REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PPD PHARMACEUTICAL DEVELOPMENT PHILIPPINES CORP., *Petitioner,*	**CTA CASE NO. 10348**
	Members:
-versus-	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondents.*	Promulgated: AUG 0 6 2024

x--x

8.15 a.m.

DECISION

RINGPIS-LIBAN, *J.*:

THE CASE

The *Petition for Review* filed on September 11, 2020 prays for the refund of the amount of ₱5,584,123.50, allegedly representing petitioner's excess and/or unutilized creditable input value-added taxes (VAT) paid and attributable to its zero-rated sales for the first quarter of the calendar year (CY) 2018.[1]

THE PARTIES

Petitioner PPD Pharmaceutical Development Philippines Corp. is a corporation registered with the Securities and Exchange Commission (SEC), with principal office address at 22nd Floor Net Park Building, 5th Avenue, E-Square, Crescent Park West, Bonifacio Global City, Taguig City.[2] It is a domestic corporation engaged in the business of conducting and managing clinical research programs, including monitoring clinical trials, providing project

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[1] Summary of the Case, Pre-Trial Order dated May 24, 2021, Docket – Vol. II, p. 460.
[2] Par. 1.1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, p. 450; Exhibits "P-1" and "P-2", Docket – Vol. III, pp. 980 to 1005.

management services and conducting clinical feasibility assessments. It is registered with the SEC as an export enterprise;[3] and with the Bureau of Internal Revenue (BIR) for VAT purposes,[4] under Tax Identification Number (TIN) 009-270-744-000.[5]

On the other hand, respondent is the Commissioner of Internal Revenue who is empowered by law to act upon and approve claims for refund or tax credit,[6] with office address at the BIR National Office Building, BIR Road, Diliman, Quezon City.[7]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On June 10, 2020, petitioner filed with the BIR an *Application for Tax Credits/Refunds* (BIR Form No. 1914) for its alleged excess and/or unutilized creditable input VAT in the amount of ₱5,584,123.50 for the 1st quarter of CY 2018 with the VAT Credit Audit Division (VCAD),[8] with the corresponding *Revised Checklist of Mandatory Requirements for Claims for VAT Refund.*[9]

On August 12, 2020, petitioner received the letter dated July 28, 2020 signed by Assistant Commissioner Maria Luisa I. Belen for the Assessment Service, stating that petitioner's application for VAT refund, for the period January 1, 2018 to March 31, 2018, "is *denied* for lack of factual and legal basis."[10]

PROCEEDINGS BEFORE THIS COURT

Aggrieved, petitioner filed a judicial claim for refund with the Court *through* the present *Petition for Review* on September 11, 2020.[11] The case was initially raffled to the Court's Second Division.

Thereafter, respondent filed a *Motion for Extension of Time to File Answer* on October 16, 2020,[12] and *Urgent Motion for Extension of Time to File Answer* on November 16, 2020,[13] which were both granted by the Court in the Order dated October 20, 2020 and November 17, 2020, respectively.[14]

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[3] Par. 1.3, Stipulation of Facts, JSFI, Docket – Vol. II, p. 451.
[4] Par. 1.4, Stipulation of Facts, JSFI, Docket – Vol. II, p. 451.
[5] Exhibit "P-3", Docket – Vol. III, p. 1251.
[6] Par. 2.2, *Petition for Review*, vis-à-vis par. 1, *Answer*, Docket – Vol. I, pp. 8 and 355, respectively.
[7] Par. 1.2, Stipulation of Facts, JSFI, Docket – Vol. II, p. 450.
[8] Exhibit "P-4", BIR Records (Exhibit "R-3"), p. 108.
[9] Exhibit "P-5", BIR Records (Exhibit "R-3"), p. 110.
[10] Exhibits "P-27" and "R-2", BIR Records (Exhibit "R-3"), pp. 213 to 214.
[11] Docket – Vol. I, pp. 7 to 34.
[12] Docket – Vol. I, pp. 354 to 357.
[13] Docket – Vol. I, pp. 360 to 363.
[14] Docket – Vol. I, pp. 359 and 364, respectively.

In his *Answer* filed on December 4, 2020,[15] respondent raises the following special and affirmative defenses, to wit: (1) the instant judicial claim should be denied for petitioner's failure to substantiate the claim for refund at the administrative level; (2) it is an established fact that a decision by respondent has already been rendered and in such case, the Supreme Court has held that the duty of the court is now limited in determining whether the decision is proper; and (3) the claim for refund should be denied for failure to comply with the mandatory invoicing requirements pursuant to Section 113 in relation to Section 110 and 114 (C) of the Tax Code, as amended.

Petitioner then filed its *Reply* on January 5, 2021.[16]

The Pre-Trial Conference was set and held on February 17, 2021.[17] Prior thereto, petitioner's *Pre-Trial Brief* was filed on February 11, 2021,[18] while that of *Respondent's* was filed on February 16, 2021.[19]

On March 19, 2021, the parties submitted their *Joint Stipulation of Facts and Issue*,[20] which was approved and adopted by the Court in the *Pre-Trial Order* dated May 24, 2021,[21] terminating the Pre-Trial.

Respondent transmitted the *BIR Records* for the case on May 26, 2021, consisting of 215 pages in one (1) folder.[22]

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

Petitioner offered the testimonies of: (1) Mr. Rustom Jay A. Ruiz,[23] petitioner's Tax Accountant; and (2) Atty. Mark Darwin A. Camara,[24] the Court-commissioned independent certified public accountant (ICPA).[25]

The *Report* of the ICPA was submitted on October 25, 2021.[26]

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[15] Docket – Vol. I, pp. 365 to 374.
[16] Docket – Vol. I, pp. 378 to 385.
[17] Notice of Pre-Trial Conference dated December 11, 2020, Docket – Vol. I, pp. 376 to 377; Minutes of the hearing held on, and Order dated, February 17, 2021, Docket – Vol. I, pp. 407 to 408.
[18] Docket – Vol. I, pp. 388 to 406.
[19] Docket – Vol. I, pp. 415 to 418.
[20] Docket – Vol. II, pp. 450 to 457.
[21] Docket – Vol. II, pp. 460 to 465.
[22] *Compliance* dated May 24, 2021, Docket – Vol. II, pp. 480 to 482.
[23] Exhibit "P-57", Docket – Vol. II, pp. 550 to 580; Order dated November 15, 2021, Docket – Vol. II, pp. 947 to 948.
[24] Exhibit "P-58", Docket – Vol. II, pp. 880 to 903; Order dated November 15, 2021, Docket – Vol. II, pp. 947 to 948.
[25] *Oath of Commission* dated June 21, 2021, Docket – Vol. II, p. 520; Minutes of the hearing held on, and Order dated, June 21, 2021, Docket – Vol. II, pp. 521 and 479, respectively.

Petitioner filed its *Formal Offer of Documentary Evidence* on January 10, 2022,[27] with respondent's *Comment (On Petitioner's Formal Offer of Evidence)* filed on February 16, 2022.[28] In the *Resolution* dated March 21, 2022,[29] the Court admitted petitioner's offered exhibits, *except* for (1) Exhibit "P-3", for failure to submit the duly marked exhibit; (2) Exhibits "P-34-1 to P-34-6 Series", "ICPA-34-Series", and "ICPA-45-1" to "ICPA-45-14", for *not* being found in the records of the case; (3) Exhibit "P-35", for failure to present original for comparison; (4) Exhibits "ICPA-45-2", "ICPA-45-4", "ICPA-45-6", "ICPA-45-8", and "ICPA-45-10", for being blurred or unreadable; *and*, (5) Exhibits "ICPA-6-B" and "ICPA-11", for failure of the exhibits formally offered to correspond with the ICPA-marked exhibits.

Consequently, on March 31, 2022, petitioner filed its *Motion for Partial Reconsideration with Motion for Commissioner's Hearing (Re: Resolution dated 21 March 2022).*[30] Respondent, however, failed to file a comment thereon.[31] In the *Resolution* dated June 16, 2022,[32] the Court granted the *Motion for Commissioner's Hearing.* Thereafter, in the *Resolution* dated January 6, 2023,[33] the Court partially granted petitioner's *Motion*, admitting Exhibits "P-3", "P-34-1", "P-34-2", "P-34-3", "P-34-4", "P-34-5", "P-34-6", "ICPA-45-2", "ICPA-45-4", "ICPA-45-6", "ICPA-45-8", and "ICPA-45-10", but still denied the admission of Exhibits "P-35", for failure to present original for comparison; and Exhibits "ICPA-6-B" and "ICPA-11", for failure of the exhibits formally offered to correspond with the ICPA-marked exhibits.

In the *Order* dated June 29, 2022,[34] the case was transferred to the Third Division of this Court.

Respondent offered the testimony of Revenue Officer Orlan S. Rabelista.[35]

On May 24, 2023, respondent filed his *Formal Offer of Evidence*,[36] with petitioner's *Comment/Opposition (To the Respondent's Formal Offer of Evidence)* filed

[26] Exhibit "P-54" (on a separate binder).
[27] Docket – Vol. III, pp. 958 to 978.
[28] Docket – Vol. III, pp. 954 to 956.
[29] Docket – Vol. III, pp. 1180 to 1185.
[30] Docket – Vol. III, pp. 1192 to 1197.
[31] Records Verification dated May 20, 2022 issued by the Judicial Records Division of this Court, Docket – Vol. III, p. 1235.
[32] Docket – Vol. III, pp. 1237 to 1238.
[33] Docket – Vol. III, pp. 1256 to 1262.
[34] Docket – Vol. III, p. 1240.
[35] Exhibit "R-4", Docket – Vol. III, pp. 1168 to 1171; Minutes of the hearing held on, and Order dated, March 21, 2022, Docket – Vol. III, pp. 1186 and 1187; Minutes of the hearing held on, and Order dated, May 10, 2022, Docket – Vol. III, pp. 1272 and 1273.
[36] Docket – Vol. III, pp. 1274 to 1277.

on June 13, 2023.[37] In the *Resolution* dated July 10, 2023,[38] the Court admitted all of respondent's offered evidence.

In the meantime, per the *Notice of Resolution* dated June 7, 2023,[39] the present case was transferred to the Second Division of this Court.

Petitioner filed its *Memorandum* on August 17, 2023.[40] Respondent, however, failed to file a memorandum.[41]

The present case was considered submitted for decision on September 12, 2023.[42]

THE STIPULATED ISSUE

The parties stipulated this issue for the Court's resolution:

> "Whether PPD is entitled to a tax refund or to the issuance of a tax credit certificate in the amount of PhP5,584,123.50, representing the alleged excess and/or unutilized input VAT credits attributable to its zero-rated sales of services for the first quarter of CY 2018."[43]

Petitioner's arguments:

Petitioner argues that all the requisites to be entitled to refund or tax credit of the creditable input VAT attributable to zero-rated or effectively zero-rated sales, are present in its case. In support of such argument, petitioner posits that it is a VAT-registered taxpayer; that its sale of services for the 1st quarter of CY 2018 are VAT zero-rated, pursuant to Section 108(B)(2) of the Tax Code, as amended; that the input taxes paid by petitioner are duly substantiated and directly attributable to its zero-rated sales for the 1st quarter of CY 2018; that the input taxes paid by petitioner are not transitional input taxes and were not applied to any output VAT liability for the 1st quarter of CY 2018 and for any subsequent quarter; that petitioner timely filed its administrative claim for refund within two (2) years from the close of the taxable quarter when the zero-rated sales were made; that petitioner timely filed its judicial claim for refund; that petitioner was deprived of due process in its

[37] Docket – Vol. III, pp. 1280 to 1287.
[38] Docket – Vol. III, pp. 1291 to 1292.
[39] Docket – Vol. III, p. 1279.
[40] Docket – Vol. III, pp. 1295 to 1341.
[41] Records Verification dated September 4, 2023 issued by the Judicial Records Division of this Court, Docket – Vol. III, p. 1344.
[42] Minute Resolution dated September 12, 2023, Docket – Vol. III, p. 1345.
[43] Par. 2.1, Stipulation of the Issue, JSFI, Docket – Vol. II, p. 451.

administrative claim for refund as the denial letter does not state any factual basis; and that the observations of the Assistant Commissioner used as basis to partially deny petitioner's claim for refund are misplaced and bereft of factual and legal basis.

Respondent's counter-arguments:

Respondent contends that (1) the instant judicial claim should be denied for petitioner's failure to substantiate the claim for refund at the administrative level; (2) it is an established fact that a decision by respondent has already been rendered and in such case, the Supreme Court has held that the duty of the court is now limited in determining whether the decision is proper; and (3) the claim for refund should be denied for failure to comply with the mandatory invoicing requirements pursuant to Section 113 in relation to Section 110 and 114 (C) of the Tax Code, as amended.

THE COURT'S RULING

The present *Petition for Review* lacks merit.

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

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

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

[44] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES. Took effect January 1, 2018 (Section 87).

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

xxx xxx xxx

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

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

Based on the foregoing provisions, jurisprudence has laid down the requisites for the successful credit/refund of input VAT. These requisites may be classified as follows:

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

1. The refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[45]

2. In case of full or partial denial of the refund claim rendered within a period of ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision;[46]

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

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

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

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

<u>In relation to the taxpayer's output VAT</u>:

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

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

<u>As regards the taxpayer's input VAT being refunded</u>:

6. The input taxes are *not* transitional input taxes;[51]

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

8. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[53] and

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

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

[48] *Id.*

[49] Under RA No. 10963, Section 106(A)(2)(a)**(2)** was renumbered to Section 106(A)(2)(a)**(3)** while Section 106(A)(2)**(b)** was deleted. However, there was no corresponding amendment to the subsections cited in Section 112(A) of the NIRC of 1997, as amended.

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

[51] *Id.*

[52] *Id.*

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

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

In addition, applicants must satisfy the substantiation and invoicing requirements under the NIRC and other implementing rules and regulations.[55] Specifically, petitioner's compliance with all the *VAT invoicing* requirements is required to claim a refund/tax credit for input VAT attributable to zero-rated sales.[56] *Strict* compliance with substantiation and invoicing requirements is necessary considering VAT's nature and VAT system's tax credit method, where tax payments are based on output and input taxes and where the seller's output tax becomes the buyer's input tax that is available as tax credit or refund in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates computation of tax credits, and provides accurate audit trail or evidence for BIR monitoring purposes.[57] In short, these requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims[58] and compliance is mandatory.[59]

Finally, although the taxpayer may have already filed it administrative claim with the respondent, the judicial claims filed before this Court are litigated *de novo* and the party-litigants must again prove every minute aspect of their case.[60]

Petitioner's administrative and judicial claims for refund/credit were timely filed.

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

Since the present claim covers the 1st quarter of CY 2018, counting two (2) years from the close of the quarter, petitioner had until March 31, 2020 within which to file its administrative claim for refund.

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[55] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.

[56] *J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.

[57] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, supra.

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

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

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

However, it must be noted that the BIR has issued several issuances in 2020, extending the statutory deadline for filing applications for VAT credit/refund claims, among others.[61] Thus, the period for filing of claims for VAT refund for the calendar quarter ending March 31, 2018 was extended to July 15, 2020.[62]

Considering that petitioner's administrative claim covering the said period, together with the supporting documents, was filed with the BIR on June 10, 2020,[63] or within the extended period, the same was timely made.

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

Thus, from the filing the administrative claim on June 10, 2020, respondent had ninety (90) days or until September 8, 2020, to act on the claim. Respondent acted on petitioner's claim when Assistant Commissioner Maria Luisa I. Belen issued the letter denying the claim on July 28, 2020, or within the ninety (90)-day period prescribed by law. The letter was received by petitioner on August 12, 2020[64] and, counting thirty (30) days, petitioner had until September 11, 2020 to file its judicial claim for refund. Considering that petitioner filed the present *Petition for Review* on September 11, 2020,[65] the judicial claim was timely filed.

The Court finds that petitioner complied with the above-stated *first* and *second* requisites.

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[61] Revenue Regulations No. 7-2020 dated March 27, 2020; Revenue Regulations No. 10-2020 dated April 9, 2020; Revenue Regulations No. 11-2020 dated April 29, 2020, and Revenue Regulations No. 16-2020 dated June 19, 2020.

[62] Section 2, Revenue Regulations No. 16-2020 provides:

"**SECTION 2. Filing Due Dates by Taxpayer-Claimants.** – Filing of Claims for VAT refund for the following taxable quarters shall be until the herein specified due dates:

Calendar Quarter ending March 31, 2018 - July I5, 2020
xxx xxx xxx"

[63] Exhibit "P-4", BIR Records (Exhibit "R-3"), p. 108.

[64] Exhibits "P-27" and "R-2", BIR Records (Exhibit "R-3"), pp. 213 to 214.

[65] Docket – Vol. I, pp. 7 to 34.

Petitioner is a VAT-registered person/entity.

It is also undisputed that petitioner is a VAT-registered person/entity, with TIN 009-270-744-000.[66] Thus, there is no question that it proved compliance with the *third* requisite.

However, petitioner failed to fully substantiate its zero-rated sales.

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

Section 108(B)(2) of the NIRC of 1997, as amended, reads as follows:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – **The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate**:
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);
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> **(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);"** *(Emphases added)*

Based on the foregoing, the following essential elements must be present for a sale or supply of services to be subject to the VAT rate of zero percent (0%), under Section 108(B)(2) of the NIRC of 1997, as amended:

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[66] Exhibit "P-3", Docket – Vol. III, p. 1251.

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;[67]

2. The services fall under any of the categories under Section 108(B)(2),[68] or simply, the services rendered should be other than *"processing, manufacturing or repacking goods"*;[69]

3. The services must be performed in the Philippines[70] by a VAT-registered person; *and*,

4. The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[71]

With respect to the *first* essential element, in order to be considered as a non-resident foreign corporation doing business *outside* the Philippines, each entity must be supported, at the very least, by **both** a *Certification of Non-Registration of Corporation/Partnership* issued by the Philippine SEC, **and** proof of incorporation/registration in a foreign country (*e.g.*, Articles/Certificate of Incorporation/Registration and/or Tax Residence Certificate). The former establishes that the recipient of the service has *no* registered business in the Philippines, and that it is *not* engaged in trade or business within the Philippines; while the latter proves that said recipient of the service is indeed foreign. In *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*,[72] the Supreme Court affirmed the necessity of presenting these documents:

> **"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.**

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

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

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

[70] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, supra.

[71] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, supra.

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

> xxx xxx xxx
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> To recall, the CTA found that the SEC Certification of Non-Registration of Company and Authenticated Articles of Association and/or Certificates of Registration/Good Standing/Incorporation sufficiently established the NRFC status of 11 of DKS's affiliates clients.
>
> The Court upholds these findings.
>
> The Court accords the CTA's factual findings with utmost respect, if not finality, because the Court recognizes that it has necessarily developed an expertise on tax matters. Significantly, both the CTA Division and CTA *En Banc* gave credence to the aforementioned documents as sufficient proof of NRFC status. The Court shall not disturb its findings without any showing of grave abuse of discretion considering that the members of the tax court are in the best position to analyze the documents presented by the parties.
>
> In any case, after a judicious review of the records, the Court still does not find any reason to deviate from the court *a quo*'s findings. **To the Court's mind, the SEC Certifications of Non-Registration show that these affiliates are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines.**" *(Emphases added)*

In the present case, petitioner satisfied the *first* essential element as it was able to prove that its sole client, *PPD Global Limited*, for the subject period, is a non-resident foreign corporation doing business outside the Philippines, on the strength of the following documents:

1. *Certifications of Non-Registration of Company* dated December 17, 2019 and October 18, 2021 issued by the SEC,[73] to the effect that the records of the SEC "*do not show the registration of* ***PPD Global Limited*** *as a corporation, partnership or One Person Corporation (OPC)*";

2. *Apostilled Articles of Association* of PPD Global Limited;[74] *and*,

3. *Apostilled Certificate of UK Residence* dated October 21, 2020, issued by the HM Revenue and Customs of the United Kingdom in favor of PPD Global Ltd., stating that "xxx the above company was a resident of the Kingdom from 1 January 2018 to 31 December 2018 xxx."[75]

[73] Exhibits "P-11" and "P-11-1", Docket – Vol. II, pp. 660 to 661.
[74] Exhibit "P-10", Docket – Vol. I, pp. 134 to 144.
[75] Exhibit "P-34-6", Docket – Vol. III, pp. 1220 to 1224.

The claim meets the *second* essential element. It appears that petitioner entered into the *Affiliate Services Agreement* dated April 13, 2016[76] with PPD Global Limited, wherein *Services Addendum* (Exhibit A) attached to the agreement enumerated the services petitioner agreed to provide *i.e.*, Clinical Trial Co-ordination and Support Services, Global Clinical Data Management Services, Global Biostatistics and Programming Services, Clinical Shared Services, Administrative Shared Services, and Local Contracting with Sponsors. An examination of *Services Addendum vis-à-vis* the *Affiliate Service Agreement* reveals that the services fall within the scope of *"services other than processing, manufacturing or repacking of goods"* as contemplated by Section 108(B)(2).

Relative to the *third* essential element, while the *Affiliate Services Agreement*, including the *Services Addendum* (Exhibit A) thereof does *not* show that the subject services were to be performed only in the Philippines, petitioner's witness, Mr. Rustom Jay A. Ruiz, its Tax Accountant, nevertheless, testified, in part, that petitioner's "sales for the first quarter of CY 2018 were zero-rated because they consisted of *sale of services rendered in the Philippines* in favor of PPD Global Limited xxx."[77]

Aside from petitioner's Tax Accountant, the Court-commissioned ICPA, Atty. Mark Darwin A. Camara, corroborated that the subject services were rendered by petitioner in the Philippines:

> "**14. Q: You said that your findings shows that PPD engaged in zero-rated sales pursuant to Section 108 (B)(2) of the Tax Code and that the fees for such sales were paid for in acceptable foreign currency. What are the details of your findings, if any, upon performing this procedure?**
>
> **A:** I conducted a verification of the SLS [Summary List of Sales] and the zero-rated VAT-registered O.R.s issued by PPD to support the receipts collected for the covered period (Exhibits ICPA-P-36 to P-36-5). Except for VAT-registered O.R. No. 0000014 (Exhibit ICPA-P-36-1) issued to Treston International College which should have been identified as a mere cash-refund transaction, I found that these O.R.s showed that the **transactions were considered as sales subject to VAT at zero percent (0%) because these pertain to fees collected <u>for services rendered by PPD in the Philippines</u> to its customer, PPD Global Limited, an entity incorporated under the laws of United Kingdom and is not registered as a corporation nor partnership in the Philippines.**
>
> xxx xxx xxx."[78] *(Emphasis and underscoring added)*

In view thereof, petitioner has complied with the *third* essential element.

[76] Exhibits "P-8" and "P-9", Docket – Vol. I, pp. 111 to 119 and 121 to 133, respectively.
[77] Exhibit "P-57" (Q&A No. 41), Docket – Vol. II, p. 559.
[78] Exhibit "P-58" (Q&A No. 14), Docket – Vol. II, p. 887.

However, before going into the *fourth* essential element, which corresponds to the *fifth* requisite that obliges that the zero-rated sales in Section 108(B)(2) be paid for in acceptable foreign currency that have been duly accounted under BSP rules and regulations, it is equally important to determine that the VAT zero-rated *sales*, for which the foreign currency payments were remitted, were supported by VAT zero-rated official receipts (ORs) complete with the invoicing requirements in Section 113(A) and (B):

> "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 <u>VAT official receipt</u> for every lease of goods or properties, and <u>for every sale</u>, barter or exchange of <u>services</u>.
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:
>
> (a) The amount of the tax shall be shown as a separate item in the invoice or receipt;
>
> xxx xxx xxx
>
> (c) If the sale is subject to zero percent (0%) value-added tax, the term **<u>'zero-rated sale'</u>** shall be written or printed prominently on the invoice or receipt;
>
> xxx xxx xxx
>
> (3) The date of transaction, quantity, unit cost and description of the goods or properties or <u>nature of the service</u>; and
>
> (4) In the case of sales in the amount of One thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client." *(Underscoring added)*

N

The foregoing provisions are implemented by Section 4.113-1(A) and (B) of RR No. 16-2005,[79] as amended, to wit:

> "SEC. 4.113-1. *Invoicing Requirements.* —
>
> (A) A VAT-registered person shall issue: —
>
> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
>
> (2) A <u>VAT official receipt</u> for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or official receipts. Said documents shall be considered as a 'VAT Invoice' or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.
>
> VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.
>
> (B) *Information contained in VAT invoice or VAT official receipt.* — The following information shall be indicated in VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his TIN;
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:
>
> (a) The amount of tax shall be shown as a separate item in the invoice or receipt;
>
> xxx xxx xxx
>
> (c) If the sale is subject to zero percent (0%) VAT, the term <u>'zero-rated sale'</u> shall be written or printed prominently on the invoice or receipt;
>
> xxx xxx xxx
>
> (3) In the case of sales in the amount of one thousand pesos (₱1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section." *(Underscoring added)*

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

In addition to the requirements above, the sales invoices (SIs) and ORs must be duly registered with the BIR as prescribed under Section 237, in relation to Section 238 of the NIRC of 1997, as amended:

> "SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* —
>
> (A) *Issuance.* — All persons subject to an internal revenue tax shall, at the point of each sale and transfer of merchandise or for services rendered valued at One hundred pesos (P100) or more, **issue duly registered receipts or sale or commercial invoices, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service**: *Provided, however,* That where the receipt is issued to cover payment made as rentals, commissions, compensation or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided, further,* That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.
>
> xxx xxx xxx" *(Emphasis added)*

> "SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.
>
> xxx xxx xxx"

As mentioned, in claims for VAT refund/credit, applicants must *strictly* satisfy the *substantiation and invoicing requirements* under the NIRC and the implementing rules and regulations. Such that failure to comply with them is *fatal* to the claim.

In this case, petitioner filed its Quarterly VAT Return (BIR Form No. 2550-Q) for the first quarter of 2018[80] with the corresponding *Summary List of Sales* showing zero-rated sales to its *lone* client PPD Global Limited amounting to ₱151,837,024.31, broken down as follows:[81]

[80] Exhibit "P-6", BIR Records (Exhibit "R-3"), pp. 151 to 152.
[81] Exhibit "ICPA-7", USB marked as Exhibit "P-59".

Date	Customer	Amount
January 31, 2018	PPD Global Limited	₱ 24,050,014.76
February 28, 2018	PPD Global Limited	29,274,524.02
March 31, 2018	PPD Global Limited	98,512,485.53
	Total	**₱ 151,837,024.31**

The Court-commissioned ICPA examined the ORs submitted by petitioner to support its zero-rated sales for the 1st quarter of 2018,[82] the details of which are as follows:

Exhibit[83]	OR No.	Date	Amount in US$	Amount in Peso	Per General Ledger (in Peso)[84]
"ICPA-36-1"	0000014	2 February 2018		₱ 9,800.00	₱ 9,800.00
"ICPA-36-2"	0000015	31 January 2018	$ 2,040,624.25		101,705,754.09
"ICPA-36-3"	0000016	28 February 2018	499,990.00		25,702,976.40
"ICPA-36-4"	0000017	31 March 18	1,905,982.76		99,104,760.82
		Total	**$ 4,446,597.01**	**₱ 9,800.00**	**₱ 226,523,291.31**

First, the Court notes that although petitioner *submitted* an OR issued to PPD Global Limited dated April 30, 2018 amounting to $94,007.24,[85] this document *cannot* be considered as it is dated *outside* the period of claim.

Second, the ICPA noted that petitioner failed to report the amount of ₱9,800.00 (Exhibit "ICPA-36-1"), which relates to a *prior* period amount booked as a refund received from *Treston International College, Inc.* but *erroneously* identified as VAT zero-rated sale in the receipt.[86]

Third, a comparison of the total amount per ORs (excluding OR No. 0000014 amounting to ₱9,800.00) with the zero-rated sales reported in petitioner's Quarterly VAT Return[87] and *Summary List of Sales*[88] reveals a discrepancy of ₱74,676,467.00:

Date	OR No.	OR Amount in Peso	Per SLS	Difference
January 31, 2018	0000015	₱ 101,705,754.09	₱ 24,050,014.76	₱ 77,655,739.33
February 28, 2018	0000016	25,702,976.40	29,274,524.02	(3,571,547.62)
March 31, 2018	0000017	99,104,760.82	98,512,485.53	592,275.29
	TOTAL	**₱226,513,491.31**	**₱151,837,024.31**	**₱74,676,467.00**

[82] Paragraph 3.5, Exhibit "P-54", p. 8.
[83] USB marked as Exhibit "P-59".
[84] Exhibit "ICPA-39", USB marked as Exhibit "P-59".
[85] Exhibit "ICPA-36-5", USB marked as Exhibit "P-59".
[86] Paragraph 3.6, Exhibit "P-54", p. 8.
[87] Exhibit "P-6", BIR Records (Exhibit "R-3"), pp. 151 to 152.
[88] Exhibit "ICPA-7", USB marked as Exhibit "P-59".

This discrepancy of ₱74,676,467.00, the ICPA concluded, pertains to petitioner's *"unreported but inwardly remitted US Dollars from its non-resident foreign client, PPD Global"*.[89] However, it fails to account for the reason why petitioner's reported 1st quarter VAT return was understated.[90] The ICPA's explanation is *insufficient* to reconcile the discrepancy noted between the official receipts and the returns/*Summary List of Sales*. The discrepancy cannot be disregarded since petitioner only has one client[91] and three (3) sales transactions for the entire quarter covered by the claim.

Fourth, it is noted that the declared zero-rated sales for February 2018 is *not* fully substantiated with the VAT OR submitted to the Court for consideration. On the other hand, the ORs for January and March 2018 *exceed* the amount declared in the return. All told, the Court *cannot* be certain that the ORs, which supposedly served as documentary basis for the return, actually *pertain* to the zero-rated sales declared by petitioner in the same return.

Fifth, a scrutiny of the ORs shows that the same were issued for the payments for billing statements. Considering the *unexplained* differences discussed above, it is imperative for the Court to examine the nature of the service(s) rendered and payments received by petitioner. However, the evidence presented are *insufficient* to inform the Court of the facts needed to resolve the discrepancies.

To recall, under Section 113(B)(3), the following information are **required** to be indicated in the VAT invoice or VAT OR, among others:

a. Date of transaction;
b. Quantity;
c. Unit cost; *and*,
d. Description of the goods or properties or **nature of the service**.

However, the Court observes that petitioner did *not* indicate the nature of the service(s) in the OR *but only the corresponding number* of the billing statement numbers. More significantly, petitioner did *not* offer in evidence these billing statements, which could have been cross-referenced with the ORs and provided much needed data that will confirm the nature and details of the zero-rated sales. Consequently, the Court *cannot ascertain on its own* whether the payments received are indeed for the stipulated services rendered by petitioner or for something else. The billing statements could have shed some light on the discrepancies between the amounts per *VAT Return/Summary List of Sales* and ORs.

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[89] Paragraph 3.13, Exhibit "P-54", p. 10.
[90] Paragraph 3.7, Exhibit "P-54", p. 8.
[91] Paragraph 3.15, Exhibit "P-54", p, 10.

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Division 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

The Court stresses the importance of complying with the substantiation and invoicing requirements of the law by quoting the holding in *Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue*:[92]

> "On a final note, the Court reiterates its consistent ruling that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also **the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that he (or she) has strictly complied with the conditions for the grant of the tax refund or credit.** Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed. xxx" *(Emphasis added)*

Accordingly, petitioner's claim for refund or issuance of a tax credit certificate in the amount of ₱5,584,123.50, representing the unutilized input VAT attributable to its zero-rated sales for the 1st quarter of CY 2018, must *fail*. It is no longer necessary to discuss or determine petitioner's compliance with the other *remaining* requisites to successfully obtain a credit/refund of input VAT.

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

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON LEAVE
CORAZON G. FERRER-FLORES
Associate Justice

[92] G.R. No. 222428, February 19, 2018.