CTA Form No. 8

21-000482-0046

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10699

DEUTSCHE KNOWLEDGE SERVICES PTE., LTD,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legaspi Village, Makati City

ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. CLARISSA J. VITUDES-BABARAN
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

SALVADOR LLANILLO & BERNARDO
Units 1706-1711, 17th Floor, Tower One & Exchange Plaza
Ayala Triangle, Ayala Avenue
1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **August 22, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **August 27, 2024.**

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

DEUTSCHE KNOWLEDGE SERVICES PTE., LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. **10699**

Members:

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

Promulgated:
AUG 2 2 2024; 1:30PM

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Deutsche Knowledge Services Pte., Ltd., (**petitioner**) pursuant to Section 3(a)[2], Rule 8 in relation to Section 3(a)(1)[3], Rule 4 of the Revised Rules of the

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[1] Filed on 09 December 2021, Division Docket, Volume I, pp. 11-44.

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

[3] **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]

Court of Tax Appeals (**RRCTA**). It seeks to appeal respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) partial denial of its administrative claim for refund or issuance of tax credit certificate (**TCC**) in the disallowed portion of ₱8,277,129.92, representing excess and unutilized input Value-Added Tax (**VAT**) on purchases of goods and services attributable to zero-rated sales for the second (2nd) quarter of calendar year (**CY**) 2019.

PARTIES OF THE CASE

Petitioner is the Philippine branch of a multinational company organized and existing under and by virtue of the laws of Singapore, with registered office address at One Raffles Quay, #17-10 South Tower, Singapore 048583.[4] On 25 April 2005, the Securities and Exchange Commission (**SEC**), pursuant to the Omnibus Investments Code of 1987, as amended by Republic Act (**RA**) No. 8756[5] and its implementing rules and regulations, issued a license to petitioner to do business as a regional operating headquarters (**ROHQ**) in the Philippines. Petitioner's services are to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and component;, corporate finance advisory services; marketing control and sales promotion; training and personal management; logistic services; research and development services and product development; technical support and maintenance; data processing; and, communication and business development.[6] Petitioner is also registered with the Bureau of Internal Revenue (**BIR**) as a VAT taxpayer with Taxpayer Identification No. (**TIN**) 238-763-115-000 (as evidenced by a Certificate of Registration [**COR**] No. OCN8RC0000083319).[7]

Respondent, on the other hand, is the duly appointed CIR empowered to perform the duties of his or her office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law, with office address at the 5th Floor, BIR National Office Building, Sen. Miriam Defensor Santiago Avenue (formerly

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4 Paragraph 2, Petition for Review, supra at note 1, pp. 11-12.

5 AN ACT PROVIDING FOR THE TERMS, CONDITIONS AND LICENSING REQUIREMENTS OF REGIONAL OR AREA HEADQUARTERS, REGIONAL OPERATING HEADQUARTERS, AND REGIONAL WAREHOUSES OF MULTINATIONAL COMPANIES, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF EXECUTIVE ORDER NO. 226, OTHERWISE KNOWN AS THE OMNIBUS INVESTMENTS CODE OF 1987.

6 See Exhibit "P-1", Division Docket, Volume III, p. 1003.

7 See Exhibit "P-2", id., p. 1021.

Agham Road), Diliman, Quezon City, where he or she may be served summons and other legal processes of the Court.[8]

FACTS OF THE CASE

For the 2nd quarter of CY 2019, petitioner filed its Quarterly VAT Return (BIR Form No. 2550-Q) through the BIR's Electronic Filing and Payment System (**eFPS**) on 25 July 2019[9], indicating the following generated sales[10]:

Sales	**Amount in Php**	**Percentage**
VATable Sales	13,753,932.25	1.18400%
Zero-rated Sales	1,147,892,970.28	98.81600%
Total	1,161,646,902.53	100.00000%

For the same quarter, petitioner claimed to have accumulated excess input tax in the total amount of ₱12,203,250.04, ₱10,427,832.98 of which is attributable to zero-rated sales computed as follows[11]:

Item	**Amount in Php**
Current Purchases of Capital Goods not exceeding Php 1 Million	-
Amortization of Input Tax on Capital Goods > Php 1 Million	21,143.07
Current Domestic Purchases of Goods Other than Capital Goods	99,169.89
Current Domestic Purchases of Services	12,078,051.53
Current Services Rendered by Non-Residents	4,885.55
Total Input VAT for 2Q of CY 2019	**12,203,250.04**
Less: Output VAT	1,650,471.87
Excess Input VAT for 2Q of CY 2019	10,552,778.17
% of Zero-Rated Sales to Total Sales	98.81600%
Input VAT attributable to Zero-Rated Sales	**10,427,832.98**

On 29 June 2021, petitioner filed with the BIR VAT Credit Audit Division (**VCAD**) its Application for Tax Credits or Refunds (BIR Form No. 1914)[12], along with the Revised Checklist of Mandatory

8 Paragraph 2, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), id., Volume II, p. 911.
9 Exhibit "P-3", id., Volume III, pp. 1023-1024.
10 Table lifted from Petition for Review, supra at note 1, p. 13.
11 Table lifted from Petition for Review, id., p. 14.
12 Exhibit "P-4", Division Docket, Volume III, p. 1025.

Requirements on Claims for VAT Refund (**Revised Checklist**).[13] It requested for the refund of its excess and unutilized input VAT for the 2nd quarter of CY 2019 in the total amount of ₱10,427,832.98. On the same day, respondent issued a Tax Verification Notice (**TVN**), with No. TVN2018 00143162[14], authorizing Revenue Officers (**ROs**) Marjorie C. Dioso (**Dioso**) and Michele J. Alonzo-Bucayu (**Alonzo-Bucayu**) to verify the documents in support of petitioner's claim for VAT refund.

Within the 90-day period to decide petitioner's refund claim, respondent issued the VAT Refund Notice dated 30 September 2021[15] containing a computation of the amount approved for the VAT refund (referred as Annex "A"[16]). There, respondent partially granted the refund claim in the amount of ₱2,150,703.06 (and disallowed the remaining amount of ₱8,277,129.92). Petitioner received the VAT Refund Notice on 09 November 2021.[17]

Annex A of the VAT Refund Notice is reproduced below:

...

COMPUTATION OF THE AMOUNT APPROVED FOR VAT REFUND

Amount of Claim	**Php 10,427,832.98**
Less: Adjustment or Deductions per Verification	
Violation [of] invoicing requirements [*per*] Sec. 113 of the NIRC of 1997, as amended	Php 1,409,102.94
Disallowed amortized portion of deferred input VAT from prior period capital goods purchases	21,143.07
Additional deferred input VAT	3,792,849.89
Input VAT attributable to invalid sales not qualified for VAT zero-rating	3,019,034.02
Compromise penalty pursuant to RMC No. 7-2015	35,000.00
Sub-total	Php 8,277,129.92
Amount Recommended for VAT Refund	**Php 2,150,703.06**

...

[13] Exhibit "P-4-1", id., p. 1026.
[14] Exhibit "P-4-2", id., p. 1027.
[15] Exhibit "P-5", id., p. 1028.
[16] Id., p. 1029.
[17] Received by Marjorie R. Rosario; see written remarks on the lower portion of the VAT Refund Notice dated 30 September 2021, id.

Dissatisfied, petitioner filed before this Court the instant Petition for Review[18] on 09 December 2021. On 31 January 2022, respondent filed his or her Answer[19] (through registered mail) wherein he or she: (1) specifically denied petitioner's allegations that it rendered services to nonresident foreign corporations (**NRFCs**) doing business outside of the Philippines; and, (2) prayed that the judicial appeal must be denied for petitioner's failure to substantiate the disallowed amount of its refund claim. Later, through a Compliance filed on 11 February 2022[20], respondent transmitted the BIR Records to this Court.

Prior to the Pre-Trial Conference, respondent filed his or her Pre-Trial Brief on 11 March 2022[21], while petitioner filed its Pre-Trial Brief on 28 April 2022.[22] On 04 May 2022[23], during the pre-trial, the Court granted both parties thirty (30) days within which to file their Joint Stipulation of Facts and Issues (**JSFI**).[24] On 02 June 2022, the parties filed their JSFI.[25] After the Court approved the JSFI, it issued its Pre-Trial Order dated 14 June 2022.[26]

In the trial that ensued subsequently, petitioner presented its lone witness, Felix B. Angue, Jr. (**Angue**), the company's Finance Controller.

On the witness stand, Angue identified his Amended Sworn Statement[27] (also referred to as Judicial Affidavit), where he declared essentially that: (1) petitioner is an ROHQ in the Philippines that acts as a shared services center; (2) it rendered zero-rated sales of services to clients who are doing business outside the Philippines; (3) all of the said clients are part of the Deutsche Bank Aktiengesellschaft Group (**DB Group**); (4) from the purchases incurred (in relation to its zero-rated sales of services), petitioner had an excess and unutilized input VAT of ₱10,427,832.98, which it applied for an administrative claim for refund on 25 June 2021; (5) however, on 09 November 2021, petitioner received the VAT Refund Notice of 30 September 2021 which indicated that after

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18 Supra at note 1.
19 Received by the Court on 02 March 2022, Division Docket, Volume II, pp. 801-807.
20 Id., pp. 785-787.
21 Id., pp. 812-815.
22 Id., pp. 817-830.
23 See Notice of Pre-Trial Conference, id., pp. 810-811.
24 See Order dated 04 May 2022, id., p. 837.
25 Id., pp. 910-920.
26 Id., pp. 927-931.
27 See Amended Sworn Statement of Mr. Felix B. Angue, Jr. to Questions Propounded by Atty. Leah Francesca M. Castillo, Exhibit "P-25", id., pp. 843-867.

deducting the noted disallowances, the BIR partially granted the refund claim in the amount of ₱2,150,703.06 only; (**6**) after examination of the VAT Refund Notice, petitioner observed that the disallowances were vague, erroneous and without basis, thus, it attempted to file a formal letter-request to secure the schedules and details of computations of the said deductions; (**7**) the BIR VCAD allegedly refused to accept the formal letter-request and instead advised petitioner to coordinate with RO Dioso; (**8**) petitioner then received from RO Dioso an email (with attached Excel files) conveying that the reasons for the disallowances were: (*i*) its failure to comply with the invoicing requirements; (*ii*) petitioner's excessive amortization of deferred input VAT; and, (*iii*) its issuance of official receipts (**ORs**) covering multiple transactions to various entities; and, (**9**) petitioner disagreed with all of respondent's observations and findings on the disallowances.

In his cross-examination[28], Angue clarified that it was the BIR that provided the Excel files contained in his Amended Sworn Statement. No redirect examination was conducted.[29]

Upon the completion of Angue's testimony, petitioner was given 30 days to file its Formal Offer of Evidence (**FOE**).[30] However, on 17 August 2022, petitioner filed an "Omnibus Motion with Leave of Court (*i*) to present additional witness and evidence; (*ii*) to have another commissioner's hearing; and (*iii*) to defer the filing of the [FOE]"[31] (**Omnibus Motion**). There, it averred that although it originally intended to present Angue as the sole witness, it felt compelled to also present Atty. Marjorie R. Rosario (**Atty. Rosario**) to identify several other documents already included in the BIR records (to prove that, contrary to respondent's claim, it was able to substantiate its refund claim). After respondent failed to comment on the Omnibus Motion[32], the Court granted the same in a Resolution dated 06 October 2022.[33]

On 27 October 2022, petitioner presented Atty. Rosario where she testified through her Judicial Affidavit[34] that: (**1**) she was a former Senior

28 TSN dated 18 July 2022, pp. 5-8.
29 Id., p. 8.
30 See Order dated 18 July 2022, Division Docket, Volume II, pp. 934-935.
31 Id., pp. 939-948.
32 See Records Verification dated 21 September 2022, id., p. 952.
33 Id., pp. 954-955.
34 See Sworn Statement of Atty. Marjorie R. Rosario to Questions Propounded by Atty. Jellyn C. Clemente, Exhibit "P-42", id., pp. 966-974.

Associate at Salvador Llanillo & Bernardo (**SLB**), petitioner's legal counsel who handled the filing of the administrative and judicial claims for the subject VAT refund; (2) in the filing of the administrative claim, petitioner submitted documentary requirements as enumerated in the Revised Checklist; and, (3) the documents submitted before this Court are faithful reproductions of those submitted before the BIR. No cross-examination was conducted.[35]

On 15 November 2022, petitioner filed its FOE[36] consisting of Exhibits "**P-1**" to "**P-42**", inclusive of sub-markings. Respondent did not interpose any objection to the admission of the exhibits provided these were duly identified and compared with the originals or equivalent certified true copies.[37] In the Resolution dated 03 January 2023[38], the Court admitted all exhibits except Exhibits "**P-10-2**" for not being found in the records; and, "**P-12**", "**P-16**", "**P-22-10-10**", "**P-22-10-14**", and "**P-22-12-6**"[39] for failure of the offered exhibits to correspond with the marked document.[40] After petitioner filed its "Motion for Reconsideration (Re: Resolution dated January 3, 2023)"[41] (**MR**), and without respondent's comment[42], the Court admitted the denied exhibits (except for Exhibit "**P-10-2**").[43]

Later, respondent proceeded to present his or her lone witness, RO Daniel Carlo C. Perez (**Perez**) who testified through his Judicial Affidavit[44] that: (1) he is an RO III from the Tax Audit Review Division (**TARD**); (2) he reviewed the documents in relation to petitioner's administrative claim for VAT refund; (3) based on the Memorandum Report dated 30 September 2021[45], a portion of the claim (in the amount

35 TSN dated 27 October 2022, p. 6.
36 Division Docket, Volume III, pp. 978-1002.
37 See Comment (Re: Formal Offer of Evidence), id., pp. 1602-1604.
38 Id., pp. 1607-1611.
39 Offered as Cash Receipts Journal Vouchers, and Credit Memos and Debit Memos.
40

Exhibits	Description
P-10-2	OR No. 5767 EPD issued by Lantro Phils Inc.
P-12	Invoices and ORs issued by CWC International Corporation
P-16	Invoices, OR and CR issued by Dimension Data Philippines, Inc.
P-22-10-10	Invoice No. 270000509 issued by Petitioner
P-22-10-14	Invoice No. 270000513 issued by Petitioner
P-22-12-6	Invoice No. 270001176 issued by Petitioner

41 Division Docket, Volume III, pp. 1612-1617.
42 See Records Verification dated 06 March 2023, id., p. 1620.
43 See Resolution dated 16 March 2023, id., pp. 1622-1625.
44 See Judicial Affidavit (of Daniel Carlo C. Perez), Exhibit "R-6", id., Volume II, pp. 795-799.
45 Exhibit "R-3", BIR Records, pp. 369-376.

₱8,277,129.92) was disallowed, thus, leaving only ₱2,150,703.06 as the recommended amount for refund; and, (4) the result of the examination was reflected in the VAT Refund Notice of 30 September 2021.

During the cross-examination, RO Perez explained that the breakdowns of the disallowed items were not attached to the VAT Refund Notice that was issued to petitioner.[46] No redirect examination was conducted.[47]

Still later, or on 10 May 2023, respondent filed his or her FOE.[48] Over petitioner's objections[49], the Court admitted all the offered exhibits.[50] The Court then directed the parties to file their respective memoranda.[51] On 03 August 2023, respondent filed his or her Memorandum[52] while petitioner filed its Memorandum[53] on 17 August 2023. Accordingly, on 24 August 2023, the Court considered the case submitted for decision.[54]

ISSUE

As the parties stipulated in the JSFI[55], the issues for this Court's resolution are –

I.

WHETHER RESPONDENT COMMISSIONER OF INTERNAL REVENUE'S DEDUCTIONS OF THE VALUE-ADDED TAX (VAT) REFUND CLAIMED BY PETITIONER DEUTSCHE KNOWLEDGE SERVICES PTE., LTD. ARE NULL AND VOID FOR HAVING BEEN ISSUED IN VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS;

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46 TSN dated 10 May 2023, pp. 5-7.
47 Id., p. 7.
48 Division Docket, Volume III, pp. 1630-1633.
49 See Comment/Opposition (to Respondent's Formal Offer of Evidence dated May 10, 2023), id., pp. 1635-1640.
50 See Resolution dated 06 July 2023, id., pp. 1646-1647.
51 Id.
52 Id., pp. 1648-1655.
53 Id., pp. 1661-1687.
54 See Minute Resolution dated 24 August 2023, id., p. 1688.
55 Supra at note 25.

II.
WHETHER PETITIONER DEUTSCHE KNOWLEDGE SERVICES PTE., LTD. IS ENTITLED TO THE REFUND OF ALLEGED EXCESS AND UNUTILIZED INPUT VALUE-ADDED TAX (VAT) ALLEGEDLY ATTRIBUTABLE TO ZERO-RATED SALES OF SERVICES FOR THE SECOND (2ND) QUARTER OF CALENDAR YEAR (CY) 2019; AND,

III.
WHETHER THE DECISION OF RESPONDENT COMMISSIONER OF INTERNAL REVENUE IS CORRECT BASED ON THE DOCUMENTS PRESENTED BY PETITIONER DEUTSCHE KNOWLEDGE SERVICES PTE., LTD. TO RESPONDENT.

From the foregoing, the core issue for resolution is summarized to be as follows —

WHETHER PETITIONER DEUTSCHE KNOWLEDGE SERVICES PTE., LTD. IS ENTITLED TO A REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE (TCC) IN THE DISALLOWED PORTION OF ₱8,277,129.92, REPRESENTING ITS EXCESS AND UNUTILIZED INPUT VALUE-ADDED TAX (VAT) FOR THE SECOND (2nd) QUARTER OF CALENDAR YEAR (CY) 2019 ATTRIBUTABLE TO ZERO-RATED SALES.

ARGUMENTS

In support of its position, petitioner insists that its right to due process was violated when respondent failed to attach the schedules, breakdown and computations of the disallowances reflected in the VAT Refund Notice of 30 September 2021 (which it received on 09 November 2021). Although petitioner was able to later on secure the said details (in the Excel files) on 21 November 2021, it failed to properly prepare its counter arguments on the disallowances due to time restrictions. According to petitioner, it was left with few remaining days (out of the prescriptive period of 30 days) to prepare and file its present petition before this Court. In addition, there were discrepancies in the amounts of deductions in the BIR's VAT Refund Notice and in the Excel files which respondent failed to explain.

Petitioner adds that it is entitled to the refund of the disallowed portion considering that respondent's deductions are invalid for lack of factual and legal basis. Petitioner maintains that:

1. The amount of ₱1,409,102.94 are duly supported with ORs that the authorized representative of its customers countersigned and are accompanied by a notarized certification referring to the corrections made;

2. The input VAT of ₱3,792,849.89 pertains to purchases of services which qualify as Construction in Progress (**CIP**), thus can be claimed as an input tax credit on the month the payment was made;

3. The ORs of the zero-rated sales that were issued for several transactions with different entities are supported by separate invoices issued to the respective clients per transaction. Thus, the input tax of ₱3,019,034.02 attributable to the said sales must not be disallowed; and,

4. Petitioner is not liable to pay the compromise penalty of ₱35,000.00 as it did not agree on the imposition of the said amount. Moreover, Revenue Memorandum Circular (**RMC**) No. 7-2015[56] (which respondent alleged as his or her basis for the deduction) does not mention any compromise penalty.

Lastly, petitioner asserts that this Court should no longer disturb respondent's findings on the recommended input VAT refund of ₱2,150,703.06.

On the other hand, respondent stresses that petitioner is not entitled to claim the disallowed portion of ₱8,277,129.92 for failure to duly substantiate the said amount.

Relative thereto, respondent avers that when this Court reviews the validity of the disallowed portion, its jurisdiction is strictly appellate in nature applying the principle in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue* (**Total Gas**).[57] Thus, it should confine itself to the resolution of whether respondent's findings are consistent with the law and rules. Citing *Total Gas*, respondent claims that a

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[56] Reiterating the Tax Treatment of Interest Income Derived from Long-Term Deposits or Investments Certificates as Described in Revenue Regulations No. 14-2012 and Clarified in Revenue Memorandum Circular Nos. 77-2012 and 81-2012.

[57] G.R. No. 207112, 08 December 2015.

taxpayer cannot cure its failure to submit a document in the administrative level by submitting the same in a judicial appeal.

RULING OF THE COURT

After a careful and thorough evaluation of the applicable laws, rules and regulations and the evidence presented, the Court finds no merit in the instant petition. We essay the reasons below, in *seriatim*.

Petitioner anchors its claim on Sections 110(B)[58], 112(A) and (C) of the National Internal Revenue Code (**NIRC**) of 1997, as amended by RA 10963 or *Tax Reform for Acceleration and Inclusion* (**TRAIN**), which are all quoted hereunder:

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

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58 As amended by Republic Act No. 9361, "AN ACT AMENDING SECTION 110(B) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES"

That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

...

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

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.[59]

...

In *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[60] (**Deutsche Knowledge Services**), the Supreme Court laid down the requisites for the entitlement to tax refund or credit of excess input VAT attributable to zero-rated sales, to wit:

...

Under Section 4.112-1(a) of Revenue Regulations No. (RR) 16-05, otherwise known as the Consolidated VAT Regulations of 2005, in relation to Section 112 of the Tax Code, a claimant's entitlement to a tax refund or credit of excess input VAT attributable to zero-rated sales hinges upon the following requisites: "(1) the taxpayer must be VAT-registered; (2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable

59 Italics in the original text.
60 G.R. No. 234445, 15 July 2020; Citations omitted.

> to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax."
>
> ...

Applying the foregoing principle, the Court will proceed to determine whether petitioner complied with the aforementioned requisites; but since the Court's jurisdiction over the instant case is material, We shall first determine the third *(3rd) requisite*.

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

In accordance with Section 112(A) and (C)[61] of the NIRC of 1997, as amended by TRAIN, the administrative claim for refund of unutilized input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales are made.

Petitioner's present claim covers the 2nd quarter of CY 2019, *i.e.* for the period of 01 April 2019 to 30 June 2019. Counting two (2) years from the close of the said quarter, the last day for the filing of the administrative claim is on 30 June 2021. Considering that the administrative claim was filed on 29 June 2021[62], the same was thus timely filed.

As to the timeliness of petitioner's judicial claim, pursuant to the TRAIN Law amendment to Section 112(C) of the NIRC of 1997, as amended, it is required that the same must have been filed before this Court within 30 days from the receipt of respondent's decision denying the claim, or after the expiration of the 90-day period. Thus, from the filing of petitioner's administrative claim on 29 June 2021, respondent had ninety (90) days, or until 27 September 2021, to act on the said claim.

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[61] Supra at pp. 11 and 12.
[62] Supra at notes 12 and 13.

However, pursuant to Section 5(2) of RR No. 27-2020[63], the BIR suspended the 90-day period to process VAT refund claims during the Enhanced Community Quarantine (**ECQ**) or Modified Enhanced Community Quarantine (**MECQ**) in the midst of the COVID pandemic outbreak. It was to resume 30 days after the lifting of the ECQ or MECQ. With the foregoing and based on the following Supreme Court issuances, the National Capital Region (**NCR**) was continuously placed under ECQ and MECQ from 06 August 2021 until 15 September 2021:

Circular	Details
Memorandum Order No. 65-2021	In Memorandum Order No. 64-2021 dated July 30, 2021, the offices in the Supreme Court were ordered physically closed from August 2, 2021 to August 20, 2021 to support the government's effort to arrest the spread of the highly transmissible COVID-19 Delta variant, and considering that Metro Manila and other parts of the country were placed under General Community Quarantine "subject to heightened and additional restrictions from July 30, 2021 to August 5, 2021, and thereafter under **Enhanced Community Quarantine from Augst 6, 2021 to August 20, 2021.**
Memorandum Order No. 73-2021	In view of the declaration of **modified enhanced community quarantine in Metro Manila from August 21 to 31, 2021**[.]
OCA Circular No. 120-2021	In view of the re-imposition of **Modified Enhanced Community Quarantine (MECQ) in the National Capital Region (NCR) beginning 8 September 2021**[.]
Administrative Circular No. 72-2021	Notwithstanding that the National Capital Region (NCR) will be under **General Community Quarantine (GCQ) with Alert Level 4 beginning 16 September 2021**[.][64]

Thus, the BIR also suspended the 90-day period to process petitioner's VAT refund claim from 06 August 2021 until 15 September 2021. The processing period resumed 30 days after the NCR was placed on General Community Quarantine (**GCQ**) on 16 September 2021. Accordingly, respondent could be considered to have acted on petitioner's claim within the 90-day period prescribed by law (when the VAT Refund Notice was issued on 30 September 2021). As earlier stated, the said VAT Refund Notice informed petitioner that its claim was

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[63] Regulations suspending the Filing and Ninety (90) – Day Processing of Value-Added Tax (VAT) Refund Claims Anchored Under Section 112 of the Tax Code of 1997, as Amended, in Relation to Section 4(tt) of Republic Act (R.A.) No. 11494, Otherwise Known as the "Bayanihan to Recover as One Act"

[64] Emphasis supplied.

partially approved in the amount of ₱2,150,703.06. Petitioner claimed to have received the same only on 09 November 2021.

Further, counting 30 days from petitioner's receipt of the VAT Refund Notice on 09 November 2021, it had until 09 December 2021 to file the judicial appeal. As the present *Petition for Review* was filed on 09 December 2021[65], the same was also timely filed. Such being the case, the Court finds that petitioner satisfied the above-stated *3rd requisite*.

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

Indisputably, petitioner is a VAT-registered taxpayer with TIN 238-763-115-000, as evidenced by BIR COR No. OCN8RC0000083319.[66] Thus, petitioner complied with the *1st requisite*.

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

The *2nd requisite* requires that the taxpayer be engaged in zero-rated or effectively zero-rated sales and, for zero-rated sales under Sections 106(A)(2)(a)(1) and (3)[67], and 108(B)(1) and

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65 Supra at note 1.

66 Supra at note 7.

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

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

...

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

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

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

...

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

(2)[68] of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds must have been duly accounted for in accordance with Bangko Sentral ng Pilipinas (**BSP**) rules and regulations.

Relative to the *2nd requisite*, petitioner maintains that it rendered services to NRFCs not engaged in trade or business in the Philippines, the payments for such services were made in Euro (an acceptable foreign currency) and accounted for in accordance with the BSP rules and regulations. As such, these sales are subject to zero percent (0%) VAT pursuant to Section 108(B)(2) of the NIRC of 1997, as amended, which states:

> ...
>
> **SEC. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties. –*
>
> ...
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – **The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:**
>
> ...
>
> **(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)**[.][69]
>
> ...

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

...

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

...

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

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Services other than those mentioned in the preceding paragraph, rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)[.]

...

69 Emphasis supplied and italics in the original text.

In the case of *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[70] (**Burmeister**), the Supreme Court ruled:

> ...
>
> The Tax Code not only requires that **the services be other than "processing, manufacturing or repacking of goods" and that payment for such services be in acceptable foreign currency accounted for in accordance with BSP rules.** Another essential condition for qualification to zero-rating under Section 102(b)(2) is that **the recipient of such services is doing business *outside* the Philippines**. While this requirement is not expressly stated in the second paragraph of Section 102(b), this is clearly provided in the first paragraph of Section 102(b) where the listed services must be "for other persons doing business outside the Philippines." The phrase "**for other persons doing business outside the Philippines**" not only refers to the services enumerated in the first paragraph of Section 102(b), but also pertains to the general term "services" appearing in the second paragraph of Section 102(b). In short, services other than processing, manufacturing, or repacking of goods must likewise be performed for persons doing business outside the Philippines.[71]
>
> ...

In essence, therefore, the following conditions must be satisfied before the sale of services under the said provision may be considered as VAT zero-rated:

a. The services must be other than processing, manufacturing or repacking of goods rendered by VAT registered persons in the Philippines;

b. The transaction is paid for in acceptable foreign currency duly accounted for in accordance with BSP rules and regulations; and,

c. The recipient of such services must be performing business outside the Philippines.[72]

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[70] G.R. No. 153205, 22 January 2007.

[71] Italics and emphasis in the original text and supplied.

[72] *Accenture, Inc. v. Commissioner of Internal Revenue*, G.R. No. 190102, 11 July 2012.

We shall now proceed to determine if petitioner's sales of services qualify for VAT zero-rating *vis-à-vis* the conditions under Section 108(B)(2) of the NIRC of 1997, as amended, and as clarified in *Burmeister*.

THE SERVICES MUST BE OTHER THAN PROCESSING, MANUFACTURING OR REPACKING OF GOODS

Petitioner complied with the *first condition*. As stated above (and as the records show), the SEC issued to petitioner a license to do business as an ROHQ in the Philippines, pursuant to the Omnibus Investments Code of 1987, as amended by RA 8756, and its implementing rules and regulations. Particularly, petitioner's services are to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services; research and development services and product development; technical support and maintenance; data processing and communication and business development.[73] These services clearly fall within the scope of services other than processing, manufacturing or repacking of goods as contemplated by the afore-mentioned provision.

Whether the payment for the above services was paid in acceptable foreign currency accounted for in accordance with BSP rules, this Court deems it propitious to first tackle the *third condition* in order to determine which entities qualify as *not* doing business in the Philippines (such that only the sales made in favor of these entities shall be considered in the determination of petitioner's compliance with the *second condition*).

THE RECIPIENT OF SUCH SERVICES IS DOING BUSINESS OUTSIDE THE PHILIPPINES

In *Deutsche Knowledge Services*[74], the Supreme Court expressly declared the documentary requirements necessary to prove the

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[73] Supra at note 6.
[74] Supra at note 60; Citations omitted, italics in the original and emphasis supplied.

client's NRFC status for purposes of determining VAT zero-rated sales –

...

Proof of NRFC Status

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 ROHQ's 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.

...

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 their affiliates are foreign 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.**

Proof of the above-mentioned second component sets the present case apart from *Accenture, Inc. v. Commissioner of Internal Revenue* and *Sitel Philippines Corp. v. Commissioner of Internal Revenue*. In these cases, the claimants similarly presented SEC Certifications and client service agreements. However, the Court consistently ruled that documents of this nature only establish the

> *first* component (*i.e.*, that the affiliate is foreign). **The absence of any other competent evidence (*e.g.*, articles of association/certificates of incorporation) proving the *second* component (*i.e.*, that the affiliate is not doing business here in the Philippines) shall be fatal to a claim for credit or refund of excess input VAT attributable to zero-rated sales.**
>
> ...

Following the above pronouncement, petitioner should present at least two (2) documents to prove its NRFC status, to wit: (1) the SEC Certifications of Non-Registration, to show that their clients are foreign corporations; and, (2) the articles of association/certificates of incorporation, to prove that these clients are not doing business in the Philippines.

Unfortunately, a thorough examination of the records yields clearly that petitioner had failed to present the articles of incorporation/certificates of incorporation to show that its clients are doing business outside the Philippines. As the records bear, petitioner only submitted the SEC Certifications of Non-Registration of the following affiliates to which it rendered its services during the subject period of claim:

Name of the Service Recipient[75]	**SEC Certifications of Non-Registration**	
	Available	BIR Records reference
Deutsche Bank AG Riad Branch	✓	p. 234
Deutsche Securities, Inc. - Japan	✓	p. 252
Deutsche Bank Aktiengesellschaft, Filiale, Frankfurt (Inslandbank)	✓	p. 230
Deutsche Bank Sociedad Anonima Española	✓	p. 236
DB International (Asia) Limited - Singapore	✓	p. 223
Deutsche Bank Aktiengesellschaft - Singapore Branch	✓	p. 237
Deutsche Bank AG Taipei Branch	✓	p. 243
DWS Investments Hong Kong Limited	✓	p. 261
Deutsche Bank AG Mumbai Branch	✓	p. 241
Deutsche Bank Aktiengesellschaft – Hong Kong Branch	✓	p. 240

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[75] Recipient's names were lifted from the Schedule of Zero-Rated Sales of Services for the period of 01 April 2019 to 30 June 2019, Exhibit "P-35", BIR Records, pp. 336-350.

Deutsche Bank Aktiengesellschaft – London Branch	✓	p. 246
Deutsche Group Services Pty Limited - Australia	✓	p. 254
DWS Investments S.A. - Luxembourg	✓	p. 217
Deutsche Bank AG Brussel Branch	✓	p. 242
DWS Investments Singapore Limited	✓	p. 218
Deutsche Bank (Suisse) S.A. - Switzerland	✓	p. 251
DWS Investments UK Limited	✓	p. 260
Deutsche Alternative Asset Management (UK) Limited	✓	p. 255
Deutsche Bank AG Asia Pacific Head Office - Singapore	✓	p. 238
DWS Group Services UK Limited	✓	p. 209
Deutsche Bank Luxembourg S.A.	✓	p. 248
Deutsche Asia Pacific Holdings Pte. Ltd - Singapore	✓	p. 250
Deutsche Bank AG Dubai (DIFC) Branch	✓	p. 233
Deutsche Bank AG Amsterdam Branch	✓	p. 231
DWS Alternatives Global Limited – Great Britain	✓	p. 259
DWS Service Company - USA	✓	p. 212
Deutsche Bank AG Bangkok Branch	✓	p. 239
D.B. Vita S.A.	✓	p. 220
Deutsche Bank (Malaysia) Berhad	✓	p. 245
DWS Real Estate GmbH - Germany	✓	p. 215
DWS Beteiligungs GmbH – Germany	✓	p. 216
DB Service Centre Limited – Ireland	✓	p. 224
Deutsche Bank AG Zurich Branch	✓	p. 235
DB AG Jakarta	✓	p. 219
DWS Investment Management Americas, Inc.	✓	p. 213
RREEF Management, L.L.C. - USA	✓	p. 222
DWS Trust Company - USA	✓	p. 214
Deutsche Bank AG New York Branch	✓	p. 244
DWS Distributors, Inc. – USA	✓	p. 211
RREEF America, L.L.C	✓	p. 221
Deutsche Bank AG Abu Dhabi Branch	✓	p. 232
Joint Stock Company Deutsche Bank DBU – Ukraine	✓	p. 257
DBOI Global Services Private Limited, Bangalore Branch	✓	p. 229
DBOI Global Services Private Limited, Jaipur Branch	✓	p. 228
DBOI Global Services Private Limited, Pune Branch	✓	p. 227

DBOI Global Services Private Limited - India	✓	p. 225
Deutsche CIB Centre Private Limited - India	✓	p. 253
DBOI Global Services (UK) Limited	✓	p. 226
Deutsche Bank AG Paris Branch	✓	p. 249
DWS Asset Management (Korea) Company Limited	✓	p. 210

We are not unaware that petitioner had relied on respondent's findings that the export sales (for the subject period of claim) were duly verified. However, We are not convinced that respondent's verification procedures had satisfied all three (3) conditions under Section 108(B)(2) of the NIRC of 1997, as amended, to prove the VAT zero-rating of the export sales.

First, a perusal of the BIR Memorandum dated 25 August 2021[76] indicates that the basis for respondent's verification of the export sales was Deutsche Bank's Certification of Inward Remittances[77] which only confirms the existence of the *second condition, i.e.*, that the transaction is paid for in acceptable foreign currency duly accounted for in accordance with BSP rules and regulations –

> ...
> The proceeds of the said zero-rated sales were paid for, in acceptable foreign currency generally accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). The word "Zero-rated" was indicated on the sales invoice issued by the claimant. Proofs of actual exportation and foreign currency remittances for export sales were also verified[.][78]
> ...

Second, although it appears that respondent also relied on the submission of the SEC Certifications of Non-Registration based on the BIR VCAD Remarks made on the Schedule of Zero-Rated Sales of Services for the period of 01 April 2019 to 30 June 2019[79], even so, it only proves that the affiliates or clients are foreign corporations. Thus, there is no evidence that supports petitioner's claim that the NRFCs are not engaged in trade or business in the Philippines.

[76] BIR Records, pp. 359-363.
[77] Id., pp. 262-268.
[78] Supra at note 76, p. 361.
[79] Supra at note 75.

Although it may be argued that when the administrative claim was filed, part 2.3[80] of the Revised Checklist (under Revenue Memorandum Order [**RMO**] No. 47-2020[81]) merely requires petitioner to submit the original copy of the SEC Certifications, We nevertheless underscore that petitioner came to this Court to prove its entitlement to the disallowed portion of the VAT refund claim of ₱8,277,129.92. To prove its entitlement, petitioner alleges that it had rendered services to NRFCs not doing business in the Philippines, thus it is engaged in zero-rated sales of services. Additionally, petitioner declares that it has an excess and unutilized input VAT attributable to said zero-rated sales.

It is axiomatic that under the Revised Rules on Evidence, a party who alleges a fact has the burden of proving it. A mere allegation is not evidence, and he who alleges has the burden of proving his allegation with the requisite quantum of evidence.[82]

Additionally, in civil cases, the burden of proof rests upon the plaintiff who must establish their case by preponderance of evidence. Preponderance of evidence is the evidence that is of greater weight, or more convincing, than the evidence offered in opposition to it. It is proof that leads the trier of facts to find that the existence of the contested fact is more probable than its non-existence.[83]

Here, petitioner failed to prove by preponderant evidence, the concurrence of the *third condition, i.e.*, that its affiliates or clients (who are the recipient of its services) must be performing business outside the Philippines pursuant to Section 108(B)(2) of the NIRC of 1997, amended. Evidently, petitioner also failed to prove that it is engaged in zero-rated or effectively zero-rated sales (as the *2nd requisite* for the entitlement to the tax refund so requires). To reiterate the Supreme Court's disquisition in the *Deutsche Knowledge Services*[84], the absence of the articles of association/certificates of incorporation proving that the

80 2.3 For sale of services to a non-resident foreign corporation (NRFC) under Sec. 108(B)(2), original copy of certification from SEC that the NRFC is not a registered corporation in the Philippines which shall serve as proof that the NRFC-buyer of the services is not doing business in the Philippines.

81 Consolidated and Updated Guidelines and Procedures on the Processing of Claims for Value-Added Tax Credit/ Refund Except Those Under the Authority and Jurisdiction of the Legal Group.

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

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

84 Supra at note 60.

affiliates are not doing business here in the Philippines, *shall be fatal to a refund claim of excess input VAT attributable to zero-rated sales.*

Nothing is more settled but that tax refunds partake the nature of exemption from taxation, and as such, must be looked upon with disfavor. It is regarded as in derogation of the sovereign authority and should be construed in *strictissimi juris* against the person or entity claiming the exemption. The taxpayer who claims for exemption must justify its claim by the clearest grant of organic or statute law and should not be permitted to stand on vague implications. The burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund.[85] In the case at bar, petitioner failed to sufficiently establish its claim for refund.

WHEREFORE, premises considered, the instant Petition for Review filed on 09 December 2021 by petitioner Deutsche Knowledge Services Pte., Ltd. is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LANEE S. CUI-DAVID
Associate Justice

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85 *Maibarara Geothermal, Inc. v. Commissioner of Internal Revenue*, G.R. No. 250479, 18 July 2022.

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice