B)(2) of the NIRC of 1997, as amended.[107]

buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)[.]

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

...

(B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently 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)[.]

102 As amended by Republic Act (RA) No. 10963, otherwise known as the Tax Reform for Acceleration and Inclusion Act (TRAIN Law).

103 Exhibit "R-5", BIR Records, pp. 86-87.

104 Exhibit "R-5", id., pp. 84-85.

105 Exhibit "R-5", id., pp. 82-83.

106 Exhibit "R-5", id., pp. 80-81.

107 Pars. 16, 17, 19-23 and 44-46, Petition for Review, supra at note 1.

Upon reviewing petitioner's claimed zero-rated sales of ₱601,682,148.46, as summarized in its "Schedule of Zero-Rated Sale of Services"[108] *vis-à-vis* the supporting documents submitted, respondent found that a portion amounting to ₱157,357,454.30 should be disallowed for lack of sufficient support, as prescribed under Annex A.1 of RMC No. 47-2019.[109] Specifically, petitioner allegedly failed to provide the following documents: (1) Service Agreement between the petitioner and its NRFC clients; and/or the (2) Certificate of Foreign Registration of its NRFC clients; and, (3) proof of remittance or the documents provided were not in the name of petitioner's customer. Consequently, respondent disallowed input VAT amounting to ₱8,704,732.58 allocated thereto.[110] Petitioner then argues that the disallowance of its claimed zero-rated sales on the ground of insufficient support is unwarranted and that the Court should reconsider the corresponding input VAT disallowance of ₱8,704,732.58.[111]

Relative thereto, Section 108(B)(2) of the NIRC of 1997, as amended, reads as follows:

> ...
>
> **SEC. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties.*
>
> ...
>
> (B) *Transactions Subject to Zero Percent (0%) Rate* — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate.
>
> > (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently 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**

108 Exhibit "P-4", USB.
109 Supra at note 30.
110 Annexes A and E, Exhibit "P-12", USB; Annex C, Exhibit "R-3", BIR Records, pp. 221-225.
111 Par. 110, Petition for Review, Division Docket, Volume I, p. 46.

> **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).**[112]

...

Petitioner submitted its various service agreements[113] with each of clients or customers (save for Conopco, Inc. and Unilever Europe B.V), whereby, petitioner renders services to the Unilever Group of companies under a general services agreement pursuant to an "Enterprise Technology Solutions" strategy which centralizes support for business delivery functions of marketing, customer development, supply chain, as well as support functions of finance, IT, and HR.

Thus, petitioner was able to establish that the nature of its services falls within the scope of "services other than processing, manufacturing or repacking of goods" contemplated under Section 108(B)(2) of the NIRC of 1997, as amended. However, as far as petitioner's alleged zero-rated sales to Conopco, Inc. and Unilever Europe B.V. are concerned, in failing to submit any pertinent agreements entered into with the said entities, sales made to the same must be disallowed.

The Court likewise finds that the same service agreements[114] that petitioner and its foreign clients concluded sufficiently indicate that the former would perform the services in the Philippines. Through the same agreements, petitioner was able to establish that it actually performed the subject services in the Philippines.

In *Deutsche Knowledge Services*[115], the Supreme Court held that for the sales of "other services"[116] to be considered VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended, the taxpayer-claimant must prove the following conditions:

---

112 Emphasis supplied and italics in the original text.
113 Exhibits "P-13-6", "P-13-9", "P-13-22", "P-13-34", "P-13-56", "P-13-51", "P-13-1", and "P-13-79", USB.
114 Id.
115 Supra at note 98; Citations omitted and italics in the original text.
116 Supra at note 101.

> ...
>
> *First*, the seller is VAT-registered. *Second*, the services are 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." *Third*, services are "paid for in acceptable foreign currency and accounted in accordance with [BSP] rules and regulations.
>
> ...

Additionally, as laid down under Section 108(B)(2)[117] of the NIRC of 1997, as amended, the "other services" must be performed in the Philippines.

As to the ***1st condition***, it was previously established that petitioner is VAT-registered. Similarly, as to the ***4th condition***, petitioner was able to demonstrate that it actually performed its services in question in the Philippines.

As regards the ***2nd condition***, which requires that the recipient of such services must be engaged in business conducted outside the Philippines or not engaged in business and is outside the Philippines when the services are performed, in *Deutsche Knowledge Services*[118], the Supreme Court discussed the two (2) components that the claimant must establish to prove a client's status as an NRFC, to wit:

> ...
>
> (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.
>
> ...
>
> 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

117 Supra at note 101.

118 Supra at note 98; Citations omitted, emphasis supplied and italics in the original text.

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.

...

Based on *Deutsche Knowledge Services*, there must be sufficient proof of **both** components – (1) that petitioner's clients are **foreign corporations** which can be proven by the SEC Certifications of Non-Registration; and, (2) that they are **not doing business in the Philippines** (the *prima facie* proof of which is the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines).

The table below summarizes petitioner's compliance with **both** the *first and second components* as **it** presented evidence of the said SEC Certificate of Non-Registration and Certificates of Registration / Foreign Incorporation / Association for each of the recipients of the services that petitioner rendered, *viz*:[119]

	Clients/Customers	SEC Certification (Exhibit Nos.)	Foreign Incorporation/ Registration/ Association (Exhibit Nos.)
1	UNILEVER(CAMBODIA) LTD.	"P-3-1"	NONE
2	UNILEVER (MYANMAR) LIMITED	"P-3-2"	NONE
3	UNILEVER SERVICES (HEIFEI) CO LTD.	"P-3-3"	NONE
4	UNILEVER AUSTRALIA SUPPLY SERVICES	"P-3-4"	NONE
5	UNILEVER SINGAPORE PTE LTD	"P-3-5"	"P-2-5"
6	UNILEVER ISRAEL FOODS LIMITED	"P-3-6"	NONE
7	SERVICIOS PROFESIONALES UNILEVER	"P-3-7"	NONE
8	UNILEVER DE ARGENTINA SA	"P-3-8"	NONE
9	UNILEVER BANGLADESH LIMITED	"P-3-9"	NONE
10	UNILEVER NEW ZEALAND LTD	"P-3-10"	NONE
11	UNILEVER SERVICES (M) SDN BHD	"P-3-11"	NONE
12	UNILEVER THAI HOLDINGS LIMITED	"P-3-12"	NONE
13	UNILEVER UK LIMITED	"P-3-13"	"P-2-13"
14	CONOPCO INC	"P-3-14"	"P-2-14"
15	UNILEVER EUROPE BUSINESS CENTER BV	"P-3-15"	"P-2-15"
16	UNILEVER SVERIGE AB	"P-3-16"	NONE
17	HINDUSTAN UNILEVER LIMITED	"P-3-17"	NONE
18	UNILEVER NEDERLAND BV	"P-3-18"	"P-2-18"
19	UNILEVER EUROPE BV	"P-3-19"	"P-2-19"
20	UNILEVER SOUTH AFRICA (PTY) LTD	"P-3-20"	NONE
21	UNILEVER GULF FZE	"P-3-21"	NONE
22	UNILEVER VIETNAM INTERNATIONAL COMP	"P-3-22"	NONE
23	UNILEVER ASIA PRIVATE LIMITED	"P-3-23"	NONE

[119] USB.

24	UNILEVER AUSTRALIA LTD	"P-3-24"	NONE
25	UNILEVER PAKISTAN LIMITED	"P-3-25"	NONE
26	UNILEVER NV	"P-3-26"	"P-2-26"
27	PT UNILEVER INDONESIA, TBK.	"P-3-27"	NONE
28	UNILEVER AUSTRALIA HOLDINGS PTY LIMITED	NONE	NONE
29	UNILEVER MASHREQ - TEA (S.A.E.)	"P-3-29"	NONE
30	UNILEVER SAN.VE TIC.T.A.S.	"P-3-30"	NONE
31	UNILEVER (MALAYSIA) HOLDINGS SDN BHD	"P-3-31"	NONE
32	OOO UNILEVER RUS	"P-3-32"	NONE
33	UNILEVER UKCR	"P-3-33"	NONE
34	UNILEVER THAI TRADING LIMITED	"P-3-34"	NONE
35	UNILEVER INDUSTRIES PRIVATE LIMITED	"P-3-35"	NONE
36	UNILEVER EUROPE - IT	"P-3-36"	NONE
37	BINZAGR UNILEVER LTD	"P-3-37"	NONE
38	UNILEVER R&D PORT SUNLIGHT	"P-3-38"	NONE

Thus, on the basis of the foregoing, only the following clients of petitioner shall be considered NRFCs doing business outside the Philippines, insofar as petitioner's compliance with *both components* is concerned, to wit:

	Clients/Customers	**SEC Certification** (Exhibit Nos.)	**Foreign Incorporation/ Registration/ Association** (Exhibit Nos.)
1	UNILEVER SINGAPORE PTE LTD	"P-3-5"	"P-2-5"
2	UNILEVER UK LIMITED	"P-3-13"	"P-2-13"
3	CONOPCO INC	"P-3-14"	"P-2-14"
4	UNILEVER EUROPE BUSINESS CENTER BV	"P-3-15"	"P-2-15"
5	UNILEVER NEDERLAND BV	"P-3-18"	"P-2-18"
6	UNILEVER EUROPE BV	"P-3-19"	"P-2-19"
7	UNILEVER NV	"P-3-26"	"P-2-26"

Further, the Court cannot give credence or probative value to the following **unauthenticated** documents offered to prove foreign incorporation/registration/association:

	Clients/Customers	**Foreign Incorporation/ Registration/ Association** (Exhibit Nos.)
1	UNILEVER(CAMBODIA) LTD.	"P-2-1", "P-2-1-a"
2	UNILEVER (MYANMAR) LIMITED	"P-2-2"
3	UNILEVER SERVICES (HEIFEI) CO LTD.	"P-2-3"
4	UNILEVER ISRAEL FOODS LIMITED	"P-2-6", "P-2-6-a"
5	SERVICIOS PROFESIONALES UNILEVER	"P-2-7"
6	UNILEVER BANGLADESH LIMITED	"P-2-9", "P-2-9-a", "P-2-9-b"
7	UNILEVER NEW ZEALAND LTD	"P-2-10"
8	UNILEVER SERVICES (M) SDN BHD	"P-2-11", "P-2-11-a", "P-2-11-b"
9	UNILEVER THAI HOLDINGS LIMITED	"P-2-12", "P-2-12-a", "P-2-12-b", "P-2-12-c"
10	UNILEVER SVERIGE AB	"P-2-16"
11	HINDUSTAN UNILEVER LIMITED	"P-2-17"
12	UNILEVER SOUTH AFRICA (PTY) LTD	"P-2-20", "P-2-20-a", "P-2-20-b"
13	UNILEVER GULF FZE	"P-2-21", "P-2-21-a",
14	UNILEVER ASIA PRIVATE LIMITED	"P-2-23", "P-2-23-a"
15	UNILEVER PAKISTAN LIMITED	"P-2-25", "P-2-25-a"
16	PT UNILEVER INDONESIA, TBK.	"P-2-27", "P-2-27-a", "P-2-27-b", "P-2-27-c", "P-2-27-d"
17	UNILEVER MASHREQ - TEA (S.A.E.)	"P-2-29"

18	UNILEVER (MALAYSIA) HOLDINGS SDN BHD	"P-2-31", "P-2-31-a", "P-2-31-b"
19	OOO UNILEVER RUS	"P-2-32", "P-2-32-a"
20	UNILEVER THAI TRADING LIMITED	"P-2-34", "P-2-34-a", "P-2-34-b", "P-2-34-c"
21	UNILEVER INDUSTRIES PRIVATE LIMITED	"P-2-35", "P-2-35-a"
22	UNILEVER EUROPE - IT	"P-2-36", "P-2-36-a"
23	BINZAGR UNILEVER LTD	"P-2-37", "P-2-37-a", "P-2-37-b"
24	UNILEVER R&D PORT SUNLIGHT	"P-2-38", "P-2-38-a"

Section 24, Rule 132 of the Rules of Court reads as follows:

> ...
> Section 24. *Proof of official record.* - The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his or her deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody.
>
> If the office in which the record is kept is in a foreign country, which is a contracting party to a treaty or convention to which the Philippines is also a party, or considered a public document under such treaty or convention pursuant to paragraph (c) of Section 19 hereof, the certificate or its equivalent shall be in the form prescribed by such treaty or convention subject to reciprocity granted to public documents originating from the Philippines.
>
> For documents originating from a foreign country which is not a contracting party to a treaty or convention referred to in the next preceding sentence, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his or her office.
>
> A document that is accompanied by a certificate or its equivalent may be presented in evidence without further proof, the certificate or its equivalent being *prima facie* evidence of the due execution and genuineness of the document involved. The certificate shall not be required when a treaty or convention between a foreign country and the Philippines has abolished the requirement or has exempted the document itself from this formality.[120]
> ...

As the Supreme Court pertinently held in *Rhodora Ilumin Racho v. Seiichi Tanaka, et al.*:[121]

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[120] Italics in the original text.
[121] G.R. No. 199515, 25 June 2018; Citations omitted and italics in the original text.

> ...
>
> Under Rule 132, Section 24 of the Rules of Court, the admissibility of official records that are kept in a foreign country requires that it must be accompanied by a certificate from a secretary of an embassy or legation, consul general, consul, vice consul, consular agent or any officer of the foreign service of the Philippines stationed in that foreign country:
>
> > Section 24. Proof of official record. - The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.
>
> The Certificate of Acceptance of the Report of Divorce was accompanied by an Authentication issued by Consul Bryan Dexter B. Lao of the Embassy of the Philippines in Tokyo, Japan, certifying that Kazutoyo Oyabe, Consular Service Division, Ministry of Foreign Affairs, Japan was an official in and for Japan. The Authentication further certified that he was authorized to sign the Certificate of Acceptance of the Report of Divorce and that his signature in it was genuine. Applying Rule 132, Section 24, the Certificate of Acceptance of the Report of Divorce is admissible as evidence of the *fact* of divorce between petitioner and respondent.
>
> The Regional Trial Court established that according to the national law of Japan, a divorce by agreement "becomes effective by notification." Considering that the Certificate of Acceptance of the Report of Divorce was duly authenticated, the divorce between petitioner and respondent was validly obtained according to respondent's national law.
>
> ...

Based on the above jurisprudential pronouncements, foreign records must first be duly authenticated for them to be admissible in evidence. Thus, without proper authentication of petitioner's documents offered to prove foreign incorporation, registration, or association, the same may not be admitted as evidence of proof of such fact.

The Court also did not consider the following entities as NRFCs doing business outside the Philippines for petitioner's **failure to submit English translations** of the documents presented before this Court, to wit:

	Clients/Customers	SEC Certification (Exhibit Nos.)	Foreign Incorporation/ Registration/ Association without English Translation (Exhibit Nos.)
1	UNILEVER ISRAEL FOODS LIMITED	"P-3-6"	"P-2-6", "P-2-6-a"
2	SERVICIOS PROFESIONALES UNILEVER	"P-3-7"	"P-2-7"
3	UNILEVER DE ARGENTINA SA	"P-3-8"	"P-2-8"
4	UNILEVER SERVICES (M) SDN BHD	"P-3-11"	"P-2-11-a", "P-2-11-b"
5	UNILEVER THAI HOLDINGS LIMITED	"P-3-12"	"P-2-12", "P-2-12-a", "P-2-12-b"
6	PT UNILEVER INDONESIA, TBK.	"P-3-27"	"P-2-27", "P-2-27-a", "P-2-27-b", "P-2-27-c"
7	UNILEVER MASHREQ - TEA (S.A.E.)	"P-3-29"	"P-2-29"
8	UNILEVER SAN.VE TIC.T.A.S.	"P-3-30"	"P-2-30"
9	BINZAGR UNILEVER LTD	"P-3-37"	"P-2-37-a", "P-2-37-b"

Section 33, Rule 132 of the Rules of Court reads as follows:

> ...
>
> Sec. 33. *Documentary evidence in an unofficial language.* — Documents written in an unofficial language shall not be admitted as evidence, unless accompanied with a translation into English or Filipino.[122]
>
> ...

In this case, *sans* any translation in English or Filipino, while they may be admitted in evidence, the admission does not equate to their probative weight or value. Neither will the entries in these documents be taken to constitute proof of the facts stated therein.[123]

Furthermore, the following entities cannot be considered as NRFCs doing business outside the Philippines as the **name of petitioner's foreign client is different** from the name indicated in the Philippine SEC Certificates of Non-Registration of Company and the respective document offered by petitioner to prove foreign registration:

[122] Italics in the original text.

[123] *St. Martin Polyclinic, Inc., v. LWV Construction Corporation*, G.R. No. 217426, 04 December 2017.

	Clients/Customers	SEC Certification (Exhibit Nos.)	Foreign Incorporation/ Registration/ Association (Exhibit Nos.)
1	UNILEVER(CAMBODIA) LTD.	"P-3-1"	"P-2-1", "P-2-1-a"
2	UNILEVER SERVICES (HEIFEI) CO LTD.	"P-3-3"	"P-2-3"
3	UNILEVER AUSTRALIA SUPPLY SERVICES	"P-3-4"	"P-2-4"
4	UNILEVER NEW ZEALAND LTD	"P-3-10"	"P-2-10"
5	UNILEVER SERVICES (M) SDN BHD	"P-3-11"	"P-2-11"
6	UNILEVER THAI HOLDINGS LIMITED	"P-3-12"	"P-2-12-c"
7	UNILEVER SOUTH AFRICA (PTY) LTD	"P-3-20"	"P-2-20", "P-2-20-a", "P-2-20-b"
8	UNILEVER VIETNAM INTERNATIONAL COMP	"P-3-22"	"P-2-22"
9	UNILEVER AUSTRALIA LTD	"P-3-24"	"P-2-24"
10	PT UNILEVER INDONESIA, TBK.	"P-3-27"	"P-2-27-d"
11	UNILEVER AUSTRALIA HOLDINGS PTY LIMITED	"P-3-28"	"P-2-28"
12	UNILEVER SAN.VE TIC.T.A.S.	"P-3-30"	"P-2-30-a"
13	UNILEVER (MALAYSIA) HOLDINGS SDN BHD	"P-3-31"	"P-2-31", "P-2-31-a"
14	OOO UNILEVER RUS	"P-3-32"	"P-2-32-a"
15	UNILEVER UKCR	"P-3-33"	"P-2-33"
16	UNILEVER EUROPE - IT	"P-3-36"	"P-2-36", "P-2-36-a"
17	BINZAGR UNILEVER LTD	"P-3-37"	"P-2-37"
18	UNILEVER R&D PORT SUNLIGHT	"P-3-38"	"P-2-38", "P-2-38-a"

Finally, the Court could also not consider Unilever (Malaysia) Holdings Sdn Bhd to be an NRFC doing business outside the Philippines because petitioner's **submitted document is not a valid proof of foreign incorporation/registration** (as it is merely the "Confirmation of Submission e-C for Year of Assessment 2016" indicating its income tax and registration numbers).[124]

On another note, while it may be argued that part 2.3[125] of the Revised Checklist under RMO No. 47-2020[126] **(although petitioner had pointed out that the same was not yet in force at the time of filing the administrative claim and the instant Petition for Review)** requires the submission of only the original SEC Certifications, We nevertheless underscore that petitioner came to this Court to prove its entitlement to the disallowed portion of its VAT refund claim. To prove its entitlement, petitioner alleges that it had rendered services to NRFCs not doing business in the Philippines, thus it is engaged in zero-rated sales of services. Additionally, petitioner declares that it has an excess and unutilized input VAT attributable to said zero-rated sales.

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124 Exhibit "P-2-31-b", USB.

125 2.3 For sale of services to a non-resident foreign corporation (NRFC) under Sec. 108(B)(2), original copy of certification from SEC that the NRFC is not a registered corporation in the Philippines which shall serve as proof that the NRFC-buyer of the services is not doing business in the Philippines.

126 Supra at note 29.

It is axiomatic that under the Revised Rules on Evidence, a party who alleges a fact has the burden of proving it. A mere allegation is not evidence, and the party who alleges has the burden of proving the allegation with the requisite quantum of evidence.[127] Moreover, in civil cases, the burden of proof rests upon the plaintiff who must establish its case by preponderance of evidence. Preponderance of evidence is the evidence that is of greater weight, or more convincing, than the evidence offered in opposition to it. It is proof that leads the trier of facts to find that the existence of the contested fact is more probable than its non-existence.[128]

In the case at bar, to the extent disallowed, petitioner failed to prove by preponderant evidence, that its affiliates or clients (who are the recipient of its services) are performing business outside the Philippines pursuant to Section 108(B)(2) of the NIRC of 1997, amended. Evidently, petitioner also failed to prove that it is engaged in zero-rated or effectively zero-rated sales (as the *2nd requisite* for the entitlement to the tax refund so requires). To reiterate the Supreme Court's disquisition in the *Deutsche Knowledge Services*[129], the absence of the articles of association/certificates of incorporation (proving that the affiliates are not doing business here in the Philippines) shall be fatal to a refund claim of excess input VAT attributable to zero-rated sales.

We proceed to the ***3rd condition***.

For zero-rated sales under Sections 108(B)(2) of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds must have been duly accounted for in accordance with BSP rules and regulations.

Additionally, they must also comply with the pertinent invoicing requirements, containing all the required information under Section 113(A) and (B) of the NIRC of 1997, as amended, to wit:

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127 *Spouses Nilo Ramos, et al. v. Raul Obispo and Far East Bank and Trust Company*, G.R. No. 193804, 27 February 2013.

128 *Spouses Eugenio Ponce, et al. v. Jesus Aldanese*, G.R. No. 216587, 04 August 2021.

129 Supra at note 98.

...

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

(A) *Invoicing Requirements.* — A VAT-registered person shall issue:

1. A VAT invoice for every sale, barter or exchange of goods or properties; and,

2. A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:

1. A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);

2. The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided,* That:

    a. The amount of the tax shall be shown as a separate item in the invoice or receipt;

    b. If the sale is exempt from value-added tax, the term '**VAT-exempt sale**' shall be written or printed prominently on the invoice or receipt;
    c. If the sale is subject to zero percent (0%) value-added tax, the term '**zero-rated sale**' shall be written or printed prominently on the invoice or receipt;

    d. If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided,* That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

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

4. In the case of sales in the amount of One thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered

person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.[130]

...

The foregoing provisions of the NIRC of 1997, as amended, are further implemented by Section 4.113-1(A) and (B) of Revenue Regulations (**RR**) No. 16-2005[131], as amended, to wit –

...

SEC. 4.113-1. *Invoicing Requirements.* —

(A) A VAT-registered person shall issue: —

1. A VAT invoice for every sale, barter or exchange of goods or properties; and

2. A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

   Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or official receipts. Said documents shall be considered as a 'VAT Invoice' or 'VAT official receipt'. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

   VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) *Information contained in VAT invoice or VAT official receipt.* — The following information shall be indicated in VAT invoice or VAT official receipt:

1. A statement that the seller is a VAT-registered person, followed by his TIN;

2. The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:

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[130] Emphasis supplied and italics in the original text.
[131] Consolidated Value-Added Tax Regulations of 2005.

a. The amount of tax shall be shown as a separate item in the invoice or receipt;

b. If the sale is exempt from VAT, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

c. If the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;

d. If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

3. In the case of sales in the amount of one thousand peso (₱1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section.

...

In addition to the above requirements, the sales invoices and official receipts (**OR**s) must be duly registered with the BIR as prescribed under Section 237, in relation to Section 238, of the NIRC of 1997, as amended, to wit:

...

"SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* —

(A) *Issuance.* — All persons subject to an internal revenue tax shall, at the point of each sale and transfer of merchandise or for services rendered valued at One hundred pesos (P100) or more, issue duly registered receipts or sale or commercial invoices, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however,* That where the receipt is issued to cover payment made as rentals, commissions, compensation or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided, further,* That where the purchaser is a

VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.

...

SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

...

Since petitioner's claimed zero-rated 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 in each must be in compliance with the applicable invoicing requirements previously cited.

Respondent's verification of petitioner's documents at the administrative level disclosed that petitioner's claimed zero-rated sales of services were supported by ORs wherein the word "zero-rated" was indicated, and that the proceeds for said zero-rated services were paid for in acceptable foreign currency, generally accounted for and inwardly remitted in accordance with the rules and regulations of the BSP, except for the following:[132]

OR No.	OR Date	Name of Client	Amount of Sales			Reason for Disallowance	
			In Foreign Currency		In Philippine Peso	Invoicing	Proof of Remittance
0209	23 January 2018	CONOPCO INC	US$	8,708.10	₱438,418.00		Remitter not in the name of customer
0268	24 April 18	CONOPCO INC	US$	8,708.00	₱453,425.56		
0268	24 April 2018	CONOPCO INC	US$	3,008.80	₱156,668.22		
0317	24 July 2018	CONOPCO INC	US$	8,708.00	₱457,640.23		
0378	24 October 2018	CONOPCO INC	US$	8,708.00	₱468,673.27		

[132] BIR Records, p. 214 and Exhibit "P-12", Annex E, USB.

0378	24 October 2018	CONOPCO INC	US$	10,425.00	₱564,555.45		
0399	23 November 2018	CONOPCO INC	EUR	15,450.00	₱963,464.47		
0222	23 January 2018	UNILEVER EUROPE - IT	EUR	2,000.00	₱119,863.80		
0202	03 January 2018	UNILEVER ASIA PRIVATE LIMITED	US$	7,596.75	₱392,645.62	OR and Billing Invoice not in the name of customer	Remitter not in the name of customer
0325	27 July 2018	UNILEVER HOLDINGS AUSTRALIA	US$	10,264.93	₱536,342.59		No proof of remittance
0326	27 July 2018	UNILEVER HOLDINGS AUSTRALIA					
0361	10 October 2018	UNILEVER INDUSTRIES PRIVATE LIMITED	EUR	12,978.00	₱789,412.81		
0219	23 January 2018	UNILEVER R&D PORT SUNLIGHT	EUR	16,000.00	₱958,910.40		Remitter not in the name of customer
0219	23 January 2018	UNILEVER R&D PORT SUNLIGHT	EUR	2,750.00	₱164,812.73		
0229	25 January 2018	UNILEVER SOUTH AFRICA (PTY) LTD	EUR	4,980.00	₱298,460.86		No proof of remittance
0229	25 January 2018	UNILEVER SOUTH AFRICA (PTY) LTD	EUR	9,474.50	₱567,824.79		
0273	07 May 2018	UNILEVER SOUTH AFRICA (PTY) LTD	EUR	9,474.50	₱602,019.20		
0281	25 May 2018	UNILEVER SOUTH AFRICA (PTY) LTD	EUR	3,660.00	₱235,716.44		
0318	24 July 2018	UNILEVER SOUTH AFRICA (PTY) LTD	EUR	3,660.00	₱224,931.16		
0318	24 July 2018	UNILEVER SOUTH AFRICA (PTY) LTD	EUR	9,474.50	₱582,270.56		
0321	25 July 2018	UNILEVER SOUTH AFRICA (PTY) LTD	EUR	3,000.00	₱187,223.70		
0379	06 November 2018	UNILEVER SOUTH AFRICA (PTY) LTD	EUR	3,660.00	₱231,216.00		
0379	06 November 18	UNILEVER SOUTH AFRICA (PTY) LTD	EUR	9,474.50	₱598,772.48		
				Total	₱9,993,268.34		

However, none of the above exceptions/disallowances flagged by respondent pertained to the sales made by petitioner to its NRFC-clients (which satisfactorily met the other conditions for VAT zero-rating discussed earlier above) in the amount of ₱409,496,725.54, as detailed in petitioner's "Schedule of Zero-Rated Sale of Services"[133] as follows:

OR No.	OR Date	Name of Client	Amount			Proof of Remittance (Exhibit "P-53")			
			In Foreign Currency		In Philippine Peso	Ref. No.	Date	Amount Remitted (In Foreign Currency)	
0218	23 January 2018	UNILEVER UK LIMITED	EUR	10,020.00	₱600,517.64	3368023001	23 January 2018	EUR	10,020.00
0221	23 January 2018	UNILEVER EUROPE BUSINESS CENTER BV	EUR	2,100.00	125,856.99	3368023004	23 January 2018	EUR	2,095.00
0226	23 January 2018	UNILEVER NEDERLAND BV	EUR	2,977.78	178,464.01	3368023085	23 January 2018	EUR	2,972.78
0234	15 February 2018	UNILEVER SINGAPORE PTE LTD	EUR	22,582.70	1,360,817.69	3368046137	15 February 2018	EUR	22,582.70

133 Exhibit "P-4", USB.

0235	23 February 2018	UNILEVER NV	USD	119,210.56	5,955,521.16	3368054142	23 February 2018	USD	119,210.56
0250	22 March 2018	UNILEVER NV	USD	2,109,271.73	108,292,119.89	3368074113	22 March 2018	USD	2,109,271.73
0262	23 April 2018	UNILEVER NEDERLAND BV	EUR	2,977.78	189,211.12	3368113117	23 April 2018	EUR	2,972.78
0285	4 June 2018	UNILEVER EUROPE BUSINESS CENTER BV	EUR	2,100.00	126,135.03	3368155002	04 June 2018	EUR	2,095.00
0294	21 June 2018	UNILEVER UK LIMITED	EUR	4,980.00	309,008.00	3368172001	04 June 2018	EUR	4,980.00
0296	30 June 2018	UNILEVER NV	USD	1,710,463.53	88,489,120.26	3368169061	30 June 2018	USD	1,710,463.53
0309	23 July 2018	UNILEVER EUROPE BUSINESS CENTER BV	EUR	31,661.00	1,945,777.41	3368204003	23 July 2018	EUR	31,656.00
0312	23 July 2018	UNILEVER UK LIMITED	EUR	11,580.00	711,667.43	3368204006	23 July 2018	EUR	11,580.00
0314	23 July 2018	UNILEVER NEDERLAND BV	EUR	2,977.78	183,004.23	3368204113	23 July 2018	EUR	2,972.78
0333	22 August 2018	UNILEVER EUROPE BUSINESS CENTER BV	EUR	2,276.00	142,040.38	3368234001	22 August 2018	EUR	2,271.00
0349	19 September 2018	UNILEVER NV	USD	1,800,010.75	95,917,172.84	3368262085	19 September 2018	USD	1,800,010.75
0354	21 September 2018	UNILEVER EUROPE BUSINESS CENTER BV	EUR	2,276.00	138,385.01	3368264001	21 September 2018	EUR	2,271.00
0368	23 October 2018	UNILEVER UK LIMITED	EUR	4,980.00	314,605.37	3368296006	23 October 2018	EUR	4,980.00
0373	23 October 2018	UNILEVER EUROPE BUSINESS CENTER BV	EUR	2,276.00	143,783.50	3368296002	23 October 2018	EUR	2,271.00
0374	23 October 2018	UNILEVER NEDERLAND BV	EUR	2,977.78	185,020.34	3368296113	23 October 2018	EUR	2,972.78
0394	21 November 2018	UNILEVER EUROPE BUSINESS CENTER BV	EUR	2,276.00	140,502.49	3368325003	21 November 2018	EUR	2,271.00
0404	14 December 2018	UNILEVER NV	EUR	1,957,813.43	104,047,994.74	3368348086	14 December 2018	USD	1,957,813.43
				Total	₱409,496,725.54				

In other words, it has thus been established that petitioner's sales of services to its NRFC-clients not doing business outside the Philippines in the amount of ₱409,496,725.54 is properly supported by VAT ORs and that the foreign currency proceeds thereof were paid for in acceptable foreign currency, inwardly remitted and accounted for in accordance with BSP rules and regulations.

To recap what has been laid out thus far, out of the ₱601,682,148.46 zero-rated sales that petitioner reported for taxable year 2018, only the amount of **₱409,496,725.54** represents its **valid zero-rated sales of services**, while the remaining amount of

₱192,185,422.92 (and not ₱157,357,454.30 as found by respondent), must be disallowed.

THIRD (3RD) REQUISITE:
THE CLAIM MUST BE FILED WITHIN TWO (2) YEARS AFTER THE CLOSE OF THE TAXABLE QUARTER WHEN SUCH SALES WERE MADE.

In accordance with Section 112(A) and (C) of the NIRC of 1997, as amended by the TRAIN Law, the administrative claim for refund of unutilized input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the 1st to 4th quarters of the CY ending 31 December 2018, or from 01 January 2018 to 31 December 2018. Counting two (2) years from the respective close of the said quarters, the last day for the filing of the administrative claim for the said four (4) quarters, *vis-à-vis* the date of filing of the administrative claim by petitioner, pursuant to Section 112(A) of the NIRC of 1997, as amended, are shown below, *viz*:

Quarter (CY 2018)	Close of taxable quarter	Last day for filing an administrative claim	Date of filing of claim for refund
1st Quarter	31 March 2018	31 March 2020	15 July 2020[134]
2nd Quarter	30 June 2018	30 June 2020	
3rd Quarter	30 September 2018	30 September 2020	
4th Quarter	31 December 2018	31 December 2020	

Based on the foregoing timeline, petitioner's administrative claim covering the 1st and 2nd quarters of CY 2018 had been filed outside the two (2)-year prescriptive period. Nonetheless, pursuant to RA 11469[135], Section 2 of RR No. 16-2020[136] extended the period for

[134] Exhibit "P-9", supra at note 14.
[135] AN ACT DECLARING THE EXISTENCE OF A NATIONAL EMERGENCY ARISING FROM THE CORONAVIRUS DISEASE 2019 (COVID-19) SITUATION AND A NATIONAL POLICY IN CONNECTION THEREWITH, AND AUTHORIZING THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES FOR A LIMITED PERIOD AND SUBJECT TO RESTRICTIONS, TO EXERCISE POWERS NECESSARY AND PROPER TO CARRY OUT THE DECLARED NATIONAL POLICY AND FOR OTHER PURPOSES.

application for VAT credit/refund claims to **15 July 2020** and to **31 August 2020**, for the calendar quarters ending 31 March 2018 (1st quarter) and 30 June 2018 (2nd quarter), respectively. Thus, petitioner had until such dates to file its administrative claims for the two (2) quarters of CY 2018.

As such, the filing of petitioner's administrative claim on **15 July 2020**[137] fell within the prescriptive period and was thus timely made.

As to the timeliness of petitioner's judicial claim, pursuant to the TRAIN Law amendment to Section 112(C) of the NIRC of 1997, as amended, it is required that the same must have been filed within 30 days from receipt of respondent's decision, or after the expiration of the ninety (90)-day period under Section 112(C) of the NIRC of 1997, as amended. Thus, from the filing of petitioner's administrative claim on 15 July 2020, respondent had 90 days, or until 13 October 2020, to act on the said claim.

Respondent is thus considered to have acted on petitioner's claim within the 90-day period prescribed by law when then OIC-ACIR Belen issued the VAT Refund Notice dated 18 September 2020[138] (which petitioner received on 25 September 2020), informing petitioner that its claim was partially approved.

Considering that petitioner received the said VAT Refund Notice on 25 September 2020, counting 30 days therefrom, it initially had until 25 October 2020 to file a Petition for Review. However, as this date fell on a Sunday, petitioner actually had until the following Monday, or **26 October 2020**, to file. With petitioner filing the instant Petition for Review on **26 October 2020**[139], its judicial claim was likewise timely filed.

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136 Regulations Further Suspending the Due Dates in the Application of the Ninety (90)-Day Period to Process Value Added Tax (VAT) Refund/Claim Pursuant to Section 112 of the Tax Code of 1997, as Amended by Republic Act (R.A.) No. 10963 (TRAIN Law) For Taxable Quarters Affected by the Declaration of the National State of Emergency.

137 Exhibit "P-9", supra at note 14.

138 Exhibit "P-11", supra at note 16.

139 Supra at note 1.

Such being the case, the Court finds that petitioner satisfied the above-stated *third requisite*.

FOURTH (4^{TH}) REQUISITE:
THE CREDITABLE INPUT TAX DUE OR PAID MUST BE ATTRIBUTABLE TO SUCH SALES, EXCEPT THE TRANSITIONAL INPUT TAX, TO THE EXTENT THAT SUCH INPUT TAX HAS NOT BEEN APPLIED AGAINST THE OUTPUT TAX.

To satisfy the *fourth requisite*, the following conditions must concur:

a. **1st condition**: the input taxes are due or paid;

b. **2nd condition**: the input taxes claimed are attributable to zero-rated or effectively zero-rated sales and 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;

c. **3rd condition**: the input taxes are not transitional input taxes; and,

d. **4th condition**: the input taxes have not been applied against output taxes during and in the succeeding quarters.

Petitioner complied with the ***3rd condition*** as its input taxes do not appear to be transitional input taxes, which are meant to benefit only newly VAT-registered persons.

As to the ***4th condition***, with respect to its input taxes attributable to zero-rated sales, the taxpayer-claimant has the option to either: (1) charge a portion of its input taxes attributable to zero-rated sales to the output taxes, and refund the balance, if any; or, (2) refund all of the input taxes attributable to zero-rated sales.[140]

In the present case, petitioner effectively opted to avail of the **first option**. In CY 2018, petitioner reported an aggregate amount of ₱43,746,247.05 input VAT arising from its amortization of input VAT on purchases of capital goods exceeding ₱1 million, domestic purchases of goods other than capital goods, and domestic purchases of services, broken down as follows:

Particulars	Input VAT				
	1st Quarter, CY 2018[141]	2nd Quarter, CY 2018[142]	3rd Quarter, CY 2018[143]	4th Quarter, CY 2018[144]	CY 2018 Total
Input VAT deferred on capital goods exceeding ₱1 million from previous quarter	₱20,670,655.78	₱19,296,139.74	₱ 17,921,623.79	₱16,547,107.80[145]	₱20,670,655.78
Add: Input VAT on purchases of capital goods exceeding ₱1 million this quarter				284,667.86	284,667.86
Less: Input VAT deferred on capital goods exceeding ₱1 million deferred for the succeeding period	(19,296,139.74)	(17,921,623.79)	(16,547,107.80)	(15,443,944.04)	(15,443,944.04)
Amortization of Input VAT on capital goods exceeding ₱1 million	1,374,516.04	1,374,515.95	1,374,515.99	1,387,831.62	5,511,379.60
Purchase of capital goods exceeding ₱1 million					
Domestic purchases of goods other than capital goods	34,839.63	10,535.99	13,682.18	16,521.25	75,579.05
Domestic purchase of services	6,165,621.43	4,491,116.81	17,278,496.01	10,224,054.15	38,159,288.40
Total Current Purchases	**₱7,574,977.10**	**₱5,876,168.75**	**₱18,666,694.18**	**₱11,628,407.02**	**₱43,746,247.05**

For the said CY, petitioner's declared output VAT liability in relation to its sales subject to VAT amounted to ₱10,546,991.96 which, when offset against the ₱5,575,803.37 declared input VAT allocable to sales subject to VAT for the same year, leaves an **Output VAT still due** in the amount of ₱4,971,188.59. Petitioner's remaining output VAT liability of ₱4,971,188.59, when deducted from its ₱38,170,443.68 declared input VAT allocable to zero-rated sales, leaves an amount of ₱33,199,255.09 excess/unutilized VAT allocable to zero-rated sales, as shown below:

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140 See *Chevron Holdings, Inc. (formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*, G.R. No. 215159, 05 July 2022.
141 Exhibit "P-20", BIR Records, pp. 86-87.
142 Exhibit "P-20-1", id., pp. 84-85.
143 Exhibit "P-20-2", id., pp. 82-83.
144 Exhibit "P-20-3", id., pp. 80-81.
145 Overstated by ₱1.00 *per* return.

	Amount		Allocation Factor	Allocated Declared Input VAT		Input VAT Offset Against Output VAT	Excess Input VAT
	[a]		*[c = a ÷ b]*	*[e= c x d]*			
VAT-able Sales	₱87,891,599.59		12.7458%	₱5,575,803.37		₱5,575,803.37	₱ -
Zero-Rated Sales	601,682,148.46		87.2542%	38,170,443.68		4,971,188.59	33,199,255.09
Total Reported Sales	₱689,573,748.05	*[b]*	100.0000%	₱43,746,247.05	*[d]*	₱10,546,991.96	₱33,199,255.09

The reported excess input VAT of ₱33,199,255.09, though lower by ₱1.00[146], is the very same amount of VAT refund claim for CY 2018 that petitioner filed at the administrative level.

It is thus clear from the foregoing that petitioner opted to claim for refund its unutilized or "excess" input tax, which is the remaining amount after charging the input tax allocated to zero-rated sales against its output tax liabilities.

Petitioner deducted the amount of its VAT refund claims for the entirety of CY 2018 amounting to ₱33,199,256.09 as a "VAT Refund/TCC Claimed" in its VAT Return for the 3rd Quarter of CY 2019.[147] This, inasmuch as the instant claim for the 1st Quarter of CY 2019 is concerned, prevented the carry-over of the amount claimed for the CY 2018 to any succeeding taxable periods and complying with the 4th condition.

As to the ***1st condition***, petitioner claims that for the 1st to 4th quarters of CY 2018, it had a total available input tax of ₱43,746,247.05 arising from its (1) domestic purchases of goods other than capital goods; (2) domestic purchases of services; and, (3) amortization of input VAT on purchases of capital goods exceeding ₱1 million.[148]

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146 The difference of ₱1.00 represents the overstatement of the ₱16,547,108.80 "Input Tax Deferred on Capital Goods Exceeding P1Million from Previous Quarter" indicated in petitioner's Amended Quarterly VAT Return for the 4th quarter of CY 2018 (Exhibit "P-20-3", Line 20B, BIR Records, p. 81) when compared with the ₱16,547,107.80 "Input Tax on Purchases of Capital Goods exceeding P1 Million deferred for the succeeding period" indicated in petitioner's Amended Quarterly VAT Return for the 3rd quarter of CY 2018 (Exhibit "P-20-2", Line 23A, BIR Records, p. 82).

147 Line 23D, BIR Records, p. 88.

148 Exhibit "P-20", BIR Records, pp. 80-87; supra at p. 37.

For purposes of satisfying the previously mentioned condition, it is of crucial importance that petitioner provides supporting documents to prove that the input VAT claimed during the subject period is due or paid *per* Section 110(A) of the NIRC of 1997, as amended, which provides:

...

SEC. 110. *Tax Credits.* —

(A) *Creditable Input Tax.* —

(1) **Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:**

a. Purchase or importation of goods:

i. For sale; or
ii. For conversion into or intended to form part of a finished product for sale including packaging materials; or
iii. For use as supplies in the course of business; or
iv. For use as materials supplied in the sale of service; or
v. For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

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

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

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

b. To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

Provided, that the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000): *Provided, however,* That if the estimated useful life of

> the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, further,* That the amortization of the input VAT shall only be allowed until December 31, 2021 after which taxpayers with unutilized input VAT on capital goods purchased or imported shall be allowed to apply the same as scheduled until fully utilized. *Provided, finally,* That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.[149]
>
> ...

Sections 4.110-1 to 4.110-3 of RR No. 16-2005, as amended by RR No. 13-2018[150], implement the above provisions. They read —

> ...
> **SEC. 4.110-1.** ***Credits For Input Tax.*** — '*Input tax*' means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the Tax Code.
>
> It includes input taxes which can be directly attributed to transactions subject to the VAT plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.
>
> **Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Secs. 113 and 237 of the Tax Code shall be creditable against the output tax:**
>
> a. Purchase or importation of goods
>   1. For sale; or
>   2. For conversion into or intended to form part of a finished product for sale, including packaging materials; or
>   3. For use as supplies in the course of business; or
>   4. For use as raw materials supplied in the sale of services; or
>   5. For use in trade or business for which deduction for depreciation or amortization is allowed under the Tax Code.

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149 Emphasis supplied and italics in the original text.

150 Regulations Implementing the Value-Added Tax Provisions under the Republic Act (RA) No. 10963, or the "Tax Reform for Acceleration and Inclusion (TRAIN)," Further Amending Revenue Regulations (RR) No. 16-2005 (Consolidated Value-Added Tax Regulations of 2005), as Amended.

b. Purchase of real properties for which a VAT has actually been paid;
c. Purchase of services in which a VAT has actually been paid;
d. Transactions 'deemed sale' under Sec. 106 (B) of the Tax Code;
e. Transitional input tax allowed under Sec. 4.111 (a) of these Regulations;
f. Presumptive input tax allowed under Sec. 4.111 (b) of these Regulations;
g. Transitional input tax credits allowed under the transitory and other provisions of these Regulations.

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

a. To the importer upon payment of VAT prior to the release of goods from customs custody;
b. To the purchaser of the domestic goods or properties upon consummation of the sale; or
c. To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee.

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

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

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

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed One million pesos (P1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition.

...

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

...

(c) The amortization of the input VAT shall only be allowed until December 31, 2021 after which taxpayers with unutilized input VAT on capital goods purchased or imported shall be allowed to apply the same as scheduled until fully utilized: *Provided*, That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

...

If the depreciable capital good is sold/transferred within a period of five (5) years or prior to the exhaustion of the amortizable input tax thereon, the entire unamortized input tax on the capital goods sold/transferred can be claimed as input tax credit during the month/quarter when the sale or transfer was made.[151]

...

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

...

SEC. 4.110-8. *Substantiation of Input Tax Credits.* —

a. Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited

[151] Emphasis supplied and italics in the original text.

against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, **must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau**:

1. For the importation of goods — import entry or other equivalent document showing actual payment of VAT on the imported goods.
2. For the domestic purchase of goods and properties — invoice showing the information required under Secs. 113 and 237 of the Tax Code.
3. For the purchase of real property — public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.
4. For the purchase of services — official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

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

b. Transitional input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.

c. Input tax on 'deemed sale' transactions shall be substantiated with the invoice required under Sec. 4.113-2 of these Regulations.

d. Input tax from payments made to non-residents (such as for services, rentals and royalties) shall be supported by a copy of the Monthly Remittance Return of Value Added Tax Withheld (BIR Form 1600) filed by the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor.

e. Advance VAT on sugar shall be supported by the Payment Order showing payment of the advance VAT.[152]

...

[152] Emphasis supplied and italics in the original text.

The documents also need to comply with the invoicing requirements provided under Sections 113(A)(1), (B)(1) and (2)(c)[153] of the NIRC of 1997, as amended, and Sections 4.113-1(A)(1), (B)(1) and (2)(c)[154] of RR No. 16-2005, as amended.

As demonstrated further above, petitioner's excess input VAT claim of ₱33,199,256.09[155] emanated from petitioner's **total reported input VAT** for CY 2018 in the amount of ₱43,746,247.05.[156] From the said total, respondent recognized only a total of ₱38,431,490.44 as petitioner's **net available input VAT**. Respondent denied a portion amounting to ₱5,314,757.60[157], broken down as follows:

Gross Input Tax for the Subject Period		₱43,746,248.04[158]
Violation of Invoicing Requirements	₱697,733.34	
Disallowed ripened portion of Deferred Input Tax (DIT) on Prior Years' Capital Goods (CG) > 1M (based on previous years' approved claim)	2,503,220.30	
Disallowed ripened portion of DIT on Prior Years' CG > 1M (non-compliance with Section 11(4)(b) of RMC No. 47-2019)	2,113,803.96	5,314,757.60
Net Available Input Tax		**₱38,431,490.44**

The foregoing findings stemmed from respondent's verification of petitioner's input VAT sources against the original VAT invoices or ORs issued in accordance with Section 113[159] in relation to Section 110[160] of the NIRC of 1997, as amended.[161]

Petitioner is deemed to have conceded the disallowance of the input VAT due to violation of invoicing requirements amounting to ₱697,733.34 as it did not question the same nor did it submit proof to contradict respondent's findings.

153 Supra at p. 28.
154 Supra at pp. 29-30.
155 Supra at p. 38.
156 Supra at p. 37.
157 Annex "D", Exhibit "P-12", USB.
158 Over by ₱0.99 when compared with the ₱43,746,247.05 Total Input VAT reported *per* VAT returns.
159 Supra at p. 28.
160 Supra at p. 39.
161 BIR Records, p. 213.

Petitioner, however, disagreed with the disallowance of the following input VAT items:

	Amount
a. Disallowed ripened portion of Deferred Input Tax (DIT) on Prior Years' Capital Goods (CG) > 1M (based on previous year's approved claim)	₱2,503,220.30
b. Disallowed ripened portion of DIT on Prior Years' CG > 1M (non-compliance with Section 11(4)(b) of RMC No. 47-2019)	2,113,803.96
Total	**₱4,617,024.26**

Respondent disallowed the amount of ₱2,503,220.30[162] from the present claim based on the VCAD's findings as stated in its Memorandum dated 03 September 2020[163]:

> ...
>
> 6. The previous examiner from Revenue District 044, wherein the claim for 2017 VAT refund was filed and approved, disallowed some of the previous years' input tax subject for deferment. Hence, claim for ripened portion of deferred input tax from previous years which was previously disallowed, amounting to ***<u>₱2,503,220.30</u>*** was deducted from the claim. A certified true copies of the reports from RDO 044 and Revenue Region 08 are herewith attached on pages 185-198, 170 for details[.]
>
> ...

The Court finds the disallowance in order.

Pursuant to Section 110(A)(2)[164] of the NIRC of 1997, as amended, input VAT claims on capital goods purchases attributable to zero-rated sales may be claimed either (**a**) in full during the month of acquisition, or (**b**) spread over a period of time, depending on the aggregate acquisition cost of the capital goods in the calendar month. If the aggregate acquisition cost exceeds ₱1 million, the claim for input tax should be spread over 60 months or the estimated useful life of the capital goods, whichever is shorter. On the other hand, if the aggregate acquisition cost does not exceed ₱1 million, the total input taxes shall be allowed as credit/refund in the month of acquisition.

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162 Exhibit "P-5", USB; BIR Records, p. 170.
163 BIR Records, pp. 212-215.
164 Supra at p. 39.

While the law requires the spread or amortization of the input VAT on capital goods purchases exceeding ₱1 million over a period of sixty (60) months or five (5) years and may only claim the input tax that had "ripened" during the period of the taxpayer's claim for refund, the same must still be substantiated by proper VAT invoices or ORs in the period of claim pursuant to Section 110(A)(1)[165] of the NIRC of 1997, as amended.

Records show that the disallowed amount of ₱2,503,220.30 pertains to the ripened portion of petitioner's input VAT on prior years' purchases of capital goods exceeding ₱1 million which petitioner failed to properly substantiate in the VAT refund claim it filed with the BIR for CY 2017.[166]

Other than the statement that the said disallowance was without any explanation, petitioner failed to submit the corresponding VAT invoices or ORs in support of its claimed input VAT of ₱2,503,220.30; hence, respondent's disallowance thereof stands.

Next, regarding the disallowed amount of ₱2,113,803.96, the same represents petitioner's Deferred Input Taxes (**DIT**) on Capital Goods (**CG**) acquisitions exceeding ₱1 million, which respondent had also deducted from petitioner's claim due to non-compliance with the prescribed documentary requirements under Section II(4)(b) of RMC No. 47-2019. Respondent computed the disallowed amount of ₱2,113,803.96[167] as follows:

...

Ripened portion of DIT on CG > 1M for prior years' CG > 1M	₱5,498,064.00
DIT disallowed *per* VCAD verification (based on previous year's approved claim)	(2,503,220.30)
Ripened portion of DIT from prior years' CG > 1M (Certified by RDO)	(881,039.74)
Additional Disallowed Ripened DIT from Prior Years' CG	**₱2,113,803.96**

...

165 Id.
166 BIR Records, p. 170.
167 Exhibit "R-3", BIR Records, p. 229.

Petitioner argues that respondent did not likewise explain the disallowance, thus, it was deprived of the opportunity to controvert the same.[168]

The Court finds respondent's disallowance in order.

Under Section II(4)(b) of RMC No. 47-2019, a claimant who has made a previous VAT refund claim of DIT need not submit the original ORs and invoices pertaining to its claim. Instead, the claimant must present the amortization schedule of DIT in the approved report for that previous VAT refund claim. The copy of the schedule should be authenticated by the head of the processing office by marking "Certified True Copy from the Original" on each page thereon to clearly show that the purchases have been duly verified in the previous VAT refund claim/s.

Respondent submitted the documents regarding petitioner's 2017 VAT Refund claim, namely: (1) Approved Memorandum on the 2017 VAT Refund Claim dated 05 April 2019[169]; (2) VAT Refund/Credit Notice dated 05 April 2019[170]; (3) "Summary of Refundable Amount" prepared by Reviewer Maria Katrina S. Ong[171]; (4) "Summary of Findings – VAT Refund"[172]; (5) "Allocation of Input VAT and Computation of Refundable Amount"[173]; (6) Excerpt of Annex A.1.6 Working Papers[174]; and, (7) "Schedule of Amortization of Input Tax on Locally Purchased Capital Goods Exceeding ₱1 Million from Previous Quarter/Year for the Taxable Year Ending December 31, 2016".[175]

A perusal of the aforesaid documents shows that only the: (1) Approved Memorandum on the 2017 VAT Refund Claim dated 05 April 2019; (2) VAT Refund/Credit Notice dated 05 April 2019; and, (3) "Summary of Refundable Amount" were marked as "**Authenticated From: Original Copy**" or the mandatory requirement for the processing of and grant of VAT refund claims of

168 Par. 120, Petition for Review, Division Docket, Volume I, p. 49.
169 BIR Records, pp. 192-198.
170 Id., p. 191.
171 Id., p. 190.
172 Id., p. 189.
173 Id., p. 188.
174 Id., pp. 186-187.
175 Id., p. 185.

the amortized DIT originating from purchases prior to the period of claim pursuant to Section II(4)(b.1) of RMC No. 47-2019.

On the other hand, petitioner submitted a "**Authenticated From: Photocopy**" instead of a "**Certified True Copy from the Original**" of the following documents which will clearly show that the purchases have been duly verified in the previous VAT refund claims, to wit: (1) "Summary of Findings – VAT Refund; (2) "Allocation of Input VAT and Computation of Refundable Amount"; (3) Excerpt of Annex A.1.6 Working Papers; and, (4) "Schedule of Amortization of Input Tax on Locally Purchased Capital Goods Exceeding ₱1 Million from Previous Quarter/Year for the Taxable Year 2016".

Consequently, the Court finds the disallowance of the "ripened" or amortized portion of the deferred input VAT in the amount ₱2,113,803.96 proper.

In summary, for purposes of determining the total available valid and substantiated input VAT (in relation to the ***1st condition***), petitioner's valid input VAT due or paid of ₱38,431,489.45 (out of the ₱43,746,247.05 it reported in its VAT returns[176]) is computed as follows:

Total available input VAT for the period		**₱43,746,247.05**
Less: Disallowances		
Violation of the invoicing requirements	₱697,733.34	
Disallowed ripened portion of DIT on prior year's CG > 1M (based on previous years' approved claim)	2,503,220.30	
Disallowed ripened portion of DIT on prior years' CG > 1M (non-compliance with Section 11(4)(b) of RMC No. 47-2019)	2,113,803.96	5,314,757.60
Total Substantiated or Valid Input VAT		**₱38,431,489.45**

Relatedly, to arrive at the partial refund of ₱16,671,353.86[177], respondent deducted as well, among others (apart from the disallowances discussed thus far), the following amounts:

[176] Exhibit "P-20", BIR Records, pp. 80-87; supra at p. 37.
[177] Annex "A", Exhibit "P-12", USB.

Reason for disallowance/deduction	Amount deducted
1. Output tax on proceeds from disposal of Property Plant and Equipment (PPE)	₱60,821.52
2. Output tax on other VAT-able transactions	₱563,703.65
3. Withholding VAT on interest expense paid to foreign entity	₱1,858,886.88
4. Compromise penalty for failure to supply correct and accurate sales information in the Quarterly VAT Returns	₱25,000.00

The Court finds the deduction of the foregoing amounts aggregating ₱2,508,412.05 from petitioner's claim for refund improper.

Respondent's deduction of the said amounts is tantamount to an assessment of deficiency VAT, withholding VAT and compromise penalty, which cannot be made by respondent without following the proper procedures for the issuance of tax assessments under Section 228[178] of the NIRC of 1997, as amended, and RR No. 12-99[179], as amended, lest it violate petitioner's right to administrative due process. It would be unfair to allow respondent to use a claim for refund under Section 112[180] of the NIRC of 1997, as amended, to assess a taxpayer for any deficiency taxes, especially if the period to assess had already prescribed.[181]

While respondent or the BIR did not actually collect the output VAT imposed on the alleged proceeds from sale of equipment and other VAT-able transactions which petitioner supposedly did not subject to VAT, the act of deducting the imposed output VAT from the amount claimed for refund (by petitioner) nevertheless produces the same effect. This results in the denial of petitioner's claim for refund (albeit partially) and a deprivation of petitioner's right to the amount which should have been refundable.

Moreover, as regards the 12% withholding VAT that respondent imposed on the alleged interest expense that petitioner paid to a foreign entity, it is to be noted that Section 4.114-2(b) of RR No.

178 SEC. 228. *Protesting of Assessment.*

179 Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

180 Supra at note 13.

181 *Commissioner of Internal Revenue v. Toledo Power Company*, G.R. Nos. 196415 and 196451, 02 December 2015.

16-2005, as amended by RR No. 4-2007[182], provides that the VAT withheld and remitted on behalf of the NRFC may be claimed as input tax credit on the part of the resident withholding agent. The pertinent regulation reads –

> ...
>
> SEC. 4.114-2. *Withholding of VAT on Government Money Payments and Payments to Non-Residents.* —
>
> ...
>
> (b) The government or any of its political subdivisions, instrumentalities or agencies, including GOCCs, as well as private corporations, individuals, estates and trusts, whether large or non-large taxpayers, shall withhold twelve percent (12%) VAT, starting February 1, 2006, with respect to the following payments:
>
> (1) Lease or use of properties or property rights owned by non-residents; and
>
> (2) **Other services rendered in the Philippines by non-residents.**
>
> In remitting VAT withheld, the withholding agent shall use BIR Form No. 1600 Remittance Return of VAT and Other Percentage Taxes Withheld.
>
> **VAT withheld and paid for the non-resident recipient (remitted using BIR Form No. 1600), which VAT is passed on to the resident withholding agent by the non-resident recipient of the income, may be claimed as input tax by said VAT-registered withholding agent** upon filing his own VAT Return, subject to the rule on allocation of input tax among taxable sales, zero-rated sales and exempt sales. The duly filed BIR Form No. 1600 is the proof or documentary substantiation for the claimed input tax or input VAT.[183]
>
> ...

Thus, granting for the sake of argument that respondent was correct in imposing the 12% final withholding VAT against petitioner, the latter may claim the same amount as an input tax credit. Either way, the transaction would have no effect on petitioner's VAT refund claim.

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182 Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005.

183 Emphasis supplied and italics in the original text.

All told, these afore-discussed disallowances totalling ₱2,508,412.05 shall be disregarded in computing petitioner's final refundable amount.

We shall now proceed with the determination of the ***2^{nd} condition***.

Since petitioner had both zero-rated and VAT-able sales in CY 2018 and the corresponding input VAT cannot be directly and entirely attributed to any of these sales, the input VAT shall be proportionately allocated on the basis of sales volume.

In the case of *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*[184] (**Chevron**), the Supreme Court made a definitive declaration that a VAT-registered taxpayer has two (2) options with respect to its input VAT attributable to zero-rated sales, it may: (1) charge the same against output VAT from VAT-able sales, and claim for refund or issuance of a tax credit certificate (**TCC**) any unutilized or "excess" input VAT; or, (2) claim the same for refund or issuance of a TCC in its entirety, *viz*:

> ...
> [T]**he input tax attributable to zero-rated sales may, <u>at the option of the VAT-registered taxpayer</u>, be: (1) charged against output tax from regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety.** It must be stressed that **the remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative.**
> ...

Clearly from the foregoing, a VAT-registered taxpayer has the discretion to decide whether to charge its input VAT attributable to zero-rated sales against output VAT. In this respect, the Court cannot impose its own methods for calculating the refund, such as compelling the crediting of input VAT against output VAT as a condition precedent to the refund or issuance of a TCC. This is especially true

184 G.R. No. 215159, 05 July 2022; Citation omitted, underscoring supplied, emphasis in the original text and supplied.

when the taxpayer-claimant opts to claim the input VAT attributable to zero-rated sales for a refund or issuance of a TCC in its entirety.

Furthermore, regardless of which option the taxpayer-claimant chooses, the Supreme Court's ruling in *Chevron* clarifies that since the taxpayer-claimant is requesting a refund of unutilized or unused input VAT from zero-rated sales (as opposed to the "excess" creditable input VAT from the output VAT), this amount is inherently immediately refundable, given that there is no related output VAT to offset it against. Therefore, the CTA's proper preliminary step in determining the refundable excess and unutilized input VAT attributable to valid zero-rated sales should be computing the ratable portion of the taxpayer-claimant's input VAT allocable to zero-rated sales, assuming the input VAT cannot be directly attributed to zero-rated activities.

It is only when the taxpayer-claimant chooses the first option, *i.e.*, to charge the input VAT attributable to zero-rated sales against output VAT from VAT-able sales and claim for refund or issuance of a TCC any unutilized or "excess" input VAT that the Court may require the offsetting of such ratable portion of the taxpayer-claimant's input VAT attributable to zero-rated sales against "Output VAT Still Due" as a condition precedent to the refund or issuance of a TCC.

In the present case, as has been determined earlier above, petitioner has clearly chosen the **first option**.

Since petitioner's declared input VAT allocated to 12% VAT-able sales in the amount of ₱5,575,803.37, as determined earlier, is not enough to cover the output VAT due of ₱10,546,991.96, the declared input VAT attributable to declared zero-rated receipts in the amount of ₱3,851,047.41 shall then be utilized against the output VAT still due of ₱4,971,188.59, resulting in an excess input VAT attributable to declared zero-rated sales in the amount of ₱133,671,461.36, computed as follows:

Output VAT	₱10,546,991.96
Less: Declared Input VAT allocated to Declared 12% VAT-able Receipts	5,575,803.37
Output VAT still due	**₱4,971,188.59**

Declared Input VAT attributable to Declared Zero-Rated Receipts	₱38,170,443.68
Output VAT still due	4,971,188.59
Excess Input VAT attributable to Declared Zero-Rated Receipts	**₱33,199,255.09**

However, as discussed earlier, not all of petitioner's input VAT is valid. Thus, this Court determines whether the valid input VAT of petitioner is sufficient to cover its excess input VAT attributable to declared zero-rated sales, *viz:*

Excess Input VAT attributable to Declared Zero-Rated Receipts (A)	₱33,199,255.09
Total Available Valid and Substantiated Input VAT (B)	38,431,489.45
Valid Available Input VAT attributable to Declared Zero-Rated Receipts (A or B, whichever is lower)	**₱33,199,255.09**

Meanwhile, in relation to its zero-rated sales, petitioner was able to properly substantiate only the total amount of ₱409,496,725.54 out of its total declared zero-rated sales of ₱601,682,148.46. Consequently, only the input VAT of ₱22,594,963.61 is attributable to the said valid zero-rated sales of ₱409,496,725.54, as computed below:

Valid Zero-Rated Sales	₱409,496,725.54
Divided by Declared Zero-Rated Sales	601,682,148.46
Multiplied by Valid Input VAT attributable to Declared Zero-Rated Sales	33,199,255.09
Total Refundable Amount	**₱22,594,963.61**

Finally, due to the BIR's previous partial approval of petitioner's administrative claim through the issuance in the latter's favor of an "Authority to Issue VAT Refund" in the amount of ₱16,671,353.86[185], the said amount shall be offset against the ₱22,594,963.61 refundable excess input VAT attributable to valid zero-rated sales, as found by this Court. Petitioner shall be entitled to receive an additional grant of refund representing the difference, as computed below:

Refundable Excess and Unutilized Input VAT Attributable to Valid Zero-Rated Sales, *as recalculated*	₱22,594,963.61
Less: Amount partially granted by the BIR *per* Authority to Issue VAT Refund already issued to petitioner by respondent	16,671,353.86
Additional/(Excess) Refundable Amount	**₱5,923,609.75**

It is a well-settled doctrine that a tax refund, which is in the nature of a tax exemption, should be construed *strictissimi juris*

[185] BIR Records, p. 220.

against the taxpayer. However, when the claim for refund has a clear legal basis and is sufficiently supported by evidence, as in the present case, then the Court shall not hesitate to grant the refund.[186]

WHEREFORE, premises considered, the instant Petition for Review filed on 26 October 2020 by petitioner Unilever Global Services B.V. Philippines Regional Operating Headquarters (ROHQ) is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** in the amount of **₱5,923,609.75**, representing petitioner's unutilized excess input Value-Added Tax for the four (4) quarters of CY 2018 which is attributable to its zero-rated sales for the same period.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LANEE S. CUI-DAVID
Associate Justice

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186 *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, 25 November 2009; *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, G.R. No. 180043, 14 July 2009.

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice