REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

STEFANINI PHILIPPINES, INC. *Petitioners,*	**CTA Case No. 10188**
- versus -	Members: **DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN**, and **REYES-FAJARDO** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 23 2022 11:17 AM.

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DECISION

REYES-FAJARDO, J.:

This is a *Petition for Review* filed by petitioner Stefanini Philippines, Inc. against respondent Commissioner of Internal Revenue on October 16, 2019, praying that refund or issuance of tax credit certificate (TCC) be granted to petitioner in the amount of ₱5,577,917.98, allegedly representing excess and unutilized input value-added tax (VAT) on purchases of goods and services attributable to zero-rated sales for the 2nd quarter of calendar year (CY) 2017.[1]

THE PARTIES

Petitioner Stefanini Philippines, Inc. is a corporation organized under Philippine law, with registered office address at 3, 5 & 6/F iMET BPO Metrobank Ave., Metropolitan Park, Roxas Blvd., Pasay City

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1 Statement of the Case, Pre-Trial Order dated June 30, 2020, Docket – Vol. II, p. 919.

1300.[2] It is engaged in the business of providing business process outsource solutions and allied contact or call center services, both as principal and agent.[3]

Respondent is the Commissioner (CIR) of the Bureau of Internal Revenue (BIR) empowered to perform the duties of the office, including, to act upon and to approve claims for refund or tax credit, with office address at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[4]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On June 28, 2019, petitioner filed with the BIR VAT Credit Audit Division an *Application for Tax Credits/Refunds* (BIR Form No. 1914),[5] and a letter,[6] requesting for a refund of the unutilized input VAT allocable to zero-rated sales, in the amount of ₱5,577,917.98 for the 2nd quarter of CY 2017.

On September 18, 2019, petitioner received the letter denying petitioner's administrative claim dated August 27, 2019, issued by the BIR through Ms. Maria Luisa I. Belen, OIC-Assistant Commissioner (ACIR) – Assessment Service. [7]

PROCEEDINGS BEFORE THIS COURT

Petitioner filed a *Petition for Review* on October 16, 2019.[8]

On December 19, 2019, respondent filed an *Answer*.[9]

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2 Par. 1, Stipulation of Facts, *Compliance* dated March 6, 2020, Docket – Vol. II, p. 865.

3 Par. 1.1, Stipulation of Facts, *Compliance* dated March 6, 2020, Docket – Vol. II, p. 865.

4 Par. 2, Stipulation of Facts, *Compliance* dated March 6, 2020, Docket – Vol. II, pp. 865 to 866.

5 Exhibit "P-25", Docket – Vol. II, p. 1261.

6 Exhibit "P-24", Docket – Vol. II, pp. 1258 to 1260.

7 Exhibit "P-27" (Q&A No. 57) [Docket – Vol. II, p. 1292], vis-à-vis Annexes "F" and "F-1" of *Petition for Review* [Docket – Vol. I, pp. 41 to 43].

8 Docket – Vol. I, pp. 6 to 15.

9 Docket Vol. I, pp. 53 to 62.

Respondent submitted the *BIR Records* of the case on January 20, 2020.[10]

Respondent's Pre-Trial Brief was submitted on February 5, 2020,[11] while petitioner's *Pre-Trial Brief* was filed on February 14, 2020.[12] The Pre-Trial Conference was set and held on February 20, 2020.[13]

On March 5, 2020, the parties filed their *Compliance*,[14] embodying their joint stipulation of facts and issues, which was approved by the Court on June 23, 2020.[15] The Pre-Trial Order was issued on June 30, 2020.[16]

Petitioner offered the testimonies of: (1) Jeanina B. Pepito,[17] petitioner's Finance Manager; and (2) Joseph Cedric V. Calica,[18] the Court-commissioned Independent Certified Public Accountant (ICPA).[19]

The *Report* of the ICPA was submitted on October 9, 2020.[20]

Petitioner filed a *Formal Offer of Evidence* on November 16, 2020.[21] Respondent filed a *Comment [Re: Petitioner's Formal Offer of Evidence]* on November 26, 2020.[22] The Court admitted all of petitioner's offered exhibits in the Resolution dated January 8, 2021.[23]

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10 Respondent's *Compliance*, Docket - Vol. I, pp. 67 to 69.

11 Docket - Vol. I, pp. 73 to 76.

12 Docket - Vol. I, pp. 95 to 106.

13 Notice of Pre-trial Conference dated January 10, 2020, Docket - Vol. I, pp. 65 to 66; Minutes of the hearing held on, and Order dated, February 20, 2020, Docket - Vol. II, pp. 857 to 859, and 861 to 862.

14 Docket - Vol. II, pp. 865 to 874.

15 Docket - Vol. II, pp. 893 to 894.

16 Docket - Vol. II, pp. 919 to 929.

17 Exhibit "P-27", Docket - Vol. II, pp. 1266 to 1293; Exhibit "P-28", Docket - Vol. II, pp. 1294 to 1298; Minutes of the hearing held on, and Order dated, September 10, 2020, Docket - Vol. II, pp. 955 to 959, and 961 and 962, respectively.

18 Exhibit "P-60", Docket - Vol. II, pp. 975 to 988; Minutes of the hearing held on, and Order dated, October 27, 2020, Docket - Vol. II, pp. 1162 to 1166.

19 *Oath of Commission* dated September 10, 2020, Docket - Vol. II, p. 960; Minutes of the hearing held on, and Order dated, September 10, 2020, Docket - Vol. II, pp. 955 to 959, and 961 and 962, respectively.

20 Exhibit "P-58", Docket - Vol. II, pp. 990 to 1005.

21 Docket - Vol. II, pp. 1174 to 1198.

22 Docket - Vol. II, pp. 1463 to 1465.

23 Docket - Vol. II, pp. 1471 to 1474.

Respondent presented the testimony of Revenue Officer Dexter C. Bustillos.[24]

On March 5, 2021, respondent's *Formal Offer of Evidence (with Motion to Set Commissioner's Hearing)* was filed.[25] On May 20, 2021, petitioner filed a *Comment (to Respondent's Formal Offer of Evidence with Motion to Set Commissioner's Hearing)*.[26] The Court admitted the offered exhibits of respondent in the Resolution dated July 7, 2021.[27]

On October 26, 2021, respondent filed a *Memorandum*.[28] On October 27, 2021, petitioner filed a *Memorandum*.[29]

The present case was submitted for decision on December 16, 2021.[30]

THE ISSUE STIPULATED BY THE PARTIES

The issue to be resolved by this Court is whether or not petitioner is entitled to refund or to the issuance of TCC amounting to ₱5,577,917.98 representing its alleged excess and unutilized input VAT attributable to zero-rated sales for the 2nd quarter of CY 2017.[31]

Petitioner's arguments:

Petitioner argues that both administrative and judicial claims for refund were timely filed; that petitioner has zero-rated sales during the 2nd quarter of CY 2017; that it incurred input VAT that were attributable to its sales of services and the excess were unutilized; and that the claimed input taxes for the 2nd quarter of CY 2017 were not applied against any output VAT liability.

Respondent's counter-arguments:

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24 Exhibit "R-4", Docket - Vol. I, pp. 82 to 86; Order dated February 18, 2021, Docket - Vol. II, pp. 1482 to 1483.
25 Docket - Vol. II, pp. 1486 to 1489.
26 Docket - Vol. II, pp. 1491 to 1496.
27 Docket - Vol. II, pp. 1503 to 1505.
28 Docket - Vol. II, pp. 1506 to 1514.
29 Docket - Vol. II, pp. 1516 to 1543.
30 Resolution dated December 16, 2021, Docket - Vol. II, p. 1546.
31 Stipulation of Issues, *Compliance* dated March 6, 2020, Docket - Vol. II, p. 866.

Respondent counters that the judicial claim should be denied for petitioner's failure to substantiate the claim for refund at the administrative level; and that a decision by respondent has already been rendered denying the claim for failure to comply with the mandatory invoicing requirements pursuant to Section 113 in relation to Section 110 of the Tax Code, as amended.

THE COURT'S RULING

The *Petition for Review* is partially granted.

Cases filed before this Court are litigated *de novo.*

Respondent cites *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue (Atlas)*[32] in arguing that the petition must fail for failure of petitioner to substantiate its claim for refund at the administrative level.

The Court disagrees.

Atlas as explained in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue (Pilipinas Total Gas)*[33] is not at all fours with the case at bar.

It must be emphasized that the factual milieu in *Atlas* and *Pilipinas Total Gas,* relates to the requirement on the taxpayer-claimant to submit complete documentary requirements in the administrative level as required in Revenue Regulations (RR) No. 3-88 and Revenue Memorandum Circular (RMC) No. 49-2003, respectively.[34] *Pilipinas Total Gas,* explaining *Atlas,* made a distinction between (1) an administrative VAT refund claim that was dismissed due to failure to submit complete documents despite notice or request; and (2)

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32 G.R. No. 145526, March 16, 2007.

33 G.R. No. 207112, December 8, 2015 citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue,* G.R. No. 145526, March 16, 2007.

34 *Zuellig-Pharma Asia Pacific Ltd. Phils. ROHQ v. Commissioner of Internal Revenue (CIR),* G.R. No. 244154, July 15, 2020.

administrative VAT refund claims that were either deemed denied due to inaction or denied by respondent other than due to failure to submit complete documents despite notice or request. In the first instance, a taxpayer-claimant must show this Court not only entitlement to a VAT refund under substantive law, but that there was also a submission of complete documents as requested by respondent. In the second instance, a taxpayer-claimant may present **all** evidence to prove its entitlement to a VAT refund, and the Court will consider all evidence offered even those not presented before respondent at the administrative level.[35]

In order words, if there is no allegation that in the claim for refund in the administrative proceedings below the claim was denied for failure of the taxpayer to submit complete documents despite notice, the taxpayer on appeal to this Court may present all documents to support its prayer for refund.

In the case at bar, there was no allegation from respondent that petitioner failed to submit complete documents despite notice or request.

Also, it must be noted that in RR No. 3-88 and RMC No. 49-2003, there is no requirement for a taxpayer-applicant to certify the completeness of supporting documents in its administrative claim for refund or issuance of TCC. At present, the prevailing rule is RMC No. 54-2014[36] that now requires that complete documents are to be submitted upon the filing of the taxpayer-claimant's administrative claim for VAT refund or issuance of TCC.[37]

Verily, cases filed before this Court are litigated *de novo*, and taxpayer claimants are required to prove every minute aspect of their

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35 *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue* G.R. No. 207112, December 8, 2015 citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007 as cited in *Commissioner of Internal Revenue v. CE Luzon Geothermal Power Company, Inc.*, CTA EB Case No. 2132 (CTA Case Nos. 7180 & 7279), January 28, 2021.

36 Subject: Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund / Credit under Section 112 of the Tax Code, as amended, June 11, 2014.

37 *Zuellig-Pharma Asia Pacific Ltd. Phils. ROHQ v. Commissioner of Internal Revenue (CIR)*, G.R. No. 244154, July 15, 2020.

cases.[38] The case of *Philippine Airlines, Inc. v. Commissioner of Internal Revenue,*[39] is instructive:

> The power of the Court of Tax Appeals to exercise its appellate jurisdiction does not preclude it from considering evidence that was not presented in the administrative claim in the Bureau of Internal Revenue. Republic Act No. 1125 states that the Court of Tax Appeals is a court of record:
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>> Section 8. Court of record; seal; proceedings. - The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the forms of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.
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> As such, parties are expected to litigate and prove every aspect of their case anew and formally offer all their evidence. No value is given to documentary evidence submitted in the Bureau of Internal Revenue unless it is formally offered in the Court of Tax Appeals. Thus, the review of the Court of Tax Appeals is not limited to whether or not the Commissioner committed gross abuse of discretion, fraud, or error of law, as contended by the Commissioner. As evidence is considered and evaluated again, the scope of the Court of Tax Appeals' review covers factual findings.

Accordingly, this Court is not limited to determining whether the findings of the respondent are consistent with law considering the supporting documents submitted at the administrative level. Rather, jurisprudence has settled that this Court may consider and evaluate anew evidence submitted before it and make its own factual determination of the case.

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38 *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.),* G.R. No. 197515, July 2, 2014; *Commissioner of Internal Revenue v. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.

39 G.R. Nos. 206079-80 and 206309, January 17, 2018.

Petitioner partially complied with the requisites a taxpayer-applicant must comply to successfully obtain a credit/refund of input VAT.

Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 10963,[40] provides as follows:

> SEC. 112. *Refunds or Tax Credits of Input Tax.*-
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> (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.
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> xxx xxx xxx
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> (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

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40 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.

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.

Jurisprudence has laid down requisites which the taxpayer-applicant must comply with to successfully obtain a credit/refund of input VAT, as follows:

As to the timeliness of the filing of the administrative and judicial claims:

1. the claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[41]
2. that in case of full or partial denial of the refund claim, or the failure on the part of respondent to act on the said claim within a period of ninety (90) days, the judicial claim must be filed with this Court, within thirty (30) days from receipt of the decision or after the expiration of the said 90-day period;

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

3. the taxpayer is a VAT-registered person;[42]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively

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

42 *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue,* supra; *San Roque Power Corporation v. Commissioner of Internal Revenue,* supra; and *AT&T Communications Services Philippines, Inc. v. CIR,* supra.

zero-rated sales;[43]

5. for zero-rated sales under Sections 106(A)(2)(a)(1), (2), and (b); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[44]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[45]
7. the input taxes are due or paid;[46]
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;[47] and
9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[48]

Petitioner's administrative and judicial claims were timely filed.

As for the *first* requisite, the present claim covers the 2nd quarter of CY 2017. Counting two (2) years from the close of the said quarter, the following table shows that the filing of petitioner's *Application for Tax Credits/Refunds* of its excess and unutilized input VAT for the 2nd quarter of CY 2017, on June 28, 2019,[49] was timely made within the 2-year prescriptive period:

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43 *Id.*

44 *Id.*

45 *Id.*

46 *Id.*

47 *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra.

48 *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc. v. CIR*, supra.

49 Exhibit "P-24", Docket - Vol. II, pp. 1258 to 1260; Exhibit "P-25", Docket - Vol. II, p. 1261.

2017	Period	Close of the Taxable Quarter	Last Day to File Administrative Claim	Date of Filing
2nd quarter	April 1, 2017 to June 30, 2017	June 30, 2017	June 30, 2019	June 28, 2019[50]

Anent the *second* requisite, it necessitates that the judicial claim be filed within thirty (30) days from receipt of respondent's decision or after the expiration of the 90-day period under Section 112(C) of the NIRC of 1997, as amended.

From the filing of petitioner's administrative claim on June 28, 2019, respondent had ninety (90) days or until September 26, 2019 to act on the said claim.

On September 18, 2019, petitioner received the letter dated August 27, 2019 issued by the BIR, through OIC-ACIR Maria Luisa I. Belen, denying petitioner's administrative claim. [51] Counting thirty (30) days from September 18, 2019, petitioner had until October 18, 2019, within which to file its judicial claim for refund. Considering that petitioner filed the instant *Petition for Review* on October 16, 2019,[52] the judicial claim was timely filed.

Petitioner is a VAT-registered taxpayer.

Petitioner likewise complied with the *third* requisite, since it is registered with the BIR as a VAT taxpayer with Tax Identification Number 006-960-314-00000.[53]

Petitioner established that it was engaged in zero-rated sales or effectively zero-rated sales during the 2nd quarter of the CY 2017.

The *fourth* and *fifth* requisites require that the taxpayer is engaged in zero-rated or effectively zero-rated sales, and for zero-

50 Exhibit "P-24", Docket - Vol. II, pp. 1258 to 1260; Exhibit "P-25", Docket - Vol. II, p. 1261.

51 Refer to Exhibit "P-27" (Q&A No. 57) [Docket - Vol. II, p. 1292], vis-à-vis Annexes "F" and "F-1" of *Petition for Review* [Docket - Vol. I, pp. 41 to 43].

52 Docket - Vol. I, pp. 6 to 15.

53 Exhibits "P-4" to "P-4-A", and "P-5" to "P-5-A", Docket - Vol. II, pp. 1210 to 1211.

rated sales under Sections 106(A)(2)(a)(1), (2), and (b), and 108(B)(1) and (2) of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the BSP rules and regulations.

In its Quarterly VAT Return for the 2nd quarter of CY 2017,[54] petitioner reported total sales/receipts in the amount of ₱179,460,898.85, which included zero-rated sales/receipts in the amount of ₱179,437,738.44, as follows:

Vatable Sales/Receipts	₱ 23,160.41
Zero-Rated Sales/Receipts	**179,437,738.44**
Total Sales/Receipts	₱ 179,460,898.85

However, in the report of the Court-commissioned Independent Certified Public Accountant (ICPA), Mr. Joseph Cedric V. Calica of AMC & Associates, he noted a discrepancy between the amount per summary[55] and schedule[56] of zero-rated sales of services and the amount declared in the Quarterly VAT Return[57] for the 2nd quarter of CY 2017. He accounted petitioner's total zero-rated sales only in the amount of ₱155,686,959.49, as follows:[58]

Name of Customer	Official Receipt			ICPA Exhibit
	No.	Date	Amount	
Stefanini Inc.	109	05-Apr-2017	₱ 45,112,500.00	"P-35-A"
	110	25-Apr-2017	14,899,500.00	"P-35-B"
	111	05-May-2017	33,436,116.99	"P-35-C"
	112	05-Jun-2017	492.50	"P-35-D"
	113	07-Jun-2017	4,947,000.00	"P-35-E"
	114	15-Jun-2017	19,772,000.00	"P-35-F"
	115	21-Jun-2017	12,281,850.00	"P-35-G"
	116	30-Jun-2017	25,237,500.00	"P-35-H"
TOTAL			**₱155,686,959.49**	

54 Exhibit "P-16", Docket - Vol. II, pp. 1240 to 1241.
55 Exhibit "P-34", ICPA Report binder.
56 Exhibit "P-10", Docket - Vol. II, p. 1231.
57 Exhibit "P-16", Docket - Vol. II, pp. 1240 to 1241.
58 Exhibits "P-35" and "P-36", ICPA Report binder.

Petitioner avers that for the 2nd quarter of CY 2017, its sales of services are rendered to a non-resident foreign corporation (NRFC) not engaged in business in the Philippines, particularly to *Stefanini, Inc.*, the consideration for which were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of BSP, qualify as zero-rated sales under Section 108(B)(2) of the NIRC of 1997, as amended, which reads:

> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.-*
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> ...
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> (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);
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> (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)...

Based on the foregoing provision, certain essential elements must be present for a sale or supply of services to be subject to the VAT rate of zero percent (0%), to wit:

1. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a nonresident person not engaged in business who is outside the Philippines when the services were performed;[59]

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

2. The services fall under any of the categories under Section 108(B)(2),[60] or simply, the services rendered should be other than "processing, manufacturing or repacking goods";[61]

3. The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules;[62] and

4. The services must be performed in the Philippines[63] by a VAT-registered person.

Relative to the *first* essential element, to prove that its client is an NRFC for purposes of VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended, petitioner must prove 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. There must be sufficient proof of both of these requirements to establish that the clients are foreign corporations and are not doing business in the Philippines.[64]

Thus, petitioner must submit for its NRFC client, at the very least, both: (1) the SEC Certificate of Non-Registration of Corporation/Partnership; and (2) the Certificate/Articles of Foreign Incorporation/Association. The SEC Certificate of Non-Registration shows that the foreign client is not engaged in trade or business in the Philippines; while 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. [65]

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60 *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

61 *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra.

62 *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, supra.

63 *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, supra.

64 *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*, G.R. No. 234445, July 15, 2020.

65 *Id.*

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In the present case, petitioner satisfied the *first* essential element as it proved that its sole client for the 2nd quarter of CY 2017, *Stefanini, Inc.*, is an NRFC doing business outside the Philippines, by virtue of the following documents:

(1) *Certificate of Non-Registration of Company* dated 21 June 2019 issued by the SEC,[66] to the effect that the records of the SEC do not show the registration of *Stefanini Inc.* as a corporation, partnership, or One Person Corporation (OPC);

(2) *Apostilled Certification on the Incorporation of Stefanini, Inc.*[67] as certified by the Secretary of State of the State of Delaware, USA; and

(3) *Apostilled Certification on the Restated Certificate of Incorporation of Stefanini, Inc. with attached Amended and Restated Certificate of Incorporation*[68] as certified by the Secretary of State of the State of Delaware, USA.

As regard the *second* essential element, petitioner entered into an Agreement for Services[69] with *Stefanini, Inc.* for *"outsourced processing services to support Principal's internal operations and external customer contracts"*. These 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 of 1997, as amended.

Relative to the *third* essential element and in relation to the *fifth* requisite for the granting of the input VAT refund, petitioner presented the *Certificate of Inward Remittance*[70] from the Bank of America Merrill Lynch purportedly showing the remittances of its NRFC client for the 2nd quarter of CY 2017. The certification of inward

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66 Exhibit "P-11", BIR Records, p. 93.
67 Exhibits "P-12" to "P-12-A", Docket - Vol. II, pp. 1233 to 1234.
68 Exhibits "P-26" to "P-26-C", Docket - Vol. II, pp. 1262 to 1265.
69 Exhibits "P-6" to "P-6-B", Docket - Vol. II, pp. 1212 to 1216.
70 Exhibits "P-14" to "P-14-A", BIR Records, pp. 140 to 141.

remittances attests to the fact of payment *"in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP."*[71]

Moreover, there must also be compliance with the invoicing requirements, containing all the required information under Section 113(A) and (B) of the NIRC of 1997, as amended.

> 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 break-down of the sale price between its taxable, exempt and zero-rated

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[71] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.

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.

These provisions of the NIRC of 1997, as amended, are further implemented by Section 4.113-1(A) and (B) of RR No. 16-05, 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:

(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 pesos (₱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.

The sales invoices (SIs) and official receipts (ORs) must also be 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.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sale or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: xxx

xxx xxx xxx

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.

Aside from the Certificate of Inward Remittance from the Bank of America Merrill Lynch[72], petitioner also presented its Schedule of Zero-Rated Sale of Services[73], Reconciliation of Export Sales and Foreign Currency Remittances on Zero-Rated Sale of Services,[74] and Summary of Zero-Rated Sales with Cross Reference to Amount Inwardly Remitted to Stefanini Philippines, Inc. for the 2nd quarter of 2017,[75] and the corresponding VAT zero-rated ORs,[76] proving that for services rendered to Stefanini, Inc. for the 2nd quarter of CY 2017, petitioner was paid the amount of US$3,115,946.43, with the respective Philippine Peso equivalent of ₱155,686,959.49, as follows:

Official Receipt			Bank Certification Exhibit	Amount in USD	Amount in PHP
Date	No.	Exhibit			
05-Apr-2017	109	"P-7"	"P-14"	$ 900,000.00	₱ 45,112,500.00
25-Apr-2017	110	"P-7-A"		300,000.00	14,899,500.00
05-May2017	111	"P-7-B"		670,936.43	33,436,116.99
05-Jun-2017	112	"P-7-C"		10.00	492.50
07-Jun-2017	113	"P-7-D"		100,000.00	4,947,000.00
15-Jun-2017	114	"P-7-E"		400,000.00	19,772,000.00
21-Jun-2017	115	"P-7-F"		245,000.00	12,281,850.00
30-Jun-2017	116	"P-7-G"		500,000.00	25,237,500.00
TOTAL				$3,115,946.43	₱155,686,959.49

A scrutiny of the supporting VAT zero-rated ORs[77] shows that the same are compliant with the invoicing requirements under the VAT law and regulations cited earlier.

72 Exhibits "P-14" to "P-14-A", BIR Records, pp. 140 to 141.
73 Exhibit "P-10", Docket - Vol. II, p. 1231.
74 Exhibit "P-15", Docket - Vol. II, p. 1239.
75 Exhibit "P-36", ICPA Report binder.
76 Exhibits "P-7" to "P-7-G", Docket - Vol. II, pp. 1218 to 1225.
77 Exhibits "P-7" to "P-7-G", Docket - Vol. II, pp. 1218 to 1225.

With regard to the *fourth* essential element, petitioner alleges that it rendered outsourced business process services in the Philippines.[78] In its Memorandum, petitioner supported its assertion that it rendered outsourced business process services in the Philippines[79] with its Amended Articles of Incorporation,[80] BIR Certificates of Registration dated December 17, 2013 and January 18, 2018,[81] and Agreement for Services,[82] among others.

Petitioner's Amended Articles of Incorporation provide that its principal place of business is in the Philippines and that petitioner's primary purpose is to engage, conduct, and carry on the business of providing business processes outsource solutions and allied contact or call center services, as well as to lease real properties suitable for operations, marketing, and advertising.[83] In *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*,[84] the Supreme Court ruled that a foreign corporation's articles of incorporation prove that that it is not doing business in the Philippines. Stated in the general sense, a corporation's articles of incorporation prove where it is conducting its business, as in the instant case.

Petitioner's BIR Certificate of Registration indicates petitioner's line of business as "other call centers activities (voice), n.e.c. [not elsewhere classified]" under Philippine Standard Industrial Classification (PSIC)[85] code "82219."[86] In the 2009 PSIC as updated, the code 82219 belongs to the division (82) of businesses engaged in the provision of office administrative, office support and other business support activities and to the class (8221) of businesses engaged in call center activities, to wit:

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78 *Petition for Review*, Docket - Vol. I, par. 3, p. 7; *Memorandum*, Docket - Vol. II, par. 3, p. 1517.

79 *Memorandum*, Docket - Vol. II, par. 3, p. 1517.

80 Exhibit "P-3", Docket - Vol. II, pp. 1202-1209.

81 Exhibits "P-4" and "P-5", Docket - Vol. II, pp. 1210-1211.

82 Exhibits "P-6" to "P-6-B", Docket - Vol. II, pp. 1212-1217.

83 Exhibit "P-3", Docket - Vol. II, p. 1202.

84 G.R. No. 234445, July 15, 2020.

85 2019 Updates to the 2009 Philippine Standard Industrial Classification, Technical Notes, p. 23 available at https://psa.gov.ph/sites/default/files/2019%20Updates%20to%20the%2020009%20PSIC-Apr082022.pdf [last accessed on October 14, 2022] provides that "*PSIC is a classification according to kind of economic activity, and not a classification of goods and services. The activity carried out by a unit is the type of production in which it engages. This is the characteristic of the unit according to which it will be grouped with other units to form industries. An industry is defined as the set of all production units engaged primarily in the same or similar kind of productive activity.*"

86 Exhibits "P-5", Docket - Vol. II, p. 1211.

DIVISION 82. OFFICE ADMINISTRATIVE,
OFFICE SUPPORT AND OTHER
BUSINESS SUPPORT ACTIVITIES

This division includes the provision of a range of day to day office administrative services, as well as ongoing routine business support functions for others, on a contract or fee basis.

This division also included all support service activities, typically provided to businesses not elsewhere classified.

Units classified in this division do not provide operating staff to carry out the complete operations of a business.

...

8221 Call centers activities (Voice)

This class includes:

Inbound call centers, answering calls from clients by using human operators, automatic call distribution, computer telephone integration, interactive voice response systems or similar methods to receive order, provide product information, deal with customer request for assistance or address customer complaints.

Outbound call centers using similar methods to sell or market goods or services to potential customers, undertake market research or public opinion polling and similar activities for clients.

...

82219 Other call centers activities (voice), n.e.c.[87]

The Agreement for Services between petitioner and its client, Stefanini, Inc, defines the services that petitioner perform under said agreement as *"outsourced processing services to support [Stefanini, Inc.'s] internal operations and external customer contracts."*

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87 2019 Updates to the 2009 Philippine Standard Industrial Classification, Technical Notes, available at https://psa.gov.ph/sites/default/files/2019%20Updates%20to%20the%202009%20PSIC-Apr082022.pdf [last accessed on October 14, 2022].

Verily, the services performed by petitioner did not involve the provision of operating staff but rather the performance of outsourced processing services through voice within the Philippines.

While petitioner satisfactorily established that it is engaged in zero-rated sales for the 2nd quarter of CY 2017, out of the total zero-rated sales of ₱179,437,738.44 reported by petitioner for the 2nd quarter of CY 2017, only the amount of ₱155,686,959.49 qualifies as zero-rated sales while the unaccounted and unsupported amount of ₱23,750.778.95[88] must be disallowed for purposes of refund.

Having found that petitioner had valid VAT zero-rated sales in the total amount of ₱155,686,959.49 for the subject period of claim, the Court shall proceed to determine whether petitioner complied with the remaining requisites pertaining to the input VAT being claimed for refund.

The input VAT being claimed are not transitional input taxes.

The claimed input taxes are not transitional input taxes, as understood under Section 111(A) of the NIRC of 1997, as amended, to wit:

> SEC. 111. *Transitional/Presumptive Input Tax Credits.* -
>
> (A) *Transitional Input Tax Credits.* - A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory according to the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to two percent (2%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax.

Transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisitions of their beginning inventory of goods, materials and

88 ₱179,437,738.44 reported zero-rated sales less ₱155,686,959.49 zero-rated sales with supporting documents.

supplies. During the period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer.[89]

Since there is no showing that the above-stated input VAT are transitional input VAT, petitioner has complied with the *sixth* requisite for the grant of an input VAT refund.

The input taxes being claimed were due or paid.

Anent the *seventh requisite,* petitioner must provide supporting documents to prove the input taxes claimed during the 2nd quarter of CY 2017 were actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, to wit:

> 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:
>
> (1) 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.

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89 *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue,* G.R. Nos. 158885 and 170680, April 2, 2008.

(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 (₱1,000,000): 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,* 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.

The above provisions are implemented by Sections 4.110-1 to 4.110-3 of RR No. 16-05, which provides:

SECTION 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,

(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.

SECTION 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.

SECTION 4.110-3. *Claim 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 (₱1,000,000.00), 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 (₱1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition; Provided, however, that the total amount of input taxes (input tax on depreciable capital goods plus other allowable input taxes) allowed to be claimed against the output tax in the quarterly VAT Returns shall be subject to the limitation prescribed under Sec. 4.110-7 of these Regulations.

The aggregate acquisition cost of a depreciable asset in any calendar month refers to the total price 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 will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed ₱1,000,000.00.

...

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 but subject to the limitation prescribed under Sec. 4.110-7 of these Regulations.

Meanwhile, Section 4.110-8 of RR No. 16-05 provides for the substantiation requirements of input tax credits, as follows:

SECTION 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 against zero-rated sales, 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.

To prove entitlement to credits for input taxes due or paid, petitioner must not only present the supporting documents prescribed under Section 4.110-8 of RR No. 16-05, but more importantly, these documents must comply with the invoicing requirements under Section 113(A) and (B), 237 and 238 of the NIRC of 1997, as amended, as implemented by Section 4.113-1(A) and (B) of RR No. 16-05, as amended.

In its Quarterly VAT Return for the 2nd quarter of CY 2017,[90] petitioner declared total input VAT of ₱5,601,079.14, as follows:

Input Tax from:	
Purchase of Capital Goods not Exceeding ₱1Million	₱ 111,002.77
Domestic Purchases of Goods Other than Capital Goods	159,314.56
Domestic Purchase of Services	5,254,865.82
Total current input VAT	***₱5,525,183.15***
Input Tax Deferred on Capital Goods Exceeding ₱1Million from Previous Quarter	₱ 1,155,081.44
Add: Purchase of Capital Goods exceeding ₱1Million	503,260.73
Input Tax from Purchase of Capital Goods exceeding ₱1Million	*1,658,342.17*
Less: Input Tax on Purchases of Capital Goods exceeding ₱1Million deferred for the succeeding period	1,582,446.18
Amortized Input Tax from Purchase of Capital Goods exceeding ₱1Million	***₱ 75,895.99***
Input tax for the 2nd quarter of CY 2017	**₱5,601,079.14**

Accordingly, petitioner submitted in evidence its VAT sales invoices and ORs[91] to support its input taxes from domestic purchases of goods and services. These documents were examined by the Court-commissioned ICPA in order to verify petitioner's compliance with the substantiation and invoicing requirements prescribed by the NIRC of 1997, as amended, and its implementing rules.

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90 Exhibit "P-16", Docket - Vol. II, pp. 1240 to 1241.

91 Exhibits "P-31-A" to "P-31-KKKKKKKK-1", "P-32-A" to "P-32-B", and "P-33-A" to "P-33-G".

As found by the ICPA, petitioner's input VAT from domestic purchases amounting to ₱1,255,624.98 must rightfully be disallowed for non-compliance with substantiation requirements, as follows:[92]

Particulars		Exhibit		Input Tax
<u>Local purchases of goods other than capital goods and services</u>				
Company name not properly indicated in the supporting documents		P-37-A	₱	51,279.95
No valid supporting documents		P-37-B		448,897.72
Incorrect or incomplete address indicated in the supporting documents		P-37-C		479,013.27
Not in the period covered by the claim		P-37-D		97,544.67
VAT amount not separately shown in the supporting documents		P-37-E		6,778.71
TIN of the supplier does not indicate VAT registration		P-37-F		7,120.71
With discrepancy in the amount filed		P-37-G		55,773.67
No sales invoices/official receipts submitted by the petitioner		P-37-H		41,750.40
<u>Purchases of capital goods not exceeding ₱1million</u>				
No sales invoices/official receipts submitted by the petitioner		P-37-H		15,000.00
<u>Amortization on purchases of capital goods exceeding P1million</u>				
No sales invoices/official receipts submitted by the petitioner		P-37-H		52,465.88
TOTAL			₱	1,255,624.98

An additional input VAT amounting to ₱650,925.74 must further be disallowed on the following grounds:

Exhibit No.	Supplier	SI/OR No.	SI/OR Date[93]	Amount
Input VAT from Domestic Purchases of Capital Goods Not Exceeding P1Million				
Purchases of services with VAT OR but is dated outside the				

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[92] Exhibit "P-37", ICPA Report binder (Summary of Exceptions Noted on Purchases of Goods and Services for the 2nd Quarter of 2017).

[93] Expressed in dd-mmm-yyyy.

period of claim				
"P-32-A"	Unison Computer Systems Inc.	124856	20-Mar-2017	₱ 72,962.77
"P-32-B"	Unison Computer Systems Inc.	124641	10-Mar-2017	23,040.00
Total disallowed input VAT from domestic purchases of capital goods not exceeding P1Million				**96,002.77**
Input VAT from Domestic Purchases of Goods Other than Capital Goods				
Purchases of goods with VAT invoice but petitioner's TIN is not indicated				
"P-31-PPP-1"	Gateway Network Solutions (GNS), Inc.	10809	07-Apr-2017	117.92
"P-31-TTT-1"	Gem Stationary, Inc.	SI 24083	12-Apr-2017	950.30
"P-31-UUU-1"	Gem Stationary, Inc.	SI 24278	26-Apr-2017	792.86
"P-31-VVV-1"	Gem Stationary, Inc.	SI 24277	26-Apr-2017	1,585.71
"P-31-XXX-1"	Gem Stationary, Inc.	SI 25058	25-May-2017	535.71
	Subtotal			***3,982.50***
Purchase of goods with VAT invoice but is dated outside the period of claim and petitioner's TIN is not indicated				
"P-31-Q-1"	Beyond The Ground Commodities, Inc.	74986	27-Mar-2017	***9,390.00***
Total disallowed input VAT from domestic				**13,372.50**

purchase of goods other than capital goods				
Input VAT from Domestic Purchases of Services				
Purchases of services with VAT OR but nature of service is not indicated (billing invoice indicated in the OR does not match with the attached billing invoice)				
"P-31-O"	APEX 9V, Inc.	104	11-May-2017	328,047.00
"P-31-P"	APEX 9V, Inc.	108	22-Jun-2017	164,023.50
"P-31-AA"	Buan and Temprosa	7119	29-May-2017	120.00
	Subtotal			***492,190.50***
Purchase of services with VAT OR but nature of service is not indicated (billing invoice is not indicated in the OR)				
"P-31-BB"	Buan and Temprosa	7026	05-May-2017	144.00
"P-31-EE"	Buan and Temprosa	7027	05-May-2017	600.00
	Subtotal			***744.00***
Purchase of services with VAT OR but is dated outside the period of claim				
"P-31-JJJ"	Federal Express Pacific, LLC	OR 843857	25-Sep-2017	192.70
"P-31-OOOOO-1"	Philippine Long Distance Telephone Company (PLDT)	PQGOR094570780	03-Jul-2017	10,707.11

"P-31-OOOOO-2"	Philippine Long Distance Telephone Company (PLDT)	PQGOR094570781	03-Jul-2017	194.67
"P-31-PPPPP-1"	Philippine Long Distance Telephone Company (PLDT)	PQGOR094570778	03-Jul-2017	11,133.96
"P-31-PPPPP-2"	Philippine Long Distance Telephone Company (PLDT)	PQGOR094570779	03-Jul-2017	202.44
	Subtotal			***22,430.88***
Purchase of services with VAT OR but the amount of VAT is not indicated				
"P-31-DDDDD"	Kalibrr Technology Ventures , Inc.	2995	23-Jun-2017	3,090.00
"P-31-HHHHH"	Lane Archive Technologies	56473	29-Jun-2017	140.40
"P-31-KKKKK"	Newtown Plaza Hotel Corp.	2697	27-May-2017	1,725.00
"P-31-VVVVVV"	Summit Auto Mall Inc.	8529	01-Jun-2017	8,918.14
	Subtotal			***13,873.54***
Purchase of services with VAT OR but indicates wrong TIN of petitioner				
"P-31-YYYYY"	Quaerito Qualitas, Inc.	OR 13694	04-May-2017	6,072.00
"P-31-ZZZZZ"	Quaerito Qualitas, Inc.	OR 13912	09-Jun-2017	3,960.00
	Subtotal			***10,032.00***
Purchase of services not supported with VAT OR				
"P-31-XXXXX"	Powermax Consulting Group Inc.	Deposit slip	15-Jun-2017	*2,278.80*
Total disallowed input VAT from domestic purchase of services				**541,549.72**
Amortized input VAT from Purchase of Capital				

Goods exceeding P1Million				
Discrepancy in the amounts of input taxes as declared per VAT Return vs. as accounted by the ICPA				
Amount of input taxes as declared per VAT Return				5,601,079.14
Amount of input taxes as accounted by the ICPA[94]				(5,601,078.39)
Total disallowed amortized input VAT from purchase of capital goods exceeding P1Million				**0.75**
Total disallowed input VAT				**₱650,925.74**

Summarizing the above findings, out of the total reported input VAT amounting to ₱5,601,079.14 for the 2nd quarter of CY 2017, only the amount of ₱3,694,528.42 pertains to validly substantiated input VAT, as computed below:

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Exhibit No.	Amount of Input Tax
"P-31"	₱5,414,180.38
"P-32"	111,002.77
"P-33"	75,895.24
Input tax as accounted by ICPA	₱5,601,078.39

	Purchase of Capital Goods not Exceeding ₱1Million	Domestic Purchases of Goods Other than Capital Goods	Domestic Purchase of Services	Amortized Input Tax from Purchase of Capital Goods exceeding ₱1Million	Total
Total reported input VAT	*₱111,002.77*	*₱159,314.56*	*₱5,254,865.82*	*₱75,895.99*	*₱5,601,079.14*
Less: Disallowances					
Found by the ICPA	15,000.00	92,090.09	1,096,069.01	52,465.88	1,255,624.98
Found by the Court	96,002.77	13,372.50	541,549.72	0.75	650,925.74
Total disallowances	*111,002.77*	*105,462.59*	*1,637,618.73*	*52,466.63*	*1,906,550.72*
Valid input VAT	**₱ -**	**₱ 53,851.97**	**₱3,617,247.09**	**₱23,429.36**	**₱3,694,528.42**

Since there are types of sales other than zero-rated or effectively zero-rated sales, the said amount of ₱3,694,528.42 shall be proportionately allocated on the basis of sales volume.

In relation to the *eighth* requisite, where there are zero-rated or effectively zero-rated sale 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.

As can be recalled, for the 2nd quarter of CY 2017, petitioner reported total sales in the amount of ₱179,460,898.85. However, since its input VAT cannot be directly or entirely attributed to any of the transactions, the validly substantiated input VAT of ₱3,694,528.42 shall be allocated proportionately on the basis of the volume of its sales, as follows:

	Amount per VAT Return		Allocation Factor	Valid Input VAT Allocation	
	[A]		*[C]*	*[D]*	
			(A ÷ B)	*(E x C)*	
Taxable sales	₱ 23,160.41		0.012905546%	₱ 476.80	
Zero-rated sales	179,437,738.44		99.987094453%	3,694,051.62	
Total	**₱179,460,898.85**	*[B]*	100%	**₱3,694,528.42**	*[E]*

Thus, only the amount of ₱3,694,051.62 represents petitioner's valid input VAT attributable to total declared zero-rated sales.

The subject input taxes have not been applied against output taxes in the succeeding quarters.

Having determined that petitioner had valid input VAT attributable to its zero-rated sales/receipts, relative to the *ninth* requisite, for determination is whether the same was not applied against its output VAT liability during and in the succeeding quarters.

Since petitioner's valid input VAT allocated to taxable sales in the amount of ₱476.80 is insufficient to cover its output VAT liability for the 2nd quarter of CY 2017 in the amount of ₱2,779.25,[95] the substantiated input VAT attributable to zero-rated sales in the amount of ₱3,694,051.62 shall be utilized against the remaining output VAT of ₱2,302.45. Thus, only the remaining input VAT of ₱3,691,749.17 can be attributed to the entire zero-rated sales declared by petitioner in the amount of ₱179,437,738.44, as computed below:

Output VAT per VAT returns	₱ 2,779.25
Less: Valid input VAT allocated to taxable sales	476.80
Output VAT still due	**₱ 2,302.45**
Valid input VAT allocated to zero-rated sales	₱ 3,694,051.62
Less: Output VAT still due	2,302.45
Excess input VAT attributable to zero-rated sales	**₱3,691,749.17**

However, it can be recalled that out of the total zero-rated sales declared by petitioner amounting to ₱179,437,738.44, only the amount of ₱155,686,959.49 qualifies as valid zero-rated sales for the 2nd quarter of CY 2017. Hence, out of the excess input VAT attributable to zero-rated sales amounting to ₱3,691,749.17, only the amount of ₱3,203,101.02 is attributable to the valid zero-rated sales of ₱155,686,959.49, as computed below:

Excess input VAT attributable to zero-rated sales	**₱ 3,691,749.17**
Divided by declared zero-rated sales	179,437,738.44

95 Exhibit "P-16" (Line 19B), Docket - Vol. II, p. 1240.

Multiply by valid zero-rated sales	155,686,959.49
Input VAT attributable to valid zero-rated sales	**₱ 3,203,101.02**

Lastly, although the input VAT claim of ₱5,577,917.98, which includes the substantiated input VAT claim of ₱3,203,101.02, was carried-over by petitioner in its succeeding Quarterly VAT Returns,[96] the same remained unutilized until it was deducted as "VAT Refund/TCC claimed" in its Amended Quarterly VAT Return for the 2nd quarter of CY 2019.[97] Accordingly, the amount claimed for refund of ₱5,577,917.98 was included in the amount of ₱15,210,089.68 deducted, as broken down below:

Period Covered[98]	Claim Amount	Date Filed[99]
01-Apr-2017 to 30-Jun-2017[100]	₱ 5,577,917.98	28-Jun-2019
01-Jul-2017 to 30-Dec-2017[101]	9,632,173.66	26-Sep-2019
Total	**₱ 15,210,091.64**[102]	

Such being the case, the subject claim no longer formed part of the excess input VAT of ₱53,931,951.90[103] as of the end of the 2nd quarter of CY 2019 that was carried over to the succeeding 3rd quarter of CY 2019.[104] Correspondingly, it eliminates the possibility that the present claim would be applied to petitioner's future output VAT liability.

In sum, petitioner is entitled to refund or issuance of TCC in the amount of ₱3,203,101.02.

WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent is **DIRECTED TO REFUND OR ISSUE TAX CREDIT CERTIFICATE** in favor of petitioner in the amount ₱3,203,101.02 representing its unutilized input VAT attributable to its zero-rated sales for the 2nd quarter of CY 2017 or for the period April to June 2017.

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96 Exhibits "P-42" to "P-50", ICPA Report binder.
97 Exhibit "P-20" (Line 23D), Docket - Vol. II, p. 1249.
98 Expressed in dd-mmm-yyyy.
99 Expressed in dd-mmm-yyyy.
100 Exhibits "P-24" to "P-25", Docket - Vol. II, pp. 1258 to 1261.
101 Exhibits "P-22" to "P-23", Docket - Vol. II, pp. 1253 to 1257.
102 Minimal difference of ₱1.96.
103 Exhibit "P-20" (Line 29), Docket - Vol. II, p. 1250.
104 Exhibit "P-51", ICPA Report binder.

SO ORDERED.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice