REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AVALOQ PHILIPPINES OPERATING HEADQUARTERS,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10248

Members:
RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:
FEB 0 3 2025
4:51 p.m.

x---x

DECISION

RINGPIS-LIBAN, J.

THE CASE

The *Petition for Review* prays judgment be rendered ordering respondent to refund in favor of petitioner the amount of ₱3,055,913.90, representing petitioner's unutilized and/or excess input value-added tax (VAT) attributable to its zero-rated sales for the 3rd to 4th quarters of calendar year (CY) 2017, or the period from September 1, 2017 to December 31, 2017.[1]

THE PARTIES

Petitioner Avaloq Philippines Operating Headquarters is a regional operating headquarters (ROHQ) of Avaloq Group AG (Head Office).[2] It is licensed to transact business in the Philippines by the Securities and Exchange Commission (SEC);[3] and is primarily engaged in general administration and planning, business planning and coordination, sourcing/procurement of raw

[1] Statement of the Case, Pre-Trial Order dated January 6, 2021, Docket – Vol. I, p. 332.
[2] Par. 1.a, Stipulation of Facts, *Joint Stipulations of Facts and Issues* (JSFI), Docket – Vol. I, p. 276; Exhibit "P-1", Vol. I, pp. 486 to 498.
[3] Par. 1.b, Stipulation of Facts, JSFI, Docket – Vol. I, p. 276; Exhibit "P-2", Vol. I, p. 500.

materials and components, corporate finance advisory services, marketing control and sales promotion, training and personnel management, logistics services, research and development services, product development, technical support and maintenance, data processing and communication, and, business development.[4]

Petitioner is also registered with the Bureau of Internal Revenue (BIR), Revenue District Office (RDO) No. 050, as a taxpayer with Taxpayer's Identification Number (TIN) 008-637-771-000.[5]

Respondent Commissioner of Internal Revenue (CIR) is vested by the Tax Code with the authority, among others, to decide, approve and grant application for the refund on the excess or unutilized input VAT.[6]

THE FACTS OF THE CASE

On September 30, 2019, petitioner filed with the BIR an *Application for Tax Credits/Refunds* (BIR Form No. 1914),[7] and its letter of even date,[8] requesting for the refund of its unutilized input VAT attributable to petitioner's zero-rated sale of services, for the 3rd and 4th quarters of CY 2017 or the period from September 1, 2017 to December 31, 2017, amounting to ₱3,055,913.90.

Subsequently, on December 18, 2019, petitioner received the letter dated December 6, 2019, issued by the BIR, through Ms. Erlinda A. Simple, Assistant Commissioner for the Assessment Service,[9] denying petitioner's administrative claim for lack of factual and legal basis.

The *Petition of Review* was filed on January 17, 2020.[10]

In his *Answer* filed on July 1, 2020,[11] respondent interposed the following special and affirmative defenses, to wit: (1) the instant judicial claim should be denied for petitioner's failure to prove and substantiate the claim for refund at the administrative level; (2) since a decision has already been rendered and as held by the Supreme Court, the duty of the court is now limited to determining whether the decision is proper; (3) the claim for refund should be denied for failure to comply with the mandatory invoicing requirements pursuant to Section 113 in relation to Section 110 of the Tax Code, as amended; (4) the claimant has the burden of proof to establish the factual basis of his claim for

---

[4] Par. 1.c, Stipulation of Facts, JSFI, Docket – Vol. I, p. 276; Exhibit "P-2-1", Vol. I, p. 500.
[5] Par. 1.a to 1.d, Stipulation of Facts, JSFI, Docket – Vol. I, p. 276; Exhibit "P-3", Vol. 2, p. 501.
[6] Par. 2, The Parties, *Petition for Review*, vis-à-vis par. 4, Admissions and Denials, *Answer*, Docket – Vol. I, pp. 8 and 83, respectively.
[7] Exhibit "P-19", Docket – Vol. I, p. 562; Par. 1.f.2, Stipulation of Facts, JSFI, Docket – Vol. I, p. 277.
[8] Exhibit "P-18", Docket – Vol. I, pp. 556 to 561; Par. 1.f.1, Stipulation of Facts, JSFI, Docket – Vol. I, p. 277.
[9] Exhibit "P-20", Docket – Vol. I, pp. 65 to 69; Par. 1.f.3, Stipulation of Facts, JSFI, Docket – Vol. I, p. 277.
[10] Docket – Vol. I, pp. 7 to 18.
[11] Docket – Vol. I, pp. 82 to 91.

tax credit or refund; and (5) partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language.

Respondent transmitted the *BIR Records* for this case on September 21, 2020.[12]

The Pre-Trial Conference was set and held on November 10, 2020.[13] Prior thereto, *Respondent's Pre-Trial Brief* was filed on November 3, 2020,[14] while the *Pre-Trial Brief (of Petitioner Avaloq Philippines Operating Headquarters)* was submitted on November 6, 2020.[15]

On November 26, 2020, the parties filed their *Joint Stipulation of Facts and Issues*,[16] which was admitted and approved by the Court in its Resolution dated December 3, 2020,[17] thereby deeming the termination of the Pre-Trial. Thereafter, the Pre-Trial Order was issued on January 6, 2021.[18]

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

Petitioner offered the testimonies of the following individuals, namely: (1) Mary Lalaine V. Munar,[19] petitioner's accountant; and (2) Ms. Krista V. Bambao,[20] the Court-commissioned independent certified public accountant (ICPA).[21]

The Amended ICPA *Report* was submitted on February 19, 2021.[22]

On March 24, 2021, petitioner posted its *Formal Offer of Evidence*,[23] to which respondent filed his *Comment [Re: Petitioner's Formal Offer of Evidence]* on May 27, 2021.[24] In the Resolution dated October 13, 2021,[25] the Court admitted all of petitioner's offered exhibits.

---

[12] Docket – Vol. I, pp. 100 to 103.
[13] Notice of Pre-Trial Conference dated July 9, 2020, Docket – Vol. I, pp. 94 to 95; Minutes of the hearing held on, and Order dated, November 10, 2020, Docket – Vol. I, pp. 270, and 273 to 275, respectively.
[14] Docket – Vol. I, pp. 119 to 122.
[15] Docket – Vol. I, pp. 257 to 268.
[16] Docket – Vol. I, pp. 276 to 285.
[17] Docket – Vol. I, pp. 287 to 288.
[18] Docket – Vol. I, pp. 332 to 339.
[19] Exhibit "P-21", Docket – Vol. I, pp. 142 to 155; Minutes of the hearing held on, and Order dated January 28, 2021, Docket – Vol. I, pp. 418. and 421 to 422, respectively.
[20] Exhibit "P-22", Docket – Vol. I, pp. 429 to 464; Minutes of the hearing held on, and Order dated, February 24, 2021, Docket – Vol. I, pp. 467 to 469.
[21] *Oath of Commission* dated November 10, 2020, Docket – Vol. I, p. 272; Minutes of the hearing held on, and Order dated, November 10, 2020, Docket – Vol. I, pp. 270, and 273 to 275, respectively.
[22] Exhibit "P-35", Docket – Vol. I, pp. 383 to 416.
[23] Docket – Vol. I, pp. 470 to 484.
[24] Docket – Vol. 2, pp. 617 to 619.
[25] Docket – Vol. 2, pp. 627 to 628.

For his part, respondent offered the testimony of Revenue Officer Audrey Pepito-Collado.[26]

On April 22, 2022, respondent filed his *Formal Offer of Evidence.*[27] Petitioner, however, failed to file its comment thereto.[28] In the Resolution dated July 4, 2022,[29] the Court admitted all of respondent's offered evidence.

Thereafter, on July 21, 2022, respondent filed a *Manifestation*,[30] stating that he is adopting the arguments he raised in his *Answer* dated June 22, 2020 as his *Memorandum.* On the other hand, petitioner filed its *Memorandum* on August 18, 2022.[31]

This case was deemed submitted for decision per the Order dated August 25, 2022.[32]

However, on February 14, 2023, petitioner filed its *Motion for Leave of Court to Reopen the Case for Presentation of Additional Evidence and Allow Conditional Recall of Witness (of Petitioner Avaloq Philippines Operating Headquarters).*[33] Respondent then filed his *Comment and Opposition (Re: Petitioner's Motion for Leave of Court to Reopen the Case for Presentation of Additional Evidence and Allow Conditional Recall of Witness dated 14 February 2023)* on February 20, 2023.[34] In the Resolution dated April 11, 2023,[35] the Court granted petitioner's *Motion* , thereby vacating the Resolution dated August 25, 2022.

Petitioner's Accountant, Ms. Mary Lalaine V. Munar, was then recalled to the witness stand on July 20, 2023.[36] On July 25, 2023, petitioner filed its *Compliance with Submission*, with attached *Supplemental Formal Offer of Evidence*,[37] to which respondent filed his *Comment (Re: Supplemental Formal Offer of Evidence dated 25 July 2023)* on August 11, 2023.[38]

In the Resolution dated October 9, 2023,[39] the Court admitted petitioner's additional offered exhibits, except Exhibits "P-220" and "P-221", for failure of the exhibits to be formally offered and identified to correspond with the documents actually marked.

[26] Exhibit "R-7", Docket – Vol. I, pp. 113 to 118; Minutes of the hearing held on, and Order dated, April 20, 2022, Docket – Vol. 2, pp. 631 to 633.
[27] Docket – Vol. 2, pp. 634 to 637.
[28] Docket – Vol. 2, p. 641.
[29] Docket – Vol. 2, pp. 643 to 644.
[30] Docket – Vol. 2, pp. 645 to 646.
[31] Docket – Vol. 2, pp. 649 to 688.
[32] Order dated August 25, 2022, Docket – Vol. 2, p. 689.
[33] Docket – Vol. 2, pp. 690 to 696.
[34] Docket – Vol. 2, pp. 793 to 803.
[35] Docket – Vol. 2, pp. 807 to 810.
[36] Minutes of the hearing held on July 20, 2023, Docket – Vol. 2, p. 972.
[37] Docket – Vol. 2, pp. 974 to 980.
[38] Docket – Vol. 2, pp. 1088 to 1090.
[39] Docket – Vol. 2, pp. 1093 to 1094.

On October 25, 2023, petitioner filed a *Motion for Reconsideration (Re: Resolution dated 09 October 2023 on Petitioner's Supplemental Formal Offer of Evidence dated 25 July 2023)*,[40] to which respondent filed his *Comment (Re: Motion for Reconsideration dated 25 October 2023)* on November 24, 2023.[41] In the Resolution dated February 21, 2024,[42] the Court denied petitioner's *Motion for Reconsideration* for lack of merit, and submitted the case anew for decision.

Hence, this Decision.

THE STIPULATED ISSUE

The parties stipulated the following issue for this Court's resolution, *viz.*:

> "Whether the Petitioner is entitled to a tax refund amounting to Pesos: **Three Million Fifty-Five Thousand Nine Hundred Thirteen and 90/100 (₱3,055,913.90)** representing its alleged excess and/or unutilized input vat credits attributable to its zero-rated sales for Third and Fourth Quarters of CY 2017 or the period of 01 July to 31 December 2017."[43]

THE ARGUMENTS

Petitioner argues that it is a VAT-registered entity as required under Section 112(A) of the Tax Code, as amended; that the administrative and judicial claim for refund was filed within the prescriptive period provided under the pertinent provisions of the Tax Code and its implementing rules and regulations; that petitioner is engaged in zero-rated or effectively zero-rated transactions as required under the Tax Code, as amended, and its pertinent regulations, and the sales were paid for in acceptable foreign currency exchange and the proceeds have been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP); that the input taxes due from the purchases of goods and services directly attributable to zero-rated sales of petitioner were duly supported by VAT invoices or official receipts (ORs).

Respondent contends that the instant judicial claim should be denied for petitioner's failure to prove and substantiate the claim for refund at the administrative level; that it is an established fact that a decision has already been rendered and in such case, the Supreme Court has held that the duty of the court is now limited in determining whether the decision is proper; that the claim for refund should be denied for failure to comply with the mandatory

[40] Docket – Vol. 2, pp. 1095 to 1099.
[41] Docket – Vol. 2, pp. 1102 to 1104.
[42] Docket – Vol. 2, pp. 1107 to 1109.
[43] Stipulation of Issue, JSFI, Docket – Vol. 1, p. 277.

invoicing requirements pursuant to Section 113 in relation to Section 110 of the Tax Code, as amended; that the claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund; and that partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language.

THE COURT'S RULING

The present *Petition for Review* must be denied.

Requisites under the law for the refund or issuance of tax credit certificate of input VAT.

Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 10963[44], provides, in part, 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 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.

---

[44] 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 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

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."

Based on the foregoing 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;[45]

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 ORs 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;[46]

<u>With reference to the taxpayer's registration with the BIR</u>:

3. the taxpayer is a VAT-registered person;[47]

---

[45] *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.

[46] 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.

[47] *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.

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[48]

5. for zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2),[49] the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[50]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[51]

7. the input taxes are due or paid;[52]

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;[53] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[54]

In addition, in claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the NIRC and other implementing rules and regulations.[55] Thus, petitioner's compliance with all the VAT invoicing requirements is required to be able to file a claim for input taxes attributable to zero-rated sales.[56] The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[57] Moreover, it must be pointed out that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[58]

---

[48] *Ibid.*
[49] Under RA No. 10963, Section 106(A)(2)(a)**(2)** was renumbered to Section 106(A)(2)(a)**(3)** while Section 106(A)(2)**(b)** was deleted. However, there was no corresponding amendment to the subsections cited in Section 112(A) of the NIRC of 1997, as amended.
[50] *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.
[51] *Ibid.*
[52] *Ibid.*
[53] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.
[54] *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.
[55] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.
[56] *J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.
[57] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.
[58] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

Furthermore, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[59] Thus, it behooves petitioner to show compliance with each of the foregoing requisites and invoicing requirements. As a corollary, the absence of *any* of the said requisites is already a valid ground to deny the refund claim.

Petitioner's administrative and judicial claims were timely filed.

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

As previously stated, the present claim covers the 3rd to 4th quarters of CY 2017. Counting two (2) years from the close of the said quarters, the following table indicates the respective last day for filing of the administrative claim, to wit:

2017	Period	Close of the Taxable Quarter	Last Day to File Administrative Claim
3rd Quarter	July 1, 2017 to September 30, 2017	September 30, 2017	September 30, 2019
4th Quarter	October 1, 2017 to December 31, 2017	December 31, 2017	December 31, 2019

Thus, the filing of petitioner's administrative claim covering the said quarters in the amount of ₱3,055,913.90 was timely filed on September 30, 2019.[60]

As regards 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 of 1997, as amended.

From the filing of petitioner's administrative claim on September 30, 2019, respondent had ninety (90) days or until December 29, 2019, to act on the said claim. In case of inaction within the said ninety (90)-day period, petitioner has thirty (30) days from such expiration to file its judicial claim, or until January 28, 2020.

[59] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

[60] Exhibit "P-19", Docket – Vol. I, p. 562; Par. 1.f.2, Stipulation of Facts, JSFI, Docket – Vol. I, p. 277; Exhibit "P-18", Docket – Vol. I, pp. 556 to 561; Par. 1.f.1, Stipulation of Facts, JSFI, Docket – Vol. I, p. 277.

Petitioner received the BIR's denial letter dated December 6, 2019 on December 18, 2019.[61] Subsequently, petitioner filed its judicial claim, via the present *Petition for Review*,[62] on January 17, 2020, which is within the thirty (30)-day reglementary period.

Such being the case, the Court finds that petitioner complied with the above-stated *first* and *second* requisites.

Petitioner is a VAT-registered person/entity.

Anent the *third* requisite, it is also undisputed that petitioner is a VAT-registered person/entity, with TIN 008-637-771-000.[63] Thus, there is no question that petitioner showed compliance with the said requisite.

Petitioner failed to establish that it was engaged in zero-rated sales or effectively zero-rated sales.

The *fourth* and *fifth* requisites respectively mandate that the taxpayer be engaged in zero-rated or effectively zero-rated sales; and that for zero-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 thereof have been duly accounted for in accordance with BSP rules and regulations.

In this case, petitioner claims that it is engaged in zero-rated transactions as required under Section 108(B)(2) of the NIRC of 1997, 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:**
>
> (1) Processing, manufacturing or repacking of goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in

[61] Exhibit "P-20", Docket – Vol. I, p. 65.
[62] Docket – Vol. I, pp. 7 to 17.
[63] Exhibit "P-3", Docket – Vol. 2, p. 501.

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)**;" *(Emphases added)*

As can be discerned from the foregoing provision, certain essential elements must be present for a sale or supply of services to be subject to the VAT rate of 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;[64]

2) The services fall under any of the categories under Section 108(B)(2),[65] or simply, the services rendered should be other than "*processing, manufacturing or repacking goods*";[66]

3) The services must be performed in the Philippines[67] 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.[68]

For the *first* essential element, in order to be considered as a non-resident foreign corporation (NRFC) doing business outside the Philippines, each entity must be supported, at the very least, by **both** a *Certification of Non-Registration of Corporation/Partnership* issued by the Philippine SEC, **and** proof of incorporation/registration in a foreign country (*e.g.*, Articles/Certificate of Incorporation/Registration and/or Tax Residence Certificate). The former establishes that the recipient of the service has no registered business in the Philippines, and that it is not engaged in trade or business within the

---

[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, January 22, 2007; *Accenture, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012.

[65] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

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

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

[68] *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.

Philippines; while the latter proves that the said recipient of the service is indeed foreign. The said documents have been consistently required by this Court, for purposes of the said *first* essential element. In fact, in *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*,[69] the Supreme Court affirmed the necessity of presenting the said documents in this wise:

> "For purposes of zero-rating under Section 108(B)(2) of the Tax Code, the claimant must establish the two components of a client's NRFC status, *viz.*: (1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of both of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines.
>
> **Such proof must be especially required from ROHQs** such as DKS. That the law expressly authorizes ROHQs to render services to local and foreign affiliates alike only stresses the ROHQs burden to distinguish among their clients' nationalities and actual places of business operations and establish that they are seeking refund or credit of input VAT only to the extent of their sales of services to foreign clients doing business outside the Philippines.
>
> To recall, the CTA found that the SEC Certification of Non-Registration of Company and Authenticated Articles of Association and/or Certificates of Registration/Good Standing/Incorporation sufficiently established the NRFC status of 11 of DKS's affiliates clients
>
> The Court upholds these findings.
>
> The Court accords the CTA's factual findings with utmost respect, if not finality, because the Court recognizes that it has necessarily developed an expertise on tax matters. Significantly, both the CTA Division and CTA *En Banc* gave credence to the aforementioned documents as sufficient proof of NRFC status. The Court shall not disturb its findings without any showing of grave abuse of discretion considering that the members of the tax court are in the best position to analyze the documents presented by the parties.
>
> In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court *a quo*'s findings. **To the Court's mind, the SEC Certifications of Non-Registration show that these affiliates are foreign**

[69] G.R. No. 234445, July 15, 2020.

corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines." *(Emphases added)*

Based on the documents submitted, the following clients of petitioner can be considered NRFCs doing business outside the Philippines in compliance with the *first* essential element, to wit:

NAME OF COMPANY	PROOF OF FOREIGN INCORPORATION/ REGISTRATION (Exhibit No.)	SEC CERTIFICATION OF NON-REGISTRATION (Exhibit No.)
Avaloq Evolution AG	"P-23"[70]	"P-24"[71]
Avaloq Australia Pty. Ltd.	"P-25"[72]	"P-26"[73]
Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd.	"P-27"[74]	"P-28"[75]
Avaloq License AG	"P-29"[76]	"P-30"[77]
Avaloq Sourcing (Europe) AG	"P-31"[78]	"P-32"[79]
Avaloq Sourcing Switzerland and Liechtenstein SA	"P-33"[80]	"P-34"[81]

As to the *second* essential element, petitioner must prove that the services to these clients fall within the scope of *"services other than processing, manufacturing or repacking goods"*. Per the *General Framework Services Agreement* presented by petitioner, the definition of "services" means all kinds of services provided by Avaloq Affiliates as specified in Appendix 1, and may include the performance of work leading to a Work Result.[82]

Upon an examination of the records, petitioner did not submit Appendix 1 of the *General Services Framework Agreement.* Thus, there is no way of knowing the kind of services were provided.

With regard to the *third* essential element, petitioner must show that the subject services were performed in the Philippines by a VAT-registered person.

[70] BIR Records, pp. 330 to 337.
[71] BIR Records, p. 344.
[72] BIR Records, pp. 323 to 326.
[73] BIR Records, p. 343.
[74] BIR Records, pp. 315 to 322.
[75] BIR Records, p. 345.
[76] BIR Records, pp. 327 to 328.
[77] BIR Records, p. 341.
[78] Docket – Vol. 2, pp. 563 to 569.
[79] BIR Records, p. 342.
[80] Docket – Vol. 2, pp. 570 to 586.
[81] BIR Records, p. 346.
[82] Exhibit "P-14", Docket – Vol. 2, p. 512 to 524.

A perusal of the above *Agreements* reveals that the same lacks any indication that the services were performed in the Philippines. This was also confirmed by the ICPA in her *Report* as follows:[83]

> "4. In addition to the above-enumerated documents, the General Framework Services Agreement ('GFSA') (Exhibit P-14 as marked by counsel of Petitioner) were evaluated during my review to ascertain xxx, the location where the services were provided xxx:
>
> xxx xxx xxx
>
> • Location Where the Services were Provided - Not specified
>
> xxx xxx xxx
>
> No document/agreement were provided for my review to ascertain the nature of the services, the location where the services were provided as well as the fees to be paid for the services provided by Petitioner to Avaloq Sourcing (Switzerland & Liechtenstein) Ltd. And Avaloq Sourcing (Europe) AG xxx"

In her *Supplemental Judicial Affidavit*,[84] petitioner's Accountant, Ms. Mary Lalaine V. Munar, clarified this seeming uncertainty, thus:

"3. Q: Can you please elaborate your statement that '*Petitioner's provision of services to its non-resident foreign affiliates were all rendered in the Philippines*'?

A: As previously mentioned in my Judicial Affidavit, Petitioner is the regional operating headquarter ('ROHQ') of Avaloq Group AG, a multinational company organized and existing under the laws of Switzerland. Further, Avaloq Philippines Operating Headquarters was established to provide general administration and planning, business planning and coordination, training and personnel management, logistic services, technical support and maintenance, data processing and communication, and business development to its foreign affiliates. **Being situated in the Philippines, Petitioner's provision of services to its non-resident foreign affiliates were all rendered in the Philippines.**

4. Q: Ms. Witness, what proof, if any, would support your statement that '*Petitioner's provision of services to its non-resident foreign affiliates were all rendered in the Philippines*'?

A: I have here our extracted logs in our ProTime monitoring software or our performance time entry, which we use to attribute our presence time in a specific project. This includes the location of the service, the non-resident affiliate to whom it was rendered, the month when the service was rendered and the corresponding time charges.

Our services being rendered in the Philippines is established through our extracted ProTime logs for July to December 2017. Column K of the said document indicates the location of service for the covered period.

[83] Exhibit "P-35", Docket – Vol. 1, pp. 383 to 417.
[84] Exhibit "P-222", Docket – Vol. 2, pp. 819 to 824.

Based on Section 4.2.1 of our ProTime – Employee Booking Guidelines the symbol "AA" signifies that the location of service is in the Domestic Country of the company rendering the service. However, in practice, the same may be replaced with the letter symbols of the country (e.g., 'PH')

Correlating Column C and Column K of ProTime logs for July to December 2017, it is shown that the services rendered for the covered period were rendered in the Philippines.

xxx

Lastly, as an ROHQ, Petitioner is an entity which is only taxable for its income from sources within the Philippines. Hence, it would not have declared such an amount of income if its services were not rendered here. There is simply no incentive for Petitioner to declare the same if it were not rendered domestically because it would only result in the imposition of income.

xxx

7. Q: Considering that the regional operating headquarters is operating here in the Philippines and its clients are based abroad, how does Petitioner render its services to its foreign clients?
   A: As Petitioner is a software company, which provides services through software maintenance, support, and bug-fixing, it renders its services through phone calls, emails, online meetings, and other electronic means."

To bolster its position, petitioner also offered the *Extracted ProTime Logs for 2017*[85] as well as the corresponding *ProTime Employee Guidelines*[86] being referred to in the testimony of Ms. Munar.

Considering the foregoing explanation of petitioner's witness, coupled with the documentary evidence presented, petitioner was able to prove that the subject services were actually performed in the Philippines. Accordingly, the said *third* essential element was fulfilled by petitioner.

Before going into the *fourth* essential element, which corresponds to the *fifth* requisite that requires that for zero-rated sales under Section 108(B)(2) of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations, it is equally important to consider that the VAT zero-rated sales, to which the foreign currency remittances correspond, must be duly supported by VAT zero-rated ORs in accordance with the pertinent invoicing requirements, containing all the required information under Section 113(A) and (B) of the NIRC of 1997, as amended, and as implemented by Section 4.113-1(A) and (B) of Revenue Regulations (RR) No. 16-05, as amended. Further, the sales invoices (SIs) and ORs must be duly registered with the BIR as prescribed under Section 237, in relation to Section 238 of the NIRC of 1997.

[85] Exhibit "P-215", Docket – Vol. 2, pp. 981 to 1004.
[86] Exhibit "P-216", Docket – Vol. 2, pp. 1005 to 1021.

Since petitioner's reported sales are in the nature of sales of services under Section 108(B)(2) of the NIRC of 1997, petitioner is required to issue BIR-registered VAT ORs for the foreign currency proceeds of each sales transaction, the information contained therein must be in compliance with the applicable provisions previously mentioned, such as the word "zero-rated", and the taxpayer's TIN-VAT number.

Petitioner submitted the ORs with attached invoices,[87] issued to its clients, as well as the Schedule of Sales,[88] to support its zero-rated sales for the 3rd and 4th quarters of CY 2017.

Upon examination of the foregoing documents, this Court finds that out of the declared zero-rated sales of ₱235,821,048.51, only the zero-rated sales amounting to **₱148,238,575.00** are duly substantiated with valid supporting documents, as detailed below:

OR Exhibit No.	O.R. DATE	CLIENT NAME	OR AMOUNT IN US$	OR AMOUNT IN PHP	FINDINGS
"P-39"	21 July 2017	Avaloq Evolution AG	1,223.24	60,842.40	Without Exception
"P-40"	21 July 2017	Avaloq Evolution AG	15,837.92	787,760.48	Without Exception
"P-41"	21 July 2017	Avaloq Australia Pty Ltd	14,344.65	713,486.76	Without Exception
"P-42"	21 July 17	Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd	115,928.39	5,766,146.99	Without Exception
"P-43"	21 July 2017	Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd	49,250.78	2,449,678.04	Without Exception
"P-44"	24 July 17	Avaloq License AG	1,188,627.36	59,120,983.00	Without Exception
"P-46"	24 October 2017	Avaloq License AG	1,337,059.56	68,213,844.00	Without Exception
"P-47"	24 October 2017	Avaloq Australia Pty Ltd	49,628.30	2,531,927.08	Without Exception
"P-48"	24 October 2017	Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd	83,952.51	4,283,072.92	Without Exception
"P-49"	24 October 2017	Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd	84,496.64	4,310,833.33	Without Exception
			Sub-total	**148,238,575.00**	
"P-45"	1 February 2018	Avaloq Sourcing (Europe) AG	42,581.05	2,117,933.38	Out of Period
"P-51"	1 January 2018	Avaloq License AG	1,224,905.83	61,638,609.89	Out of Period
"P-52"	1 January 2018	Avaloq Sourcing (Switzerland & Liechtenstein) SA	57,233.87	2,696,941.79	Out of Period
"P-53"	1 January 2018	Avaloq Australia Pty Ltd	80,727.24	4,062,283.59	Out of Period
"P-54"	1 January 2018	Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd	34,245.92	1,723,292.40	Out of Period
"P-55"	1 January 2018	Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd	72,594.96	3,653,058.31	Out of Period
"P-56"	1 February 2018	Avaloq Sourcing (Europe) AG	87,020.16	4,378,950.25	Out of Period
"P-57"	1 February 2018	Avaloq Sourcing (Europe) AG	18,295.35	920,642.15	Out of Period
"P-58"	1 January 2018	Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd	-	10,918.00	Out of Period; Sale not classified in the

[87] Exhibits "P-39" to "P-60-1", USB.
[88] Annex 1, ICPA Report, USB.

					OR as zero-rated
"P-59"	1 February 2018	Avaloq Sourcing (Europe) AG	88,491.37	4,514,635.42	Out of Period
"P-60"	1 February 2018	Avaloq Sourcing (Europe) AG		1,865,208.33	Out of Period
			Sub-total	**87,582,473.51**	
		GRAND TOTAL		**235,821,048.51**	

However, petitioner still fell short in proving that the corresponding payments thereof were inwardly remitted thru the Philippine banking system and duly accounted for in accordance with the BSP rules and regulations, as enunciated in the above-stated *fourth* essential element and *fifth* requisite.

According to petitioner, its total receipts were treated sales subject to VAT at zero percent (0%) since these represent fees collected for services rendered by petitioner in the Philippines to its non-resident foreign affiliates and billed and paid for in acceptable foreign currencies through intercompany offsetting arrangements.[89]

Notably, offsetting arrangements are recognized by the BIR as an alternative to proof of foreign currency inward remittances. In Revenue Memorandum Circular (RMC) No. 42-2003 dated July 15, 2003,[90] the documents required in an offsetting arrangement were enumerated, *viz*:

> "Q-8 With the full liberalization of the BSP rules on foreign exchange and trade transactions (CB Circular No. 1389 dated April 13, 1993 enunciated in RMC No. 57-97), the BIR requirement for full documentation of proofs of inward remittances of export proceeds should no longer be enforced. Accordingly, what should be the acceptable documentary requirements in the processing of claims for TCC/refund, specifically on offsetting arrangements?
>
> A-8: In the case of offsetting arrangements, the following documents should be required:
>
> a. Import documents which created liability accounts in favor of the foreign parent or affiliated company;
> b. Other contracts with the foreign or affiliated company that brought about the liabilities which were offset against receivables from export sales;
> c. Evidence of proceeds of loans, in case the claimant has received loans or advances from the foreign company;
> d. Documents or correspondence regarding offsetting arrangements;
> e. Confirmation of the offsetting arrangements by the heads of the business organizations involved;
> f. Documents to prove actual export of goods;
> g. Documents to prove that the sales are zero-rated sales."

[89] Par. 6, Statements of Facts, *Memorandum*, Docket – Vol. 2, p. 651.
[90] SUBJECT: Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters.

As can be discerned from the aforequoted provision of RMC No. 42-2003, the submission of proof of inward remittances of foreign currency payments for export sales was relaxed where there are offsetting arrangements as these do not entail inward remittances. In such cases, the above-enumerated documents are acceptable pieces of documentary evidence proving the payment in foreign currency accounted for in accordance with BSP rules and regulations.

In the Judicial Affidavit of petitioner's witness, Ms. Mary Lalaine V. Munar, she explained the process by which said offsetting arrangement was being implemented, thus:[91]

"28. Q: Ms. Munar, do you know how Petitioner bills its foreign affiliates for the services rendered?

A: Yes. The 'General Framework Services Agreement' that shows the guidelines for the provision of services between the affiliates of Avaloq Group AG, and the 'Short Term Credit Facility Agreement' would explain how Avaloq PH bills its foreign affiliates.

The invoices billed by Petitioner are collected/offset against the loan payable to Avaloq Group AG. Based on the General Framework Services Agreement, the offsetting process of the receivables and payables of the Petitioner are as follows:

a. Avaloq PH maintains a current account, in which the funding of Avaloq Group AG is being remitted pursuant to a Short-Term Credit Facility Agreement;

b. For the collection of intercompany receipts billed by the Avaloq PH to its affiliates, these are collected/offset through this account.

To illustrate, whenever we obtain a 'loan' from our head office – Avaloq Group AG, which is basically the funding we receive monthly, the funding/cash remitted is credited to Avaloq Group AG current account. The amount receivable from the invoices billed for the services rendered to the affiliates of Avaloq PH will be debited or offset to this same account.

xxx

31. Q: Ms. Munar, how did Petitioner collect/offset the intercompany services billed against the loan payable to Avaloq Group AG pursuant to the Short-Term Credit Facility?

A: Under the Short-Term Credit Facility, Petitioner is entitled to request for a loan in the form of advance and/or overdraft from Avaloq Group AG. The loan amount, which varies depending on the financial necessity of the Petitioner to support its operations. The funds remitted by Avaloq Group AG were foreign currency denominated. However, our bank automatically converts these foreign remittances into Peso in order to credit it to our PHP local bank account. The funds remitted by Avaloq Group AG forms part of the loan payable of petitioner which are then offset against the intercompany invoices billed to the

[91] Exhibit "P-21", Docket – Vol. I, pp. 150 to 151.

foreign affiliates of Avaloq PH.

32. Q: What proof, if any, do you have to support your statement that the funds remitted were in foreign currency?

A: The Foreign Exchange Confirmation issued by Credit Suisse (Schweiz) AG [*pre-marked as* ***Exhibit P-16***] showing the conversion of foreign currency into peso prior to its credit in our current account.

33. Q: Ms. Munar, in your Answer to Question No. 28, what proof do you have to show that the intercompany services billed by Petitioner to its foreign affiliates are collected/offset against the loan payable to Avaloq Group AG?

A: The transactions that can be identified in the Schedule of Offsetting of Receivables [*pre-marked as* ***Exhibit P-17***] and the Foreign Exchange Confirmation [*pre-marked as* ***Exhibit P-16***]."

In essence, petitioner receives foreign currency funding from its parent company which is recorded and treated in its books as loan payable to Avaloq Group AG. From this loan, petitioner offsets all of the receivables it earns and becomes entitled to, for the services rendered to the affiliates of Avaloq Group AG.

To support its assertion, petitioner adduced documentary proof, such as *Short-Term Credit Facility Agreement*,[92] *Bank Statements* purportedly issued by the Bank of the Philippine Islands,[93] and *Schedule of Offsetting of Receivables*.[94]

While an examination of the *Short-Term Credit Facility Agreement*[95] executed by and between Avaloq Group AG and its various affiliates, including petitioner, validates petitioner's claim of having loan transactions in US Dollars with Avaloq Group AG, the same agreement failed to show that such advances from Avaloq Group AG can be the subject of set-off as payment for the receivables earned by petitioner from its sale of services to other affiliates. Suffice it to say, petitioner should have presented additional corroborating documentary evidence on this matter.

First, the *Short-Term Credit Facility Agreement* is an undertaking between Avaloq Group AG, as the primary party and lender, and each affiliate, as a borrower. Thus, it does not include any loan agreement between one affiliate and another affiliate.

Second, the said agreement does not provide for an offsetting arrangement between Avaloq Group AG's advances to petitioner and the latter's receivables from Avaloq Group AG's affiliates. It would be erroneous

[92] Exhibit "P-15", Docket – Vol. 2, pp. 525 to 539.
[93] Exhibits "P-65" to "P-68, USB.
[94] Exhibit "P-17", Docket – Vol. 2, pp. 551 to 555.
[95] Exhibit "P-15", Docket – Vol. 2, pp. 525 to 539.

to construe par. "12. Set Off Balances"[96] of the agreement[97] as authorizing offsetting arrangement between affiliates given that such provision contemplates a set-off of credits between the lender-parent company and borrower-affiliate.

Third, Avaloq Group AG is a distinct legal entity from its affiliates so that the right of offset between petitioner and other affiliates cannot be presumed. If there is indeed an offsetting arrangement among Avaloq Group AG affiliates, the same should have been covered by a separate agreement executed between and among them. Unfortunately, petitioner failed to present or offer evidence of this separate agreement.

For these reasons, petitioner was not able to establish before this Court that there exists a valid offsetting arrangement in the present case that may serve as an alternative to actual inward remittance of foreign currency in consideration for the services it rendered to the aforementioned NRFCs. Consequently, petitioner failed to prove that it is engaged in zero-rated sales of services under Section 108 (B)(2) of the NIRC of 1997, as amended.

But even granting that the subject agreement adduced by petitioner is sufficient to prove that a valid offsetting arrangement between petitioner and Avaloq Group AG's affiliates was authorized in this case, petitioner must still establish the actual details of offsetting that occurred between petitioner's receivables from its sales of service to Avaloq Group AG's affiliates and the advances made by Avaloq Group AG. Petitioner avers that it accomplished this by offering in evidence the *Schedule of Offsetting of Receivables*,[98] pertinent details of which are excerpted below:

					SCHEDULE OF OFFSETTING OF RECEIVABLES IN PHP		BPI ACCOUNT STATEMENT		
					(Exhibit "P-17")		(Exhibits "P-65" to "P-68")		
O.R. EXH. NO.	CLIENT NAME	AMOUNT OFFSET/ DEBIT	AMOUNT REMITTED/ CREDIT	BALANCE IN PHP	DATE	TEXT	DATE	AMOUNT	PARTICULARS
				100,617,435.06					
"P-39"	Avaloq Evolution AG	60,842.40		100,556,592.66	21 July 17	PAYM. AVALOQ EVOLUTION 2430000060 OR0000007			
"P-40"	Avaloq Evolution AG	787,760.48		99,768,832.18	21 July 17	PAYM. AVALOQ EVOLUTION 2430000061 OR0000008			
	Avaloq Sourcing (Europe) AG	2,117,933.38		97,650,898.80	21 July 17	PAYM. AVALOQ SOURCING EU 2430000057			

[96] "12. Set-Off Balances - Both parties authorize each other to set-off any credit balance in any currency to which it is entitled on any account in satisfaction of any sum due and payable under this Agreement but unpaid. xxx."
[97] Exhibit "P-15", Docket – Vol. 2, p 534.
[98] Exhibit "P-17", Docket – Vol. 2, pp. 551 to 555.

"P-41"	Avaloq Australia Pty Ltd	713,486.76		96,937,412.04	21 July 17	PAYM. AVALOQ AUSTRALIA 2430000062 OR0000009			
"P-42"	Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd	5,766,146.99		91,171,265.05	21 July 17	PAYM. ASAP 2430000056 OR0000006			
"P-43"	Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd	2,449,678.04		88,721,587.01	21 July 17	PAYM. ASAP 2430000063 OR0000010			
			2,117,933.38	90,839,520.39	21 July 17	PAYM. AVALOQ SOURCING EU 2430000057			
			437,002.33	91,276,522.72	21 July 17	PAYM. AVALOQ SOURCING ASIA PACIFIC 2032000221			
"P-44"	Avaloq Licence AG	59,120,983.00		32,155,539.72	21 July 17	PAYM. AVALOQ AUSTRALIA 2430000064 OR0000011			
			20,000,000.00	52,155,539.72	24 July 17	FUND TRANSFER GROUP A/C	4 Aug 17	19,998,850.00	BPI ACCOUNT STATEMENT 07/31/2017 - 08/31/2017
			7,051,957.52	59,207,497.24	9 August 2017	PAYM. EVLOLUTION 1130003777			
		26,041.67		59,181,455.57	4 September 2017	VISION APARTMENT DEPOSIT REFUND			
			11,979.17	59,193,434.74	11 September 2017	PAYM. EVLOLUTION 1130003889 ACP			
			20,000,000.00	79,193,434.74	18 September 2017	FUND TRANSFER GROUP A/C	18 Sep 17	19,998,850.00	BPI ACCOUNT STATEMENT 07/31/2017 - 08/31/2017
			4,227,445.31	83,420,880.05	30 September 2017	PAYM. EVLOLUTION 1130003912 EXPAT			
			661,357.36	84,082,237.41	30 September 2017	Interest Q3			
		132,271.47		83,949,965.94	30 September 2017	WHT on interest Q3			
		78,976.47		83,870,989.47	10 October 2017	VISION APARTMENT DEPOSIT RETURN			
		184,485.47		83,686,504.00	15 November 2017	PAYM 1601F WHT ON EXPAT SALARIES			
			184,485.47	83,870,989.47	15 November 2017	PAYM 1601F WHT ON EXPAT SALARIES			
			20,000,000.00	103,870,989.47	25 October 2017	AVQ GROUP FUND TRANSFER	25 Oct 17	19,998,850.00	BPI ACCOUNT STATEMENT 09/30/2017 - 10/31/2017
			5,101.88	103,876,091.35	25 October 2017	AVQ GROUP FUND TRANSFER			
"P-46"	Avaloq Licence AG	68,213,844.00		35,662,247.35	24 October 2017	PAYM. Q3 RD FEES OR0000012			

"P-47"	Avaloq Australia Pty Ltd	2,531,927.08		33,130,320.27	24 October 2017	PAYM. AVQ AUSTRALIA IT CONSULTING FEE Q3 OR0000013			
"P-48"	Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd	4,283,072.92		28,847,247.35	24 October 2017	PAYM. ASAP IT CONSULTING OR0000014			
"P-49"	Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd	4,310,833.33		24,536,414.02	24 October 2017	PAYM. ASAP IT CONSULTING FEE Q3 OR0000015			
			1,087,659.43	25,624,073.45	24 October 2017	PAYM. ASAP 203100261 CORP FUNCTIONS			
			20,000,000.00	45,624,073.45	24 November 2017	AVQ GROUP ACCOUNT FUND TRANSFER	24 Nov 17	19,998,850.00	BPI ACCOUNT STATEMENT 10/31/2017 - 11/30/2017
			3,066,907.78	48,690,981.23	6 November 2017	PAYM. 1130004026 ACP			
"P-50"	Avaloq Sourcing (Switzerland & Liechtenstein) SA	8,244,791.67		40,446,189.56	20 November 2017	PAYM. ASSL 2430000073 OR 0000016			
			5,065,028.03	45,511,217.59	21 December 2017	1130004261 EXPAT			
			432,857.81	45,944,075.40	31 December 2017	Interest Q4			
		86,571.56		45,857,503.84	31 December 2017	WHT on interest Q4			
"P-58"	Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd	10,918.00		45,846,585.84	1 January 2018	PAYM. ASAP 2430000081 OR0000022			
			472,203.32	46,318,789.16	1 January 2018	PAYM. ASAP 2430000307			
"P-45"	Avaloq Sourcing (Europe) AG	2,117,933.38		44,200,855.78	2 February 2018	PAYM. ASEU 2430000057 OR0000023			
"P-59"	Avaloq Sourcing (Europe) AG	4,514,635.42		39,686,220.36	2 February 2018	PAYM. ASEU 2430000069 OR0000024			
"P-60"	Avaloq Sourcing (Europe) AG	1,865,208.33		37,821,012.03	2 February 2018	PAYM. ASEU 2430000070 OR0000025			
			49,823.55	37,870,835.58	1 March 2018	PAYM. 2032000333 ASAP			
			742,549.40	38,613,384.98	16 March 2018	PAYM. 1130004461 ACADEMY			
			401,508.05	39,014,893.03	31 March 2018	Interest Q1			
		80,301.61		38,934,591.42	31 March 2018	WHT on interest Q1			

Despite providing the above *Schedule of Offsetting of Receivables* and other documentations, such as *Confirmation of Foreign Currency Conversion*[99] and *Apostilled English-translated debit advice*[100] issued by Credit Suisse (Schweiz) AG, to

[99] Exhibit "P-16", Docket – Vol. 2, pp. 540 to 550.
[100] Exhibit "P-61" to P-64"; USB.

demonstrate the transfer of funds from the Avaloq Group Account to Avaloq PH's account, petitioner was unable to prove that these sums were for payment for services provided by Avaloq PH to its clients, and not just a mere transfer of funds representing loans.

Verily, since the supposed offsetting arrangement was not convincingly established, it cannot be said that petitioner has shown compliance with the said *fourth* essential element and *fifth* requisite that requires that for zero-rated sales under Section 108(B)(2) of the NIRC of 1997, as amended.

At this point, petitioner has already fallen short in establishing that its sales or supply of services qualify for VAT zero-rating under the said provision. To be sure, it is only when the sales of a VAT-registered person are zero-rated or effectively zero-rated that such person 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.[101]

Considering petitioner's failure to establish its zero-rated or effectively zero-rated sales for the 3rd and 4th quarters of CY 2017, the present *Petition for Review* must necessarily fail. Correspondingly, it becomes unnecessary to look into petitioner's compliance with the remaining requisites.

As a final note, it is the taxpayer-claimant that has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[102] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[103] Thus, 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.[104] Strict adherence to the conditions prescribed by law is required of the taxpayer.[105]

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

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

---

[101] *Coca-Cola Bottlers Philippines, Inc. vs Commissioner of Internal Revenue*, G.R. No. 222428, July 19, 2018.
[102] *Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.
[103] *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, June 25, 1999.
[104] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015, citing *J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.
[105] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019.

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

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

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