REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

SC JOHNSON PHILIPPINES, ROHQ,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9602

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

Promulgated:
JUN 25 2020
3:30 p.m.

X---X

DECISION

RINGPIS-LIBAN, *J.*:

This is a *Petition for Review* filed by SC Johnson Philippines, ROHQ against Commissioner of Internal Revenue on May 25, 2017, seeking for the refund or issuance of a tax credit certificate (TCC) on its alleged unutilized input tax credits attributable to its zero-rated sales in the amount ₱10,911,203.79, for the period from October 1, 2014 to June 30, 2015.[1]

THE PARTIES

Petitioner S.C. Johnson Philippines ROHQ is a regional operating headquarters in the Philippines of S.C. Johnson & Son Private Limited, a multinational company organized and existing under the laws of Singapore. It has been issued a Certification of Registration and License dated October 10, 2008 by the Philippine Securities and Exchange Commission (SEC) *"to engage in general administration and planning; business planning and coordination; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistics services; research and development services and product development; technical support and maintenance; data processing and communication and business development."* [2] It is

[1] Statement of the Case, Pre-Trial Order dated May 15, 2018, Docket – Vol. 2, p. 979.
[2] Exhibit "P-1", Docket – Vol. 3, pp. 1014 to 1024.

also registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, with Taxpayer Identification Number (TIN) 266-267-699-000.[3]

On the other hand, Respondent is the duly appointed Commissioner of Internal Revenue who holds office at BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

THE FACTS

On December 27, 2016, Petitioner filed an Application for Tax Credit/Refunds (BIR Form No. 1914) of its unutilized input tax taxes in the total amount of ₱12,293,729.60[5], covering the period from October 1, 2014 to June 30, 2015.[6]

Thereafter, Respondent issued the Letter of Authority (LOA) No. LOA-411-2016-00000172 (SN: eLA201000050862) dated January 4, 2017, authorizing Revenue Officers Jimmy de Luis, Kristine Albano, Norine Cruz, Ruth Jimenez ,and Group Supervisor Alvin Batausa of Revenue Region No. 040 –VAT Credit Audit Division (VCAD), to examine Petitioner's books of accounts and other accounting records for VAT for the above-stated period.[7]

However, on April 27, 2017, Petitioner received the letter dated April 21, 2017 issued by Deputy Commissioner Nestor S. Valeroso,[8] denying its application for tax credit/refund as follows:

> "Evaluation of the case disclosed several disallowed input VAT and output VAT assessments resulting in deficiency VAT of Php16,018,854.28, computed as follows:

Amount Recommended by VCAD		**Php 5,386,418.12**
Less: Adjustment and Disallowances per TARD Review		
Disallowed input taxes on big ticket purchases	Php 1,321,492.60	
Disallowed input taxes on capital goods – failure to comply with the invoicing requirements	83,014.29	

[3] Exhibit "P-2", Docket – Vol. 3, p. 1025.

[4] Par. 1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 2, p. 885.

[5] The sum of the following amounts: ₱2,562,538.98 for October 1 to December 31, 2014; ₱7,208,628.06 for January 1 to March 31, 2015; and ₱2,522,562.55 for April 1 to June 30, 2015.

[6] Exhibits "P-3", "P-3-1", "P-3-2", Docket – Vol. 3, pp. 1026 to 1031.

[7] Exhibit "P-5", Docket – Vol. 3, p. 1048.

[8] Exhibits "P-6" and "R-2", BIR Records, p. 175; Q22 and 23, Exhibit "P-20", Docket – Vol. 2, p. 396.

Input tax attributable to sales to head office	1,241,827.29	
Output tax assessed on reimbursed expense	14,760.00	
Unsupported deduction in output VAT	1,425,958.38	
Output VAT on Outside services paid to ultimate parent company	311,145.48	
VAT assessment on income payments to foreign vendor/affiliate	17,007,074.36	Php 21,405,272.40
Amount Recommended for VAT TCC / (Payable)		**Php (16,018,854.28)**

In view of the foregoing, we regret to inform you that your claim for VAT credit covering the period October 01, 2014 to June 30, 2015 has been denied for lack of legal and factual basis."

Petitioner then filed the instant Petition for Review on May 25, 2017.[9] The case was initially raffled to this Court's First Division.

Respondent filed his Answer on August 29, 2017,[10] interposing the following defenses, to wit:

"3.1 Petitioner is not entitled to its claim for refund/TCC for the period October 1, 2014 to June 30, 2015.

3.2 The evaluation of the VAT credit claim has even resulted in deficiency VAT of Php16,018,854.28.

3.3 A careful audit and review of the documents submitted revealed the results that have substantial impact to Petitioner's claim. These results are stated in the approved Memorandum Report dated 21 April 2017 as contained in the BIR Records of the case which denied Petitioner's claim for refund for the period covering October 1, 2014 to June 30, 2015, thus:

'1. Disallowance of input taxes in the amount of Php1,321,492.60 on a big ticket supplier since the statement 'This document is not valid claim for input tax' is clearly indicated on the Official Receipts

[9] Docket – Vol. I, pp. 10 to 24.
[10] Docket – Vol. I, pp. 355 to 361.

(ORs) in violation of Section 113, in relation Sec. 110 of the NIRC of 1997. Please note that the nature of purchases from the said supplier is services as shown in the accompanying sales invoices.

REGISTERED NAME	TIN	INVOICE NUMBER	DATE OF INVOICE	OR NO.	DATE OF OR	AMOUNT	Claim
SC JOHNSON AND SON INC	000-168-702	1196000404	11/21/14	1400019102	11/28/14	1,660,800.00	199,296.00
SC JOHNSON AND SON INC	000-168-702	1196000405	11/21/14	1400019102	11/28/14	892,000.00	107,040.00
SC JOHNSON AND SON INC	000-168-702	1196000406	11/21/14	1400019102	11/28/14	138,031.51	9,642.86
SC JOHNSON AND SON INC	000-168-702	1196000410	12/18/14	1400019349	12/19/14	1,660,800.00	199,296.00
SC JOHNSON AND SON INC	000-168-702	1196000411	12/18/14	1400019349	12/19/14	892,000.00	107,040.00
SC JOHNSON AND SON INC	000-168-702	1196000412	12/18/14	1400019349	12/19/14	270,414.58	24,289.75
SC JOHNSON AND SON INC	000-168-702	1196000426	3/19/15	1400020426	3/20/15	1,660,800.00	199,296.00
SC JOHNSON AND SON INC	000-168-702	1196000427	3/19/15	1400020426	3/20/15	892,000.00	107,040.00
SC JOHNSON AND SON INC	000-168-702	1196000428	3/19/15	1400020426	3/20/15	349,489.25	41,938.74
SC JOHNSON AND SON INC	000-168-702	1196000429	4/16/15	1400020787	4/17/15	1,660,800.00	199,296.00
SC JOHNSON AND SON INC	000-168-702	1196000430	4/16/15	1400020787	4/17/15	892,000.00	107,040.00
SC JOHNSON AND SON INC	000-168-702	1196000431	4/16/15	1400020787	4/17/15	168,977.08	20,277.25
						11,138,112.42	1,321,492.60

2. Disallowed the entire input tax on capital goods detailed in Annex A, where the supporting invoices are not compliant with the invoicing requirement prescribed under Section 113 of the same Tax Code, which was initially considered as deferred upon audit by VCAD. Details as follows:

Input tax on capital goods per Annex A	449,271.43
Less: Disallowed by VCAD as part of deferred	366,257.14
Input tax for ₱622,297.55 (p. 108)	
Balance for Disallowance	**83,014.29**

3. Additional disallowance of Php1,241,827.29 (Annex 'B') on input taxes claimed arising from 'Input taxes attributable to sale to head office' pursuant to the promulgation of the Court of Tax Appeals (CTA) on the case of ***'Institutional Shareholder Services, Inc.—Philippine ROHQ vs. The Commissioner of Internal Revenue, CTA Case No. 7662, June 03, 2010'***, where the CTA held that the services rendered by a Regional Operating Headquarters (ROHQ) to its head office, are not considered as **'other persons doing business outside the Philippines'** since the said

entities are considered one and the same; hence, sales thereto are not considered as zero-rated sales.

It is to be noted, however, that VCAD has disallowed input taxes in the amount of Php2,900,378.99 attributable to sales to ultimate parents, CJ Racine, which is based in the United States, on the basis of the foregoing court ruling. Since it is unclear if the ultimate parent could also be considered as 'other person doing business outside the Philippines', a query was raised to Legal Group per our memorandum dated April 06, 2017 (copy of which is attached hereto). Unfortunately, no response has been received yet as of report date.

4. Collection from SC Johnson & Son, Inc. an affiliated company, under Official Receipt No 1100001125 dated October 22, 2014 (folder 3) representing reimbursement on the advances of claimant on summer outing expenses in the amount of Php137,760.00 was not included in the VATable sales. Output VAT of Php14,760.00 was assessed pursuant to RMC 65-2012 and likewise deducted from the herein claim.

5. A reduction from the sales appearing on the schedule of VATable sales covered by OR number 1100001125 (folder 3) amounting to Php11,882,986.50 as detailed hereunder, was not properly explained and documented. In effect, it was not considered as a sales reduction ad thus, the corresponding output VAT of ₱1,425,958.38 was deducted from the herein claim.

Inv No	**Ref No**	**Inv Date**	**OR No**	**OR Date**	**Customer Name**	**Peso Value**	**Output Tax**	**Gross Amount**
IC96350177	700000175	11/9/2014	110001125	10/22/2014	SC JOHNSON & SON INC	(11,882,986.50)	(1,425,958.38)	(13,308,944.88)

6. Final withholding VAT of ₱311,145.48 was assessed on 'outside services' paid by the claimant to its ultimate parent company pursuant to Section 4.114-2 (b)(3) of Revenue Regulations No. 16-2005, as amended, to wit:

Vendor	35030	SC JOHNSON AND SON INC

Document Number	Posting Date	Document Date	Text	Amount in PHP	Amount in USD
1900014055	10/29/2014	10/8/2014	DELOITTE TAX	(79,710.20)	(1,780.00)
1900010536	11/19/2014	11/12/2014	DELOITTE TAX	(85,833.50)	(1,910.00)
1900010957	3/3/2015	2/18/2015	DELOITTE TAX	(637,111.28)	(14,615.00)
1900010959	3/3/2015	2/18/2015	FRAGOMEN DEL REY JAN 2015	(201,017.30)	(4,555.22)
1900011072	3/30/2015	3/17/2015	FRAGOMEN DEL REY FEB 2015	(314,116.72)	(7,012.16)
8000000353	10/7/2014	10/7/2014		(1,275,090.00)	(30,000.00)
Grand Total				**(2,592,879.00)**	**(59,872.38)**
Multiply by VAT Rate of 12%				**12%**	
VAT Assessed				**Php311,145.48**	

7. There are deductions appearing in the reconciliation of export sales against remittances tagged as 'payment to foreign vendor' and 'payment to affiliates' in the total amount of USD3,3221,036.81. [*sic*] For failure to properly document and explain the nature of said payments to non-residents, final withholding VAT ₱17,007,074.36 was assessed pursuant to Section 4.114-2 (b)(3) of Revenue Regulations No. 16-2005, as amended (Annex 'C').

From the foregoing disallowances on input VAT and assessments of VAT on various transactions subject to VAT, the evaluation of the herein VAT credit claim has resulted in deficiency VAT of Php16,018,854.28, summarized as follows:

Amount Recommended by VCAD		**Php5,386,418.12**
Less: Adjustment and Disallowances per TARD Review		
Disallowed input taxes on big ticket purchases	Php1,321,492.60	
Disallowed input taxes on capital goods failure to comply with the invoicing requirements	83,014.29	

Input tax attributable to sales to head office	1,241,827.29	
Output tax assesses on reimbursed expenses	14,760.00	
Unsupported deduction in output VAT	1,425,958.38	
Output VAT on Outside services paid ultimate parent company	311,145.48	
VAT assessment on income payments to foreign vendor/affiliate	17,007,074.36	
		Php21,405,272.40
Amount Recommended for VAT TCC/ (Payable)		**Php(16,018,854.28)**

3.4. The power of the Commissioner of Internal Revenue (CIR) to decide claims for refund of all internal revenue taxes is enshrined in Section 4 of the National Internal Revenue Code (NIRC) of 1997, as amended, viz:

> '**SEC. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.**— x x x x The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.'

3.5. Clearly, the judicial claim for refund /tax credit is not an original action but an appeal from unsuccessful administrative remedy.

3.6. In *ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION, vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 145526, March 16, 2007*, the nature of a judicial claim before the Honorable CTA is explained as follows:

> 'x x x First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an *appeal* by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claims. In this case, it was

> necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit. Second, cases filed in the CTA are litigated *de novo*. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.'

3.7. Thus, those only pieces of evidence presented by petitioner in the administrative claim for refund are the ones to be presented in the judicial appeal to the Honorable Court.

3.8 For this reason, the right of taxation cannot easily be surrendered, statutes granting tax exemptions are considered as a derogation of the sovereign authority. Since tax refunds are regarded as tax exemptions, therefore, these are to be construed *strictissimi juris* against the person or entity claiming the exemption.

3.9. To reiterate, claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and as such, they are looked upon with disfavor. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications. The law does not look with favor on tax exemption and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.

3.10. In sum, petitioner's claim for VAT refund/tax credit for the period covering October 1, 2014 to June 30, 2015 was properly **denied** for lack of factual and legal bases."

In the Resolution dated September 8, 2017,[11] the Court initially set pre-trial conference on September 28, 2017. However, upon the filing of Respondent's Motion to Reset Pre-Trial Conference Scheduled on 28

[11] Docket – Vol. I, pp. 369 to 370.

September 2017 at 9:00 A.M. filed on September 22, 2017,[12] the pre-trial conference was reset to, and held on, February 8, 2018.[13]

Thereafter, the Pre-Trial Brief for the Petitioner was filed on September 25, 2017,[14] while Respondent's Pre-Trial Brief was filed on January 29, 2018.[15]

The BIR Records for the instant case was filed on October 18, 2017.[16]

On February 9, 2018, the Independent Certified Public Accountant (ICPA) Report was submitted to this Court.[17]

The parties submitted their Joint Stipulation of Facts and Issues (JSFI) on February 28, 2018.[18] In the Resolution dated March 14, 2018,[19] deeming the pre-trial terminated. The Court then issued the Pre-Trial Order dated May 15, 2018.[20]

The trial of the case then proceeded.

During trial, Petitioner presented documentary and testimonial evidence. As for its testimonial evidence, Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Maria Celeste C. Mutuc,[21] Finance Director/Chief Financial Officer of Petitioner; and (2) Mr. John Christian B. Sabal,[22] the Court-commissioned ICPA.[23]

The Formal Offer of Evidence for the Petitioner with Motion for Remarking of the Judicial Affidavit of ICPA John Christian B. Sabal During his Commissioning was filed on July 3, 2018.[24] Respondent filed his Comment Re: Formal Offer of Evidence for the Petition with Motion for Remarking of the

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[12] Docket – Vol. 2, pp. 373 to 376.

[13] Order dated September 26, 2017, Docket – Vol. 2, pp. 781 to 782; Minutes of the hearing held on, and Order dated, February 8, 2018, Docket – Vol. 2, pp. 846 to 848, and 850 to 852, respectively.

[14] Docket – Vol. 2, pp. 378 to 386.

[15] Docket – Vol. 2, pp. 813 to 816.

[16] *Compliance*, Docket – Vol. 2, pp. 784 to 786.

[17] Docket – Vol. 2, pp. 856 to 881.

[18] Docket – Vol. 2, pp. 885 to 890.

[19] Docket – Vol. 2, p. 827.

[20] Docket – Vol. 2, pp. 979 to 986.

[21] Exhibit "P-20", Docket – Vol. 2, pp. 390 to 412; Minutes of the hearing held on, and Order dated, May 22, 2018, Docket – Vol. 3, pp. 987 to 990.

[22] Exhibit "P-38", Docket – Vol. 2, pp. 933 to 964; Minutes of the hearing held on, and Order dated, June 14, 2018, Docket – Vol. 3, pp. 992 to 996; Exhibit "P-37", Docket – Vol. 2, pp. 898 to 925; Resolution dated March 23, 2018, Docket – Vol. 2, p. 829.

[23] Exhibit "P-9", Docket – Vol. 2, pp.762 to 769; Minutes of the hearing held on, and Order dated, November 23, 2017, Docket – Vol. 2, pp. 795 to 797 and 799 to 800, respectively; *Oath of Commission* dated November 23, 2017, Docket – Vol. 2, p. 798.

[24] Docket – Vol. 3, pp. 997 to 1013.

Judicial Affidavit of ICPA John Christian B. Sabal During his Commissioning on July 11, 2018.[25]

In the Resolution dated July 9, 2018,[26] the Court granted Petitioner's Motion for Remarking of the Judicial Affidavit of ICPA John Christian B. Sabal During his Commissioning, and set the Commissioner's Hearing to re-mark the Judicial Affidavit of ICPA.

In the Resolution dated September 18, 2018,[27] the Court admitted Petitioner's Exhibits, *except* for the following:

1. Exhibits "P-32", "P-32-1" to "P-32-6", "P-32-160", "P-32-207" to "P-32-227", "P-32-285" to "P-32-575", "P-32-808" to "P-32-838", "P-32-1038", "P-32-1100" to "P-32-1138", "P-32-1291", "P-32-1337" to "P-32-1417", "P-32-2234" to "P-32-2333", "P-32-3046" to "P-32-3065", "P-32-3265", "P-32-3560" to "P-32-3565", "P-32-4065", "P-32-4143" to "P-32-4144", "P-35-5", and "P-35-20" to "P-35-46", for not being found in the records of the case; and

2. Exhibit "P-34 and series", for failure of the exhibit formally offered to correspond with the ICPA-marked exhibit.

Consequently, Petitioner filed a Motion for Partial Reconsideration [of the Resolution promulgated on September 18, 2018] on October 17, 2018,[28] praying for the following:

> "1. To allow the re-submission of the USB flash drive containing **Exhibits 'P32-1' to 'P-32-6', 'P-32-160' 'P-32-207' to 'P-32-227', 'P-32-1291', 'P-32-3046' to 'P-32-3065' 'P-35-5', and 'P-35-20' to 'P-35-46'** and for the admission of these Exhibits as offered.
>
> 2. To admit the re-offer of Exhibits '**P-34 and series**' under the actual description of the said ICPA document.
>
> 3. To admit the re-offer of Exhibits **'P-4-7', 'P-3', 'P-7' and 'P-16'** under the actual description of the said documents as noted by the Honorable Court.

[25] Docket – Vol. 3, pp. 1062 to 1064.
[26] Docket – Vol. 3, pp. 1060 to 1061.
[27] Docket – Vol. 3, pp. 1073 to 1076.
[28] Docket – Vol. 3, pp. 1081 to 1087.

4. It is further prayed that a Commissioner's Hearing be held for the purpose of the ICPA identifying his new, re-submitted USB, which was pre-marked as Exhibit **'P-37-c'**."

No comment was, however, filed by Respondent on the said motion.[29]

In the meantime, on October 9, 2018, the instant case was transferred to this Court's Third Division.[30]

In the Resolution dated January 14, 2019,[31] the Court partially granted Petitioner's Motion for Partial Reconsideration, and admitted the following Exhibits: "P-32-1" to "P-32-6", "P-32-160", "P-32-207" to "P-32-227", "PP-32-1291", "P-32-3046" to "P-32-3065", "P-35-5", "P-35-20" to "P-35-46", and "P-34 and series".

Respondent also presented his documentary and testimonial evidence. With respect to testimonial evidence, Respondent proffered the testimony of Daniel Carlo C. Perez,[32] Revenue Officer I of the BIR.

On January 28, 2019, Respondent filed, through private courier, his Formal Offer of Evidence.[33] Petitioner filed its Comment [On the Respondent's Formal Offer of Evidence] on February 13, 2019.[34] The Court then admitted all of Respondent's Exhibits, in the Resolution dated March 6, 2019.[35]

Thereafter, Respondent's Memorandum was filed on April 8, 2019,[36] while the Memorandum for the Petitioner was filed on April 30, 2019.[37] Thus, in the Resolution dated May 6, 2019,[38] the present case was deemed submitted for decision.

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[29] Records Verification dated November 21, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. 3, p. 1092.
[30] Docket – Vol. 3, p. 1078.
[31] Docket – Vol. 3, pp. 1097 to 1099.
[32] Exhibit "R-5", Docket – Vol. 2, pp. 821 to 829; Minutes of the hearing held on, and Order dated, January 17, 2019, Docket – Vol. 3, pp. 1105 to 1107.
[33] Docket – Vol. 3, pp. 1112 to 1115.
[34] Docket – Vol. 3, pp. 1121 to 1125.
[35] Docket – Vol. 3, pp. 1129 to 1130.
[36] Docket – Vol. 3, pp. 1131 to 1138.
[37] Docket – Vol. 3, pp. 1147 to 1177.
[38] Docket – Vol. 3, p. 1179.

THE ISSUE

The principal issue proposed by the parties[39] for the resolution of this Court is as follows:

> "Whether or not Petitioner is Entitled to Refund or Issuance of Tax Credit Certificate amounting to Ten Million Nine Hundred Eleven Thousand Two Hundred Three Pesos and 79/100 (₱10,911,203.79), representing Unutilized Input Taxes Attributable to Petitioner's Zero-rated Sales Covering the Period from October 1, 2014 to June 30, 2015".

THE ARGUMENTS OF THE PARTIES

Petitioner argues against the bases of the BIR's VCAD and Tax Audit Review Division in denying its administrative claim. Particularly, Petitioner contends that the unutilized input taxes from prior periods can be applied against the output tax on sales realized during the period of the claim in the amount of ₱2,722,180.97; that the input VAT assessment in the amount of ₱2,900,378.99 on sales to Petitioner's ultimate parent company is untenable; that the input tax assessment of ₱1,321,492.60 on big ticket purchases should be allowed; that the assessment of ₱1,241,827.29 on *"input taxes attributable to sale to Head Office"* is likewise untenable; that the deduction in output VAT in the amount of ₱1,425,958.38 should be allowed; that the output VAT assessment in the amount of ₱311,145.48 paid to the ultimate parent company is without merit; and that the VAT assessment on income payment to foreign vendor affiliate in the amount of ₱17,007,074.00 is without basis.

On the other hand, Respondent primarily counter-argues that Petitioner is not entitled to refund or issuance of TCC. He insists that the evaluation of the subject VAT credit claim has even resulted in deficiency VAT of ₱16,018,854.28. Thus, Respondent is of the view that Petitioner is not entitled to the issuance of a TCC or refund of its alleged unutilized input taxes for the period from October 1, 2014 to June 30, 2015.

Furthermore, according to Respondent, the judicial claim for refund/tax credit is not an original action but an appeal from an unsuccessful administrative remedy; and only those pieces of evidence presented by Petitioner in the administrative claim for refund are the ones to be presented in the judicial appeal to this Court.

[39] Docket – Vol. 2, pp. 885 to 886.

THE RULING OF THE COURT

The Court denies the instant Petition for Review.

Matters to Be Proved

In arguing that only those pieces of evidence presented by Petitioner in the administrative claim for refund are the ones to be presented in the judicial appeal to this Court, Respondent invokes the ruling of the Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation vs, Commissioner of Internal Revenue* ("*Atlas* case").[40]

In *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*,[41] the Supreme Court reinforces, but expounds on, the *Atlas* case, in this wise:

> "At this stage, a review of the nature of a judicial claim before the CTA is in order. In *Atlas Consolidated Mining and Development Corporation v. CIR*,[42] it was ruled –
>
> > x x x **First, a judicial claim for refund or tax credit in the CTA is <u>by no means an original action</u> but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, <u>as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claim</u>. In this case, <u>it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit</u>. Second, cases filed in the CTA are litigated *de novo*. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include**

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[40] G.R. No. 145526, March 16, 2007.
[41] G.R. No. 207112, December 8, 2015.
[42] G.R. No. 145526, March 16, 2007.

whatever is required for the successful prosecution of an administrative claim.

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

Based on the foregoing jurisprudential pronouncements, it is imperative on the part of the concerned taxpayer to show not only the entitlement to the claim for refund or tax credit under substantive law, but also that all documentary and evidentiary requirements for an administrative claim were satisfied. In other words, there are two (2) matters which must be proved before this Court, upon appeal of an unsuccessful administrative claim, to wit: *first*, the taxpayer's entitlement to the claim for refund or tax credit under substantive law, and *second*, all documentary and evidentiary requirements for an administrative claim were satisfied at the BIR level. Parenthetically, while the *first* matter to be proved is in accord with the principle that cases filed in this Court are litigated *de novo*, the *second* matter is consistent with the very nature of an appellate jurisdiction. Relative thereto, appellate jurisdiction is the authority of a court higher in rank **to re-examine** the final order or judgment of a lower court which tried the case now elevated for judicial review.[43]

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

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

Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 9337,[44] prescribes the requisites to be complied with by the taxpayer-applicant for a successful refund claim. It provides, in part, as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or 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 or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one-hundred-twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals."

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

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

> As to the timeliness of the filing of the administrative and judicial claims:
> 1. the claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[45]
> 2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of one hundred twenty (120) days, the judicial claim has been filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[46]
>
> With reference to the taxpayer's registration with the BIR:
> 3. the taxpayer is a VAT-registered person;[47]
>
> In relation to the taxpayer's output VAT:
> 4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[48]
> 5. for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[49]
>
> As regards the taxpayer's input VAT being refunded:
> 6. the input taxes are not transitional input taxes;[50]
> 7. the input taxes are due or paid;[51]
> 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

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[45] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 155732, 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] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

[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] *Id.*

[50] *Id.*

[51] *Id.*

attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[52] and
9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[53]

Petitioner's Administrative and Judicial Claims Timely Filed

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

The present claim covers the period from October 1, 2014 to June 30, 2015, or for the 2nd, 3rd and 4th quarters of FY 2015, which closed on December 31, 2014, March 31, 2015 and June 30, 2015, respectively. Counting two years from the said dates, Petitioner had until December 31, 2016, March 31, 2017 and June 30, 2017, respectively, within which to file its administrative claim for the issuance of TCC or refund. Thus, Petitioner's administrative claim for the said period was seasonably filed, as shown below:

Period Covered	Close of the Taxable Quarter	Last Day to File Administrative Claim	Date of Filing of Administrative Claim
2nd Quarter of FY 2015 (October 1, 2014 to December 31, 2014)	December 31, 2014	December 31, 2016	December 27, 2016[54]
3rd Quarter of FY 2015 (January 1, 2015 to March 31, 2015)	March 31, 2015	March 31, 2017	
4th Quarter of FY 2015 (April 1, 2015 to June 30, 2015)	June 30, 2015	June 30, 2017	

The *second* requisite is to the effect that the judicial claim must have been filed within thirty (30) days from receipt of Respondent's decision or after the expiration of the 120-day period under Section 112(C) of the NIRC of 1997, as amended. Considering that Petitioner received Respondent's decision (embodied in the letter dated April 21, 2017 issued by Deputy Commissioner Nestor S. Valeroso), denying Petitioner's application for tax credit/refund, on

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

[53] *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.*

[54] Exhibits "P-3", "P-3-1", "P-3-2", Docket – Vol. 3, pp. 1026 to 1031.

April 27, 2017,[55] Petitioner's filing of the instant *Petition for Review* on May 25, 2017[56] was timely made.

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

Petitioner is a VAT-registered Person.

Petitioner likewise complied with the *third* requisite, considering that it is a VAT-registered taxpayer, with TIN No. 266-267-699-000.[57]

Petitioner Failed to Establish Engagement in Zero-rated or Effectively Zero-rated Sales

For purposes of the above-stated *fourth* requisite, the instant refund claim is anchored on Section 108(B)(2) of the NIRC of 1997, as amended, which provides as follows:

> "**SEC. 108.** ***Value-added Tax on Sale of Services and Use or Lease of Properties. –***
>
> xxx xxx xxx
>
> **(B)** ***Transactions Subject to Zero Percent (0%) Rate.*** - **The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:**
>
> (1) Processing, manufacturing or repacking of goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in 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**

[55] Exhibits "P-6" and "R-2", BIR Records, p. 175; Q22 and 23, Exhibit "P-20", Docket – Vol. 2, p. 396.
[56] Docket – Vol. I, pp. 10 to 24.
[57] Exhibit "P-2", Docket – Vol. III, p. 1025.

regulations of the Bangko Sentral ng Pilipinas (BSP);" *(Emphases supplied)*

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

1) The recipient of the services is a foreign corporation, and the said corporation is doing business *outside* the Philippines, or is a nonresident person not engaged in business who is *outside* the Philippines when the services were performed;[58]

2) The services fall under any of the categories under Section 108(8)(2),[59] or simply, the services rendered should be other than *"processing, manufacturing or repacking goods"*;[60]

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

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

Relative to the *first* essential element, the Supreme Court ruled in *Accenture, Inc. Vs. Commissioner of Internal Revenue* [63] that it is not enough that the recipient of the service be shown to be a foreign corporation, it must likewise be established that the said recipient is a *"non-resident foreign corporation"*. Moreover, there must not be any indication that the recipient of the services is doing business in the Philippines, consistent with the ruling of the High Court in *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[64]

Thus, to be considered as a non-resident foreign corporation doing business outside the Philippines, the entity must be supported at the very least by both SEC Certificate of non-registration of corporation/partnership and

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[58] *Sitel Philippines Corporotion (Formerly Clientlogic Phils. Inc.) vs. Commissioner of Internol Revenue*, G.R. No. 201326, February 8, 2017; *Commissioner of Internol Revenue vs. Burmeister ond Woin Scondinovion Controctor Mindonao, Inc.*, G.R. No. 153205, January 22, 2007; *Accenture, Inc. vs. Commissioner of Internol Revenue*, G.R. No. 190102, July 11, 2012.

[59] *Commissioner of Internal Revenue vs. Americon Express International, Inc. (Philippine Branch)*, supra.

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

[61] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinovion Controctar Mindanoo, Inc.*, supra; *Commissioner of Internol Revenue vs. American Express Internationol, Inc. (Philippine Bronch)*, supra.

[62] *Commissioner of Internol Revenue vs. Burmeister ond Woin Scondinovian Contractor Mindonoo, Inc.*, supra; *Commissioner of Internal Revenue vs. Americon Express Internotionol, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

[63] G.R. No. 190102, July 11, 2012.

[64] *Commissioner of Internol Revenue vs. Chevron Holdings, Inc.*, CTA EB No 1509, March 21, 2018.

Certificate/Articles of foreign incorporation/association/registration or its equivalent.

Based on the Schedule of Zero Rated Sales for the FY ended June 30, 2015,[65] Petitioner rendered sales of services to the following clients, which are allegedly doing business outside the Philippines, for the periods October to December 2014, January to March 2015, and April to June 2015, or for the 2nd, 3rd, and 4th quarters, respectively, of FY 2015, viz:

1) SC Johnson and Son Inc.;
2) PT Johnson Home Hygiene Products;
3) SC Johnson and Son Taiwan;
4) Shanghai Johnson Ltd.;
5) SC Johnson and Son Pty Ltd.;
6) SC Johnson Ltd.;
7) Johnson Co Ltd.;
8) Johnson Trading Co Ltd.;
9) SC Johnson Korea Inc.;
10) SC Johnson and Son M SDN B;
11) SC Johnson and Son Pte Limited;
12) SC Johnson and Son Ltd.;
13) Frimley Green Road Camberley Surrey;
14) SC Johnson & Son Inc.;
15) SC Johnson Europe SARL;
16) Johnson Homecare Malaysia SDN BHD; and
17) SC Johnson Manufacturing Malaysia.

To support the foregoing contention, Petitioner presented the Authenticated *Original Copy of the Certificate Confirming Incorporation of Company (S.C. Johnson & Son Private Limited)*[66] and the *Certified True Copy of the Certificate of Production of Statement by Computer of the Business Profile of S.C. Johnson & Son Private Limited.*[67] Such documents, however, failed to establish that Petitioner's foregoing clients are non-resident foreign corporations doing business outside the Philippines. Moreover, Petitioner failed to present any SEC Certificate of Non-registration for any of the above enumerated clients. Thus, the records are bereft of any showing that the above-mentioned clients are non-resident foreign corporations doing business outside the Philippines. As such, Petitioner failed to comply with the above-stated *first* essential element.

Moreover, this Court cannot rely on the submitted *Intercompany Services Agreement* in establishing that the services it rendered to the supposed service-

[65] Exhibit "P-11-1-a to P-11-1-f".
[66] Exhibit "P-8", Docket – Vol. III, pp. 1051 to 1052.
[67] Exhibit "P-8" as included in the USB, while Exhibit "P-9" as attached to the Docket – Vol. III, pp. 1053 to 1059.

recipients are other than *"processing, manufacturing or repacking goods"*, since Petitioner is not even one of the parties therein.[68]

Furthermore, there is also no indication of Petitioner's compliance with the *third* essential element, *i.e.*, that the subject services were performed in the Philippines, as there was no evidence submitted in this case to prove such fact.

Lastly, the *fourth* essential element was also not complied with because Petitioner did not submit any proof that the services rendered to foreign clients were paid for *"in acceptable foreign currency ... and accounted for in accordance with the rules and regulations of the BSP"*.[69]

Such being the case, Petitioner failed to fulfill the *fourth* requisite for the successful prosecution of the instant refund claim. Needless to state, it is only when the sales of a VAT-registered person are zero-rated or effectively zero-rated that he/she/it may have the option of applying for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales.[70] Considering Petitioner's failure to establish its zero-rated or effectively zero-rated sales for the subject periods, the instant *Petition for Review* must already be denied.

Consequently, it becomes unnecessary to look into Petitioner's compliance with the other remaining requisites, and whether all documentary and evidentiary requirements for an administrative claim were satisfied at the BIR level.

On the final note, it must be emphasized 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.[71] Thus, the burden is on the taxpayer to show that he/she/it has strictly complied with the conditions for the grant of the tax refund or credit.[72]

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

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[68] Exhibit "P-16".

[69] Refer to *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.

[70] *Coca-Cola Bottlers Philippines, Inc. vs Commissioner of Internal Revenue*, G.R. No. 222428, July 19, 2018.

[71] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

[72] *Commissioner of Internal Revenue vs. San Roque Power Corporation*, G.R. Nos. 187485, February 12, 2013.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO- SAN PEDRO
Associate Justice

ATTESTATION

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

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice