REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

WILLIAMS-SONOMA PHILIPPINES, INC., *Petitioner,*	**CTA CASE NO. 10325**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 14 2024 10:20 a.m.

x - x

DECISION

***MODESTO-SAN PEDRO, J.*:**

The Case

This *Petition for Review*, filed on 20 August 2020, prays for the refund of the amount of ₱1,276,574.80, allegedly representing petitioner's unutilized input VAT arising from petitioner's domestic purchases of services and purchases of goods attributable to zero-rated transaction for the First through Fourth Quarters of Fiscal Year 2019 (covering the period February 2018 to January 2019).[1]

The Parties

Petitioner Williams-Sonoma Philippines, Inc. is a domestic corporation engaged in product development support and quality control for home accessories, furniture and decorations, including outsourcing support, vendor relationship management, new vendor identification, business planning and coordination, marketing, and general sales support and promotion, without

[1] Summary of the Case, Pre-Trial Order, Docket – Vol. III, p. 951.

engaging in retail trade.[2] It is also registered with the Bureau of Internal Revenue ("BIR") as a value-added tax ("VAT") taxpayer, with Taxpayer's Identification No. ("TIN") 008-666-727.[3]

Respondent is the duly appointed Commissioner of Internal Revenue ("CIR") who holds office at the Bureau of Internal Revenue ("BIR") National Office Building located at Agham Road, Diliman, Quezon City where he may be served with summons and other legal processes.[4]

The Facts

Petitioner filed its Quarterly VAT Returns[5] for the fiscal period 1 February 2018 to 31 January 2019 on the following dates:

Quarter	Period Covered	Date Filed
1st Quarter	01 February to 30 April 2018	24 May 2018
2nd Quarter	1 March to 31 July 2018	24 August 2018
3rd Quarter	1 August to 31 October 2018	25 February 2019
4th Quarter	1 November 2018 to 31 January 2019	25 February 2019

On 21 January 2020, petitioner filed with the BIR an Application for Tax Credits/Refunds (BIR Form No. 1914),[6] based on Section 112(A) of the ***National Internal Revenue Code of 1997 ("NIRC"), as amended by Republic Act ("RA") No. 10963***,[7] for the period from 01 February 2018 to 31 January 2019 amounting to ₱1,399,888.05.

On 20 July 2020, petitioner received the VAT Refund Notice dated 15 June 2020,[8] allowing the refund of input tax on local purchases amounting to ₱123,313.25, while the amount of ₱1,276,574.80 was disallowed on the following grounds:

[2] Par. 2, Joint Manifestation on Stipulation of Facts, *id.*, p. 946.
[3] Exhibit "P-377-d", USB marked as Exhibit "P-378".
[4] Par. 1.2, Parties and Jurisdiction, Petition for Review, Docket – Vol. I, pp. 6 to 7, vis-à-vis Par. 1, *Answer*, Docket – Vol. II, p. 878.
[5] Exhibit "P-377-c", USB marked as Exhibit "P-378".
[6] Exhibit "P-5", Docket – Vol. I, p. 67.
[7] An Act Amending Sections 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, and 288; Creating New Sections 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, and 265-A; and Repealing Sections 35, 62, And 89; All Under Republic Act No. 8424, Otherwise Known as the National Internal Revenue Code of 1997, as Amended, and for Other Purposes. Otherwise known as the "Tax Reform for Acceleration and Inclusion (TRAIN)" Law.
[8] Exhibit "P-6", Docket – Vol. I, pp. 56 to 57.

Disallowed Input VAT due to violation of invoicing requirements (big ticket)	₱1,191,005.11
Disallowed Input VAT due to violation of invoicing requirements (non-big ticket)	15,610.76
Output VAT assessed against the claim	69,958.93
Total Deductions	**₱1,276,574.80**

Petitioner thus filed a Petition for Review ("Petition") before this Court on 20 August 2020,[9] praying for the refund of the disallowed amount of ₱1,276,574.80.

On 3 November 2020, within the extended time granted by the Court,[10] respondent filed his Answer,[11] interposing mainly the following special and affirmative defenses:

1. Petitioner failed to discharge with the burden of complying with the requisites in order for the supply of services to be considered VAT zero-rated under Section 108(B)(2) of the NIRC, as amended; and

2. The taxpayer bears the burden of establishing the factual and legal basis of its claim for refund and petitioner failed to present clear and convincing evidence to merit the same.

Thereafter, Pre-Trial Conference was set and held on 10 February 2021.[12] Prior thereto, the Pre-Trial Brief for the Petitioner and Respondent's Pre-Trial Brief were filed separately on 5 February 2021.[13]

On 2 March 2021, the parties submitted their Joint Manifestation on Stipulation of Facts,[14] which was approved and adopted in the Pre-Trial Order issued and dated 8 March 2021.[15] The parties filed an Amended Joint Manifestation on Stipulation of Facts on 10 March 2021, which was noted by the Court in its Resolution dated 18 March 2021.[16]

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

---

[9] *Id.*, pp. 6 to 30.
[10] Motion for Additional Time to File Answer filed by respondent on 2 October 2020 and Order dated 6 October 2020, Docket – Vol. II, pp. 874 to 877.
[11] *Id.*, pp. 878 to 883.
[12] Notice of Pre-Trial Conference dated 9 November 2020, *id.*, pp. 885 to 886; Minutes of the hearing held on, and Order dated, 10 February 2021, *id.*, p. 926, and Docket – Vol. III, p. 927, respectively.
[13] Docket – Vol. II, pp. 888 to 902 and 922 to 924, respectively.
[14] Docket – Vol. III, pp. 946 to 948.
[15] *Id.*, pp. 951 to 956.
[16] *Id.*, pp. 957 to 959 and 961, respectively.

Petitioner offered the testimonies of the following individuals: (1) Ms. Susan B. Castillo,[17] petitioner's Accountant; and (2) Ms. Richelle C. Joson,[18] the Court-commissioned Independent Certified Public Accountant (ICPA).[19]

The Report[20] of the ICPA was submitted on 17 May 2021.[21]

Petitioner filed its Formal Offer of Exhibits via registered mail on 17 August 2021, which was received by the Court on 1 October 2021.[22] Respondent then posted his Comment (Re: Petitioner's Formal Offer of Evidence) on 27 October 2021.[23] In the Resolution dated 15 February 2022,[24] the Court admitted petitioner's offered Exhibits "P-374", "P-375", "P-376", "P-377 to P-377-k-70", "P-377-k-72 to P-377-k-91", and "P-378", but denied the admission of Exhibits "P-1", "P-2", "P-3", "P-4", "P-4-a", "P-4-b", "P-4-c", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-10-a", "P-10-b", "P-10-c", "P-10-d", "P-10-e", "P-10-f", "P-10-g", "P-10-h", "P-10-I", "P-10-j", "P-10-k", "P-10-l", "P-11", "P-11-a", "P-12", "P-12-a", "P-12-b", "P-12-c", "P-12-d", "P-12-e", "P-12-f", "P-12-g", "P-12-h", "P-12-I", "P-12-j", "P-12-k", "P-12-l", "P-12-m", "P-12-n", "P-12-o", "P-12-p", "P-12-q", "P-12-r", "P-12-s", "P-12-t", "P-12-u", "P-12-v", "P-12-w", "P-12-x", "P-12-y", "P-13 to P-370", "P-371", "P-371 to P-371-b", "P-372", and "P-373", for failure to present the originals for comparison; and Exhibit "P-377-k-71" for not being found in the records.

On 8 March 2022, petitioner filed a Motion for Reconsideration (Re: Resolution dated 15 February 2022),[25] praying for the admission of the denied exhibits. This was later reiterated in petitioner's Manifestation and Motion filed on 9 August 2022.[26] Respondent, however, failed to file his comment to petitioner's Motion for Reconsideration.[27]

Meanwhile, on 30 June 2022, respondent transmitted to this Court the BIR Records of the case, consisting of 394 pages.[28]

---

[17] Docket – Vol. II, pp. 905 to 920; Minutes of the hearing held on dated 22 March 2021, Docket – Vol. III, pp. 962.
[18] Exhibit "P-376", *id.*, pp. 970 to 980; Minutes of the hearings held on, and Orders dated, 16 June 2021 and 28 July 2021, *id.*, pp. 994 to 997.
[19] Oath of Commission dated 24 May 2021, *id.*, p. 990; Minutes of the hearing held on, and Order dated, 24 May 2021, *id.*, pp. 989 and 991, respectively.
[20] Exhibit "P-377", USB marked as Exhibit "P-378".
[21] *Id.*, p. 963.
[22] *Id.*, pp. 998 to 1005.
[23] *Id.*, pp. 1008 to 1010.
[24] *Id.*, pp. 1015 to 1016.
[25] *Id.*, pp. 1018 to 1024.
[26] *Id.*, pp. 1076 to 1080.
[27] Records Verification dated 21 April 2022 issued by the Judicial Records Division of this Court, *id.*, p. 1028.
[28] Compliance dated 29 June 2022, *id.*, pp. 1062 to 1064.

In the Resolution dated 14 September 2022,[29] the Court *(1)* partially granted petitioner's Motion for Reconsideration (Re: Resolution dated June 15, 2021) and further admitted Exhibits "P-5", "P-6", "P-10", "P-10-a", "P-10-b", "P-10-c", "P-10-d", "P-10-e", "P-10-f", "P-10-g", "P-10-h", "P-10-I", "P-10-j", and "P-10-k"; and *(2)* noted petitioner's Manifestation and Motion.

For his part, respondent offered the testimony of Revenue Officer IV Clariza M. Barangan.[30]

Respondent then submitted his Formal Offer of Evidence on 5 December 2022,[31] with petitioner's Comment with Motion to Submit Memoranda (Re: Formal Offer of Evidence dated 01 December 2022) filed on 06 January 2022.[32] In the Resolution dated 8 February 2023,[33] the Court admitted all of respondent's offered exhibits.

Respondent filed his Memorandum on 10 March 2023,[34] while petitioner's Memorandum was submitted on 31 March 2023.[35] Thus, in the Minute Resolution dated 18 April 2023,[36] the case was deemed submitted for decision.

Hence, this Decision.

The Issue

Petitioner raises the following solitary issue in this case:

> "WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND OF ITS UNUTILIZED INPUT VAT ARISING FROM DOMESTIC PURCHASES OF SERVICES, AND DOMESTIC PURCHASES OF GOODS ATTRIBUTABLE TO ZERO-RATED SALES FOR THE FIRST THROUGH FOURTH QUARTERS OF FISCAL YEAR 2019 (COVERING THE PERIOD FEBRUARY 2018 TO JANUARY 2019) IN THE AMOUNT OF ONE MILLION TWO HUNDRED SEVENTY SIX THOUSAND FIVE HUNDRED SEVENTY FOUR AND 80/100 PESOS (₱1,276, 574.80)"[37]

---

[29] *Id.*, pp. 1083 to 1091.
[30] Exhibit "R-6", *id.*, pp. 1050 to 1054; Minutes of the hearing held on, and Order dated, 29 November 2022, *id.*, pp. 1101 and 1104, respectively.
[31] *Id.*, pp. 1105 to 1108.
[32] *Id.*, pp. 1111 to 1114.
[33] *Id.*, pp. 1117 to 1118.
[34] *Id.*, pp. 1119 to 1125.
[35] *Id.*, pp. 1128 to 1147.
[36] *Id.*, p. 1150.
[37] Statement of the Issue, Petition for Review, Docket – Vol. I, pp. 12 to 13, *vis-à-vis* Issues to Be Tried or Resolved, Respondent's Pre-Trial Brief, Docket – Vol. II, p. 922.

Arguments of the Parties

Petitioner's Arguments:

Petitioner argues that the disallowance of petitioner's claim for input VAT refund was procedurally defective, violated due process, and has no substantive legal and factual basis; that it faithfully complied with the invoicing requirements for its claim for input VAT refund to prosper; and that the failure to prove an administrative claim does not preclude petitioner's remedy for a judicial claim

Respondent's Counter-arguments:

Respondent counter-argues that the petition must be dismissed for failure of petitioner to substantiate its administrative claim for refund. Accordingly, petitioner failed to prove that the sales to its affiliates are zero-rated sales since it failed to: *(a)* show proof of remittances of foreign currency from export of sales of services, *(b)* fully substantiate with documentary evidence all the services claimed to be rendered to its affiliate outside the Philippines, and *(c)* submit sufficient proof that its affiliate to whom petitioner rendered services is not doing business in the Philippines. As such, the alleged input VAT attributable to said sales cannot be refunded to petitioner. Lastly, tax refunds, like tax exemptions, are construed strictly against the taxpayer and the claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund.

The Ruling of the Court

The Petition must be **DENIED** for lack of merit.

Requisites for claiming unutilized input VAT attributable to zero-rated sales.

The provision that governs the present claim for refund of excess and/or unutilized input VAT attributable to zero-rated sales is ***Section 112 (A) and (C) of the NIRC, as amended by RA No. 10963***, which reads as follows:

> "**SEC. 112.** ***Refunds or Tax Credits of Input Tax.*** —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales**, except

transitional input tax, **to the extent that such input tax has not been applied against output tax**: *Provided, however*, **That in the case of zero-rated sales under** Section 106(A)(2)(a)(1), (2) and (b)[38] and **Section 108(B)**(1) and **(2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)**: *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

xxx xxx xxx

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

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."
(Emphasis, Ours.)

Based on the aforequoted provision, jurisprudence has laid down certain requisites which the taxpayer-applicant must comply with to successfully obtain a credit/refund of input VAT. Said requisites may be classified into certain categories as follows:

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

1. the refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[39]

---

[38] In view of the amendments introduced by RA No. 10963, Section 106(A)(2)(a)(2) is now renumbered as Section 106(A)(2)(a)(3), while Section 106(A)(2)(b) is now deleted.

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

2. in case of full or partial denial of the refund claim rendered within a period of ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision;[40]

With reference to the taxpayer's registration with the BIR:

3. the taxpayer is a VAT-registered person;[41]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[42]

5. for zero-rated sales under ***Section 106(A)(2)(a)(1) and (2)***;[43] ***106(B)***;[44] and ***108(B)(1) and (2)***, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the Bangko Sentral ng Pilipinas (BSP) rules and regulations;[45]

---

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

[41] Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, *supra*; San Roque Power Corporation vs. Commissioner of Internal Revenue, *supra*; and AT&T Communications Services Philippines, Inc., vs. Commissioner of Internal Revenue, *supra*.

[42] *Ibid.*

[43] *Supra.* at Note 37.

[44] Section 106(B) cited in Section 112(A) of RA No. 8424 was later amended by RA No. 9337 to pertain to Section 106(A)(2)(b). Accordingly, Section 112(A), as amended by RA No. 9337, reads as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under **Section 106(A)(2)**(a)(1), (2) and **(b)** and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales." (*Emphasis supplied*)

However, in view of the amendments introduced by RA No. 10963, Section 106(A)(2)(b) is now deleted (*Supra.* at Note 37).

[45] *Ibid.*

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[46]

7. the input taxes are due or paid;[47]

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[48] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[49]

At this juncture, it must be emphasized that cases filed before the Court of Tax Appeals ("CTA") are litigated *de novo*; as such, party-litigants should prove every minute aspect of their case by presenting, formally offering, and submitting to the CTA all evidence required for the successful prosecution of its claim.[50] The review of the CTA is not limited to whether or not respondent committed gross abuse of discretion, fraud, or error of law. As evidence is considered and evaluated again, the scope of the CTA review covers factual findings.[51] Consequently, the CTA may give credence to all evidence presented by petitioner, including those that may not have been submitted to respondent, as the case is being essentially decided in the first instance.[52] Thus, it behooves petitioner to show compliance with each of the foregoing requisites. As a corollary, the absence of *any* of the said requisites is already a valid ground to deny the refund claim.

---

[46] *Ibid.*

[47] *Ibid.*

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

[49] Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, *supra*; San Roque Power Corporation vs. Commissioner of Internal Revenue, *supra*; and AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue, *supra*.

[50] Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.), G.R. No. 231581, 10 April 2019.

[51] Philippine Airlines, Inc. v. Commissioner of Internal Revenue, G.R. No. 206079-80 and 206309, 17 January 2018.

[52] Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.), *supra*.

Petitioner's administrative and judicial claims were timely filed.

The **first requisite** pertains to the filing of tax refund or tax credit of input VAT before the BIR, within two (2) years from the close of the quarter when the sales were made.

The present claim covers the four (4) quarters of the fiscal period covering 1 February 2018 to 31 January 2019. Counting two (2) years from the respective close of the said quarters, the respective 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, as amended***, are shown below, *viz.*:

Quarter	Close of taxable quarter	Last day for filing an administrative claim	Date of filing of claim for refund
1st Quarter	30 April 2018	30 April 2020	21 January 2020[53]
2nd Quarter	31 July 2018	31 July 2020	
3rd Quarter	31 October 2018	31 October 2020	
4th Quarter	31 January 2019	31 January 2021	

It is apparent that petitioner's administrative claim was timely filed within the two-year prescriptive period. Thus, petitioner complied with the **first requisite.**

As for the **second requisite**, the same necessitates that the judicial claim must have been filed within thirty (30) days from receipt of respondent's decision or after the expiration of the ninety (90)-day period under ***Section 112(C) of the NIRC, as amended***. Thus, from the filing of petitioner's administrative claims, respondent had ninety (90) days to act on the said claim.

Counting ninety (90) days from petitioner's submission of its administrative claim on 21 January 2020, respondent had until 20 April 2020 to act thereon.

However, on 16 March 2020, a Memorandum from the Executive Secretary was issued by the order of the President, imposing the Enhanced Community Quarantine ("ECQ") over the entire Luzon from 17 March 2020 to 13 April 2020. Pursuant thereto, the BIR issued Revenue Memorandum Circular (RMC) No. 027-20 dated 17 March 2020, extending the deadline for the ninety (90)-day processing period for VAT refund pursuant to Section 112 of the Tax Code, to wit:

[53] Exhibit "P-5", Docket – Vol. I, p. 67.

"2. The 90-day period of processing VAT refund claims by the processing offices **for those claims that are currently being evaluated** and for those that may be received from March 16 to April 14, 2020 **is suspended and that the counting of the number of processing days shall resume after the lifting of the "community quarantine"**[54] issued by the President."
(Emphasis, Ours.)

The ECQ covering the National Capital Region ("NCR") was extended until 15 May 2020[55] and was thereafter downgraded to a Modified ECQ ("MECQ")[56] from 16 May 2020 to 15 June 2020.[57]

At the time of imposition of the ECQ within NCR beginning 17 March 2020, petitioner's VAT refund claim filed on 21 January 2020 was among those already being evaluated. It is thus affected by the suspension of the 90-day VAT refund processing period pursuant to ***RMC No. 027-20***. On 17 March 2020, fifty-six (56) days out of ninety (90) processing days had already lapsed. This left thirty-four (34) remaining days for respondent to act on petitioner's VAT refund claim, the counting of which resumed after the lifting of the community quarantine.

However, the community quarantine, particularly the ECQ and later the MECQ, continued within NCR until 15 June 2020, which, incidentally, is the same date when the VAT Refund Notice was issued. Considering that respondent acted on petitioner's VAT refund claim without waiting for the lifting of any community quarantine, the VAT Refund Notice dated 15 June 2020 was timely issued.

---

[54] Community quarantine shall be further defined as follows:

a. General community quarantine – where no movement of people shall be limited to accessing basic necessities and work; and uniformed personnel and quarantine officers shall be present at border patrol;
b. Enhanced community quarantine – where strict home quarantine shall be implemented in all households; transportation shall be suspended; provision for food and essential health services shall be regulated; and heightened presence of unformed personnel to enforce quarantine procedures will be implemented. (*Inter-Agency Task Force for the Management of Emerging Infectious Disease (IATF) Resolution No. 12 (s. 2020)* dated 13 March 2020)

Later re-defined as "refers to the restriction of movement within, into, or out of the area of quarantine of individuals, large groups of people, or commodities, designed to reduce the likelihood of transmission of COVID-19 among persons in and to persons outside the affected area" (Section [1], No. 1, of Omnibus Guidelines on the Implementation of Community Quarantine per IATF Resolution No. 30 (s. 2020) dated 29 April 2020; renumbered as Section [1], No. 2 per IATF Resolution No. 37 (s. 2020) dated 15 May 2020)

[55] Memorandum from the Executive Secretary dated 7 April 2020 and Executive Order No. 112 (s. 2020), dated 30 April 2020.

[56] Refers to the transition phase between ECQ and GCQ, when these temporary measures are relaxed; stringent limiting movement and transportation of people, strict regulation of operating industries, provision of food and essential services, and heightened presence of uniformed personnel to enforce community quarantine protocols become less necessary. (Section [1], No. 11, of Omnibus Guidelines on the Implementation of Community Quarantine per IATF Resolution No. 37 (s. 2020) dated 15 May 2020)

[57] IATF Resolution No. 27 (s. 2020), dated 15 May 2020 and IATF Resolution No. 41 (s. 2020), dated 29 May 2020.

Said VAT Refund Notice was received by petitioner on 20 July 2020, thereby giving petitioner thirty (30) days therefrom, or until 19 August 2020, to file its judicial claim. But since said date fell on a special holiday (Quezon City Day), the deadline to file the judicial claim is moved to the next working day which was 20 August 2020. Thus, when petitioner filed the Petition on 20 August 2020,[58] the same was likewise timely made.

Given the foregoing, petitioner complied with the **first and second requisites** that the administrative and judicial claims should be timely filed.

Petitioner is a VAT-registered taxpayer.

As for its compliance with the **third requisite**, petitioner has fulfilled the same by establishing that it is a VAT-registered taxpayer with the BIR under TIN 008-666-727-000, as evidenced by BIR Certificate of Registration No. 9RC0000512931.[59]

Petitioner failed to prove that it was engaged in zero-rated or effectively zero-rated sales for the fiscal period February 2018 to January 2019.

The **fourth and fifth requisites** require that the taxpayer be engaged in zero-rated or effectively zero-rated sales under ***Sections 106(A)(2)(a)(1) and (3), and 108(B)(1) and (2) of the NIRC, as amended***, and that the acceptable foreign currency exchange proceeds thereof have been duly accounted for in accordance with BSP rules and regulations.

Here, petitioner claims that it is engaged in zero-rated or effectively zero-rated sales under ***Section 108(B)(2) of the NIRC, as amended***, which reads as follows:

> "**SEC. 108.** ***Value-added Tax on Sale of Services and Use or Lease of Properties***. –
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – The following **services performed in the Philippines** by VAT-registered persons shall be subject to zero percent (0%) rate:

[58] Docket – Vol. I, pp. 6 to 30.
[59] Exhibit "P-377-d", USB marked as Exhibit "P-378".

(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);"
(Emphasis, Ours.)

The foregoing provision is implemented by ***Section 4.108-5 (b)(2) or Revenue Regulations ("RR") No. 16-2005, as amended by RR No. 13-18***, which provides that:

"**SEC. 4.108-5.** ***Zero Rated Sale of Services.*** —

Xxx xxx xxx

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

Xxx xxx xxx

(2) Services other than processing, manufacturing or repacking rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP;"

In its Quarterly VAT Returns[60] for the fiscal period 1 February 2018 to 31 January 2019, petitioner reported total sales amounting to ₱46,328,068.96, which is comprised of VATable and zero-rated sales, broken down as follows:

Quarter	VATable	Zero-Rated	Total
1st	₱ -	₱14,860,729.37	**₱14,860,729.37**
2nd	-	10,644,178.82	**10,644,178.82**
3rd	582,991.08	14,242,912.26	**14,825,903.34**
4th	-	6,051,257.43	**6,051,257.43**
Total	**₱582,991.08**	**₱45,799,077.88**	**₱46,382,068.96**

[60] Exhibit "P-377-c", *id.*

Based on petitioner's Summary List of Sales for the period February 2018 to January 2019,[61] the foregoing zero-rated sales amounting to ₱45,799,077.88 were derived from its sale of services to Williams-Sonoma Singapore Pte Ltd. ("WSSPL"), a non-resident foreign corporation (NRFC).

Accordingly, for a sale or supply of services to be subject to the VAT rate of zero percent (0%) under ***Section 108(B)(2) of the NIRC, as amended***, certain _essential elements_ must be present, to wit:

1. The services fall under any of the categories under ***Section 108(B)(2)***,[62] or simply, the services rendered should be *"other than processing, manufacturing or repacking goods"*;[63]

2. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a non-resident person not engaged in business who is outside the Philippines when the services were performed;[64]

3. The services must be performed in the Philippines[65] by a VAT-registered person; and

4. The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[66]

[61] Exhibit "P-377-c-1", *id.*
[62] Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), G.R. No. 152609, 29 June 2005.
[63] Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., supra.
[64] Sitel Philippines Corporation (Formerly Clientlogic Phils. Inc.) vs. Commissioner of Internal Revenue, G.R. No. 201326, February 8, 2017; Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 153205, 22 January 2007; Accenture, Inc. vs. Commissioner of Internal Revenue, G.R. No. 190102, 11 July 2012.
[65] Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., supra; Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), supra.
[66] Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., supra; Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), supra.

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

To prove compliance with the *first essential element*, petitioner presented its Product Sourcing and Franchisee Support Services Agreement[67] ("Services Agreement") with WSSPL, whereby petitioner provides the following services:[68]

Category of Service Provided	Description of Services/Costs related to Services
Product Sourcing Services	Supports product acquisition of merchandise for WSSPL, identifying suppliers, communicating with suppliers, arrange delivery of merchandise and advise purchaser of requirements for paying of merchandise.
Quality Control Services	Inspect goods manufactured by suppliers for compliance with the Williams-Sonoma Group quality and other standards.
Franchisee Support Services	Supports WSSPL franchisee operations or provides consulting services to WSSPL's franchisee in the Philippines
Product Sourcing, Quality Control, and Franchisee Support Services	Legal, Accounting, Tax, Treasury, MIS, HR/Payroll, Contracting, Administrative and other miscellaneous management costs.
Additional Services	To be mutually agreed upon by both Parties from time to time.

The foregoing services clearly fall within the scope of "*services other than processing, manufacturing or repacking of goods*" contemplated by ***Section 108(B)(2) of the NIRC, as amended***; hence, petitioner satisfactorily complied with the *first essential element*.

The recipient of petitioner's services is an NRFC not engaged in business in the Philippines.

Relative to the *second essential element*, to prove that its client is an NRFC for purposes of VAT zero-rating under ***Section 108(B)(2) of the NIRC, as amended***, petitioner must show that: (1) the client was established under the laws of a foreign country; and, (2) it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of **both** of these

[67] Exhibit "P-377-e", USB marked as Exhibit "P-378".
[68] Exhibit I of Services Agreement, *id*.

requirements to establish that the clients are foreign corporations and are not doing business in the Philippines.[69]

Thus, petitioner must submit for its NRFC client, at the very least, **both** (1) the Philippine Securities and Exchange Commission ("SEC") Certificate of Non-Registration of Corporation/Partnership; **and** (2) Proof of Certificate/Articles of Foreign Incorporation/Association showing the state/province/country where the entity was organized.

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

Petitioner complied with the *second essential element* by presenting the SEC Certificate of Non-Registration[70] and Certificate Confirming Incorporation of Company[71] of WSSPL. Taken together, these documents duly established that WSSPL is an NRFC not engaged in business in the Philippines.

Petitioner failed to prove that the services rendered to WSSPL were performed in the Philippines.

However, with regard to the *third essential element*, petitioner failed to establish its compliance thereto. The same Services Agreement between petitioner and WSSPL does not bear any indication that the subject services were to be performed by petitioner in the Philippines. A scrutiny of the articles/clauses of the Services Agreement reveals that it does not categorically state that the contracted services thereof shall be performed by the petitioner in the Philippines. Furthermore, no other evidence was offered to show that the subject services were indeed performed in the Philippines.

Verily, petitioner fell short in establishing that its sales of services qualify for VAT zero-rating under ***Section 108(B)(2) of the NIRC, as amended***. It is only when the sales of a VAT-registered person are zero-rated or effectively zero-rated that he/she/it may have the option of applying for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Considering petitioner's failure to establish its zero-

[69] Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd., G.R. No. 234445, 15 July 2020.
[70] Exhibit "P-377-g", USB marked as Exhibit "P-378".
[71] Exhibit "P-377-g-1", *id.*

rated or effectively zero-rated sales for the subject period, the subject refund cannot be granted.

Consequently, it becomes unnecessary to look into petitioner's compliance with the other remaining requisites.

Actions for tax refund or credit are in the nature of tax exemptions. As such, they are regarded as a derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven. Hence, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements. Unfortunately for petitioner, it has failed to prove such entitlement. The Petition must perforce fail.

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

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice