REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

NIPPON EXPRESS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9873

Members:

CASTAÑEDA, JR., Chairperson, *and*
BACORRO-VILLENA, *JJ.*

Promulgated:

JUL 27 2020

2:15 p.m.

x - x

DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

The instant Petition for Review filed on July 10, 2018 prays for the refund or issuance of tax credit certificate of the amount of ₱120,869,099.12, allegedly representing unutilized input tax credits for the period from January 1, 2016 to December 31, 2016.[1]

THE PARTIES

Petitioner Nippon Express Philippines Corporation is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with business address at Lot 85A & B Avocado Road, Food Terminal Inc. Complex, East Service Road,

[1] Par. I, Summary of the Case, Pre-Trial Order dated December 3, 2018, Docket, p. 255.

Taguig City.[2] It is registered with the Bureau of Internal Revenue (BIR), with Taxpayer Identification Number (TIN) 004-669-434-000.[3]

Respondent is the incumbent Commissioner of Internal Revenue, and, thus, the government official and functionary principally charged with the implementation, enforcement, and collection of internal revenue taxes in the Philippines, inclusive of the power to grant and/or deny, among others, the administrative application for the issuance of tax refunds/tax credits in accordance with law. He is being represented by the Litigation Division, BIR, Room 703, National Office Building, Diliman, Quezon City.[4]

THE FACTS

On March 15, 2018, petitioner filed with the BIR its administrative claim, accompanied by an Application for Tax Credits / Refunds (BIR Form No. 1914), requesting for the refund and/or issuance of tax credit certificate amounting to ₱120,869,099.12, allegedly representing excess/unutilized input value-added tax (VAT) from January 1 to December 31, 2016.[5]

An investigation was conducted, pursuant to Tax Verification Notice No. TVN201700023453 dated March 23, 2018.[6]

In the assailed Decision dated 28 May 2018, respondent, through Ms. Teresita M. Dizon, OIC-Assistant Commissioner, Large Taxpayer Service (LTS), denied petitioner's claim for tax refund/tax credit.[7] The said decision was received by petitioner on June 11, 2018.[8]

On July 10, 2018, petitioner filed the instant *Petition for Review*.[9] *gr*

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[2] Exhibit "P-13-1", BIR Records – Folder 1, pp. 262 to 271.
[3] Exhibits "P-14" and "P-14-a", BIR Records – Folder 1, pp. 207 to 208.
[4] Par. 2.1, Admissions, *Joint Stipulation of Facts* (JSF), Docket, p. 210.
[5] Exhibits "P-2" and "P-3", BIR Records – Folder 1, pp. 273, and 274 to 278, respectively.
[6] Par. 2.2, Admissions, JSF, Docket, p. 210; Exhibit "R-1", BIR – Folder 1, p. 286; Exhibit "R-2", BIR Records – Folder 1, pp. 325 to 368.
[7] Par. 2.3, Admissions, JSF, Docket, p. 211.
[8] Exhibit "P-12", BIR Records – Folder 1, pp. 406 to 407; Exhibit "R-3", BIR Records, pp. 404 to 405.
[9] Docket, pp. 10 to 32.

On August 9, 2018,[10] respondent filed his Answer where he raised the following pertinent defenses:

> "6. Petitioner also failed to submit proof that the Non-Resident Foreign Corporation (NRFC)-buyer of the service is not doing business in the Philippines such as original copy of the certification form the Securities and Exchange Commission (SEC) that the NRFC is not a registered corporation in the Philippines and a Certificate of Incorporation from the foreign country (as listed under 3.4 of Annex A.1 – Revised Checklist of Mandatory Requirements pursuant to Section 112(A) of the NIRC, as amended by R.A. No. 10963.
>
> 7. In the case of ***Deutsche Knowledge Services PTE. LTD v. Commissioner of Internal Revenue***, the Second Division of the Honorable Court ruled:
>
> > 'In compliance with the third requisite, petitioner presented the following documents showing that its clients/affiliates are non-resident foreign corporations doing business outside the Philippines:
> >
> > 1. SEC Certifications of Non-Registration of Company;
> > 2. IntraGroup Service Agreements;
> > 3. Company Registration Documents (Certificate of Registration/Certificate of Incorporation/Association);
> > 4. AMInet Company Profile Fact Sheets; and
> > 5. Deutsche Bank Comprehensive List of Shareholdings 2013.
> >
> > However, each of the aforesaid documents, standing alone, is inadequate proof that petitioner's client is, indeed, a non-resident foreign corporation doing business outside the Philippines.

[10] Docket, pp. 89 to 96.

The Certificates of Registration/Foreign Incorporation/Association, as well as the List of Shareholdings, only prove that the named entities therein were incorporated/organized/ domiciled abroad. They, however, do not establish that such entities are not doing business in the Philippines.

Also, while the SEC Certificates of Non-Registration show that the named entities therein are not registered corporations/ partnerships in the Philippines, the same do not, however, prove that such entities are non-resident foreign corporations doing business outside the Philippines.

Likewise, the Service Agreements only show the names and addresses of petitioner's clients to whom it renders services but the same do not establish that such clients are non-resident foreign corporations doing business outside the Philippines.

In the case of *Sitel Philippines Corporation (formerly Clientlogic Phils., Inc.) v. Commissioner of* Internal Revenue, the Supreme Court held that while Sitel's documentary evidence, which includes Certifications issued by the Securities and Exchange Commission and Agreements between Sitel and its foreign clients, may have established that Sitel rendered services to foreign corporations and received payment therefor through inward remittances, the said documents failed to specifically prove that such foreign clients were doing business outside the Philippines or have continuity of commercial dealings outside the Philippines.

Hence, to be considered as non-resident foreign corporation doing business outside the Philippines, each entity must be supported at the very least by both SEC Certificate of Non-Registration of Corporation/Partnership and Certificate/Articles of Foreign Incorporation/

> Association/Registration and that there is no other indication that the recipient of the services is doing business in the Philippines.'
>
> This Court, however, cannot give credence to the purported foreign business registration print-outs retrieved from the AMInet database which is a databse set up by Deutsche Bank Global (the Head Office located in Germany). The said documents are not sufficient to establish the fact that the service recipients are non-resident foreign corporations doing business outside the Philippines, as they be considered self-serving and can be easily manipulated to favor petitioner in view of its affinity with the entity that maintains or keeps the said database.'"

The Court initially set the pre-trial conference of this case on September 13, 2018.[11] However, due to the reorganization of the three (3) Divisions of this Court, the pre-trial conference was reset to, and held on, October 11, 2018.[12]

On August 22, 2018, respondent filed his Respondent's Pre-Trial Brief.[13] On September 21, 2018, petitioner submitted its Pre-Trial Brief.[14] On September 6, 2018, respondent transmitted the BIR Records for this case.[15]

On October 29, 2018,[16] the parties submitted their Joint Stipulation of Facts (JSF), where they manifested that they failed to stipulate any issue and as such, they set forth their respective issues for the Court's determination.[17] On December 3, 2018, the Court issued a Pre-Trial Order.[18]

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[11] *Notice of Pre-Trial Conference* dated August 15, 2018, Docket, pp. 98 to 99.
[12] *Notice of Resetting* dated September 20, 2018, Docket, p. 185; Minutes of the hearing held on, and Order dated, October 11, 2018, Docket, pp. 193, and 204, respectively.
[13] Docket, pp. 100 to 102.
[14] Docket, pp. 105 to 116.
[15] Respondent's *Compliance* dated September 5, 2018, Docket, pp. 179 to 181.
[16] Docket, pp. 209 to 217.
[17] *Manifestation*, Docket, pp. 205 to 207; *Manifestation*, Docket, pp. 218 to 220.
[18] Pre-Trial Order dated December 3, 2018, Docket, pp. 255 to 268.

During trial, petitioner presented the following witnesses: (1) Ms. Elizabeth D. Quingquing,[19] petitioner's Finance Manager; and (2) Mr. Clark Joseph C. Babor,[20] the Court-commissioned Independent Certified Public Accountant (ICPA).[21]

The ICPA *Report* was submitted to this Court on March 29, 2019.[22]

On May 6, 2019, petitioner filed its Written Offer of Evidence.[23] Respondent submitted his Comment (Re: Petitioner's Formal Offer of Evidence) on May 7, 2019.[24] In the Resolution dated May 31, 2019, the Court admitted petitioner's Exhibits, except for Exhibit "P-62", for failure to present the original documents for comparison.[25]

Respondent likewise presented his testimonial and documentary evidence. Respondent proffered the sole testimony of Mr. Kent G. Salvador,[26] a Revenue Officer assigned at the Regular Large Taxpayers Audit Division 2 of the BIR.

At the hearing held on July 3, 2019, respondent made an oral formal offer of Exhibits "R-1", "R-2", "R-3", "R-4", and "R-4-A". Petitioner objected only to the admission of Exhibit "R-3". Nevertheless, the Court admitted all of the said Exhibits.[27]

On July 31, 2019,[28] respondent filed his Memorandum, while on August 2, 2019,[29] petitioner filed its Memorandum. On August 20, 2019,[30] the instant case was submitted for decision.

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[19] Exhibit "P-43", Docket, pp. 117 to 125; Minutes of the hearing held on, and Order dated December 5, 2018, Docket, pp. 282 to 283.
[20] Exhibit "P-63", Docket, pp. 312 to 327; Minutes of the hearing held on, and Order dated, April 29, 2019, Docket, pp. 330 to 331.
[21] *Judicial Affidavit of Clark Joseph C. Babor*, Docket, pp. 285 to 290; Minutes of the hearing held on, and Order dated, January 28, 2019, Docket, pp. 295 to 296.
[22] Transmittal Letter dated March 29, 2019, Docket, p. 304.
[23] Docket, pp. 332 to 359.
[24] Docket, pp. 360 to 362.
[25] *Id.*
[26] Exhibit "R-4", Docket, pp. 368 to 372; Minutes of the hearing held on, and Order dated, July 3, 2019, Docket, pp. 378 to 380.
[27] Minutes of the hearing held on, and Order dated, July 3, 2019, Docket, pp. 378 to 380.
[28] Docket, pp. 383 to 391.
[29] Docket, pp. 425 to 455.
[30] Resolution dated August 20, 2019, Docket, p. 457.

THE ISSUES

The parties respectively raised the following issues for the Court's determination, to wit:

Petitioner's issue

> "Whether or not the assailed decision rendered by respondent should be set-aside and reversed forthwith, insofar as there is absolutely no factual and/or legal basis, whatsoever, to justify the denial of petitioner's claim for VAT tax refund/tax credit in the total amount of P120,869,099.12, which should be granted *in toto* insofar as the same is expressly authorized by the facts and the law, as well as pertinent jurisprudence in *pari materia*."[31]

Respondent's issues

> "1. Whether or not the administrative Decision served to petitioner denying the claim for refund based on evidence presented was correct; and
>
> 2. Whether or not petitioner is entitled to refund in the amount of P120,869,099.12 allegedly representing unutilized input tax credits for the period from 1 January 2016 to 31 December 2016."[32]

THE RULING

The Court is not prevented from accepting evidence not presented by petitioner at the administrative level

Respondent contends that no probative value should be given to documents that petitioner did not submit at the administrative level.

We disagree. ge

[31] Refer to petitioner's *Manifestation* dated October 26, 2018, Docket, p. 219.
[32] Refer to respondent's *Manifestation* dated October 26, 2018, Docket, p. 205.

In *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue,*[33] the Supreme Court held:

> "At this stage, a review of the nature of a judicial claim before the CTA is in order. In *Atlas Consolidated Mining and Development Corporation v. CIR,*[34] it was ruled –
>
> > x x x **First, a judicial claim for refund or tax credit in the CTA is <u>by no means an original action</u> but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, <u>as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claim</u>. In this case, <u>it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit</u>. Second, cases filed in the CTA are litigated *de novo*. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.**
>
> A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of

[33] G.R. No. 207112, December 8, 2015.
[34] G.R. No. 145526, March 16, 2007.

the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but of the taxpayer's failure to substantiate the claim at the administrative level. **When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirement for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place.** xxx." *(Emphases and underscoring supplied)*

Based on the foregoing, there are two (2) matters which must be proved before this Court upon appeal of an unsuccessful administrative claim, to wit: *first*, the taxpayer's entitlement to the claim for refund or tax credit under substantive law, and *second*, all documentary and evidentiary requirements for an administrative claim were satisfied at the BIR level. Parenthetically, while the *first* matter to be proved is in accord with the principle that cases filed in this Court are litigated *de novo*, the *second* matter is consistent with the very nature of an appellate jurisdiction. Relative thereto, appellate jurisdiction is the authority of a court higher in rank **to re-examine** the final order or judgment of a lower court which tried the case now elevated for judicial review.[35]

Furthermore, the *first* matter to be proved entails a determination of petitioner's compliance with the requisites established by law; while the *second* matter involves a review or determination whether respondent has basis in fact and/or in law of his denial of the administrative claim. Thus, the task of this Court is to determine whether petitioner sufficiently satisfied these two (2) matters. *jc*

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[35] *Garcia, et al. v. De Jesus, et al., etseq.*, G.R. Nos. 88158 and 97108-09, March 4, 1992.

In any event, this Court is not precluded from accepting petitioner's evidence assuming these were not presented at the administrative level. Cases filed in this Court are litigated *de novo.* Thus, petitioner should prove every minute aspect of its case by presenting, formally offering and submitting to this Court all evidence required for the successful prosecution of its administrative claim.[36] In other words, this Court is not limited by the evidence presented in the administrative claim in the BIR. The claimant may present new and additional evidence to support its case for tax refund.[37]

Section 112 of the National Internal Revenue Code (NIRC) of 1997, as last amended by Republic Act (RA) No. 10963,[38] prescribes the requisites to be complied with by the taxpayer-applicant for a successful refund claim. It 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

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[36] *Commissioner of Internal Revenue v. Philippine National Bank,* G.R. No. 180290, September 29, 2014.

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

[38] 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.

> paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> xxx xxx xxx
>
> (C) *Period within which Refund of Input Taxes shall be Made*. — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided*, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however*, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code."

Pursuant to the above provisions of the NIRC, as amended, jurisprudence has laid down certain requisites which the taxpayer-applicant must comply with to successfully obtain a credit/refund of input VAT. It is noteworthy that the said requisites may be classified into certain categories, to wit:

> <u>As to the timeliness of the filing of the administrative and judicial claims</u>:
>
> 1. the refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[39] *pr*

[39] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 155732, April 27, 2007; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No.

2. in case of full or partial denial of the refund claim, the judicial claim has been filed with this Court, within thirty (30) days from receipt of the decision;

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

3. the taxpayer is a VAT-registered person;[40]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[41]

5. for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[42]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[43]

7. the input taxes are due or paid;[44]

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;[45] and

9. the input taxes have not been applied against output

180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc.*, G.R. No. 182364, August 3, 2010.

[40] *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.*, supra.

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *Id.*

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

taxes during and in the succeeding quarters.[46]

Relative to the *fourth* and *seventh* requisites, 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.[47] The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[48] More importantly, it must be emphasized that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[49]

To be clear, Section 113 of the NIRC of 1997, as amended by RA No. 9337,[50] provides the VAT invoicing requirements under the law, to wit:

> "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);

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[46] *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.*, supra.

[47] *JRA Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.

[48] *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.

[49] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

[50] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

(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 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 (P1,000) 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.

xxx xxx xxx."

Implementing the foregoing provision, Section 4.113-1 of Revenue Regulations No. 16-2005[51] provides, in part, as follows:

[51] SUBJECT: Consolidated Value-Added Tax Regulations of 2005.

"SEC. 4.113-1. *Invoicing Requirements.* –

(A) xxx:

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."

To reiterate, in cases filed before this Court which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[52] Thus, it behooves petitioner to show compliance with each of the foregoing requisites.

Petitioner's administrative and judicial claims were timely filed

The *first* requisite pertains to the filing of the refund claim for 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.

The present claim covers the 1st, 2nd, 3rd and 4th quarters of taxable year 2016. Counting two (2) years from the respective close of the said quarters, the following table indicates the pertinent last days for the filing of an administrative claim for the said four (4) quarters, to wit: Je

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

Period	Close of the Taxable Quarter	Last Day to File Administrative Claim
1st Quarter of TY 2016 (January1, 2016 to March 31, 2016)	March 31, 2016	March 31, 2018
2nd Quarter of TY 2016 (April 1, 2016 to May 31, 2016)	June 30, 2016	June 30, 2018
3rd Quarter of TY 2016 (June 1, 2016 to September 30, 2016)	September 30, 2016	September 30, 2018
4th Quarter of TY 2016 (October 1, 2017 to December 31, 2016)	December 31, 2016	December 31, 2018

Hence, petitioner's administrative claim for refund for the subject period was timely filed on March 15, 2018.[53]

The *second* requisite is to the effect that the judicial claim must have been filed within thirty (30) days from receipt of respondent's decision.

Respondent, through Ms. Teresita M. Dizon, OIC-Assistant Commissioner, denied petitioner's claim for tax refund/tax credit, in the assailed Decision dated 28 May 2018,[54] which was received by petitioner on June 11, 2018.[55]

Considering petitioner filed the instant *Petition for Review* on July 10, 2018,[56] the same was timely filed.

Such being the case, petitioner fulfilled the above-stated *first* and *second* requisites.

Petitioner is a VAT-registered person

Petitioner likewise complied with the *third* requisite, considering that it is a VAT-registered taxpayer with TIN 004-669-434-000, as

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[53] Exhibits "P-2" and "P-3", BIR Records – Folder 1, pp. 273, and 274 to 278, respectively.
[54] Par. 2.3, Admissions, JSF, Docket, p. 211.
[55] Exhibit "P-12", BIR Records – Folder 1, pp. 406 to 407; Exhibit "R-3", BIR Records, pp. 404 to 405.
[56] Docket, p. 10.

evidenced by BIR Certificate of Registration No. OCN 8RC0000046248.[57]

Petitioner failed to establish that it is engaged in zero-rated sales or effectively zero-rated sales during the four (4) quarters of 2016

The *fourth* and *fifth* requisites respectively require that the taxpayer is 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 have been duly accounted for in accordance with the BSP rules and regulations.

Petitioner claims that during the year 2016, the services it rendered to non-resident and Philippine Economic Zone Authority (PEZA)-registered clients are subject to zero percent (0%) VAT pursuant to Section 108(B)(2) and (3) of the NIRC of 1997, as amended, which provides:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* - **The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate**:
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);
>
> (2) **Services other than those mentioned in the preceding paragraph rendered to a person**

[57] Exhibits "P-14" and "P-14-a", BIR Records – Folder 1, pp. 207 to 208.

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);"

(3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects the supply of such services to zero percent (0%) rate**;" *(Emphasis supplied)*

a) Sales to non-resident clients

Based on the afore-quoted Section 108(B)(2), 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;[58]

2) The services fall under any of the categories under Section 108(B)(2),[59] or simply, the services rendered should be other than *"processing, manufacturing or repacking goods"*;[60]

3) The service must be performed in the Philippines[61] by a VAT-registered person; and

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[58] *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.

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

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

[61] *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.

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

Relative to the *first* essential element, petitioner presented various *Certifications of Non-Registration of Company*[63] issued by the Securities and Exchange Commission (SEC) to the effect that the records of the latter do not show the registration of petitioner's clients as a corporation or as a partnership.

However, the said SEC *Certifications of Non-Registration* are inadequate proof that petitioner's clients are non-resident foreign corporations doing business outside the Philippines.

Under Section 22(I) of the NIRC of 1997, as amended, "[t]he term 'nonresident foreign corporation' applies to a foreign corporation not engaged in trade or business within the Philippines". Thus, to be considered as such corporation, (1) it must be a foreign corporation; **and** (2) it must not be engaged in trade or business within the Philippines.

In *Accenture, Inc. v. Commissioner of Internal Revenue*,[64] the petitioner therein asserted that:

> "xxx based on the documentary evidence it presented, it was able to establish the following circumstances:
>
> 1. The records of the Securities and Exchange Commission (SEC) show that Accenture's clients have not established any branch office in which to do business in the Philippines.
>
> 2. For these services, Accenture bills another corporation, Accenture Participations B.V. (APB), which is likewise a foreign corporation with no 'presence in the Philippines'.

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[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] Exhibits "P-42" to "P-42-JJJJ", BIR Records - Folder 3, pp. 323 to 414; Exhibits "P-58-A" to "P-58-BBBB".
[64] G.R. No. 190102, July 11, 2012.

> 3. Only those not doing business in the Philippines can be required under BSP rules to pay in acceptable currency for their purchase of goods and services from the Philippines. Thus, in a domestic transaction, where the provider and recipient of services are both doing business in the Philippines, the BSP cannot require any party to make payment in foreign currency."

In ruling that Accenture failed to prove that its clients are nonresident foreign corporations, the Supreme Court held that:

> "Consequently, to come within the purview of Section 108(B)(2), it is not enough that the recipient of the service be proven to be a foreign corporation; rather, it must be specifically proven to be a nonresident foreign corporation.
>
> There is no specific criterion as to what constitutes 'doing' or 'engaging in' or 'transacting' business. We ruled thus in *Commissioner of Internal Revenue v. British Overseas Airways Corporation*:
>
>> x x x. There is no specific criterion as to what constitutes 'doing' or 'engaging in' or 'transacting' business. Each case must be judged in the light of its peculiar environmental circumstances. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization. 'In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character.'
>>
>> A taxpayer claiming a tax credit or refund has the burden of proof to establish the factual basis of that claim. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.

> Accenture failed to discharge this burden. It alleged and presented evidence to prove *only* that its clients were foreign entities. However, as found by both the CTA Division and the CTA *En Banc*, no evidence was presented by Accenture to prove the fact that the foreign clients to whom petitioner rendered its services were clients doing business outside the Philippines."

Again, to prove that petitioner's clients are foreign corporations, petitioner presented the relevant SEC *Certifications of Non-Registration*. However, pursuant to the *Accenture* case, petitioner failed to discharge the burden of proving that its clients are doing business outside the Philippines.

Likewise, petitioner failed to satisfy the *second, third and fourth* essential elements. In this regard, petitioner failed to present any evidence to show that the subject services are other than *"processing, manufacturing or repacking of goods"*; that such services were performed in the Philippines; and that the payments therefor are in acceptable foreign currency accounted for in accordance with BSP rules and regulations.

Moreover, petitioner failed to substantiate its alleged zero-rated sales of services by failure to present the corresponding VAT zero-rated official receipts issued for the said clients, in relation to Section 113 of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(2), B(1) and (2)(c) of RR No. 16-2005.

Considering the foregoing, petitioner's sales of services to the alleged non-resident clients failed to qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

b) Sales to PEZA-registered entities

Relative to the afore-quoted Section 108(B)(3) of the NIRC of 1997, as amended, the special law applicable to this case is RA No. 7916, as amended by RA No. 8748, otherwise known as *"The Special Economic Zone Act of 1995"*. Sections 8 and 24 thereof read:

> "SECTION 8. *ECOZONE to be Operated and Managed as Separate Customs Territory.* – **The**

> **ECOZONE shall be managed and operated by the PEZA as separate customs territory.**
>
> The PEZA is hereby vested with the authority to issue certificates of origin for products manufactured or processed in each ECOZONE in accordance with the prevailing rules of origin, and the pertinent regulations of the Department of Trade and Industry and/or the Department of Finance." *(Emphasis supplied)*
>
> "SECTION 24. *Exemption form National and Local Taxes.* – Except for real property taxes on land owned by developers, **no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE.** xxx" *(Emphasis supplied)*

Since the ecozone is viewed as a foreign territory by legal fiction, sales of goods and services made by a VAT-registered person in the Philippine customs territory to an entity registered and operating within the ecozone are considered exports to a foreign country subject to zero percent (0%) VAT. This was elucidated by the Supreme Court in the case of *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.,*[65] to wit:

> "This Court agrees, however, **that PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory.**
>
> xxx An ECOZONE or a Special Economic Zone has been described as —
>
> xxx [S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential

[65] G.R. No. 150154, August 9, 2005.

> Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.
>
> The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.
>
> Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.
>
> Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?
>
> **The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of** goods and **services from the Philippines to a foreign country must be free of VAT**; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%)[66] VAT." *(Emphasis supplied)*

In this case, petitioner presented the Certifications issued by the PEZA[67] to prove that its clients, per the ICPA's "Table XIV-PEZA Certificate",[68] are duly registered with the PEZA.

However, petitioner failed to present as evidence the VAT zero-rated official receipts to substantiate its alleged zero-rated sales to

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[66] Now at 12% VAT rate.
[67] Exhibits "P-57", "P-57-A" to "P-57-DDDDDDDDDDDDD".
[68] Exhibit "P-60" (ICPA Report), Formal Offer of Evidence, White Binder (latter part).

PEZA-registered entities. Thus, petitioner's sales of services to the said PEZA-registered entities cannot be considered as subject to the zero percent (0%) VAT, pursuant to Section 108(B)(3) of the NIRC of 1997, as amended.

In sum, petitioner failed to comply with the *fourth* and *fifth* requisites, *i.e.,* that it is engaged in zero-rated or effectively zero-rated sales during the year 2016, and that the acceptable foreign currency exchange proceeds for its sales under Section 108(B)(2) of the NIRC of 1997, as amended, have been duly accounted for in accordance with BSP rules and regulations.

Such being the case, petitioner's refund claim must perforce fail. Consequently, it is no longer necessary to determine: (1) whether petitioner complied with the remaining requisites to merit favorable consideration of its claim for refund/issuance of tax credit certificate of its alleged unutilized input VAT for the year 2016; and (2) whether all documentary and evidentiary requirements for an administrative claim were satisfied at the BIR level.

Statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to the VAT are in the nature of such exemptions.[69] It is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[70]

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

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[69] *Panasonic Communication Imaging Corporation of the Philippines v. Commissioner of Internal Revenue,* G.R. No. 178090, February 8, 2010.

[70] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 183531, March 25, 2015.

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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
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