22-000346-0059

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10922

AVALOQ PHILIPPINES OPERATING HEADQUARTERS,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

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

ATTY. FELIX PAUL R. VELASCO III
ATTY. SYLVIA R. ALMA JOSE
ATTY. AYESHA HANIA GUILING-MATANOG
ATTY. CLARISSA J. VIRTUDES-BABARAN
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

CABRERA & COMPANY
28th Floor, AIA Tower (formerly Philamlife Tower)
8767 Paseo de Roxas
1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **August 29, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **September 2, 2025.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
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AVALOQ PHILIPPINES OPERATING HEADQUARTERS,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10922

Members:

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

Promulgated:

AUG 29 2025, 8:30 AM

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DECISION

CUI-DAVID, J.:

Before the Court is a *Petition for Review* (***Petition***)[1] filed on July 15, 2022, by petitioner Avaloq Philippines Operating Headquarters ("**Petitioner**"), pursuant to Section 112(A), in relation to Section 112(C), of the National Internal Revenue Code (**NIRC**) of 1997, as amended by Republic Act No. 10963, otherwise known as the Tax Reform for Acceleration and Inclusion (**TRAIN**) Law. The *Petition* seeks a refund in the amount of ₱2,233,944.02, allegedly representing petitioner's unutilized and/or excess input value-added tax (**VAT**) attributable to its zero-rated sales for the first (**1st**) quarter of calendar year (**CY**) 2020, covering the period from January 1, 2020 to March 31, 2020.[2]

THE PARTIES

Petitioner, Avaloq Philippines Operating Headquarters, is duly licensed by the Securities and Exchange Commission (**SEC**) as the regional operating headquarters (**ROHQ**) in the Philippines[3] of Avaloq Group AG, a multi-national company

[1] Docket, Vol. I, pp. 6–17.
[2] Docket, Vol. II, p. 687, *Pre-Trial Order*, I. Summary of the Case.
[3] Docket, Vol. IV, p. 1460, Exhibit "P-2".

organized and existing under the laws of Switzerland.[4] It is registered with the Bureau of Internal Revenue (**BIR**) with Tax Identification Number (**TIN**) 008-637-771-000.[5] Its registered address is at 8th and 9th Floors, Robinsons Summit Center, Ayala Avenue, Makati City 1226.

Respondent, Commissioner of Internal Revenue ("**CIR**" or "**Respondent**"), is vested by the NIRC, as amended, with the authority, among others, to decide, approve, and grant the application for the refund of excess or unutilized input VAT.[6] He may be served court processes and pleadings at the Litigation Division, Room 703, BIR National Office Building, Diliman, Quezon City.[7]

THE FACTS AND THE PROCEEDINGS

On March 31, 2022, petitioner filed an administrative claim for a refund of its accumulated excess input tax amounting to ₱2,233,944.02 with the VAT Credit Audit Division of the BIR.[8]

Petitioner alleges that it received, on June 16, 2022, a Letter[9] dated June 6, 2022 from the BIR denying its application for VAT refund for the period January 1 to March 31, 2020 (**BIR Denial Letter**) for lack of factual and legal basis.

On July 15, 2022, petitioner filed the present *Petition for Review,* praying that judgment be rendered ordering respondent to refund in its favor the amount of ₱2,233,944.02 representing its unutilized excess input VAT attributable to its zero-rated sales for the 1st quarter of CY 2020.[10] The case was raffled to the Court's Second Division.

On August 18, 2022, *Summons* was issued and received by respondent on August 30, 2022.[11]

On September 28, 2022, respondent filed a *Motion for Extension of Time to File Answer,*[12] which was granted by the

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4 *Id.* at 1446–1459, Exhibit "P-1".
5 *Id.* at 1461, Exhibit "P-3".
6 Docket, Vol. II, p. 676, *Joint Stipulation of Facts and Issues* (JSFI), I. Stipulation of Facts, par. 1a.
7 Docket, Vol. I, p. 502, *Answer*, par. 1.
8 Docket, Vol. II, p. 676, *JSFI, Stipulation of Facts*, par. 1b.
9 Exhibit "R-4", BIR Records, pp. 224–225.
10 Docket, Vol. I, p. 16, *Petition for Review*, Prayer.
11 *Id.* at 496.
12 *Id.* at 497–499.

Court on September 30, 2022.[13] Respondent filed his *Answer* on October 14, 2022,[14] within the extended period granted by the Court.

Subsequently, respondent submitted to the Court the BIR Records of the case, consisting of 232 pages, in his *Compliance* filed on October 18, 2022.[15]

On February 16, 2023, the Pre-Trial Conference was conducted. [16] Prior thereto, *Respondent's Pre-Trial Brief*[17] was filed on October 26, 2022, while petitioner filed its *Submission (of the Pre-Trial Brief of Petitioner Avaloq Philippines Operating Headquarters)* with attached *Pre-Trial Brief (of Petitioner Avaloq Philippines Operating Headquarters)* on February 13, 2023.[18]

On March 10, 2023, the parties filed their *Joint Stipulation of Facts and Issues,*[19] which was approved by the Court in a *Resolution* dated March 24, 2023.[20] In the same *Resolution,* the Pre-Trial was deemed terminated. The *Pre-Trial Order*[21] was issued on April 25, 2023.

In a *Resolution* issued on May 29, 2023, the present case was transferred to the Court's First Division pursuant to *Administrative Circular No. 01-2023 (Reorganizing the Divisions of the Court),* dated May 23, 2023.[22]

During trial, petitioner presented the testimonies of: (1) Ms. Viena Joy S. Mangaring (**Ms. Mangaring**), petitioner's Tax Specialist;[23] and Mr. Lucky Francis P. Felipe, the Independent Certified Public Accountant (**ICPA**).[24]

Petitioner filed its *Formal Offer of Evidence*[25] on October 20, 2023, with respondent's *Comment (Re: Formal Offer of*

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[13] *Id.* at 501, *Order* dated September 30, 2022.
[14] *Id.* at 502–509.
[15] *Id.* at 513–515, *Compliance*; 517, *Minute Resolution* dated October 25, 2022.
[16] *Id.* at 674–675, *Order* dated February 16, 2023.
[17] *Id.* at 518–522.
[18] Docket, Vol. II, pp. 532–548.
[19] *Id.* at 676–683.
[20] *Id.* at 685.
[21] *Id.* at 687–692.
[22] *Id.* at 693.
[23] Docket, Vol. I, pp. 60–74, Exhibit "P-33", Judicial Affidavit of Viena Joy S. Mangaring; Docket, Vol. II, pp. 549–556, Exhibit "P-34", Supplemental Judicial Affidavit of Viena Joy S. Mangaring; Docket, Vol. II, pp. 723–725, *Order* dated August 8, 2023.
[24] Docket, Vol. II, pp. 698–702, Exhibit "P-35", Judicial Affidavit of Lucky Francis P. Felipe; Docket, Vol. II, pp. 756–791, Exhibit "P-36", Judicial Affidavit of Lucky Francis P. Felipe; Docket, Vol. II, pp. 793–794, *Order* dated October 10, 2023.
[25] Docket, Vol. II, pp. 798–808.

Evidence)[26] thereto filed on October 23, 2023. In a *Resolution*[27] dated January 15, 2024, the Court admitted petitioner's exhibits except for Exhibit "P-24," for not being found in the records, and Exhibits "P-1", "P-2", "P-2-1", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-25", "P-25-1", "P-25-2", "P-25-3", "P-25-4", "P-26", "P-27", "P-28", "P-28-1", "P-29", "P-29-1", "P-29-2", "P-30", "P-30-1", "P-31", and "P-32," for failure to submit the duly marked exhibits.

Respondent, on the other hand, presented the testimony of Revenue Officer Florence Diana B. Villapando-Mendoza.[28] He filed his *Formal Offer of Evidence*[29] on January 24, 2024, with petitioner's *Comment on the Respondent's Formal Offer of Exhibits*[30] filed on January 30, 2024. In a *Resolution* dated March 6, 2024,[31] the Court admitted all of respondent's offered exhibits.

Meanwhile, on February 6, 2024, petitioner filed a *Motion for Reconsideration (Re: Resolution dated 15 January 2024 on Petitioner's Supplemental Formal Offer of Evidence dated 20 October 2023)*[32] [*Motion for Reconsideration*], praying for the Court to reconsider the denied exhibits in the January 15, 2024 *Resolution* and to set a *Commissioner's Hearing* for the marking of its documentary evidence. Respondent failed to file a comment on said *Motion for Reconsideration.*[33]

In a *Resolution*[34] dated April 26, 2024, the Court granted petitioner's prayer to set a *Commissioner's Hearing* for the comparison and marking of its documentary exhibits. The *Commissioner's Hearing* was held on May 9, 2024.[35]

In the meantime, respondent filed his *Memorandum*[36] on March 20, 2024, while petitioner filed its *Memorandum*[37] on April 12, 2024.

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26 Docket, Vol, III, p. 1295–1297.
27 *Id.* at 1302–1303.
28 Docket, Vol. I, pp. 527–531, Exhibit "R-6", Judicial Affidavit (of Florence Diana B. Villapando-Mendoza); Docket, Vol. III, pp. 1305–1306, *Order* dated January 24, 2024.
29 Docket, Vol. III, pp. 1308–1311.
30 *Id.* at 1313–1315.
31 *Id.* at 1334–1335.
32 *Id.* at 1317–1323.
33 *Id.* at 1329, *Notice* dated February 21, 2024; 1331, *Records Verification* dated March 1, 2024.
34 *Id.* at 1413–1415.
35 *Id.* at 1419–1420.
36 *Id.* at 1338–1349.
37 *Id.* at 1353–1408.

On May 14, 2024, petitioner filed a *Motion to Set Another Commissioner's Hearing*[38] (*Motion*) for the marking of its remaining documentary evidence. The Court granted the *Motion*[39] and the *Commissioner's Hearing* was held on May 30, 2024.[40]

Thereafter, petitioner filed its *Supplemental Formal Offer of Evidence.*[41] Respondent filed his *Comment (Re: Supplemental aFormal Offer of Evidence)*[42] on June 24, 2024. In a *Resolution*[43] dated September 13, 2024, the Court admitted all exhibits in petitioner's *Supplemental Formal Offer of Evidence,* and the case was deemed submitted for decision.

THE ISSUE

The sole issue for resolution by the Court, as stipulated by the parties, is:

> "Whether or not Petitioner is entitled to its claim for refund allegedly representing petitioner's unutilized and/or excess input VAT attributable to its zero-rated sales in the amount of Php2,233,944.02 for the 1st quarter of calendar year 2020 or for the period January 1, 2020 to March 31, 2020."[44]

Petitioner's arguments:

Petitioner raises the following arguments in support of its claim for refund:

1. Petitioner is a VAT-registered entity as required under Section 112(A) of the Tax Code, as amended;

2. The administrative and the judicial claims for refund were filed within the prescriptive period provided under the pertinent provisions of the Tax Code and its implementing rules and regulations;

3. It has sufficiently established the fact that the provision of services to its foreign clients are rendered in the Philippines;

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[38] *Id.* at 1426–1427.
[39] Docket, Vol. IV, p. 1429.
[40] Docket, Vol. III, pp. 1431–1432, *Commissioner's Report.*
[41] Docket, Vol. IV, pp. 1436–1445.
[42] *Id.* at 1843–1845.
[43] *Id.* at 1851–1853.
[44] Docket, Vol. II, p. 688, *Pre-Trial Order*, II. Statement of the Facts & Issues, B. Stipulation of Issue.

4. It is engaged in zero-rated transactions as required under the Tax Code and its pertinent rules and regulations and the sales were paid for in acceptable foreign currency exchange *via* intercompany offsetting agreement and the proceeds have been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (**BSP**);

5. The input taxes due from the purchases of goods and services directly attributable to its zero-rated sales were duly supported by VAT invoices or official receipts; and

6. The claimed input VAT payments were not applied against any output tax in the succeeding periods.[45]

Respondent's counter-arguments:

On the other hand, respondent contends that:

1. Petition must be dismissed for failure of petitioner to substantiate its administrative claim for refund;

2. Petitioner is not entitled to refund in the amount of ₱2,233,944.02; and

3. Tax refunds are construed strictly against the claimant for the same partake the nature of exemption from taxation and as such, they are looked upon with disfavor.[46]

THE COURT'S RULING

The instant *Petition for Review* must be denied.

Requisites for the grant of a refund or issuance of a tax credit certificate of unutilized or excess input VAT attributable to zero-rated sales.

A claim for refund or issuance of a tax credit certificate for unutilized or excess input VAT attributable to zero-rated or effectively zero-rated sales is governed by Section 112(A) and (C) of the NIRC of 1997, as amended. The pertinent provision reads:

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[45] Docket, Vol. III, pp. 1353–1408, *Memorandum*.
[46] *Id.* at 1338–1344, *Memorandum*.

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. (Emphasis supplied)

Based on the above provision and established jurisprudence, certain requisites must be met for a taxpayer-applicant to successfully obtain a refund or tax credit of unutilized or excess input VAT attributable to zero-rated sales. These requisites are classified into specific categories as follows:

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As to the timeliness of the filing of the administrative and judicial claims:

1. The refund claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made.[47]

2. In case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 90 days, the judicial claim has been filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 90-day period.[48]

Concerning the taxpayer's registration with the BIR:

3. The taxpayer is a VAT-registered person.[49] Relative thereto, it must be emphasized that registration is an indispensable requirement under our VAT law.[50]

In relation to the taxpayer's output VAT:

4. The taxpayer is engaged in zero-rated or effectively zero-rated sales.[51]

5. For zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2),[52] the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations.[53]

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47 *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010 [Per J. Carpio-Morales, Third Division]; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009 [Per J. Chico-Nazario, Third Division]; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007 [Per J. Callejo, Sr., Third Division].

48 See *Commissioner of Internal Revenue v. Vestas Services Philippines, Inc.*, G.R. No. 255085, March 29, 2023 [Per J. Hernando, First Division]; *Commissioner of Internal Revenue v. CE Casecnan Water and Energy Company, Inc.*, G.R. No. 212727, February 1, 2023 [Per J. Hernando, First Division]; *Energy Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 203367, March 17, 2021 [Per J. Hernando, Third Division]; [cf: Sections 7(a)(1) and (2), and 11 (first paragraph), RA No. 1125, as amended by RA No. 9282].

49 *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010 [Per J. Carpio-Morales, Third Division]; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009 [Per J. Chico-Nazario, Third Division]; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007 [Per J. Callejo, Sr., Third Division].

50 *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, G.R. No. 153866, February 11, 2005 [Per J. Panganiban, Third Division].

51 *Id.*

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

53 *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010 [Per J. Carpio-Morales, Third Division]; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009 [Per J. Chico-Nazario, Third Division]; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007 [Per J. Callejo, Sr., Third Division].

As regards the taxpayer's input VAT being refunded:

6. The input taxes are not transitional.[54]

7. The input taxes are due or paid.[55]

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.[56]

9. The input taxes have not been applied against output taxes during and in the succeeding quarters.[57]

In addition to the foregoing, the taxpayer-applicant must comply with the substantiation and invoicing requirements prescribed under the NIRC and its implementing rules and regulations.[58] Such compliance is indispensable to a "valid claim for input taxes attributable to zero-rated sales,"[59] as it provides the necessary basis to "determine the veracity of the taxpayer's claims."[60]

Strict adherence to these requirements is necessary considering the nature of the VAT system and its tax credit method, in which tax payments are based on output and input taxes, and the seller's output VAT becomes the buyer's input VAT that is available as a refund or tax credit in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates the computation of tax credits, and provides an accurate audit trail or evidence for BIR monitoring purposes.[61]

Finally, cases before this Court are litigated *de novo*. As such, party-litigants must prove **every minute aspect** of their case by presenting, formally offering, and submitting their

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54 *Id.*
55 *Id.*
56 *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009 [Per J. Chico-Nazario, Third Division]; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007 [Per J. Callejo, Sr., Third Division].
57 *Supra* note 47.
58 *Team Energy Corporation (Formerly: Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) v. Commissioner of Internal Revenue*, G.R. Nos. 197663 & 197770, March 14, 2018 [Per J. Leonen, Third Division].
59 *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013 [Per J. Perlas-Bernabe, Second Division].
60 *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018 [Per J. Martires, Third Division].
61 *Supra* note 58.

evidence to the Court of Tax Appeals.[62] It is incumbent upon petitioner to establish compliance with the foregoing requisites. As a corollary, the absence of *any* of these requisites or requirements constitutes valid grounds for denying the refund claim.

First and second requisites: Petitioner's administrative and judicial claims for refund were filed within their respective prescriptive periods.

The *first* requisite requires that a claim for a refund or tax credit of input VAT must be filed with the BIR within two years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

In this case, the claim pertains to the 1st quarter of CY 2020. Counting two years from the close of the said quarter, the last day or deadline for filing the administrative claim is as follows:

Period	Close of the Taxable Quarter	Last Day to File Administrative Claim	Filing Date of Administrative Claim
January 1 to March 31, 2020 (1st quarter)	March 31, 2020	March 31, 2022	March 31, 2022

Considering that petitioner filed an *Application for Tax Credits/Refunds (BIR Form No. 1914)* before the BIR on March 31, 2022, the administrative claim was filed within the prescribed two-year period. [63]

The *second* requisite necessitates that a judicial claim must be filed within thirty (30) days from the taxpayer's receipt of respondent's decision, or after the expiration of the ninety

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[62] *Commissioner of Internal Revenue v. Vestas Services Philippines, Inc.*, G.R. No. 255085, March 29, 2023 [Per J. Hernando, First Division]; *Commission of Internal Revenue v. Deutsche Knowledge Services, Pte. Ltd.*, G.R. Nos. 226548 & 227691, 226682–83, February 15, 2023 [Per J. M.V. Lopez, Second Division] citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007 [Per J. Corona, First Division]; See also *Edison (Bataan) Cogeneration Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 201665 & 201668, August 30, 2017 [Per J. Del Castillo, First Division]; *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, September 29, 2014 [Per J. Leonen, Second Division]; *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014 [Per J. Peralta, Third Division]; *Dizon v. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008 [Per J. Nachura, Third Division]; *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005 [Per J. Carpio-Morales, Third Division].

[63] Docket, Vol. IV, p. 1722, Exhibit "P-27".

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

From the filing of petitioner's administrative claim on March 31, 2022, respondent had 90 days therefrom, or until June 29, 2022, to act on said claim.

Petitioner received the BIR Denial Letter dated June 6, 2022, on June 16, 2022.[64] Counting 30 days from petitioner's receipt of the BIR Denial Letter, petitioner had until July 18, 2022, within which to file its judicial claim.[65] Hence, the present *Petition for Review* was timely filed on July 15, 2022.

Having settled that the *Petition for Review* was timely filed, the Court likewise rules that it has the requisite jurisdiction to take cognizance of this case under Section 3(a)(1), Rule 4[66] of the Revised Rules of the Court of Tax Appeals, in relation to Sections 7(a)(1) and (2), and 11 of RA No. 1125,[67] as amended by RA No. 9282.[68]

***Third requisite:* Petitioner is a VAT-registered entity.**

As to the *third* requisite, *i.e.,* the taxpayer-claimant is a VAT-registered entity, petitioner duly established the same through the presentation of its *BIR Certificate of Registration* (BIR Form No. 2303)[69] dated December 16, 2013, with OCN No. 9RC0000461791. The said BIR Certificate of Registration also indicates the different tax types for which petitioner is registered, namely: income tax, withholding tax, and VAT. Verily, petitioner has established that it is a VAT-registered entity.

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64 Par. 4 in relation to Annex C of the *Petition for Review*; Respondent's denial of the fact of receipt of the Denial Letter by petitioner, when such is plainly within his knowledge, is an ineffective denial and amounts to an admission (*Camitan, et al. v. Court of Appeals, et al.*, G.R. No. 128099, December 20, 2006 [Per J. Tinga, Third Division]).

65 July 16, 2022, the thirtieth (30th) day, fell on a Saturday.

66 SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:
(a) Exclusive original 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.

67 AN ACT CREATING THE COURT OF TAX APPEALS.

68 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 OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

69 Docket, Vol. IV, p. 1461, Exhibit "P-3".

<u>Fourth and fifth requisites:</u> Petitioner failed to establish that it is engaged in zero-rated or effectively zero-rated sales, as it failed to prove that the services rendered to its non-resident foreign affiliates were paid for in acceptable foreign currency.

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

In its Amended Quarterly VAT Return for the 1st quarter of CY 2020, petitioner declared zero-rated sales/receipts in the total amount of ₱156,901,623.37.[70] Petitioner alleges that during the said period, it rendered services to its non-resident foreign affiliates, which were billed and paid for in acceptable foreign currency and, as such, were subjected to VAT at zero percent (0%), broken down as follows:[71]

Customer	Zero-Rated Sales/Receipts (in USD)	Zero-Rated Sales/Receipts (in PHP)
AVALOQ Asia Pacific Pte. Ltd	$ 46,133.89	₱ 2,336,682.98
	4,508.58	228,359.72
	5,688.51	288,123.21
	11,983.15	606,946.92
AVALOQ Australia Pty. Ltd	25,588.04	1,296,035.03
AVALOQ Evolution AG	1,086.46	55,029.23
AVALOQ Licence AG	2,588,265.60	131,095,734.05
AVALOQ Sourcing (Switzerland And Liechtenstein) SA	117,967.41	5,975,053.03
AVALOQ Sourcing Asia Pacific (Singapore) Pte. Ltd	92,346.81	4,677,368.83
	44,874.07	2,272,873.06
AVALOQ UK Limited	961.34	48,691.90
AVALOQ Sourcing (Europe) AG	62,046.06	3,166,825.14
	95,100.10	4,853,900.27
Total	**$3,096,550.02**	**₱156,901,623.37**

[70] Docket, Vol. IV, p. 1462–1464, Exhibit "P-4", Amended Quarterly VAT Return for 1st quarter of CY 2020.
[71] *ICPA Report*, Exhibit "P-37", USB.

Petitioner anchors its claim on Section 108(B)(2), in relation to Sections 110(B) and 112(A) of the NIRC of 1997, as amended, which reads:

> SEC. 108. V*alue-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 the VAT-registered persons shall be subject to zero percent (0%) rate:
>
> ... ...
>
> (2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP); ...

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

(1) The recipient of the services is a foreign corporation doing business outside the Philippines, or a non-resident person not engaged in business who is outside the Philippines when the services are performed;[72]

(2) The services fall under any of the categories under Section 108(B)(2),[73] or simply, the services rendered should be other than "processing, manufacturing, or repacking goods";[74]

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72 *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue,* G.R. No. 201326, February 8, 2017 [Per J. Caguioa, First Division]; *Accenture, Inc. v. Commissioner of Internal Revenue,* G.R. No. 190102, July 11, 2012 [Per J. Sereno, Second Division]; *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* G.R. No. 153205, January 22, 2007 [Per J. Carpio, Second Division].

73 *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch),* G.R. No. 152609, June 29, 2005 [Per J. Panganiban, Third Division].

74 *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* G.R. No. 153205, January 22, 2007 [Per J. Carpio, Second Division].

(3) The services must be performed in the Philippines by a VAT-registered person;[75] and

(4) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[76]

As to the *first* essential element, to be considered a non-resident foreign corporation doing business outside the Philippines, the entity must present, at the very least, **both**: (1) a Certificate of Non-registration of Corporation/Partnership issued by the SEC; **and** (2) proof of incorporation/registration in a foreign country (*e.g.*, Articles/Certificate of Incorporation/Registration and/or Tax Residence Certificate).[77]

In the instant case, petitioner complied with both documentary requirements, as evidenced by the following:

Company Name	**Certification of Non-registration issued by SEC**	**Certification of foreign incorporation/ registration in a foreign country**
AVALOQ ASIA PACIFIC PTE. LTD	Exhibit "P-12-1"[78]	Exhibit "P-12"[79]
AVALOQ AUSTRALIA PTY. LTD	Exhibit "P-13-1"[80]	Exhibit "P-13"[81]
AVALOQ EVOLUTION AG	Exhibit "P-14-1"[82]	Exhibit "P-14"[83]
AVALOQ LICENCE AG	Exhibit "P-15-1"[84]	Exhibit "P-15"[85]
AVALOQ SOURCING (SWITZERLAND AND LIECHTENSTEIN) SA	Exhibit "P-16-1"[86]	Exhibit "P-16"[87]
AVALOQ SOURCING ASIA PACIFIC (SINGAPORE) PTE. LTD	Exhibit "P-17-1"[88]	Exhibit "P-17"[89]
AVALOQ UK LIMITED	Exhibit "P-18-1"[90]	Exhibit "P-18"[91]
AVALOQ SOURCING (EUROPE) AG	Exhibit "P-19-1"[92]	Exhibit "P-19"[93]

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75 *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007 [Per J. Carpio, Second Division]; *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005 [Per J. Panganiban, Third Division].
76 *Id.*
77 *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*, G.R. No. 234445, July 15, 2020 [Per J. Inting, Second Division].
78 BIR Records, p. 155.
79 Docket, Vol. IV, pp. 1487–1517.
80 BIR Records, p. 160.
81 Docket, Vol. IV, pp. 1522–1545.
82 BIR Records, p. 157.
83 Docket, Vol. IV, pp. 1566–1574.
84 BIR Records, p. 159.
85 Docket, Vol. IV, pp. 1575–1589.
86 BIR Records, p. 154.
87 Docket, Vol. IV, pp. 1590–1598.
88 BIR Records, p. 156.
89 Docket, Vol. IV, pp. 1599–1615.
90 BIR Records, p. 153.
91 Docket, Vol. IV, pp. 1616–1631.
92 BIR Records, p. 158.
93 Docket, Vol. II, pp. 1087–1096; Docket, Vol. IV, pp. 1636–1639.

With regard to the *second* essential element, petitioner submitted three contract agreements, the details of which are summarized below:

Exhibit No.	**Contract Description**	**Parties**	**Service Description**
"P-20"[94]	General Framework Services Agreement	By and between Avaloq affiliates: • AVALOQ GROUP AG; • AVALOQ EVOLUTION AG; • AVALOQ LICENCE AG; • AVALOQ SOURCING (SWTZERLAND & LIECHTENSTEIN) SA; • AVALOQ IBERIA S.L.U.; • AVALOQ SOURCING (DEUTSCHLAND) AG; • AVALOQ SERVICES DEUTSCHLAND GMBH; • AVALOQ DEUTSCHLAND GMBH; • AVALOQ SOFTWARE (DEUTSCHLAND) GMBH; • AVALOQ LUXEMBOURG SARL; • AVALOQ FRANCE SAS; • AVALOQ INNOVATION LTD; • AVALOQ UK LTD; • AVALOQ SOURCING ASIA PACIFIC (SINGAPORE) PTE LTD; • AVALOQ ASIA PACIFIC PTE LTD; • AVALOQ HONG KONG LIMITED; • AVALOQ PHILIPPINES ROHQ; and, • AVALOQ AUSTRALIA PTY LTD.	The AVALOQ Affiliates may engage any other AVALOQ Affiliate to provide the following services (non-exhaustive list) during the duration of the Agreement: preparation of analyses, making of status quo analyses, consulting, preparation of concepts, documentation, promotion of products and services, sub-project management, training and support in training services, support in implementation services, support in parametrization services, support in maintenance services, support with and coordination of Global Processing Network projects, coordination, audits, and support in acceptance. (Appendix 1)
"P-21"[95]	Contract Software Research & Development Agreement	Between: • AVALOQ LICENCE AG ("Company") and • AVALOQ PHILIPPINES OPERATING HEADQUARTERS ("Developer").	Developer shall perform the following research and development activities in connection with the products for the Company's account: Software Development, Software Architecture and Concepts, Testing, Business Analysis, Functionality Deployment, Product Customization and parametrisation, Integration of third party software, and Cooperation with third parties in specific research projects (with benefits for the Company). (Exhibit 1)
"P-22"[96]	Corporate Service Agreement	Between: • AVALOQ ASIA PACIFIC PTE. LTD. • AVALOQ HONG KONG LTD.	Avaloq Sourcing Asia Pacific (Singapore) Pte. Ltd. shall provide to the Receiving Party the following services: Corporate

[94] Docket, Vol. IV, pp. 1641–1659.
[95] *Id.* at 1662–1681.
[96] *Id.* at 1682-1692.

		• AVALOQ PHILIPPINES ROHQ; • AVALOQ AUSTRALIA PTY. LTD. (Receiving Party) • AVALOQ SOURCING ASIA PACIFIC (SINGAPORE) PTE. LTD. (ASAP)	Manage / Corporate Center, Finance / Accounting / Controlling, and Human Resources.

At the outset, it must be noted that the *Corporate Service Agreement* is not relevant to the instant case, as it pertains to Avaloq Sourcing Asia Pacific (Singapore) Pte. Ltd. as the party rendering or performing the services, with petitioner merely being the **recipient** of the services stated therein.

On the other hand, the *General Framework Services Agreement* is a general contract agreement among the parties. It provides that Avaloq Group AG's affiliates, including petitioner, may engage another affiliate to provide services listed in Appendix 1 of such agreement.[97] Thus, petitioner is duty-bound to render services to Avaloq Group AG and its affiliates whenever a request is made through a Service Order.[98]

As for the *Contract Software Research & Development Agreement* between Avaloq Licence AG and petitioner, the latter, as developer, is required to provide research and development activities to Avaloq Licence AG.

Evidently, the foregoing services rendered by petitioner fall within the scope of *"services other than processing, manufacturing or repacking goods."* Hence, petitioner has complied with the *second* essential element.

Moving on, the *third* essential element requires that the services be performed in the Philippines by a VAT-registered person.

While the *General Framework Services Agreement* and *Contract Software Research & Development Agreement* do not indicate that the services were performed in the Philippines, Ms. Mangaring, petitioner's Tax Specialist, clarified in her *Supplemental Judicial Affidavit*[99] that the services enumerated in the aforementioned agreements were rendered by petitioner in the Philippines, to wit:

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97 See "2. Provision of Services" and Appendix 1 of *General Framework Services Agreement*, Exhibit "P-20".
98 *Id.*
99 Docket, Vol. II, pp. 549-554, Exhibit "P-34", *Supplemental Judicial Affidavit of Viena Joy S. Mangaring.*

2. Q: What is the reason why you are executing this Supplemental Judicial Affidavit?

A: I am executing this [J]udicial Affidavit to supplement my testimony for this case as embodied in my earlier judicial affidavit executed on 15 July 2022. Specifically, I am executing this supplemental Judicial Affidavit to prove that Petitioner's provision of services to its non-resident foreign affiliates were all rendered in the Philippines.

3. Q: Can you please elaborate your statement that *"Petitioner's provision of services to its non-resident foreign affiliates were all rendered in the Philippines"*?

A: As previously mentioned in my Judicial Affidavit, Petitioner is the regional operating headquarter ("ROHQ") of Avaloq Group AG, a multinational company organized and existing under the laws of Switzerland. Further, Avaloq Philippines Operating Headquarters was established to provide general administration and planning, business planning and coordination, training and personnel management, logistic services, technical support and maintenance, data processing and communication, and business development to its foreign affiliates. Being situated in the Philippines, Petitioner's provision of services to its non-resident foreign affiliates were all rendered in the Philippines.

In support of the testimony of Ms. Mangaring, petitioner offered in evidence "*ProTime Logs for CY 2020*",[100] "*Column 'C' of the extracted ProTime Logs*",[101] "*Column 'K' of the extracted ProTime Logs*",[102] "*ProTime Employee Guideline*",[103] and "*Section 4.2.1 of ProTime Employee Guideline*".[104]

According to the *ProTime Employee Guideline*, ProTime is the "official tool to register working hours, absence hours and expenses." It also provides that all Avaloq employees are required to register their time therein.

Ms. Mangaring testified that "*Column K of the extracted ProTime logs*" indicates the location of services for the covered period. Section 4.2.1 of the *ProTime Employee Guideline* states

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[100] Docket, Vol. IV, pp. 1726–1767, Exhibit "P-29".
[101] *Id.* at 1726, Exhibit "P-29-1".
[102] *Id.* at 1726, Exhibit "P-29-2".
[103] *Id.* at 1768–1784 , Exhibit "P-30".
[104] *Id.* at 1775, Exhibit "P-30-1".

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that the symbol "*AA*" signifies that the location of service is in the Domestic country of the company rendering the service,[105] *viz.:*

> 4 Q: Ms. Witness, what proof, if any, would support your statement that *"Petitioner's provision of services to its non-resident foreign affiliates were all rendered in the Philippines?*
>
> A: I have here our extracted logs in our ProTime monitoring software (Avaloq's Official tool to register working hours, absence hours and performance hours), which we use to attribute our presence time in a specific project. This includes the location of the service, the non-resident affiliate to whom it was rendered, the month when the service was rendered and the corresponding time charges.
>
> Our services being rendered in the Philippines is established through our extracted ProTime logs for January to March 2020. Column K of the said document indicates the location of services for the covered period. [*Witness hands over the copies of the extracted logs Pre-marked as* Exhibits P-29]
>
> Based on Section 4.2.1 [*Pre-marked as* Exhibit P-30-1] of our Pro-Time - Employee Booking Guidelines the symbol "AA" signifies that the location of services is in the Domestic Country of the company rendering the service. However, in practice, the same may be replaced with the letter symbols of the country (e.g., "PH"). [*Witness hands over a copy of the ProTime - Employee Booking Guidelines Pre-marked as* Exhibits P-30]
>
> Correlating Column C [*Exhibit P-29-1*] and Column K of ProTime logs for January to March 2020 [*Exhibit P-29-2*], it is shown that the services rendered for the covered period were rendered in the Philippines.

Upon careful scrutiny of these exhibits, *i.e., Columns "C" and "K" of the extracted ProTime Logs* and *Section 4.2.1 of the ProTime Employee Guideline*, the Court confirms that the company rendering the service was under the name of "**Avaloq Philippines ROHQ**", petitioner herein, and the symbol indicated in the *ProTime Logs* for CY 2020 was "***AA***", which pertains to the domestic country, the **Philippines** in this case, where the services were rendered. Therefore, the Court finds the same sufficient to establish that the services were actually

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[105] Docket Vol. II, p. 551, Exhibit "P-34", *Supplemental Judicial Affidavit of Viena Joy S. Mangaring.*

performed in the Philippines, thereby satisfying the *third* essential element.

Lastly, the *fourth* essential element requires that, for zero-rated sales under Section 108(B)(2) of the NIRC of 1997, as amended, the acceptable foreign currency proceeds must be duly accounted for in accordance with BSP rules and regulations.

Before determining compliance with this element, the Court must first ascertain whether the VAT zero-rated sale of services, to which the foreign currency remittances correspond, is duly supported by VAT zero-rated official receipts (**ORs**), in accordance with the pertinent invoicing requirements under Section 113(A) and (B) of the NIRC of 1997, as amended, which reads:

> SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* -
>
> (A) *Invoicing Requirements.* - A VAT-registered person shall issue:
>
> (1) A **VAT invoice** for every sale, barter or exchange of goods or properties; and
>
> (2) A **VAT official receipt** for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* - The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN);
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided,* That:
>
> (a) The amount of the tax shall be shown as a separate item in the invoice or receipt;
>
> (b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

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

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated component of the sale.

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

(4) In the case of sales in the amount of One thousand pesos (₱1,000.00) or more where the sale or transfers 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. (Emphasis supplied)

Section 113 is implemented by Section 4.113-1 of Revenue Regulations (RR) No. 16-2005,[106] as amended, *viz.*:

SEC. 4.113-1. *Invoicing Requirements.* —

(A) A VAT-registered person shall issue: —

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

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

Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or official receipts. Said documents shall be considered as a "VAT Invoice" or "VAT official receipt". All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipts shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

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106 SUBJECT: Consolidated Value-Added Tax Regulations of 2005.

(B) *Information contained in VAT invoice or VAT official receipt.* — The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:

(a) The amount of tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from VAT, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) In the case of sales in the amount of one thousand peso (₱1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section.

Additionally, the ORs must be duly registered with the BIR, pursuant to Section 237, in relation to Section 238, of the NIRC of 1997, as amended, to wit:

SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, **issue duly registered receipts or sales or commercial invoices**, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service. ...

SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

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> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner. (Emphasis supplied)

Thus, only petitioner's sales of services that are supported by BIR-registered ORs, containing the required information and issued with a valid Authority to Print, shall qualify for VAT zero-rating. The above-stated invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[107] Moreover, it must be pointed out that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[108]

To support its zero-rated sales for the 1st quarter of CY 2020, petitioner submitted ORs and billing statements issued to its clients. Upon examination, the declared zero-rated sales of ₱156,901,623.37[109] are duly substantiated with valid ORs, as detailed below:

Billing Statement No.	Billing Statement Date	Name of Customer	Exhibit No.	OR No.	OR Date	Zero-rated sales/receipts (in USD)	Zero-rated sales/receipts (in PHP)	Exhibit No.
24300000175	09-Jan-20	Avaloq Asia Pacific Pte Ltd	"P-41"	104	01-Jan-20	$ 46,133.89	₱ 2,336,682.98	"P-54"
24300000180	09-Jan-20	Avaloq Asia Pacific Pte Ltd	"P-42"	105	01-Jan-20	4,508.58	228,359.72	"P-55"
24300000181	09-Jan-20	Avaloq Asia Pacific Pte Ltd	"P-43"	106	01-Jan-20	5,688.51	288,123.21	"P-56"
24300000182	09-Jan-20	Avaloq Asia Pacific Pte Ltd	"P-44"	107	01-Jan-20	11,983.15	606,946.92	"P-57"
24300000176	09-Jan-20	Avaloq Australia Pty Ltd	"P-45"	108	01-Jan-20	25,588.04	1,296,035.03	"P-58"
24300000174	09-Jan-20	Avaloq Evolution AG	"P-46"	109	01-Jan-20	1,086.46	55,029.23	"P-59"
24300000183	09-Jan-20	Avaloq Licence AG	"P-47"	110	01-Jan-20	2,588,265.60	131,095,734.05	"P-60"
24300000171	09-Jan-20	Avaloq Sourcing (Switzerland & Liechtenstein) SA	"P-48"	111	01-Jan-20	117,967.41	5,975,053.03	"P-61"
24300000173	09-Jan-20	Avaloq Sourcing Asia Pacific (Singapore) Pte. Ltd.	"P-49"	112	01-Jan-20	92,346.81	4,677,368.83	"P-62"
24300000178	09-Jan-20	Avaloq Sourcing Asia Pacific (Singapore) Pte. Ltd.	"P-50"	113	01-Jan-20	44,874.07	2,272,873.06	"P-63"

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107 *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018 [Per J. Martires, Third Division].

108 *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015 [Per J. Reyes, Third Division].

109 Docket – Vol. IV, p. 1463, Exhibit "P-4", Line 17.

24300000177	09-Jan-20	Avaloq UK Limited	"P-51"	114	01-Jan-20	961.34	48,691.90	"P-64"
24300000172	09-Jan-20	Avaloq Sourcing (Europe) AG	"P-52"	115	31-Mar-20	62,046.06	3,166,825.14	"P-65"
24300000179	09-Jan-20	Avaloq Sourcing (Europe) AG	"P-53"	116	31-Mar-20	95,100.10	4,853,900.27	"P-66"
Total						**$3,096,550.02**	**₱156,901,623.37**	

While there are no noted exceptions regarding compliance with invoicing requirements in the abovementioned ORs, petitioner nonetheless failed to sufficiently prove that the corresponding payments were inwardly remitted through the Philippine banking system and duly accounted for in accordance with BSP rules and regulations.

Petitioner alleges that its total receipts of ₱2,233,944.02 were treated as sales subject to VAT at zero percent (0%), as these represent fees collected for services rendered by petitioner in the Philippines to its non-resident foreign affiliates. These fees were allegedly billed and paid for in acceptable foreign currencies through intercompany offsetting agreements.[110] It further alleges that the fees were settled through a centralized clearing/netting system or group current account under Avaloq Group AG.

Notably, offsetting arrangements are recognized by the BIR as an alternative to actual inward remittance of foreign currency proceeds in export sales, as acknowledged in Revenue Memorandum Circular (**RMC**) No. 42- 2003,[111] *viz.*:

> Q-8: With the full liberalization of the BSP rules on foreign exchange and trade transactions (CB Circular No. 1389 dated April 13, 1993 enunciated in RMC No. 57-97), the BIR requirement for full documentation of proofs of inward remittances of export proceeds should no longer be enforced. Accordingly, what should be the acceptable documentary requirements in the processing of claims for TCC/refund, specifically on offsetting arrangements?
>
> A-8: In the case of offsetting arrangements, the following documents should be required:
>
> a. Import documents which created liability accounts in favor of the foreign parent or affiliated company;

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[110] Docket – Vol. III, pp. 1355–1356, *Memorandum*, par. 6.
[111] SUBJECT: Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters, July 15, 2003.

b. Other contracts with the foreign or affiliated company that brought about the liabilities which were offset against receivables from export sales;

c. Evidence of proceeds of loans, in case the claimant has received loans or advances from the foreign company;

d. Documents or correspondence regarding offsetting arrangements;

e. Confirmation of the offsetting arrangements by the heads of the business organizations involved;

f. Documents to prove actual export of goods; [and]

g. Documents to prove that the sales are zero-rated sales.

In her *Judicial Affidavit,*[112] Ms. Mangaring explained how the intercompany offsetting arrangement is implemented, to wit:

31. Q: Ms. Mangaring, do you know how Petitioner bills its foreign affiliates for the services rendered?

A: Yes. The "General Framework Services Agreement" that shows the guidelines for the provision of services between the affiliates of Avaloq Group AG, and the "Short Term Credit Facility Agreement" would explain how Avaloq PH bills its foreign affiliates.

The invoices billed by Petitioner are collected/offset against the loan payable to Avaloq Group AG. Based on the General Framework Services Agreement, the offsetting process of the receivables and payables of the Petitioner [is] as follows:

a. Avaloq PH maintains a "centralized" current account, in which the funding of Avaloq Group AG is being remitted pursuant to a Short-Term Credit Facility Agreement;

b. For the collection of intercompany invoices billed by Avaloq PH to its affiliates, these are collected/offset through this account.

To illustrate, whenever we obtain a "loan" from our head office — Avaloq Group AG, which is basically the funding we receive monthly, the funding/cash remitted is credited to Avaloq Group AG current account. The

[112] Docket, Vol. I, pp. 60–74, Exhibit "P-33", Judicial Affidavit of Viena Joy S. Mangaring.

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> amount receivable from the invoices billed for the services rendered to the affiliates of Avaloq PH will be debited or offset against this same account.
>
> ... ...
>
> 34. Q: Ms. Mangaring, how did Petitioner collect/offset the intercompany services billed against the loan payable to Avaloq Group AG pursuant to the Short-Term Credit Facility?
>
> A: Under the Short-Term Credit Facility, Petitioner is entitled to request for a loan in the form of advance and/or overdraft from Avaloq Group AG. The loan amount, which varies depending on the financial necessity of the Petitioner to support its operations, are remitted by Avaloq Group AG in foreign currency denominated. The remitted amount forms part of the loan payable of Petitioner which are then offset against the intercompany invoices billed to the foreign affiliates of Avaloq PH.

Essentially, petitioner receives foreign currency funding from its head office, Avaloq Group AG, which is recorded in its books as a loan payable to Avaloq Group AG. From this loan, petitioner offsets all receivables earned from services rendered to the affiliates of Avaloq Group AG. To support this assertion, petitioner presented the following documentary evidence:

1. Short-Term Credit Facility Agreement (**STCFA**);[113]
2. Drawdown requests and e-mails;[114]
3. Apostilled English-translated debit advice issued by Credit Suisse (Schweiz) AG;[115]
4. Bank Statements issued by the Bank of the Philippine Islands;[116] and
5. Schedule of Offsetting of Receivables;[117]

The STCFA was executed between Avaloq Group AG and its various affiliates, including petitioner. The following are the pertinent information stated therein:[118]

[113] Docket, Vol. IV, pp. 1694–1705, Exhibit "P-23".
[114] *Id.* at 1713–1720, Exhibits "P-25" to "P-25-4".
[115] Exhibits "P-67" to "P-70", USB.
[116] Docket, Vol. IV, pp. 1706–1712, Exhibit "P-24".
[117] *Id.* at 1721, Exhibit "P-26"; See also *ICPA Report*, Annex 1, USB.
[118] *ICPA Report*, Table 17, p. 8–9.

	Short Term Credit Facility
Parties	Avaloq Group AG (Hereinafter referred to as "*AVG*") and o Avaloq Evolution AG o Avaloq Licence AG o Avaloq Sourcing (Switzerland & Liechtenstein) SA o Avaloq Outline AG o Avaloq Iberia S.L.U. o Avaloq Sourcing (Europe) AG o Avaloq Services Deutschland GMBH o Avaloq Deutschland GMBH o Avaloq Software (Deutschland) GMBH o Avaloq Luxembourg SARL o Avaloq France SAS o Avaloq Innovation Ltd o Avaloq UK Ltd o Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd o Avaloq Asia Pacific Pte Ltd o Avaloq Hong Kong Limited o Avaloq Philippines ROHQ o Avaloq Australia Pty Ltd (Hereinafter referred to collectively or individually as the "*Borrower*")
Facility	AVG will be entitled to make available to Borrower, and Borrower will be entitled to request from AVG loans in the following forms (Drawings): o Advance; and/or o Overdraft Borrower will be entitled to make available to AVG, and AVG undertakes to accept from Borrower loans in the following forms (Deposits): o Time Deposits; and/or o Cash Balance
Interest	Interest on the Drawings (Advances and/or Overdraft) and Deposits (Time Deposits and/or Cash Balance) will be calculated for each interest period on the actual number of days elapsed over a year of 360 days at the relevant interest rate plus an agreed arm's length margin.

Indeed, a perusal of the STCFA validates petitioner's claim that it is being loaned amounts in foreign currency, *i.e.*, in US Dollars, by its head office, Avaloq Group AG, to meet its financial needs. This is supported by the fact that petitioner requested loans from Avaloq Group AG, as evidenced by drawdown requests and e-mails sent by Ms. Mary Lalaine Munar, the Senior Accountant of petitioner, during the period covered by the claim.[119] In turn, Avaloq Group AG provided the

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[119] Docket, Vol. IV, pp. 1713–1720, Exhibits "P-25" to "P-25-4"; See also *ICPA Report*, Table 18, p. 9–10, *viz.*:

Email Subject	Email Date	Exhibit No.	Email Sent by	Amount Requested in USD	Amount Requested in PhP
Fund Transfer	January 10, 2020	P-25	Mary Lalaine Munar	600,000.00	-
Fund Transfer	January 27, 2020	P-25-1	Mary Lalaine Munar	500,000.00	-
Fund Transfer	February 13, 2020	P-25-2	Mary Lalaine Munar	600,000.00	-

requested amounts, as shown in a corresponding debit advice issued by Credit Suisse (Schweiz) AG.[120] Upon verification, the requested amounts can be traced to petitioner's US Dollar account with the Bank of the Philippine Islands (**BPI**), as indicated in its BPI Bank Statement.[121]

However, while the STCFA and related documents confirm that petitioner had loan transactions in foreign currency with Avaloq Group AG, they fail to prove that such advances from Avaloq Group AG can be the subject of set-off as payment for receivables earned by petitioner from its sales of services to other affiliates.

First, the STCFA is an undertaking between Avaloq Group AG, as the primary party and lender, and each affiliate, as borrower. It does not include a loan agreement between one affiliate and another.

Fund Transfer	March 13, 2020	P-25-3	Mary Lalaine Munar	800,000.00	-
Fund Transfer	March 18, 2020	P-25-4	Adrian Siegenthaler	-	40,000,000.00
Total				**2,500,000.00**	**40,000,000.00**

[120] Exhibits "P-67" to "P-70", USB; See also *ICPA Report*, Table 19, p. 10, *viz.*:

Email Date	Exhibit No.	Amount Requested in USD	Amount Requested in PhP	Debit Advice Date	USD Amount per Debit Advice	Held in the Name	Beneficiary No.	Beneficiary Name
January 10, 2020	P-25	600,000.00	-	13.01.2020	600,000.00	Avaloq Group AG	3024033456	Avaloq Philippines Operating HQ
January 27, 2020	P-25-1	500,000.00	-	29.01.2020	500,000.00	Avaloq Group AG	3024033456	Avaloq Philippines Operating HQ
February 13, 2020	P-25-2	600,000.00	-	18.02.2020	600,000.00	Avaloq Group AG	3024033456	Avaloq Philippines Operating HQ
March 13, 2020	P-25-3	800,000.00	-	16.03.2020	800,000.00	Avaloq Group AG	3024033456	Avaloq Philippines Operating HQ
March 18, 2020	P-25-4	-	40,000,000.00					
Total		**2,500,000.00**	**40,000,000.00**		**2,500,000.00**			

[121] Docket, Vol. IV, pp. 1706–1712, Exhibit "P-24"; See also *ICPA Report*, Table 20, p. 10, *viz.*:

Debit Advice Date	USD Amount per Debit Advice	Held in the Name	Beneficiary No.	BPI Account Name	BPI Account No.	Period Covered	Amount	Difference
13.01.2020	600,000.00	Avaloq Group AG	3024033456	Avaloq Phils Operating Headquarters	BPI USD 3024-0334-56	Dec. 31, 2019 - Mar. 31, 2020	599,962.50	37.50
29.01.2020	500,000.00	Avaloq Group AG	3024033456	Avaloq Phils Operating Headquarters	BPI USD 3024-0334-56	Dec. 31, 2019 - Mar. 31, 2020	499,962.50	37.50
18.02.2020	600,000.00	Avaloq Group AG	3024033456	Avaloq Phils Operating Headquarters	BPI USD 3024-0334-56	Dec. 31, 2019 - Mar. 31, 2020	599,962.50	37.50
16.03.2020	800,000.00	Avaloq Group AG	3024033456	Avaloq Phils Operating Headquarters	BPI USD 3024-0334-56	Dec. 31, 2019 - Mar. 31, 2020	799,962.50	37.50
TOTAL	**2,500,000.00**						**2,499,850.00**	**150.00**

According to petitioner, the difference noted aggregating to USD 150.00 pertains to Bank Charges.

Second, the STCFA does not provide for an offsetting arrangement between Avaloq Group AG's advances to petitioner and the latter's receivables from Avaloq Group AG's affiliates. It would be erroneous to construe paragraph "12. Set Off Balances"[122] of the STCFA as authorizing offsetting arrangements between affiliates, as the provision contemplates **set-offs of credits between the lender-parent company and its borrower-affiliates**. In other words, it refers only to a set-off of credits between Avaloq Group AG and an affiliate, ***not*** between one affiliate and another.

Third, Avaloq Group AG is a distinct legal entity from its affiliates. Thus, the right of offset between petitioner and other affiliates cannot be presumed, but must be established by evidence. If an offsetting arrangement exists among Avaloq Group AG affiliates, it should have been covered by a separate agreement executed between and among them. Unfortunately, petitioner failed to submit evidence of this separate agreement.

To reiterate, RMC No. 42-2003 provides that, in the case of offsetting arrangements, documents or correspondence regarding such offsetting arrangements and contracts with the foreign or affiliated company must be presented to prove that payments in foreign currency were accounted for in accordance with BSP rules and regulations.

In the present case, petitioner failed to adduce these documents or contracts, which would support a valid offsetting arrangement between petitioner and Avaloq Group AG's affiliates. If there is indeed an offsetting arrangement between and among Avaloq Group AG's affiliates, it must be corroborated by a separate agreement between and among such affiliates. This interpretation is duly supported by paragraph 7.3 Invoice and Payment Terms of the *General Framework Services Agreement,* which provides: "[t]he contracting entity and each service provider may agree on alternative methods for the payment of the Service Fees due to the Service Provider, including by way of centralized clearing/netting system or group current accounts." Thus, a separate agreement between or among Avaloq Group AG's affiliates, or at the very least, a provision in the STCFA to that effect, is necessary before such

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[122] Par. 12, Set-Off Balances of the Short Term Credit Facility Agreement provides:

Both parties authorize each other to set-off any credit balance in any currency to which it is entitled on any account in satisfaction of any sum due and payable under this Agreement but unpaid. For this purpose, both parties are authorized to purchase with the monies standing to the credit of any such account such other currencies as may be necessary to effect such application.

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an offsetting arrangement can take effect between and/or among Avaloq Group AG's affiliates.

Assuming *arguendo,* that the STCFA is sufficient to prove that a valid offsetting arrangement between petitioner and Avaloq Group AG's affiliates was authorized, petitioner must still establish the actual details of the offsetting that occurred between petitioner's receivables from its sales of services to Avaloq Group AG's affiliates and the advances made by Avaloq Group AG. In line with this, a Schedule of Offsetting of Receivables[123] was presented. An excerpt of the relevant details of the said schedule for the covered period of claim is shown below:

Exhibit No.	Document Number	Transaction Date	Name of Foreign Affiliates	Nature of Transaction	Amount in Foreign Currency	Amount Collectible by Avaloq PH in PhP (-)	Withdrawal from Group Account Transfer to Avaloq PH BPI USD Account (+)	Interest Income from Receivable from Foreign Affiliates (-)	Interest and Other Payables to Foreign Affiliates (+)	Group Account Balance (PhP)
OUTSTANDING RECEIVABLE FROM / (PAYABLE TO) AVALOQ GROUP AG as of 31 DECEMBER 2019										**67,249,973.00**
P-61	OR 0000111	01-Jan-20	Avaloq Sourcing (Switzerland & Liechtenstein) SA	Sale of Service	117,967.41	5,975,053.03				61,274,919.97
P-62	OR 0000112	01-Jan-20	Avaloq Asia Pte Ltd	Sale of Service	92,346.81	4,677,368.83				56,597,551.14
P-59	OR 0000109	01-Jan-20	Avaloq Evolution AG	Sale of Service	1,086.46	55,029.23				56,542,521.91
P-54	OR 0000104	01-Jan-20	Avaloq Asia Pte Ltd	Sale of Service	46,133.89	2,336,682.98				54,205,838.93
P-58	OR 0000108	01-Jan-20	Avaloq Australia Pty Ltd	Sale of Service	25,588.04	1,296,035.03				52,909,803.90
P-64	OR 0000114	01-Jan-20	Avaloq UK Limited	Sale of Service	961.34	48,691.90				52,861,112.00
P-63	OR 0000113	01-Jan-20	Avaloq Asia Pte Ltd	Sale of Service	44,874.07	2,272,873.06				50,588,238.94
P-55	OR 0000105	01-Jan-20	Avaloq Asia Pte Ltd	Sale of Service	4,508.58	228,359.72				50,359,879.22
P-56	OR 0000106	01-Jan-20	Avaloq Asia Pte Ltd	Sale of Service	5,688.51	288,123.21				50,071,756.01
P-57	OR 0000107	01-Jan-20	Avaloq Asia Pte Ltd	Sale of Service	11,983.15	606,946.92				49,464,809.09
P-60	OR 0000110	01-Jan-20	Avaloq Licence AG	Sale of Service	2,588,265.60	131,095,734.05				(81,630,924.96)
P-71		13-Jan-20		Remittances from Avaloq Group AG to BPI USD 3024-0334-56	600,000.00		30,390,018.88			(51,240,906.08)
P-71		29-Jan-20		Remittances from Avaloq Group AG to BPI USD 3024-0334-56	500,000.00		25,325,015.73			(25,915,890.35)
	Non-VAT AR	31-Jan-20	Avaloq Asia Pte Ltd	Sale of Service	(1,876.30)	(95,034.65)				(25,820,855.70)
P-71		18-Feb-20		Remittances from Avaloq Group AG to BPI USD 3024-0334-56	600,000.00		30,608,952.39			4,788,096.69
P-65	OR 0000115	01-Mar-20	Avaloq Sourcing (Europe) AG	Sale of Service	62,046.06	3,166,825.14				1,621,271.55
P- 66	OR 0000116	01-Mar-20	Avaloq Sourcing (Europe) AG	Sale of Service	95,100.10	4,853,900.27				(3,232,628.72)

[123] Docket, Vol. IV, p. 1721, Exhibit "P-26"; See also *ICPA Report*, Annex 1, USB.

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	1130006353	01-Mar-20	Avaloq Evolution AG	Payable to Avaloq Group AG: for invoices issued by Foreign Affiliates	72,960.00				3,851,351.35	618,722.63
P-71		17-Mar-20		Remittances from Avaloq Group AG to BPI USD 3024-0334-56	800,000.00		40,831,925.68			41,450,648.31
		20-Mar-20		Remittances from Avaloq Group AG to BPI USD 3024-0334-56			40,000,000.00			81,450,648.31
		31-Mar-20		Interest Income on Receivable from Avaloq Group AG (2020):	20,867.11			1,053,644.57		80,397,003.74
		31-Mar-20		Interest Expense on advances received from Avaloq Group AG, net of withholding tax remitted to BIR					1,157,770.80	81,554,774.54

According to the ICPA, the amounts received by petitioner from Avaloq Group AG were duly accounted for in the schedule of offsetting as presented in Annex 1 of the ICPA Report. However, the ICPA's findings are not conclusive upon the Court.[124] A closer examination of the Schedule of Offsetting of Receivables reveals that it does not show the actual details of the offsetting between petitioner's receivables from sales of services to Avaloq Group AG's affiliates and the advances made by Avaloq Group AG. Rather, it only shows additions and deductions to the "Group Account Balance."

Moreover, the Court was not able to ascertain that such loan transactions were treated as payments for the services provided by petitioner to Avaloq Group AG's affiliates. The Court cannot presume which loan amounts were made to directly offset a receivable from petitioner's non-resident foreign affiliates, and if such authority to offset exists. The schedule itself is self-serving, and together with the other documents, it merely proves that there was a transfer of funds representing loans.

Given the foregoing reasons, petitioner failed to establish compliance with the *fourth* essential element, which is correlated to the *fifth* requisite for the grant of a refund or tax

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[124] Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals provides:

> SEC. 3. *Findings of independent CPA.* – The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.

credit of input VAT under Section 112(A) of the NIRC of 1997, as amended. The existence of a valid offsetting arrangement, which may serve as an alternative to actual inward remittance of foreign currency in consideration for services rendered to Avaloq Group AG's affiliates, who are non-resident foreign corporations or entities, was not convincingly established. Therefore, petitioner failed to prove that it is engaged in zero-rated sales of services in accordance with Section 108 (B)(2) of the NIRC of 1997, as amended.

All told, as petitioner was unable to prove compliance with the *fourth* and *fifth* requisites for the grant of a refund or tax credit of input VAT under Section 112(A) of the NIRC of 1997, as amended, the Court need not belabor petitioner's compliance with the other requisites. Indeed, it is clear that the present *Petition for Review* must perforce fail.

As a final note, it must be emphasized that actions for a refund or tax credit, as in the present case, are in the nature of tax exemptions. As such, they are regarded as a derogation of sovereign authority and construed *strictissimi juris* against the person or entity claiming the refund.[125] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[126] Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented, as they are not intended to be liberally construed.[127] Hence, an applicant for a claim for refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[128]

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* filed on July 15, 2022, is **DENIED** for lack of merit.

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125 *Commissioner of Internal Revenue v. S.C. Johnson & Son, Inc., et al.*, G.R. No. 127105, June 25, 1999 [Per J. Gonzaga-Reyes, Third Division].

126 *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*, G.R. No. 211779 (Notice), November 3, 2020 [Per Resolution, First Division]; *Kepco Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011 [Per J. Mendoza, Second Division] citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008 [Per J. Velasco, Jr., Second Division].

127 *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018 [Per J. Peralta, Second Division].

128 *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015 [Per J. Reyes, Third Division] citing *J.R.A. Philippines, Inc. v. CIR*, G.R. No. 171307, August 28, 2013 [Per J. Perlas-Bernabe, Second Division].

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

(See Separate Opinion)
ROMAN G.DEL ROSARIO
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

First Division

AVALOQ PHILIPPINES OPERATING HEADQUARTERS, Petitioner,	**CTA Case No. 10922**
	Members:
	DEL ROSARIO, *P.J., Chairperson,* **BACORRO-VILLENA,** and **CUI-DAVID,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 29 2025; 8:30AM

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SEPARATE OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the present Petition for Review for petitioner's failure to prove that the proceeds of its alleged zero-rated sales were paid for in acceptable foreign currency and duly accounted for in accordance with BSP rules and regulations.

In addition, I find that petitioner failed to comply with the pertinent invoicing requirements under Section 113(B)(2)(c) of the NIRC of 1997, as amended, to wit:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.*
>
> xxx xxx xxx
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* - The following information **shall** be indicated in the VAT invoice or VAT official receipt:
>
> x x x

> (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:
>
> x x x
>
> **(c) If the sale is subject to zero percent (0%) value-added tax, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;**
>
> (d) If the sale involved goods, properties or services some of which are **subject to and some of which are VAT zero-rated or VAT exempt**, the invoice or receipt shall clearly indicate the **breakdown** of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale. x x x" *(Boldfacing and underscoring supplied)*

The above provision is implemented by Section 4.113-1 of Revenue Regulations (RR) No. 16-2005, as amended, which reads:

> "SEC. 4.113-1. *Invoicing Requirements.* -
>
> x x x
>
> (B) *Information contained in VAT invoice or VAT official receipt.-* The following information shall be indicated in VAT invoice or VAT official receipt:
>
> x x x
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; Provided, That:
>
> x x x
>
> **(c) If the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;**
>
> **(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT -exempt, the invoice or receipt shall clearly indicate the break-down** of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale." *(Boldfacing and underscoring supplied)*

Verily, it is a requirement that for any VAT invoice or official receipt evidencing a zero-rated transaction, the term **"zero-rated sale" should be written or printed prominently thereon**. Failure to comply with the invoicing requirements is sufficient ground to deny the claim for refund or tax credit.[1]

In a number of cases,[2] the Supreme Court has ruled that the writing or imprinting of the term "zero-rated sale" on the VAT invoice or official receipt is **indispensable** for a valid claim for refund of unutilized input tax. This requirement was traced by the Supreme Court from Section 4.108-1 of RR No. 7-95, which has been incorporated in Section 113(B)(2)(c) of the NIRC of 1997, as amended, by virtue of the amendments introduced by Republic Act No. 9337, which confirms the validity of the imprinting requirement on VAT invoices or official receipts, *viz.*:[3]

> "**RR 7-95, which took effect on 1 January 1996, proceeds from the rule-making authority granted to the Secretary of Finance** by the NIRC for the efficient enforcement of the same Tax Code and its amendments. In Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue, we ruled that this provision is reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services.' Moreover, we have held in Kepco Philippines Corporation v. Commissioner of Internal Revenue that **the subsequent incorporation of Section 4.108-1 of RR 7-95 in Section 113(B)(2)(c) of R.A. 9337 actually confirmed the validity of the imprinting requirement on VAT invoices or official receipts - a case falling under the principle of legislative approval of administrative interpretation by reenactment."** (Boldfacing supplied)

Revenue Memorandum Circular No. 42-2003 provides that if the refund claim is based on the existence of zero-rated sales but the taxpayer fails to comply with the invoicing requirements, such claim should be **denied**, viz.:

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[1] *Commissioner of Internal Revenue vs. Philex Mining Corporation*, G.R. No. 230016, November 23, 2020.

[2] *Panasonic Communications Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010; *J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 177127, October 11, 2010; *Hitachi Global Storage Technologies Philippines Corp. vs. Commissioner of Internal Revenue*, G.R. No. 174212, October 20, 2010; *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181858, November 24, 2010; *Silicon Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011; *Western Mindanao Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181136, June 13, 2012; *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

[3] *Western Mindanao Power Corporation vs. Commissioner of Internal Revenue, id.*

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> "Q-13: Should penalty be imposed on TCC application for failure of claimant to comply with certain invoicing requirements, (e.g., sales invoices must bear the TIN of the seller)?
>
> A-13: **Failure by the supplier to comply with the invoicing requirements** on the documents supporting the sale of goods and services will result to the **disallowance** of the claim for input tax by the purchaser-claimant." (Boldfacing supplied)

A scrutiny of **all the official receipts**[4] submitted by petitioner reveals that the words **"zero-rated sale" were not separately written or printed prominently thereon**. What appears on record are VAT official receipts that are exclusively intended for <u>mixed</u> transactions, that is – for sales subject to VAT and some which are VAT zero-rated or VAT exempt. In other words, notwithstanding the fact that petitioner indicated in the breakdown of the VAT official receipts the amount pertaining to "zero-rated sales", such however did **not in any way cure its failure to comply with the "prominent" imprinting requirement.**

Verily, when the transaction involves a purely VAT zero-rated sale, the VAT official receipt should prominently bear the phrase "zero-rated sale" in accordance with **Paragraph (c)** of Section 113(B)(2) of the NIRC of 1997, as amended. However, when the transaction is mixed, *i.e.,* a combination of VATable, VAT-exempt or VAT zero-rate sales, the breakdown requirement under **Paragraph (d)** of Section 113(B)(2) may apply. In the case at bar, **all of petitioner's VAT official receipts pertain to purely VAT zero-rated sales, yet the "prominent" imprinting of the required phrase "zero-rated sale" remained lacking.**

If the breakdown format is intended by law to be sufficient in all types of transactions- whether **mixed transactions <u>or</u> purely "zero-rated sales" transactions**, then the law does not make sense in crafting **separate provisions**, one, in requiring the use of "breakdown format", and another, mandating a separate format that requires imprinting of "zero-rated sale" in purely VAT zero-rated sale transactions.

Section 113 of the NIRC of 1997, as amended, in both its previous form under Republic Act (RA) No. 9337, which is applicable to this case, and present form as introduced by RA No. 11976, otherwise known as "Ease of Paying Taxes Act", requires the use of two (2) formats, that is, either the use of invoices bearing prominently the phrase "zero-rated sale" **<u>or</u>** the use of invoices bearing the

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[4] Exhibits "P-54" to "P-66", USB.

"breakdown format" **(depending upon the nature or type of sale involved)**. Section 113 of the NIRC of 1997, as amended by RA No. 9337 and RA No. 11976 read as follows:

RA No. 9337	**RA No. 11976**
SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* – (A) *Invoicing Requirements.* - A VAT-registered person shall issue: (1) A VAT invoice for every sale, barter or exchange of goods or properties; and (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services. (B) *Information Contained in the **VAT Invoice or VAT Official Receipt**.* — The following information shall be indicated in the VAT invoice or VAT official receipt: xxx xxx xxx (c) If the sale is subject **to zero percent (0%)** value-added tax, the term **'zero-rated sale' shall be written or printed prominently** on the invoice or receipt; (d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, **the invoice or receipt shall clearly indicate the <u>break-down</u> of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt**: *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-	Section 113. Invoicing and Accounting Requirements for VAT-Registered Persons.- (A) Invoicing Requirement. - A VAT-registered person shall issue a VAT invoice for every sale, barter, exchange, or lease of goods or properties, and for every sale, barter or exchange of services. (B) Information Contained in the VAT Invoice. - The following information shall be indicated in the **VAT invoice**: xxx xxx xxx (c) If the sale is subject to **zero percent (0%)** value-added tax, the term **'zero-rated sale' shall be written or printed on the invoice**; (d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, **the invoice shall clearly indicate the <u>breakdown</u> of the sale price between its taxable, exempt, and zero-rated components**, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice: *Provided*, That the seller may issue separate invoices for the taxable, exempt, and zero-rated components of the sale. xxx

rated components of the sale. xxx	

Interestingly, the Ease of Paying Taxes Act,[5] **has retained specific but separate provisions on the type of sales subject to "prominent" imprinting of "zero-rated sale" and those that are subject to "breakdown format"**, albeit with a minor modification on the imprinting requirement, *i.e.*, the omission of the word "prominently" to qualify the requirement. The retention of both requirements supports the interpretation that the **format requiring the "prominent" imprinting of "zero-rated sales" is indeed separate and distinct from the format requiring "breakdown" for mixed transactions**.

In numerous VAT refund cases, this Court had allowed erasures and corrections in invoices or official receipts as long as they are made by an authorized signatory. Such treatment of allowing erasures and corrections in invoices or official receipts, especially on the parts where the types and amounts of sales are shown, creates a risk that ill-intentioned taxpayers may manipulate zero-rated sale transactions who make use of the "breakdown format" without "zero-rated sale" separately and prominently written in the official receipts by altering such invoices or receipts to appear as VATable transactions, thus eventually allowing them to be entitled to input tax credits. **To prevent such abuse, which cannot simply be discounted, the requirement of "prominent" imprinting of the term "zero-rated sales" in receipts involving purely zero-rated sale transaction is and should be implemented. This measure ensures that alterations cannot easily convert zero-rated sales into VATable sales, and thus prevent the evil, i.e., the use of credits against output tax liability, or worse, refund of taxes not actually incurred or paid.**

ALL TOLD, I *VOTE* to **DENY** the Petition for Review for lack of merit, the petitioner having failed to establish its zero-rated sales due to non-compliance with substantiation requirements under relevant laws and regulations.

ROMAN G. DEL ROSARIO
Presiding Justice

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[5] RA No. 11976.