REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AMADEUS MARKETING PHILIPPINES, INC., Petitioner,	**CTA CASE NO. 9904**
	Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson, and* **BACORRO-VILLENA**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JAN 15 2021 9:00 a.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

The *Petition for Review* filed on August 8, 2018, prays for the refund to petitioner the amount of ₱16,818,797.89, allegedly representing petitioner's unutilized input value-added tax (VAT) for the 1st, 2nd, 3rd and 4th quarters of the taxable year 2016.[1]

THE PARTIES

Petitioner Amadeus Marketing Philippines, Inc. is a corporation duly organized and existing under the laws of the Philippines, with business address at 36th Floor, LKG Tower, 6801 Ayala Avenue,

[1] Summary of the Case, Pre-Trial Order dated February 12, 2019, Docket – Vol. I, p. 337.

Makati City.[2] It is a corporation duly registered with the Securities and Exchange Commission (SEC) with Company Registration No. A1997-11194.[3] As stated in its Articles of Incorporation, petitioner is primarily engaged in the business of marketing in the Philippines an automated computerized reservations system, the "Amadeus Global Travel Distribution" that incorporates a software package which performs various functions, such as real line airlines seat reservations, schedules booking for a variety of air, boat, train, package tours, car rental and hotel services, automatic ticketing and fare pricing displays in the Philippines.[4]

Likewise, petitioner is a VAT-registered entity as evidenced by Bureau of Internal Revenue (BIR) Certificate of Registration No. OCN 9RC0000133815 and Taxpayer's Identification Number (TIN) 005-374-900-000. Such registration was made on January 1, 1998.[5]

Respondent Commissioner of Internal Revenue is being sued in his official capacity, having been duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund as provided by law, with office address at BIR National Office Building, Diliman, Quezon City.[6]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On March 28, 2018, petitioner filed with the BIR an administrative claim for refund of unutilized input VAT [via the letter dated March 28, 2018 and *Application for Tax Credits / Refunds* (BIR Form No, 1914)], allegedly incurred in the 1st to 4th quarters of 2016, in the amount of ₱16,818,797.89.[7]

The BIR, through Regional Director Glen A. Geraldino, however, denied petitioner's claim for refund through the *VAT Refund/Credit Notice* dated June 21, 2018, a copy of which was received by petitioner on July 9, 2018.[8] *[initials]*

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[2] Par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 327.
[3] Par. 4, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 328.
[4] Par. 5, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 328.
[5] Par. 6, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 328.
[6] Par. 3, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 327.
[7] Exhibits "P-12" and "P-13", Docket – Vol. II, pp. 581 to 590.
[8] Exhibit "P-66", Docket – Vol. II, pp. 450, and 690.

PROCEEDINGS BEFORE THIS COURT

On August 8, 2018, the instant *Petition for Review* was filed.[9]

Respondent filed his *Answer* on September 26, 2018,[10] interposing certain special and affirmative defenses, to wit: (1) petitioner's claim for refund or issuance of tax credit certificate was denied because it failed to satisfy that it is engaged in zero-rated or effectively zero-rated sale; (2) petitioner's claim for refund or issuance of tax credit certificate in the amount of ₱16,818,797.89 representing its alleged excess and unutilized input VAT paid for taxable year 2016 were not fully substantiated by proper documents, such as sales invoices and official receipts, pursuant to Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code; and (3) claims for refund are construed strictly against herein petitioner since the same partakes the nature of exemption from taxation and as such, they are looked upon with disfavor.

The Pre-Trial Conference was initially set on November 22, 2018.[11] Upon motion of respondent,[12] the Pre-Trial Conference was reset and held on January 17, 2019.[13] Prior thereto, *Respondents Pre-Trial Brief* was posted on October 23, 2018;[14] while petitioner's *Pre-Trial Brief* was submitted on November 19, 2018.[15]

On February 1, 2019, the parties submitted their *Joint Stipulation of Facts and Issues* (JSFI).[16] Thereafter, the Pre-Trial Order dated February 12, 2019 was issued,[17] approving and adopting the said JSFI, and deeming the termination of the pre-trial.

As the proceedings ensued, petitioner set forth its documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Krizel Sansano,[18] petitioner's

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[9] Docket – Vol. I, pp. 10 to 36.
[10] Docket – Vol. I, pp. 83 to 85.
[11] *Notice of Pre-Trial Conference* dated October 11, 2018, Docket – Vol. I, pp. 87 to 88.
[12] *Urgent Motion to Reset*, Docket – Vol. I, pp. 94 to 95.
[13] Minutes of the hearing held on, and Order dated, November 22, 2018, Docket – Vol. Vol. I, pp. 112 to 113; Minutes of the hearing held on, and Order dated, January 17, 2019, Docket – Vol. I, pp. 310 to 311.
[14] Docket – Vol. I, pp. 89 to 91.
[15] Docket – Vol. I, pp. 99 to 110.
[16] Docket – Vol. I, pp. 327 to 334.
[17] Docket – Vol. I, pp. 337 to 344.
[18] Exhibits "P-64", Docket – Vol. I, pp. 119 to 131; Minutes of the hearing held on, and Order dated, February 20, 2019, Docket – Vol. I, pp. 351 to 352; Exhibit "P-67", Docket – Vol. II, pp.

Head of Finance; (2) Ms. Myra Luna Davalos,[19] petitioner's Senior Finance Officer; and (3) Mr. Enrico T. Pizarro,[20] the duly-commissioned Independent Certified Public Accountant (ICPA). [21]

The *Report* of the ICPA was submitted *via* courier on May 16, 2019.[22]

On October 23, 2019, petitioner filed its *Formal Offer of Evidence*.[23] Respondent failed to comment on the same.[24] In the Resolution dated February 21, 2020,[25] the Court admitted petitioner's Exhibits, *except* for Exhibits "P-130.507" to "P-130.871", "P-131.16" to "P-131.17", and "P-135.49" to "P-135.242", for not being found in the records.

For his part, respondent's counsel manifested, in open court, that he would no longer present evidence.[26]

Petitioner filed its *Memorandum* on June 30, 2020.[27] Respondent, however, did not file his memorandum.[28]

On July 13, 2020, the instant case was considered submitted for decision.[29]

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442 to 448; Minutes of the hearing held on, and Order dated, September 18, 2019, Docket – Vol. II, pp. 451 to 452.

[19] Exhibit "P-65", Docket – Vol. I, pp. 260 to 269; Minutes of the hearing held on, and Order dated, February 20, 2019, Docket – Vol. I, pp. 351 to 352.

[20] Exhibit "P-131", Docket – Vol. I, pp. 399 to 417; Minutes of the hearing held on, and Order dated, July 8, 2019, Docket – Vol. I, pp. 419 to 421.

[21] *Oath of Commission* dated April 1, 2019, Docket – Vol. I, p. 378; Minutes of the hearing held on, and Order dated, April 1, 2019, Docket – Vol. I, pp. 379 to 380.

[22] Refer to the separate Binder-Folder.

[23] Docket – Vol. II, pp. 464 to 485.

[24] Records Verification dated November 14, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 716.

[25] Resolution dated February 21, 2020, Docket – Vol. II, pp. 718 to 719.

[26] Minutes of the hearing held on, and Order dated, September 18, 2019, Docket – Vol. II, pp. 451 to 452.

[27] Docket – Vol. II, pp. 720 to 748.

[28] Records Verification dated July 2, 2020 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 750.

[29] Resolution dated July 13, 2020, Docket – Vol. II, p. 751.

THE ISSUES RAISED BY THE PARTIES

As stipulated by the parties, the following issues are to be resolved by the Court, to wit:[30]

"A. Whether Petitioner is entitled to a refund of the unutilized VAT input taxes in the total amount of **Sixteen Million Eight Hundred Eighteen Thousand Seven Hundred Ninety Seven and 89/100 pesos (Php16,818,797.89)** for the 1st, 2nd, 3rd and 4th quarters of the taxable year 2016.

B. Whether Petitioner is engaged in zero-rated or effectively zero-rated sales.

C. Whether the input taxes being claimed are due or paid.

D. Whether the input taxes being claimed have not been applied against output taxes during and in the succeeding quarters.

E. Whether the input taxes claimed are attributable to zero-rated or effectively zero-rated sales.

F. Whether the claim was filed within two years after the close of the taxable quarter when such sales were made."

Petitioner's arguments:

Petitioner contends that it is entitled to a refund of unutilized VAT input taxes in the total amount of ₱16,818,797.89, representing its unutilized VAT input taxes for the 1st, 2nd, 3rd & 4th quarters of TY 2016; that it is a VAT-registered taxpayer and is engaged in zero-rated sales; that it complied with the qualifying conditions for zero-rating; that Amadeus IT Group SA is not doing business in the Philippines; that the input taxes being claimed are attributable to zero-rated sales; that the said input taxes are due or paid and have not been applied against output taxes during the quarter and in the succeeding quarters; that the acceptable foreign currency exchanges proceeds have been duly accounted for in accordance with BSP rules and regulations; that petitioner was able to substantiate its claim for refund for the unutilized VAT input taxes; and that petitioner's administrative and judicial claims were filed within the prescriptive period.

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[30] Statement of the Issue, JSFI, Docket – Vol. I, p. 331.

Respondent's counter-arguments:

Respondent contends that petitioner's claim for refund or issuance of tax credit certificate was denied because it failed to satisfy that they are engaged in zero-rated or effectively zero-rated sale; that petitioner's claim for refund or issuance of tax credit certificate in the amount of ₱16,818,797.89, representing its alleged excess and unutilized input VAT paid for taxable year 2016 were not fully substantiated by proper documents, such as sales invoices and official receipts, pursuant to Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code; and that claims for refund are construed strictly against herein petitioner since the same partakes the nature of exemption from taxation and as such, they are looked upon with disfavor.

THE RULING

The instant *Petition for Review* lacks merit.

Requisites for the refund of input VAT under the law.

Section 112 of the National Internal Revenue Code (NIRC) of 1997, as last amended by RA No. 10963,[31] 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),

[31] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

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

Based on the foregoing provision, certain requisites must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT. The said requisites may be classified into certain categories, to wit:

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

1. the refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[32]
2. in case of full or partial denial of the refund claim, the judicial claim is filed with this Court, within thirty (30) days from receipt of the decision;

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

[32] *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.,* G.R. No. 182364, August 3, 2010.

3. the taxpayer is a VAT-registered person;[33]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[34]
5. for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[35]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[36]
7. the input taxes are due or paid;[37]
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;[38] and
9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[39]

It must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[40] Thus, it behooves petitioner to show compliance with each of the above-enumerated requisites.

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[33] *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.*, supra.

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

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

[39] *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.*, supra.

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

Petitioner's administrative and judicial claims were 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 zero-rated or effectively zero-rated sales were made.

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

Period	**Close of the Taxable Quarter**	**Last Day to File Administrative Claim**	**Date of Filling of the Administrative Claim**
1st Quarter of 2016 (January1, 2016 to March 31, 2016)	March 31, 2016	March 31, 2018	March 28, 2018
2nd Quarter of 2016 (April 1, 2016 to May 31, 2016)	June 30, 2016	June 30, 2018	
3rd Quarter of 2016 (June 1, 2016 to September 30, 2016)	September 30, 2016	September 30, 2018	
4th Quarter of 2016 (October 1, 2017 to December 31, 2016)	December 31, 2016	December 31, 2018	

On the basis thereof, petitioner's administrative claim for refund or tax credit certificate for the subject periods was timely filed on March 28, 2018.[41]

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 90-day period under Section 112(C) of the NIRC of 1997, as amended.

Respondent denied petitioner's claim for refund via the *VAT Refund/Credit Notice* dated June 21, 2018, a copy of which was received by petitioner on July 9, 2018.[42] Thus, counting thirty (30) *jl*

[41] Exhibits "P-12" and "P-13", Docket – Vol. II, pp. 581 to 590.
[42] Exhibit "P-66", Docket – Vol. II, pp. 450 and 690.

days from July 9, 2018, petitioner had until August 8, 2018, within which to file an appeal before this Court.

Considering that petitioner filed the instant *Petition for Review* on August 8, 2018,[43] the same was seasonably made.

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

Petitioner is a VAT-registered entity.

Petitioner likewise complied with the *third* requisite, considering that it is undisputed that petitioner is a VAT-registered entity, since January 1, 1998, as evidenced by BIR Certificate of Registration No. OCN 9RC0000133815 and TIN 005-374-900-000.[44]

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

The *fourth* and *fifth* requisites respectively require that the taxpayer is engaged in zero-rated or effectively zero-rated sales, and for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2) of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the BSP rules and regulations.

Petitioner claims that during the taxable year 2016, the services it rendered to Amadeus IT Group SA are subject to zero percent (0%) VAT, pursuant to Section 108(B) of the NIRC of 1997, as amended, to wit:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx

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[43] Docket – Vol. I, pp. 10 to 36.

[44] Par. 6, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 328.

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

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 services fall under any of the categories under Section 108(B)(2),[45] or simply, the services rendered should be other than *"processing, manufacturing or repacking goods"*;[46]

2) The service must be performed in the Philippines[47] by a VAT-registered person;

3) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules;[48] and

4) 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

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

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

[47] *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.

[48] *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.

> business who is *outside* the Philippines when the services were performed.[49]

To prove compliance with the *first* and *second* essential elements, petitioner presented its Certificate of Filing of Amended Articles of Incorporation[50], Amended Articles of Incorporation[51] and Amadeus Commercial Organization (ACO) Agreement[52].

Under the ACO Agreement, the term *"Service"* (to be provided by petitioner) *"means any services provided in relation to a particular Product, as updated from time to time by AMADEUS"*, and in turn, the term *"Product"* means *"any software or functionality listed in the AMADEUS catalogue, as updated from time to time by AMADEUS"*.[53] Simply put, the services to be provided by petitioner is any service related to any software or functionality listed in the AMADEUS catalogue. Thus, the said services fall within the scope of "*services other than processing, manufacturing or repacking of goods*", hence, there is compliance with the *first* essential element.

Under the same Agreement, the services to be rendered by petitioner shall be in the following geographical area: "PHILIPPINES".[54] Such being the case, petitioner likewise complied with the above-stated *second* essential element.

Anent the *third essential element* (which is likewise the *fifth requisite* for the granting of input VAT refund), petitioner presented the Certifications of bank inward remittances issued by Hong Kong and Shanghai Banking Corporation[55] purportedly showing the remittances of Amadeus IT Group SA. Considering that the certification of inward remittances attests to the fact of payment *"in acceptable foreign currency ...and accounted for in accordance with the rules and regulations of the BSP"*;[56] vis-a-vis that these remittances are from Amadeus IT Group SA and cover the year 2016, petitioner is considered to have complied with the *third* essential

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[49] *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.*, supra; *Accenture, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 190102, July 11,2012.
[50] Exhibit "P-1", Docket – Vol. II, p. 488.
[51] Exhibit "P-3", Docket – Vol. II, pp. 491 to 498.
[52] Exhibit "P-4", Docket – Vol. II, pp. 499 to 533.
[53] Exhibit "P-4", Docket – Vol. II, at p. 504.
[54] Exhibit "P-4", Docket – Vol. II, at p. 507.
[55] Exhibit "P-10", Docket – Vol. II, pp. 573 to 574.
[56] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.

element for a sale or supply of services to be subject to the VAT rate of zero percent (0%).

Relative the *fourth* essential element, petitioner offered in evidence a *Certification of Non-Registration of Company*[57] issued by the Philippine SEC to the effect that the records of the latter do not show the registration of Amadeus IT Group SA as a corporation or as a partnership. Petitioner likewise submitted Amadeus IT Group SA's Company Statute,[58] Tax Residency Certificate,[59] and Certificate of Business Registration.[60] Furthermore, petitioner's witness, Ms. Krizel Sansano, testified that Amadeus IT Group SA is not licensed to transact business here in the Philippines, to wit:

> "24. Q: What is your proof that Amadeus IT Group SA is not licensed to transact business here in the Philippines?
>
> A: We have secured from the Securities and Exchange Commission a Certificate of Non-registration of Amadeus IT Group SA as well as its Certification from Mercantile Registrar of Madrid, Spain. Moreover, we have a Company Statue of Amadeus IT Group SA and Certificate of Business Registration showing that Amadeus IT Group SA is xxx."[61]

With the aforesaid evidence, petitioner *may be said* to have established that its client, Amadeus IT Group SA, is a non-resident foreign corporation. However, notwithstanding the same, petitioner failed to convince this Court that the said client is indeed doing business outside the Philippines vis-à-vis the finding of respondent.

It is settled that a taxpayer claiming for a VAT refund or credit under Section 108(B) of the NIRC of 1997, as amended, has the burden to prove not only that the recipient of the service is a foreign corporation, **but also that said corporation is doing business outside the Philippines**.[62]

It is noteworthy that in the *VAT Refund/Credit Notice* dated June 21, 2018,[63] the BIR denied petitioner's administrative claim on the ground that the sale to Amadeus IT Group S.A. cannot be

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[57] Exhibit "P-5", Docket – Vol. II, p. 534.
[58] Exhibit "P-6", Docket – Vol. I, pp. 535 to 563.
[59] Exhibit "P-7", Docket – Vol. I, pp. 564 to 567.
[60] Exhibit "P-8", Docket – Vol. I, pp. 568 to 571.
[61] Exhibit "P-64", Docket – Vol. I, pp. 123 to 124.
[62] *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue*, G.R. 201326, February 8, 2017.
[63] Exhibit "P-66", Docket – Vol. II, pp. 450, and 690.

considered as zero-rated sales since the former to whom the taxpayer renders to service is doing business in the Philippines, to wit:

> "Verification disclosed that the taxpayer renders services to Amadeus IT Group S.A. for the year under audit. Further, investigation disclosed that Amadeus IT Group S.A. to whom the taxpayer claims to have zero-rated sales, have rendered services to the taxpayer in the Philippines as shown in the Travel Agency Management Agreement Systems (TAMS) Distribution Agreement. In the said Agreement, the taxpayer shall pay Amadeus IT Group S.A. a standard fee per month per terminal installed with Amadeus Pro Tempo, Pro Wed, and Vista.
>
> In view thereof, the sale to Amadeus IT Group S.A. cannot be considered as zero-rated sales since the former to whom the taxpayer renders to service is **doing business in the Philippines**. This violates the third requirement pursuant to Section 108 of NIRC to be considered as zero-rated sales.
>
> In the case of Commissioner of internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., the Supreme Court held that in order to for the supply of services to be considered VAT zero-rated under Section 108 (B)(2) of the NIRC of 1997, as amended the following requisites must be satisfied:
>
> 1. The services by a VAT-registered person must be other than processing, manufacturing, or repacking of goods;
> 2. The payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and
> 3. **The recipient of such services is doing business outside the Philippines."** *(Underscoring added)*

Relative thereto, when a judicial claim for refund or tax credit an appeal of an unsuccessful administrative claim, the taxpayer has to convince this Court that respondent or the BIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show this Court that not only he/she/it is entitled under substantive law to his claim for refund or tax credit, but also that he/she/it 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.**[64]

While notably, petitioner made certain allegations and arguments, in the instant *Petition for Review*, against the findings of the BIR for denying its claim, thereby admitting the existence of the TAMS Distribution Agreement entered into by Amadeus IT Group S.A. referred to the denial letter of the BIR,[65] petitioner never presented or offered any evidence to prove the said allegations.[66] Needless to state, the basic rule is that mere allegation is not evidence and is not equivalent to proof.[67] Interestingly, despite the admission of petitioner of the existence of the said Distribution Agreement, it did not offer the same in evidence for this Court's examination. This then calls for the application of the presumption "[t]*hat evidence willfully suppressed would be adverse if produced"*.[68]

Moreover, it is noted that the main allegations or arguments of petitioner, in the instant *Petition for Review*, is that what is being earned by Amadeus IT Group S.A., under the said TAMS Distribution Agreement, are royalties, and that the same are merely *"passive income"*, which is allegedly defined as *"separate from general income earned from active pursuit of business."* [69] Thus, according to petitioner, on the basis thereof, Amadeus IT Group S.A. cannot qualify as doing business in the Philippines. To show that royalties are passive income, petitioner cites, as legal basis, the following provisions of the NIRC of 1997, as amended by RA No. 9337, to wit:

> "SEC. 24. *Income Tax Rates* –
>
> (A) *Rates of Income Tax on Individual Citizen and Individual Resident Alien of the Philippines.* –
>
> xxx xxx xxx
>
> (B) *Rates of Tax on* ***Certain Passive Income.*** –

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[64] Refer to *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 207112, December 8, 2015.
[65] Refer to Pars. 27 to 35, *Petition for Review,* Docket – Vol. I, pp. 23 to 27.
[66] Pars. 27 to 35, Petition for Review, Docket – Vol. I, pp. 23 to 27.
[67] *Morales, Jr. vs. Ombudsman Conchita Carpio-Morales,* G.R. No. 208086, July 27, 2016.
[68] Section 3(e), Rule 131, Rules of Court.
[69] Refer to Par. 31, *Petition for Review,* Docket – Vol. I, p. 25.

> (1) *Interests, **Royalties**, Prizes, and Other Winnings.* – A final tax at the rate of twenty percent (20%) is hereby imposed upon the amount of xxx **royalties**, except on books, as well as other literary works and musical compositions, which shall be imposed a final tax of ten percent (10%); xxx." *(Emphases added)*
>
> "SEC. 27. *Income Tax Rates* –
>
> (A) *Rates of Income Tax on Domestic Corporations.* –
>
> xxx xxx xxx
>
> (D) *Rates of Tax on **Certain Passive Income**.* –
>
> (1) *Interest from Deposits and Yield or any other Monetary Benefit from Deposit Substitutes and from Trust Funds and Similar Arrangements, **and Royalties.*** – A final tax at the rate of twenty percent (20%) is hereby imposed upon the amount of xxx **royalties**, derived from sources within the Philippines; xxx." *(Emphases added)*

However, even granting that petitioner was able to establish the said allegations or arguments, the same are still untenable.

While it is true that the said provisions classify royalties as passive income, the same refer only to the royalties earned by individuals (*i.e.*, citizens and resident aliens) and domestic corporations. Pertinently, the classification of royalties as passive income is not true with regard to foreign corporations, such as Amadeus IT Group S.A., in accordance with Section 28 of the NIRC of 1997, as amended by RA No. 9337, which provides, in part, as follows, to wit:

> "SEC. 28. *Rates of Income Tax on Foreign Corporations* –
>
> (A) *Tax on Resident Foreign Corporations.* –
>
> xxx xxx xxx
>
> (7) *Tax on **Certain Incomes Received by a Resident Foreign Corporation**.* –
>
> (a) *Interest from Deposits and Yield or any other Monetary Benefit from Deposit Substitutes and from Trust Funds and Similar Arrangements, **and Royalties.*** – xxx **royalties** derived from sources within the Philippines shall be subject to final income tax at the rate of twenty percent (20%) xxx.
>
> xxx xxx xxx

> (B) *Tax on Nonresident Foreign Corporation.* –
>
> (1) *In General.* – Except as other provided in this Code, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to thirty-five percent (35%) of the gross income received during each taxable year from all sources within the Philippines, such as xxx **royalties** xxx.
>
> xxx xxx xxx." *(Emphases added)*

Based on the foregoing provisions, it is clear that unlike in the cases of Philippine citizens and resident aliens, where the royalties they earn are already categorized as *"passive income"*, the same is not true as regards the royalties earned by foreign corporations. The law, as regards royalties earned by foreign corporations, does *not* distinguish whether the same is passive or otherwise. *Apropos*, where the law does not distinguish, courts should not distinguish.[70]

Such being the case, when a foreign corporation earns royalties from sources within the Philippines, it does not necessarily mean that such royalties should already be treated as mere passive income, so as to automatically classify the said foreign corporation as not doing business in the Philippines. Simply put, it is *non-sequitur*. Thus, petitioner should have presented proof that notwithstanding that Amadeus IT Group S.A. is earning royalties from the Philippines, it should still not be considered as doing business therein. In any event, as already noted, petitioner never presented any evidence to refute the above-stated finding of the BIR.

In sum, petitioner failed to show that respondent was in error in finding that Amadeus IT Group S.A. is doing business in the Philippines. This Court, thus, affirms the finding of the BIR. Having failed to show that respondent should *not* have denied its administrative claim in the first place, the instant *Petition for Review* must already be denied.

It becomes unnecessary to determine whether petitioner complied with the remaining requisites under Section 112 of the NIRC of 1997, as amended, to successfully obtain a credit/refund of its alleged input VAT.

[70] *Pension and Gratuity Management Center (PGMC), et al. vs. AAA*, G.R. No. 201292, August 1, 2018.

It bears stressing that tax refunds are in the nature of tax exemptions. As such they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption. The burden of proof is upon him who claims the exemption in his favor and he must be able to justify his claim by the clearest grant of organic or statute law.[71]

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

SO ORDERED.

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

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

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

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

[71] *Commissioner of Internal Revenue v. Interpublic Group of Companies, Inc.,* G.R. No. 207039, August 14, 2019.

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