REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

FIRMENICH (PHILIPPINES), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10938

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
NOV 11 2025; 4:14PM

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Firmenich (Philippines), Inc. (**petitioner/FPI**) pursuant to Section 3(a)[2], Rule 8, in relation to Section 3(a)(2)[3], Rule 4, of the Revised Rules of the Court

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1 Filed on 25 July 2022, Division Docket, Volume I, pp. 6-26.

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

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

of Tax Appeals[4] (**RRCTA**). It seeks the refund of the alleged unutilized input Value-Added Tax (**VAT**) attributable to petitioner's zero-rated sales for the third (3rd) quarter of fiscal year (**FY**) 2020, or the taxable period from 01 January 2020 to 31 March 2020, in the total amount of ₱1,324,337.13.[5]

PARTIES TO THE CASE

Petitioner is a domestic corporation organized and existing under the laws of the Philippines.[6] It is registered with the Bureau of Internal Revenue (**BIR**) for VAT purposes under Taxpayer Identification No. (**TIN**) 004-841-520-000, with principal office address at the 10th and 11th Floors, Cocolight Building, 39th Street corner 11th Avenue, Bonifacio Global City Fort Bonifacio, Taguig City, as evidenced by BIR Certificate of Registration (**COR**) No. 9RC0000520154.[7]

Respondent, on the other hand, is the Commissioner of Internal Revenue (**respondent/CIR**), empowered to perform the duties of his office, including, among others, deciding claims for the tax refund of overpaid or erroneously paid internal revenue taxes.[8] He or she holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

FACTS OF THE CASE

For the 3rd quarter of FY 2020, pursuant to an *Agency Agreement*[9], petitioner rendered sales support and assistance services in the Philippines to Firmenich Asia Pte. Ltd. (**FAPL**).

FAPL purports to be a nonresident foreign corporation (**NRFC**) not engaged in trade or business within the Philippines, as indicated in the Certificate of Non-Registration of Company dated 13 December

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4 A.M. No. 05-11-07-CTA dated 22 November 2005.
5 Summary of the Case, Pre-Trial Order dated 26 May 2023, Division Docket, p. 313.
6 Exhibit "P-1", id., pp. 411-423.
7 Exhibit "P-2", id., p. 424.
8 Par. 1b., I. Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), id, p. 303.
9 Exhibit "P-4", Division Docket, pp. 434-445.

2021[10] issued by the Securities and Exchange Commission (**SEC**). It is a private company registered in Singapore, as laid out in the Certificate Confirming Incorporation of Company dated 15 March 2018[11], issued by the Singapore Accounting and Corporate Regulatory Authority. Petitioner, a wholly-owned subsidiary of Firmenich Trading Corporation (a Switzerland-based company) is under common control with FAPL.[12]

During the covered period, petitioner reported zero-rated sales, purchased goods and services, and paid input VAT, as follows:

Zero-Rated Sales	₱55,825,023.35[13]
Purchases	6,208,088.25[14]
Input VAT	744,970.59[15]

Petitioner neither had sales subject to 12% VAT nor exempt sales for the said periods.[16] For its zero-rated sales, petitioner claims that the same pertain to commissions received from FAPL, for which petitioner was paid in acceptable foreign currency.[17]

Petitioner represents that, for the period in question, it incurred and paid input VAT from its purchases of goods and services amounting to ₱1,341,404.98, but opted to file a refund claim for a reduced amount of ₱1,324,337.13 after realizing (while preparing for its claim) that it lacked supporting documentation for the difference.[18]

Thus, on 28 March 2022, or within two (2) years from the close of the 3rd quarter of FY 2020, petitioner filed, with the BIR VAT Credit Audit Division (**VCAD**), its administrative claim for refund of input tax through an Application for Tax Credits/Refunds (BIR Form No. 1914)[19] in the amount of ₱1,324,337.13, representing its alleged unutilized input

10 Exhibit "P-6", id., p. 431.

11 Exhibit "P-5", id., pp. 427-430.

12 See Notes 1 and 13(a), Notes to the Financial Statements (NFS), Exhibit "R-3", BIR Records, pp. 104 and 76, respectively.

13 Line 17, Quarterly Value-Added Tax Return (BIR Form No. 2550-Q) for the 3rd Quarter of FY 2020, Exhibit "P-3", Division Docket, pp. 425-426.

14 Line 21P, id.

15 Sum of Lines 21F and 21J, id.

16 See Lines 15A and 18, id.

17 See Line 17, id., *vis-à-vis* par. 11, II. Statement of Antecedent Facts, Petition for Review, id., p. 9.

18 See Qs 26-30, Exhibit "P-18", Judicial Affidavit of Emily G. Recto, id., pp. 139-140.

19 Exhibit "P-7", id., p. 432.

VAT attributable to its zero-rated sales for the 3rd quarter of FY 2020, accompanied by a Revised Checklist of Mandatory Requirements on Claims for VAT Credit/Refund.[20]

Respondent then issued the Tax Verification Notice (**TVN**) No. TVN201800190731 dated 28 March 2022,[21] authorizing Revenue Officers (**ROs**) Michele J. Alonzo-Bucayu (**Alonzo-Bucayu**) and Marjorie C. Dioso (**Dioso**) to verify the supporting documents and pertinent records relative to petitioner's refund claim.

In a letter dated 27 May 2022[22], respondent denied petitioner's claim. Petitioner received a copy thereof on 24 June 2022.[23]

Thus, within thirty (30) days therefrom, on 25 July 2022, petitioner filed its Petition for Review before the Court in Division to appeal the denial of its administrative claim.[24] The same was initially raffled to this Court's Second Division.

PROCEEDINGS BEFORE THE SECOND DIVISION

On 10 October 2022, pursuant to an extension[25] granted by the Second Division, respondent filed his or her Answer.[26] There, the CIR raised the following special and affirmative defenses: (1) petitioner is not entitled to a refund as it did not render the corresponding services (from which the supposed input taxes in the subject claim arose) 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 were performed; and (2) petitioner failed to comply with the pertinent invoicing and accounting requirements.

With the filing of respondent's Answer, the Second Division set the Pre-Trial Conference for the case on 02 March 2023.[27] Ahead of the

20 Exhibit "P-8", id., p. 433.
21 Exhibit "P-10", id., p. 474; Exhibit "R-1", BIR Records, p. 159.
22 Exhibit "P-11", id., pp. 453-473; Exhibit "R-5", BIR Records, pp. 223-243.
23 Id.
24 Supra at note 1.
25 See Respondent's "Motion for Extension of Time to File Answer" filed on 07 September 2022, Division Docket, pp. 214-216, *vis-à-vis* Order dated 12 September 2022, Division Docket, p. 218.
26 Id., pp. 219-235.
27 See Notice of Pre-Trial Conference dated 11 October 2022, id., pp. 248-249.

same, the parties filed their respective Pre-Trial Briefs on 27 February 2023.[28]

Meanwhile, on 12 October 2022, respondent transmitted the BIR Records of this case, consisting of 248 pages in one (1) folder.[29]

On 02 March 2023, the Pre-Trial Conference proceeded, as scheduled.[30] Towards its conclusion, the Second Division gave the parties 30 days, or until 03 April 2023, to file their Joint Stipulation of Facts and Issues (**JSFI**) and gave the petitioner the same period to file a Motion to Commission an Independent Certified Public Accountant (**ICPA**). The Court likewise set the hearing dates (the first of which was set on 18 July 2023 for petitioner's initial presentation of evidence and the possible commissioning of an ICPA) and Commissioner's Hearings for the comparison of the parties' exhibits.

On 03 April 2023, pursuant to the Court's directive, petitioner filed its "Motion for Commissioning of [ICPA]".[31]

On 11 April 2023, after an extension[32] granted by the Second Division, the parties filed their JSFI.[33] The Second Division then admitted and approved the same in the Resolution dated 20 April 2023[34], thereby marking the termination of the Pre-Trial. The Court then issued the Pre-Trial Order on 26 May 2023.[35]

On 29 May 2023, pursuant to CTA Administrative Circular No. 01-2023 dated 23 May 2023[36], the present case was transferred to the Court's First Division, which continued to hear the same.[37] Accordingly, the First Division reset the hearing for petitioner's initial presentation

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28 Petitioner's Pre-Trial Brief, id., pp. 255-263; Respondent's Pre-Trial Brief, pp. 268-271.
29 See Compliance dated 12 October 2022, id., pp. 250-252.
30 See Minutes of the Hearing and Order, both dated 02 March 2023, id., pp. 277 and 278-279, respectively.
31 Id., pp. 280-283.
32 See Petitioner's "Motion for Additional Time to File [JSFI]" dated 03 April 2023, Division Docket, pp. 294-297, *vis-à-vis* Resolution dated 20 April 2023, Division Docket, p. 311.
33 Id., pp. 302-309.
34 See Resolution dated 20 April 2023, supra at note 32.
35 Id., pp. 313-317.
36 Reorganizing the Divisions of the Court.
37 See Notice dated 29 May 2023, Division Docket, p. 319.

of evidence and the ICPA's possible commissioning to 14 September 2023.[38]

PROCEEDINGS BEFORE THE FIRST DIVISION

Trial then ensued on 14 September 2023, as rescheduled.[39] Therein, the First Division commissioned Krista V. Bambao (**ICPA Bambao**) and directed her to submit her report by 16 October 2023.[40]

Emily G. Recto (**Recto**), petitioner's Senior Finance Manager, then took the stand as petitioner's first witness.[41] Through her Judicial Affidavit[42], she declared that her position makes her responsible for all matters relating to petitioner's finance or accounting, treasury, internal and external audit, and tax and regulatory compliance – and as such, she was involved in processing petitioner's refund claim. Recto attested that petitioner was duly registered with both the SEC and the BIR. She explained that all of petitioner's revenues for the period of the claim were derived from fees collectible for services rendered to FAPL, and were thus subject to VAT zero-rating. She likewise clarified that petitioner did not engage in any transactions that would have been subject to the 12% output tax, but it did incur, pay, and remit the 12% input tax on its local purchases of goods and services. Recto confirmed that petitioner timely filed and reported its VAT returns then later on similarly filed its administrative and judicial refund claims on time. She recalled that while petitioner's records showed input VAT aggregating ₱1,341,404.98 for the 3rd quarter of FY 2020, they voluntary filed a refund claim for the lower amount of ₱1,324,337.13 after discovering that they lacked sufficient documentation to support the difference of ₱17,067.85.

In her cross-examination, Recto confirmed that she had been with petitioner since 01 July 1998. She attested that, pursuant to an *Agency Agreement*, FPI had been providing marketing, promotion, and

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38 See Notices of Resetting dated 03 July 2023 and 17 July 2023, id., pp. 320 and 322, respectively.
39 See Minutes of the Hearing and Order, both dated 14 September 2023, id., pp. 336-339 and 340-341, respectively.
40 Id.
41 Id.
42 Exhibit "P-18", "Judicial Affidavit of Emily G. Recto" dated 22 July 2022, id., pp. 131-144.

other sales support to FAPL in the Philippines, for the sale of Firmenich products, since 01 July 1999.[43]

Recto did not undergo a redirect examination.[44]

On 16 October 2023, in compliance with the First Division's directive, ICPA Bambao filed the ICPA Report.[45]

On the next hearing of 14 November 2023, ICPA Bambao took the witness stand to testify on her findings as outlined in her report.[46] Through her Judicial Affidavit[47], she identified her report and described the relevant portions therein, detailing the procedures she conducted and the methods she employed in verifying petitioner's documents. In particular, she was able to reconcile the amount of zero-rated sales and purchases (subject to input tax) that petitioner used as the basis for its claim. ICPA Bambao explained that, out of petitioner's claim for refund amounting to ₱1,324,337.13, she is recommending the grant of a partial refund in the amount of ₱106,814.80, considering that such is the only portion thereof that had been properly substantiated, based on the documents presented to her by petitioner for her examination.

In her cross-examination, ICPA Bambao confirmed that petitioner presented its Audited Financial Statements (**AFS**) to her for examination, but considering that it covers the entire taxable year (**TY**), she instead requested extracts from petitioner's General Ledger (**GL**) for the relevant period. She then clarified that as basis for agreeing that petitioner's sales of services are subject to VAT zero-rating, she explained that petitioner performed the services in the Philippines in favor of an NRFC then it received payments denominated in US Dollars. She added that FAPL's status as an NRFC is supported by an apostilled Certificate of Incorporation and a Certificate of Non-Registration issued by the SEC.[48]

43 TSN dated 14 September 2023, pp. 22-27.
44 Id., pp. 27.
45 Exhibit "P-19", Division Docket, pp. 345-363.
46 See Minutes of the Hearing and Order, both dated 14 November 2023, id., pp. 397-397B and 398-398A, respectively.
47 Exhibit "P-194", id., pp. 368-394.
48 TSN dated 14 November 2023, pp. 10-14.

During her redirect examination, she reiterated that petitioner offered its FY 2020 AFS for her examination (even though the refund claim only covered the period from January to March 2020) and that her recommendation of a partial refund in the amount of ₱106,814.80 pertains to the portion that she had determined to be fully compliant with the BIR's requirements.[49]

In her re-cross examination that followed, she explained that the invoices pertaining to the refund she recommended were among those transmitted to the BIR's VCAD for the processing of the claim, considering that the said invoices bear the department's stamp.[50]

With no further witnesses to present, petitioner's turn to present evidence had thus ended. The First Division then gave petitioner fifteen (15) days, or until 29 November 2023, to file its Formal Offer of Evidence (**FOE**). Correspondingly, it gave respondent 15 days from receiving a copy of the FOE to file a Comment thereon.[51]

Accordingly, on 29 November 2023, petitioner filed its FOE[52], to which respondent filed his or her "Comment (Re: Petitioner's [FOE])"[53] (**Comment**) on 14 December 2023. In the Comment, respondent objected to the admission of petitioner's offered Exhibits "P-31" and "P-32" (which both correspond to Citibank's credit advice) after failing to find the same in the case's records.

On 28 December 2023, petitioner sought to rectify the matter through filing "Petitioner's Reply to Respondent's Comment to Petitioner's [FOE] with Motion to Set Commissioner's Hearing and Motion to Admit Evidence"[54] (**Reply**). The said Reply came with copies of the missing Exhibits and an Affidavit[55] from ICPA Bambao, clarifying that the latter inadvertently excluded the aforementioned Exhibits from her earlier submissions with her report. In the Resolution dated 27 February 2024[56], the Court granted petitioner's embodied "Motion

49 Id., pp. 14-16.
50 Id., p. 17.
51 Supra at note 46.
52 Division Docket, pp. 400-410.
53 Id., pp. 477-480.
54 Id., pp. 482-485.
55 Id., pp. 486-487.
56 Id., pp. 496-498.

to Set Commissioner's Hearing" to pave the way for the Exhibits' admission.

Later, in the Resolution dated 06 May 2024[57], the Court admitted petitioner's offered exhibits, *except*: (1) Exhibit "P-19-3"[58], for not being found in the records; and (2) Exhibits "P-159"[59] and "P-176"[60], for failure to present the original for comparison.

On 25 June 2024, trial continued with respondent offering the testimony of his or her lone witness, RO Alonzo-Bucayu.[61]

Through her Judicial Affidavit[62], she explained that her assignment at the VCAD entails that she is responsible for verifying the VAT refund of direct exporters and preparing evaluation reports and memoranda on the procedures she conducted, and that petitioner's claim is one among those given to her for processing. She outlined that the VCAD issued a TVN to petitioner, informing it that her team would be evaluating its supporting documentation in support of its refund claim. RO Alonzo-Bucayu declared that petitioner's AFS was among the documentation she examined, and the Note disclosures therein pertaining to Related Parties led their team to conclude that FAPL, is conducting business in the Philippines (which meant that petitioner's sales were not subject to zero-rating).

In her cross-examination, RO Alonzo-Bucayu confirmed that FPI and FAPL's Agency Agreement and FPI's TY 2020 AFS were supposedly among the documents she inspected in her examination. She ratiocinated that she was able to confirm that FPI was FAPL's agent through the aforementioned documents, along with the responses of petitioner's authorized representatives during prior interviews.[63]

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57 Id., pp. 506-507.
58 Offered as the ICPA's transmittal of USB Flash Drive to respondent.
59 Offered as part of petitioner's purchase documents for realized deferred input tax from purchase of capital goods that were not valid for claiming input taxes.
60 Offered as part of petitioner's purchase documents for realized deferred input tax from purchase of capital goods with no nature of service indicated.
61 See Minutes of the Hearing and Order, both dated 25 June 2024, Division Docket, pp. 508-510 and 512-513, respectively.
62 Exhibit "R-7", Judicial Affidavit of Revenue Officer Michele J. Alonzo-Bucayu dated 07 October 2022, id., pp. 241-247.
63 TSN dated 25 June 2024, pp. 7-18.

During her redirect examination, RO Alonzo-Bucayu agreed that petitioner submitted only one Agency Agreement to the VCAD for its present refund claim.[64] In her re-cross examination, she further attested that it was this same Agreement plus petitioner's AFS that she considered in preparing her Memorandum Report for petitioner's claim.[65]

The completion of RO Alonzo-Bucayu's testimony marked the conclusion of respondent's presentation of evidence. Accordingly, the First Division gave respondent ten (10) days to file an FOE and petitioner five (5) days from receipt thereof to file a Comment. It likewise gave the parties 30 days from receiving a copy of the Resolution on respondent's FOE, to file their respective memoranda.[66]

Thus, on 02 July 2024, respondent filed his or her FOE.[67] Petitioner filed its Comment[68] thereto on 08 July 2024. In the Resolution dated 06 September 2024[69], over petitioner's objections, the First Division admitted all of respondent's offered Exhibits.

Later, on 14 October 2024, respondent filed his or her Memorandum[70], while petitioner's Memorandum[71] was filed on 17 October 2024. With the filing of the parties' Memoranda, the First Division submitted the case for decision on 11 November 2024.[72]

ISSUE

As the parties so stipulated in their JSFI[73], the following issue was laid out for this Court's determination —

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64 Id., pp. 18-19.
65 Id., pp. 19-20.
66 Supra at note 61.
67 Division Docket, pp. 515-518.
68 Petitioner's "Comment on the Respondent's Formal Offer of Evidence" dated 08 July 2024, id., pp. 520-522.
69 Id., pp. 536-537.
70 Id., pp. 541-556.
71 Id., pp. 560-579.
72 See Minute Resolution dated 11 November 2024, id., p. 583.
73 Part II. Stipulation of Issue, JSFI, id., p. 303.

WHETHER PETITIONER FIRMENICH (PHILIPPINES), INC. IS ENTITLED TO A TAX REFUND OR TO THE ISSUANCE OF A TAX CREDIT CERTIFICATE (TCC) IN THE AMOUNT OF ₱1,324,337.13, REPRESENTING ITS EXCESS AND/OR UNUTILIZED INPUT VALUE-ADDED TAX (VAT) CREDITS ATTRIBUTABLE TO ITS ZERO-RATED SALES OF SERVICES FOR THE TAXABLE PERIOD FROM 01 JANUARY 2020 TO 31 MARCH 2020, OR THE THIRD QUARTER OF FISCAL YEAR (FY) 2020.

ARGUMENTS

Petitioner argues that the services it rendered to FAPL are zero-rated and, thus, the input VAT attributable to such services may be claimed through a tax refund. It insists that FAPL is not doing business in the Philippines and that assuming, without conceding, that FAPL is doing business in the Philippines, petitioner would still be subjected to zero-percent VAT due to the nature of its services.

Likewise, petitioner maintains that the input taxes subject of the refund claim are properly substantiated by purchase documents that are compliant with the invoicing requirements.

He or she also points out that petitioner failed to comply with the invoicing and accounting requirements for VAT-registered persons under the Tax Code.

RULING OF THE COURT

Petitioner anchors its claim for refund on Section 110(B), in relation to Section 112(A) and (C) of the National Internal Revenue Code (**NIRC**) of 1997, as amended by Republic Act (**RA**) No. 10963[74], otherwise known as Tax Reform for Acceleration and Inclusion (**TRAIN**) Act. The said provisions read as follows:

[74] 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.

...

Sec. 110. *Tax Credits.* —

...

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

...

Sec. 112. *Refunds or Tax Credits of Input Tax.* —

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

...

(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.

...

In *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[75] (**Deutsche Knowledge Services**), the Supreme Court set forth the requisites for the entitlement to a refund or credit of unutilized input VAT attributable to zero-rated sales, to wit:

...

Under Section 4.112-1(a) of Revenue Regulations No. (RR) 16-05, otherwise known as the Consolidated VAT Regulations of 2005, in relation to Section 112 of the Tax Code, a claimant's entitlement to a tax refund or credit of excess input VAT attributable to zero-rated sales hinges upon the following requisites: "(1) the taxpayer must be VAT-registered; (2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax."

...

In addition, in VAT refund claims, applicants are duty-bound to satisfy the substantiation and invoicing requirements under the NIRC and other implementing rules and regulations.[76] Thus, petitioner's compliance with all the VAT invoicing requirements is required to be able to file a claim for input taxes attributable to zero-rated sales.[77] The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[78] Moreover, it must be pointed out that compliance with all the

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[75] G.R. No. 234445, 15 July 2020; Citations omitted.

[76] *Team Energy Corporation (Formerly Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) v. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 & 197770, 14 March 2018.

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

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

VAT invoicing requirements provided by tax laws and regulations is mandatory.[79]

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.[80]

Furthermore, 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.[81] Thus, petitioner must sufficiently demonstrate compliance with each of the foregoing requisites and invoicing requirements. The absence of *any* of the said requisites is already a valid ground to deny the refund claim.

For an orderly determination of petitioner's compliance with the foregoing requisites, the Court deems it propitious to first discuss whether it complied with the *third (3^{rd}) requisite*, or the timeliness of the filing of its claim.

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

In accordance with the above-cited Section 112(A) and (C) of the NIRC of 1997, as amended by TRAIN, the administrative claim for

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

80 *Team Energy Corporation v. Commissioner of Internal Revenue, et seq.*, supra at note 76.

81 *Edison (Bataan) Cogeneration Corporation v. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 201665 & 201668, 30 August 2017; *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, 29 September 2014; *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, 02 July 2014; *Rafael Arsenio S. Dizon v. Court of Tax Appeals, et al.*, G.R. No. 140944, 30 April 2008; *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, 16 March 2007; *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, 31 August 2005.

refund of unutilized input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The instant claim covers the 3rd quarter of FY 2020. Counting two (2) years from the close of the said quarter, the last day to file an administrative claim for refund of excess or unutilized input VAT fell on **31 March 2022**. Thus, petitioner timely filed its *Application for Tax Credits/Refunds*[82] of input tax for the 3rd quarter of FY 2020 on **28 March 2022**, being within the two (2)-year reglementary period.

As to the timeliness of petitioner's judicial claim, Section 112(C) of the NIRC of 1997, as amended, provides that respondent has 90 days from the date of submission on 28 March 2022 of the documentation in support of the administrative claim, or until **26 June 2022**, to decide on petitioner's claim.

Section 7(a)(2) of RA 1125[83], as amended by RA 9282[84], provides:

> ...
>
> **Sec. 7.** *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> ...
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue[.][85]
>
> ...

Furthermore, Section 11 of RA 1125, as amended by RA 9282, states:

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82 Exhibit "P-7", supra at note 19.

83 AN ACT CREATING THE COURT OF TAX APPEALS.

84 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

85 Emphasis supplied and italics in the original text.

> ...
>
> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — **Any party adversely affected by a decision**, ruling or inaction **of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision** or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.[86]
>
> ...

Respondent issued the letter denying petitioner's administrative claim on **27 May 2022**[87], which fell within the ninety (90)-day period to decide, while petitioner received the same on **24 June 2022.**[88]

Based on the foregoing, petitioner had 30 days from its receipt of the CIR's decision, or until 24 July 2022, to file an appeal before this Court. Considering that 24 July 2022 fell on a Sunday, petitioner had until **25 July 2022**, or the next working day, to file its judicial claim, pursuant to Section 1, Rule 22 of the Rules of Court. Evidently, petitioner's judicial claim for refund was also timely filed on **25 July 2022.**[89]

We proceed with the *first (1st) requisite.*

<u>FIRST (1ST) REQUISITE:</u>
THE TAXPAYER-CLAIMANT MUST BE A VALUE-ADDED TAX (VAT)-REGISTERED ENTITY.

Section 110(B)[90], in relation to Section 112(A) and (C)[91] of the NIRC of 1997, as amended, clearly states that **only a VAT-registered person** has the option to apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to zero-rated or effectively zero-rated.

---

86 Emphasis supplied and italics in the original text.
87 Exhibits "P-11" and "R-5", supra at note 22.
88 Id.
89 Supra at note 1.
90 Supra at p. 12.
91 Supra at pp. 12-13.

The reason for such a requirement can be gleaned from the very nature of Philippine VAT. It is a broad-based consumption tax imposed at every stage of the production and distribution chain—from manufacturers and producers to distributors.[92] Ultimately, the tax burden is passed on to the final consumer.[93]

In the present case, it is undisputed that petitioner also satisfied the *1st requisite*, being duly registered with the BIR as a VAT taxpayer with TIN 004-841-520-000.[94]

<u>SECOND (2ND) REQUISITE:</u>
THE TAXPAYER-CLAIMANT MUST BE ENGAGED IN SALES WHICH ARE ZERO-RATED OR EFFECTIVELY ZERO-RATED.

The *2nd requisite* requires 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) and (3)[95], and 108(B)(1) and (2) of the NIRC of 1997, as amended[96], the acceptable foreign currency exchange proceeds must have been duly accounted for in accordance with BSP rules and regulations.

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92 See *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, G.R. No. 153866, 11 February 2005.

93 Id.

94 Exhibit "P-2", supra at note 7.

95 **Sec. 106.** *Value-Added Tax on Sale of Goods or Properties.* –

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

...

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

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

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

...

(3) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)[.]

96 As amended by TRAIN.

Herein, petitioner claims that during the 3rd quarter of FY 2020, it rendered sales support and assistance services in the Philippines to FAPL, an entity that is allegedly an NRFC not doing business in the Philippines pursuant to Section 108(B)(2) of the NIRC of 1997, as amended[97], which states:

> ...
>
> **SEC. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —
>
> ...
>
> (B) *Transactions Subject to Zero Percent (0%) Rate* — **The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate.**
>
> > (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 <u>outside the Philippines</u> or to a nonresident person not engaged in business who is <u>outside the Philippines</u> 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).**[98]
>
> ...

Petitioner's total alleged zero-rated sales for the covered period, as shown in its 3rd quarter original VAT return, amounted to ₱55,825,023.35[99], broken down as follows:

OR No.	OR Date	Customer	Amount (USD)	Amount (PhP)
13776[100]	29 January 2020	FAPL	$274,260.27	₱13,892,653.98
13777[101]	04 March 2020	FAPL	431,579.39	22,001,054.14

[97] Before amendments introduced by TRAIN.
[98] Italics in the original text, emphasis and underscoring supplied.
[99] Exhibit "P-3", supra at note 13.
[100] Exhibit "P-24", USB.
[101] Exhibit "P-25", USB.

13779[102]	27 March 2020	FAPL	390,978.76	19,931.315.23
			Total	**₱55,825,023.35**

The foregoing table shows that all of petitioner's supposed zero-rated sales were made in favor of PPD Global, an alleged NRFC not doing business in the Philippines.

In *Deutsche Knowledge Services*[103], the Supreme Court held that for VAT zero-rating purposes under the aforementioned provision, the services must be rendered to an NRFC client, then the claimant must establish the two (2) components of its client's NRFC status:

> ...
> *Conditions for Zero-rating of Sales of Services*
>
> Zero-rated sales are, for all intents and purposes, subject to VAT, only that the rate imposed upon them is 0%. Thus, while these sales will not mathematically yield output VAT, the input VAT arising therefrom is nonetheless creditable or refundable, as the case may be.
>
> Sales of "other services," such as those qualifying services rendered by DKS to its foreign affiliates-clients, shall be zero-rated pursuant to Section 108(B)(2) of the Tax Code if the following conditions are met: *First*, the seller is VAT-registered. ***Second***, **<u>the services are 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."</u>** *Third*, services are "paid for in acceptable foreign currency and accounted in accordance with [BSP] rules and regulations."
>
> ...
>
> *Proof of NRFC Status*
>
> For purposes of zero-rating under Section 108(B)(2) of the Tax Code, **the claimant must establish the two components of a client's NRFC status, *viz.*: (1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) <u>that it is not engaged in trade or business in the Philippines</u>. To be sure, there must, be**

---
102 Exhibit "P-26", USB.

103 Supra at note 75; Citations omitted, italics in the original text, emphasis and underscoring supplied.

> **sufficient proof of *both* of these components: showing not only that the clients are foreign corporations, <u>but also are not doing business in the Philippines</u>.**
>
> ...

Additionally, in *Accenture, Inc. v. Commissioner of Internal Revenue*[104], the Supreme Court held thusly –

> ...
>
> The evidence presented by Accenture may have established that its clients are foreign. This fact does not automatically mean, however, that these clients were doing business outside the Philippines. After all, the Tax Code itself has provisions for a foreign corporation engaged in business within the Philippines and vice versa, to wit:
>
>> SEC. 22. *Definitions* – When used in this Title:
>>
>> ...
>>
>> (H) The term *"resident foreign corporation"* applies to a foreign corporation engaged in trade or business within the Philippines.
>>
>> (I) **The term *"nonresident foreign corporation"* applies to a foreign corporation <u>not engaged in trade or business within the Philippines</u>.**
>
> Consequently, to come within the purview of Section 108(B)(2), it is not enough that the recipient of the service be proven to be a foreign corporation; **rather, <u>it must be specifically proven to be a nonresident foreign corporation</u>.**
>
> There is no specific criterion as to what constitutes "doing" or "engaging in" or "transacting" business. We ruled thus in *Commissioner of Internal Revenue v. British Overseas Airways Corporation*:
>
>> ... **There is no specific criterion as to what constitutes "doing" or "engaging in' or 'transacting" business.** Each case must be judged in the light of its peculiar environmental circumstances. **The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally**

---

104 G.R. No. 190102, 11 July 2012; Citations omitted, italics in the original text, emphasis and underscoring supplied.

> **incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization. "<u>In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character.</u>"**
>
> A taxpayer claiming a tax credit or refund has the burden of proof to establish the factual basis of that claim. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.
>
> ...

As held in *Deutsche Knowledge Services*[105], there must be sufficient proof of both components – (1) that the client is a **foreign corporation** (which can be proven by the <u>SEC Certification of Non-Registration</u>); and, (2) also **not doing business in the Philippines** (the *prima facie* proof of which is the <u>articles of association/certificate of incorporation stating that the affiliate is registered to operate in their respective home countries, outside the Philippines</u>).

In the case at bar, to prove that petitioner rendered services to an NRFC, it presented FAPL's SEC Certificate of Non-Registration of Company[106], and its Certificate Confirming Incorporation of Company[107] issued in Singapore. Respondent, however, opposes petitioner's position and interposes that the arrangement between FPI and FAPL demonstrates a continuity of commercial dealings; hence, the latter should not be considered as not doing business in the Philippines.

While it is true that in *Deutsche Knowledge Services,* the submission of Articles of Association already constitutes a *prima facie* proof that a taxpayer's client is not doing business in the Philippines, the same remains to be *prima facie,* which should stand if unrebutted or uncontradicted. *Prima facie* evidence is evidence that is "good and sufficient on its face . . . [s]uch evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts

105 Supra at note 75.
106 Exhibit "P-6", supra at note 10.
107 Exhibit "P-5", supra at note 11.

constituting the party's claim or defense and **which if not rebutted or contradicted, will remain sufficient**".[108]

Considering the above dispute, a more detailed determination of whether FAPL is indeed not engaged in trade or business in the Philippines becomes necessary.

In the case of *Agilent Technologies Singapore (Pte) Ltd. v. Integrated Silicon Technology Philippines Corporation, et al.*[109], the Supreme Court reiterated the rule laid down in *The Mentholatum Co., Inc., et al. v. Anacleto Mangaliman, et al.*[110], with respect to the two general tests to determine whether a foreign corporation can be considered as "doing business" in the Philippines, *viz*:

> ...
>
> The challenge to Agilent's legal capacity to file suit hinges on whether or not it is doing business in the Philippines. However, there is no definitive rule on what constitutes "doing", "engaging in", or "transacting" business in the Philippines, as this Court observed in the case of *Mentholatum v. Mangaliman*. The Corporation Code itself is silent as to what acts constitute doing or transacting business in the Philippines.
>
> Jurisprudence has it, however, that the term "implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the **performance of acts or works or the exercise of some of the functions normally incident to or in progressive prosecution of the purpose and subject of its organization.**"
>
> In *Mentholatum*, this Court discoursed on the two general tests to determine whether or not a foreign corporation can be considered as "doing business" in the Philippines. The first of these is the <u>substance</u> test, thus:
>
> > The true test [for doing business], however, seems to be whether the foreign corporation is continuing the body of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another.

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108 *Bicol Medical Center, et al. v. Noe B. Botor, et al.*, G.R. No. 214073, 04 October 2017 citing *Tomas P. Tan, Jr. v. Jose G. Hosana*, G.R. No. 190846, 03 February 2016.

109 G.R. No. 154618, 14 April 2004; Citations omitted, emphasis supplied and italics in the original text.

110 G.R. No. L-47701, 27 June 1941.

The second test is the <u>continuity</u> test, expressed thus:

> The term [doing business] implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in the progressive prosecution of, the purpose and object of its organization.

...

The said rulings are echoed in the case of *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue*[111], as follows:

> ...
>
> There is no specific criterion as to what constitutes "doing" or "engaging in" or "transacting" business. We ruled thus in *Commissioner of Internal Revenue v. British Overseas Airways Corporation*:
>
> > ... There is no specific criterion as to what constitutes "doing" or "engaging in" or "transacting" business. Each case must be judged in the light of its peculiar environmental circumstances. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization. "**In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character.**"
>
> ...

In the more recent case of *Saint Wealth Ltd. v. Bureau of Internal Revenue, et al.*[112] (**Saint Wealth**), the Supreme Court laid down four (4) jurisprudential tests to determine whether a foreign corporation is

[111] G.R. No. 201326, 08 February 2017; Emphasis in the original text.
[112] G.R. No. 252965, 07 December 2021; Citations omitted, emphasis and italics in the original text and supplied.

"doing" or "engaging in" or "transacting" business in the Philippines, to wit:

> ...
>
> *Substance Test* — the true test in determining whether a foreign corporation is transacting business "seems to be whether [it] is **continuing** the body or **substance of the business or enterprise** for which it was organized or whether it has substantially retired from it and turned it over to another." As noted by Justice Dimaampao, the **Substance Test** implies a **continuity of commercial dealings and arrangements**, and contemplates, to the extent, the performance of acts or works or the **exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose of its organization**.
>
> *Contract Test* — transactions entered into by a foreign corporation which constitute an **isolated transaction** and are not a series of commercial dealings which signify an intent on the part of such corporation to do business in the Philippines, does not fall under the category of "doing business." Thus, as stressed by Justice Dimaampao, **isolated transactions** by a foreign corporation do not constitute engaging in business in the Philippines.
>
> *Intention Test* — what is determinative of "doing business" is not really the number or the quantity of the transactions, but the **intention of the entity to continue the body of its business in the country. The number and quantity are merely evidence of such intention**. The phrase "*isolated transaction*" has a definite and fixed meaning, *i.e.*, a transaction or series of transactions set apart from the common business of a foreign enterprise in the sense that no intention to engage in a progressive pursuit of the purpose and object of the business organization. As such, Justice Dimaampao noted in his *Reflections* that under the ***Intention Test***, the question of whether a foreign corporation is "doing business" does not necessarily depend upon the frequency of its transactions, but more upon the **nature and character of the transactions**.
>
> *Actual Performance Test* — an essential condition to be considered as "doing business" in the Philippines is the **actual performance of specific commercial acts within the territory of the Philippines**, because, as aptly pointed out by Justice Dimaampao in his *Reflections*, the Philippines has no jurisdiction over commercial acts performed in foreign territories.
>
> ...

At this point, it bears relevance to look into the pertinent provisions of the *Agency Agreement* entered into by FAPL and petitioner (wherein the former is referred to as "Firmenich Asia")[113], in order to determine whether the former is an NRFC for purposes of Section 108(B)(2) of the NIRC of 1997, as amended:

> ...
> **WHEREAS,** in consideration of the development and expansion of the operations carried by Firmenich Phils, i.e. the promotion of Firmenich products sold by any affiliates of the Firmenich group ('Affiliates'), **Firmenich Phils shall be appointed as Firmenich's agent representative for the Philippines** and shall be fairly compensated **for any sales support services rendered to Firmenich Asia <u>and Affiliates</u>.**
>
> **WHEREAS,** the Parties have decided to compensate Firmenich Phils through commissions paid by Firmenich Asia on all sales made by Firmenich Affiliates in the Philippines that have benefited from Firmenich Phils' sales support and assistance.
>
> **NOW, THEREFORE,** the Parties agree to confirm their mutual understanding as follows:
>
> <u>ARTICLE I: PURPOSE</u>
>
> **Subject to the terms and conditions hereof, Firmenich Asia appoints Firmenich Phils <u>in order to market, promote and extend the sales of the Firmenich products in the Philippines</u>.**
>
> **Firmenich Phils accepts such appointment and undertakes <u>to market, promote and extend the sales of the Firmenich products in the Philippines</u>.**
> ...
>
> <u>ARTICLE III: RIGHTS AND OBLIGATIONS OF THE PARTIES</u>
>
> **Firmenich Phils shall use its best endeavour in order <u>to promote and expand sales of the Firmenich products</u>** with the utmost professionalism and maintaining good relationships with existing customers from the Firmenich group.
> ...
>
> **Acting as an agent,** Firmenich Phils shall have neither power nor authority to represent or to bind Firmenich Asia or other Affiliates in any manner **<u>except as expressly provided herein.</u>**

113 Exhibit "P-4", supra at note 9.

Firmenich Phils shall act on behalf of Firmenich Asia <u>or other Affiliates</u> but sales shall be concluded directly between customers and Firmenich Asia and <u>other Affiliates</u>. Firmenich Phils shall transmit to Firmenich Asia or other affiliates, whenever the case may be, any orders for their approval and Firmenich Asia <u>or such affiliate</u> shall be responsible for delivery, invoicing and collection of receivables.

Firmenich Asia shall be entitled to refuse certain orders transmitted by Firmenich Phils. In which case, Firmenich Asia <u>or such Affiliate</u> will inform Firmenich Phils of its refusal within 3 (three) working days after the transmission of said order.

The Parties will ensure that all clients are of a sound financial background and will exchange all information they can acquire in this respect. Moreover, Firmenich Phils accepts to assist Firmenich Asia <u>or other Affiliates</u> in its receivable collection of directly invoiced sales.

<u>ARTICLE IV: COMPENSATION</u>

It is expressly agreed between the Parties that Firmenich Phils shall not be compensated for sales performed in the Territory without its sales support.

Firmenich Asia <u>or other Affiliates</u> shall pay to Firmenich Phils as compensation for its activities <u>as commercial agent</u> a commission computed on the amount of sales invoiced by Firmenich Asia or other Affiliates to third-party clients in the Philippines, after deduction of the 'nationalization' costs (customs duties, freight, costs, taxes, etc...). ... **<u>Sales invoiced by other Affiliates</u> shall be entitled to the same commission rates in consideration of Firmenich Phils' effective sales support. Such commissions shall be paid by Firmenich Asia who is responsible for organizing internal compensations with the other Affiliates.**

<u>ARTICLE V: TERM OF THE AGREEMENT</u>

This Agreement shall comment on July 1st, 1999 and remain in force until June 30, 2001. **It will then be automatically renewed each year for successive periods of one year**, unless either Party has expressed its intention to terminate it at any time, by 3 (three) months prior notice by registered letter."[114]

...

[114] Emphasis and underscoring in the original text and supplied.

We deduce the following observations based on the foregoing provisions of the *Agency Agreement*:

1. Firmenich appointed petitioner as its agent representative in the Philippines, for which it would be fairly compensated for any sales support services rendered not only to FAPL, but also to any affiliate of the Firmenich group (collectively referred to in the said *Agency Agreement* as "Affiliates");

2. Petitioner would be compensated through commission paid by FAPL on sales made in the Philippines by the said Affiliates that benefited from petitioner's sales support and assistance;

3. Petitioner's appointment mainly involves marketing, promoting, and extending or expanding the sales of Firmenich products in the Philippines;

4. Petitioner is to act on FAPL or other Affiliates' behalf, but sales are only to be made directly between the customers and FAPL (or Affiliates);

5. Petitioner is likewise required to conduct a sound financial background of all clients, and to exchange any acquired information with FAPL;

6. Petitioner may also be required to assist FAPL or other Affiliates in the collection of receivables of directly invoiced sales;

7. The compensation for petitioner's activities as commercial agent shall be paid by FAPL or other Affiliates. Any commission relative to the sales invoiced by other Affiliates for petitioner's effective sales support shall be paid by FAPL; and

8. Petitioner's appointment as local agent is virtually perpetual for the foreseeable future through the Agreement's continual automatic renewal.

At the outset, it must already be emphasized that while in the above-stated *Agency Agreement* (entered into by and between petitioner and FAPL), it is stipulated that petitioner shall act as agent of FAPL, such agency shall extend to the other Affiliates of the Firmenich group; and despite that, any commission or compensation relative to the sales invoiced by any of the said Affiliates shall be paid by FAPL, and not by the concerned Affiliate. This is even bolstered by the fact that such information is found under Note No. 13 of the Notes to Financial Statements (**NFS**) accompanying petitioner's AFS as at 30 June 2020 and 2019[115], which states, *inter alia*, the following:

> ...
> [Petitioner] has an agency agreement with [FAPL], a company under common control, where [petitioner] was appointed as [FAPL's] agent representative to market, promote and extend the sales of Firmenich products in the Philippines. . . . **[Petitioner] is compensated through commissions paid by Firmenich Asia <u>on all sales made by Firmenich affiliates in the Philippines</u> that have benefited from [petitioner's] sales support and assistance.**[116]
> ...

Thus, petitioner's invocation of Section 108(B)(2)[117] of the NIRC of 1997, as amended, for VAT zero-rating, and the determination of whether the recipients of the services rendered by petitioner are NRFCs, pursuant to the said provision, must involve not only FAPL, but also of the concerned Firmenich Affiliates.

Relative thereto, in her *Report*, the ICPA said that *"the commissions collected for the covered period would show that the transactions were considered as sales subject to VAT at zero percent (0%) because these pertains to fees collected for services rendered in the Philippines to* [FAPL]".[118]

However, this Court finds no evidence on record to support this claim and, thus, cannot be given due consideration. Upon perusal of the Summary List of Sales[119] (**SLS**), GL Account No. 762100[120], and the

115 Exhibit "R-3", BIR Records, p. 76.
116 Emphasis and underscoring supplied.
117 Supra at p. 18.
118 Exhibit "P-19", Division Docket, pp. 350-351.
119 Exhibits "P-20" and "P-21", USB.
120 Exhibit "P-22", USB.

pertinent Official Receipts (**ORs**)[121] — the documents relied upon by the ICPA, the same fail to show any clear indication that the subject payments of FAPL were for the services rendered by petitioner pertaining only to it. Absent any competent proof, We cannot simply assume and conclude that the said payments pertained to the services rendered to FAPL (considering that *per* the said *Agency Agreement*, the latter was also tasked to pay on behalf of the other Firmenich Affiliates).

Plainly stated, in view of the stipulation from the *Agency Agreement* relative to the fact that petitioner also acts as agent to other Firmenich Affiliates coupled with the consideration that FAPL is the entity tasked to pay the commissions relative thereto, it behooves petitioner to show that the subject services were rendered only to FAPL, and do not pertain to services rendered to the said other Affiliates.

Considering that petitioner failed to present evidence to show that the subject payments of commission pertained *only* to the services rendered to FAPL *vis-à-vis* the *Agency Agreement*, We cannot be certain, or even readily apply, the provision of Section 108(B)(2) of the NIRC of 1997, to treat the sale of petitioner as subject to the zero percent (0%) VAT, since it is probable that the payments pertained to other Firmenich Affiliates, which do not qualify as NRFCs.

At this point, the examination of the subject ORs issued by petitioner to FAPL finds relevance, in order to determine whether the said documents complied with the invoicing requirements under the law. To reiterate, compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[122]

Section 113(A) and (B) of the NIRC of 1997, as amended, read as follows:

> ...
>
> SEC. 113. *Invoicing and Accounting Requirements for VAT Registered Persons.* –

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[121] Exhibits "P-24" and "P-26", USB.

[122] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, supra at note 79.

(A) *Invoicing Requirements.* – A VAT-registered person shall issue:

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) **A VAT official receipt for every lease of goods or properties, and <u>for every sale</u>, barter or exchange <u>of services</u>.**

(B) *Information Contained in the VAT invoice or VAT Official Receipt.* – **The following information <u>shall be indicated</u> in the VAT invoice or <u>VAT official receipt</u>:**

(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:

...

(c) If the sale is subject to zero percent (0%) value-added tax, the term '**zero-rated sales**' shall be written or printed prominently on the invoice or receipt;

...

(3) The date of transaction, quantity, unit cost and description of the goods or properties or **<u>nature of the services</u>**; and

(4) In the case of sales in the amount of One thousand (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.[123]

...

Based on the foregoing provisions, a VAT OR must be issued for each sale of service. Such OR must indicate, among others, the nature of the services performed.

An examination of petitioner's ORs[124] issued to FAPL shows that they do not contain any information about the nature of services performed by petitioner. Thus, this Court finds that the said ORs are

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[123] Italics in the original text, emphasis and underscoring supplied.

[124] Exhibits "P-24", "P-25", and "P-26", USB.

not compliant with the invoicing requirements under the law. This is not even remedied by correlating the said ORs with the corresponding sales invoices (**SIs**) issued to FAPL.[125] This is so because the SIs merely state that the respective amount represents "commissions."

Existing jurisprudence defines a *"commission"* as the recompense, compensation or reward of an agent, salesman, executor, trustee, receiver, factor, broker or bailee, when the same is calculated as a percentage on the amount of his transaction or on the profit of the principal.[126] Thus, the word *"commission"* may cover a recompense, compensation or reward, other than from being an agent (such as petitioner), salesman, and broker. Such being the case, the word *"commission"* found in the said SIs is *not* tantamount to, or does not sufficiently imply, a statement of the nature of service performed.

Correspondingly, considering that petitioner failed to show that the services it rendered pertained only to FAPL, coupled with its failure to comply with the invoicing requirements under the law, We cannot treat petitioner's sales of services as subject to the zero percent (0%) VAT rate. On this score, the present *Petition for Review* must already fail.

Be that as it may, even assuming that the recipient of FPI's services is exclusively FAPL, We nevertheless do not find FAPL to be an NRFC for purposes of Section 108(B)(2)[127] of the NIRC of 1997, as amended. In this connection, it must already be stated that We find that FAPL is a foreign corporation based on the evidence proffered by petitioner.[128] However, contrary to its contentions, We maintain that it is engaged in trade or business in the Philippines.

To reiterate, based on the foregoing disquisitions, while there is no specific criterion as to what constitutes 'doing' or 'engaging in' or 'transacting' business, the term implies a continuity of commercial dealings and arrangements, and contemplates performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain. And such

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125 Exhibits "P-27", "P-28", and "P-29", USB.

126 *Jose Songco, et al. v. National Labor Relations Commission (First Division), et al.*, G.R. Nos. L-50999-51000, 23 March 1990.

127 Supra at p. 18.

128 Exhibits "P-5" and "P-6", supra at notes 10 and 11.

continuity may involve the appointment of a local agent, such as petitioner.[129]

In applying the jurisprudential tests laid down in *Saint Wealth*[130], the Court is constrained to hold that FAPL, through petitioner, is doing business in the Philippines.

Firstly, the *Substance Test* looks at the nature and scope of the activities being conducted by the foreign corporation in the Philippines, that is, whether the same is normally incident to and in progressive prosecution of, the purpose of its organization. Secondly, the *Contract Test* examines whether a series of commercial dealings reflects an intention on the part of a foreign corporation to engage in business in the Philippines.

In the instant case, the continuity of FAPL's commercial dealings and arrangements is manifested through the fact that it appointed petitioner as a local agent. Consequently, petitioner is made to render sales support service and assistance to FAPL, and to market, promote, and extend or expand the sales of Firmenich products in the Philippines. Petitioner is likewise made to check the financial background of all clients and to exchange information relative thereto with FAPL. Additionally, petitioner may also be required to assist FAPL in the collection of receivables of directly invoiced sales. From the foregoing, in line with the *Substance Test*, it is evident that petitioner is obliged to perform functions that are integral to FAPL's business purpose, in the context of maintaining its continued business presence in the country.

With these, FAPL's intention to establish a continuous business in the Philippines (rather than an isolated transaction), through petitioner, in the context of the *Contract Test*, is likewise clear. Furthermore, the *Agency Agreement*'s automatic renewal is an *indicium* of intent on the part of FAPL to engage in business in the Philippines by having continuing commercial dealings and arrangements.

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129 Supra at pp. 22-24.
130 Supra at note 112.

Thirdly, the *Intention Test* looks at nature and character of the transaction or whether the activities performed are in furtherance of the foreign corporation's business purpose and objectives (as opposed to isolated transactions or those which are "apart from the common business of a foreign enterprise"), and not on the frequency of the transaction.

In the same vein as the previous *Tests*, FAPL may be considered to be doing business in the Philippines under the *Intention Test*, considering that the nature and character of the above-stated transactions with petitioner reflects FAPL's intention to continue carrying on its business in the country. Stated bluntly, it is readily apparent that FAPL, through petitioner, intends to have petitioner continue distributing Firmenich products in the Philippines.

Finally, the *Actual Performance Test* looks at whether the services were performed within the country in question. In this case, it is clear that petitioner actually performed specific commercial acts for FAPL within the Philippines, namely, the marketing, promoting, and extending or expanding the sales of Firmenich products therein, while checking its prospective clients' financial backgrounds.

All told, the sale of services of petitioner to FAPL may not be subject to VAT zero-rating, pursuant to Section 108(B)(2)[131] of the NIRC of 1997, as amended.

In any event, petitioner argues that it is merely an *indentor* and that FAPL does not have a permanent establishment in the Philippines, as defined under the Philippines-Singapore Tax Treaty.[132] Petitioner likewise invokes certain BIR VAT Rulings to support its stance that the sales of services to FAPL is subject to zero percent (0%) VAT rate.

The Court is not convinced.

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[131] Supra at p. 18.

[132] Formally known as the "CONVENTION BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE REPUBLIC OF SINGAPORE FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME".

Petitioner manifests that its contractual undertaking to market, promote, and extend the sales of products is precisely the role of an indentor; and as explained in the case of *Development Bank of the Philippines v. Monsanto Company*[133] (**DBP**), a middleman such as an indentor, commercial broker, or commission merchant acts as an agent to both parties to a transaction.

In the *DBP* case, the Supreme Court held as follows:

> ...
>
> The foregoing laws and rules[134] consistently provide that the appointment of representatives which transact business in its own name and for its own account shall not be deemed as "doing business." Markedly, the IRR of PD 1789 specifically mentions transactions done through middlepersons acting in their own names, such as indentors, as excluded from the phrase "doing business."
>
> Verily, as a foreign corporation without license to do business in the Philippines, the capacity to sue of MISCO, or its assignee Monsanto, hinges on whether Lipton transacts business in its own name and for its own account. In order to determine compliance with such requirement, We need to understand how an indentor operates.
>
> In the case of *Schmid & Oberly, Inc. v. RJL Martinez Fishing Corp. (Schmid)*, the Court elucidated on the nature of the business of an indentor thusly:
>
>> On the other hand, there is no statutory definition of "indent" in this jurisdiction. However, the Rules and Regulations to Implement Presidential Decree No. 1789 (the Omnibus Investments Code) lumps "indentors" together with "commercial brokers" and "commission merchants" in this manner: . . .
>>
>> Therefore, **an indentor is a middleman in the same class as commercial brokers and commission merchants.** To get an idea of what an indentor is, a look at the definition of those in his class may prove helpful.
>>
>> . . .
>>
>> Thus, the chief feature of a commercial broker and a commercial merchant is that **in effecting a sale, <u>they are merely intermediaries or middlemen</u>, an act in a**

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[133] G.R. No. 207153, 25 January 2023.

[134] Article 65, Presidential Decree (PD) No. 1789; Section 1(g) of the Implementing Rules and Regulations of PD No. 1789; and Section 3(d) of Republic Act No. 7042.

> **certain sense as the agent of both parties to the transaction.**
>
> Webster defines an indent as "a purchase order for goods especially when sent from a foreign country." [Webster's Ninth New Collegiate Dictionary 612 (1986).] It would appear that there are three parties to an indent transaction, namely, the buyer, the indentor, and the supplier who is usually a non-resident manufacturer residing in the country where the goods are to be brought [Commissioner of Internal Revenue v. Cadwallader Pacific Company, G.R. No. L-20343, September 29, 1976, 73 SCRA 59.] **An indentor may therefore be best described as one who, for compensation, acts as a middleman in bringing about a purchase and sale of goods between a foreign supplier and a local purchaser.**

From the language of Section 1(g) of the IRR of PD 1789 and the nature of the business of an indentor as described in *Schmid*, it can be concluded that when an indentor brings about a purchase and sale of goods between a foreign supplier and a local purchaser, as an agent of both parties, it is in contemplation of law transacting for its own account. Precisely because such is the business of an indentor as a middleman.

In this case, both the RTC and the CA found that the sale between CMC and MISCO was made through Lipton acting as an indentor. The records of this case likewise show that Lipton is a registered domestic corporation whose purpose is, among others, "[t]o engage and carry on a general brokerage business; to act as agents or brokers in effecting sales of merchandise and other commodities." **<u>In the pursuit of its business, Lipton represents a number of manufacturers.</u> This can be gleaned from the testimony of Lipton's Vice-President describing the nature of Lipton's business, to wit:**

> **Q. And as indentor can you please describe how you pursue the business?**
>
> **A. We are or we represent the different manufacturers through out the world** and we have all the products that they manufacture and we elicit and offer the products to various manufacturers here in the Philippines, sir. It is from this transaction that we get our commission. **In other words, we put together the buyer and the manufacturer and from that we get commission.** That is our manner of operating our income, sir.

DBP does not deny nor offer controverting evidence against the foregoing. It contends, however, that Lipton is not transacting business in its own name and account, as it functions

> was merely to act as go-between to the transactions of CMC and MISCO. It stressed that Lipton had no authority to agree and enter into agreement for the supply of raw materials for MISCO and that MISCO acted and transacted in its own behalf.
>
> The argument must be rejected. **To be clear, acting as a "go-between" is exactly the business of an indentor, and Lipton's lack of authority to enter into an agreement with CMC is consistent with its role as a middleperson.** DBP's assertions do not negate the independence of Lipton. As discussed above, the IRR of PD 1789 saw it proper to expressly exclude transactions of foreign corporations done through indentors from the contemplation of the phrase "doing business."[135]
>
> ...

Indeed, since petitioner acts as a "go-between" or as a middleman in bringing about a purchase and sale of goods between FAPL and a local purchaser, and receives commission as such, petitioner may be considered as in the business of an indentor.

However, it cannot be denied that petitioner likewise performs acts or exercises certain functions normally incident to, and in progressive prosecution of, commercial gain for FAPL. Specifically, as noted earlier, petitioner is further required to conduct a sound financial background of all clients, and to exchange any acquired information with FAPL. Moreover, petitioner may also be required to assist FAPL or other Affiliates in the collection of receivables of directly invoiced sales. To the mind of the Court, these obligations of petitioner under the *Agency Agreement* are in excess of being merely a "go-between" or as a middleman or indentor.

Additionally, unlike in the case of *Lipton* cited in the *DBP* case, there is no showing in the present case that petitioner represents *different* foreign manufacturers. Notably, it catered exclusively to FAPL for the period under consideration. Thus, We cannot readily apply the ruling in the *DBP* case in petitioner's favor.

Petitioner further argues that FAPL does not have a permanent establishment in the Philippines, as defined under the Philippines-

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[135] Id.; Underscoring supplied, emphasis in the original text and supplied.

Singapore Tax Treaty. However, paragraphs (1) and (3) of Article 2 of the Philippines-Singapore Tax Treaty reads as follows:

...

Article 2
TAXES COVERED

1. **This Convention shall apply to <u>taxes on income</u> imposed on behalf of each Contracting State**, irrespective of the manner in which they are levied.

...

3. The existing taxes to which the Convention shall apply are in particular:

    a) **in the case of the Philippines:**

    the <u>income taxes imposed by the Government of the Republic of the Philippines</u>, (hereinafter referred to as "Philippine tax")

    b) in the case of Singapore:

    the income tax (hereinafter referred to as 'Singapore tax').[136]

...

From the foregoing, it is clear that the said treaty does not apply to VAT, but only to income taxes. Such being the case, the provisions thereof may not be resorted to for purposes of interpreting or applying the provisions of the VAT law relative to zero-rating.

In any event, even granting that this Court ought to consider the provisions of the Philippines-Singapore Tax Treaty, the same is of no moment.

In arguing that FAPL has no permanent establishment in the Philippines and for claiming that it is an agent of an independent status, petitioner invokes, *inter alia*, paragraph (5) of Article 5 of the Philippines-Singapore Tax Treaty, which provides as follows:

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[136] Emphasis and underscoring supplied.

...

Article 5
PERMANENT ESTABLISHMENT

...

5. An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because that enterprise carries on business in that other Contracting State through a broker, general commission agent, or any other agent of an independent status, where such broker or agent is acting in the ordinary course of his business. **<u>However</u>, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he shall not be considered an agent of independent status within the meaning of this paragraph <u>if the transactions between the agent and the enterprise were not made under arm's length conditions</u>.**[137]

...

Petitioner contends that it acts for itself in the ordinary course of its business and is not *exclusively* devoted to or acting on behalf of FAPL.

While it may be shown that petitioner indeed acts in the ordinary course of its business, it would be irrelevant to point out that it is *"not exclusively devoted"* to act or acting on behalf of FAPL. To be sure, the foregoing provision of the Philippines-Singapore Tax Treaty qualifies the meaning of an agent of an independent status in that when the activities of such agent is ***"devoted wholly or almost wholly"*** (not *"exclusively"*) on behalf of the enterprise of the other Contracting State, the same agent shall ***not*** be considered as one of an independent status ***"if the transactions between the agent and the enterprise were not made under arm's length conditions."*** Otherwise stated, the subject agent will be considered as an agent of independent status only when the transactions between such agent and enterprise of the other Contracting State were made under **arm's length conditions**.

In this case, assuming (*ex gratia argumenti*) that petitioner's sales for the subject period relates only to its sales of services to FAPL, it can be said that for such period, petitioner's activities were devoted

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137 Emphasis and underscoring supplied.

wholly on behalf of FAPL. Petitioner, however, has not shown that its transactions with FAPL were made under arm's length conditions. Consequently, petitioner may not be considered as an agent of an independent status under the Philippines-Singapore Tax Treaty.

Anent petitioner's reliance on BIR Ruling No. DA-505-07 dated 26 September 2003, VAT Ruling No. 346-88 dated 01 August 1988, and VAT Ruling No. 345-88 dated 22 July 1988, the same is similarly misplaced.

It is a basic rule that a taxpayer cannot utilize for themselves specific BIR Rulings made for another, as only the taxpayer who sought such BIR Ruling may invoke the same.[138] Thus, as petitioner had not obtained a favorable ruling from the BIR categorically stating that FAPL is an NRFC (and thus petitioner's sales to FAPL is subject to VAT zero-rating), petitioner cannot seek refuge under a VAT Ruling that was issued for another entity.

In sum, petitioner failed to prove that its sales of services to FAPL is subject to the zero percent (0%) VAT rate, pursuant to Section 108(B)(2)[139] of the NIRC of 1997, as amended.

The above circumstances collectively synthesize the conclusion that FAPL, the sole recipient of petitioner's services that are allegedly subject to 0% VAT under Section 108(B)(2) of the NIRC of 1997, as amended, is doing business in the Philippines (contrary to petitioner's contentions). Simply stated, since petitioner's sole customer, FAPL, is deemed engaged or doing business in the Philippines, its services to FAPL cannot qualify for VAT zero-rating. To rule otherwise would permit foreign corporations to reap economic benefits from the services rendered within the country, while enjoying the protections afforded by the State, without the need to register and/or pay taxes herein.

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138 *San Miguel Corporation v. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 257697 and 259446, 12 April 2023; *Commissioner of Internal Revenue v. Filinvest Development Corporation, et seq.*, G.R. Nos. 163653 and 167689, 19 July 2011.

139 Supra at p. 18.

As such, it is no longer necessary to further delve into the remaining requisites for successfully obtaining a refund of input VAT, nor to address the other arguments raised by the parties herein.

It bears to emphasize that tax refunds or credits, just like tax exemptions, are to be strictly construed against taxpayers, the latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit.[140] Moreover, statutes in derogation of sovereignty such as those containing exemption from taxation should be strictly construed in favor of the state.[141] The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed[142], a burden which petitioner here failed to discharge.

In the same light, actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the pieces of evidence presented to entitle a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer-claimant to show that it has strictly complied with the conditions for the grant of the tax refund or credit.[143] For failure to substantiate the alleged zero-rated sales, petitioner cannot claim for refund the unutilized input VAT attributable thereto.

WHEREFORE, in view of all the foregoing, the Petition for Review filed by petitioner Firmenich (Philippines), Inc. on 25 July 2022 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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140 *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue*, G.R. No. 201326, 08 February 2017, citing *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (now Team Energy Corporation)*, G.R. No. 180434, 20 January 2016.

141 *Philippine Long Distance Telephone Company, Inc. v. City of Davao, et al.*, G.R. No. 143867, 25 March 2003.

142 *National Power Corporation v. Province of Isabela*, G.R. No. 165827, 16 June 2006, citing *Cyanamid Philippines, Inc. v. The Court of Appeals, et al.*, G.R. No. 108067, 20 January 2000.

143 *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, 19 February 2018, citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, 18 February 2008.

I CONCUR:

LANEE S. CUI-DAVID
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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
First Division Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the First Division Acting 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.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice