REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

*Third Division*

**ASURION HONG KONG LIMITED-ROHQ,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 9852**

Members:

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

Promulgated:
FEB 09 2022
3:54 p.m.

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# DECISION

***RINGPIS-LIBAN, J.:***

## The Case

This case involves Petitioner's claim for the issuance of tax credit certificate for Petitioner's excess and unutilized input value-added tax ("VAT") attributable to its zero-rated sales of service for the period of January 01, 2016 to June 30, 2016 in the amount of Php13,650,684.76.[1]

## The Parties

Petitioner Asurion Hong Kong Limited – ROHQ is the Philippine Branch of a multinational company organized and existing under the laws of Hong Kong. It is licensed by the Securities and Exchange Commission ("SEC") to transact business in the Philippines as a regional operating headquarters ("ROHQ") under SEC Registration No. FS201413422 dated July 17, 2014; and

[1] Docket, Pre-Trial Order dated March 22, 2019, Statement of the Case, p. 562.

holds office at the 17/F ACCRALAW Tower, 30th St. cor. 2nd Ave Avenue, Crescent Park West, Bonifacio Global City, Taguig City.[2]

As an ROHQ, Petitioner's purposes are limited to performing general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistics services; research and development services, and product development; technical support and maintenance; data processing and communication; and business development.[3]

Petitioner is registered with Bureau of Internal Revenue ("BIR") as a VAT taxpayer, with Taxpayers Identification Number ("TIN") 008-817-591-000.[4]

On the other hand, Respondent is the duly appointed Commissioner of Internal Revenue, vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of his Office, including *inter alia*, the duty to act upon and approve claims for refund pursuant to the provisions of the Tax Code and other tax laws, rules, and regulations.[5]

## The Facts

On March 28, 2018, Petitioner filed with the BIR Revenue District Office ("RDO") No. 44, an administrative claim for the refund of its unutilized input VAT for the 1st and 2nd quarters of calendar year ("CY") 2016 amounting to Php13,650,684.76.[6]

Thereafter, on April 5, 2018, Petitioner received the *Letter of Authority* ("LOA") No. AUDM04/018277/2018 (eLA201500087354) dated April 03, 2018, for the examination of its books of accounts and other accounting records for VAT, for the 1st and 2nd quarters of CY 2016.[7]

On April 30, 2018, in compliance with the BIR's Tax Advisory No. 015294 dated March 27, 2018, Petitioner submitted the certified true copy of the Second Amended and Restated Charter of Asurion Insurance Services, Inc.

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2 *Id.*, Joint Stipulation of Facts and Issues (JSFI), Stipulated Facts, Par. 1, p. 519.
3 *Id.*, JSFI, Stipulated Facts, Par. 4, p. 520.
4 *Id.*, JSFI, Stipulated Facts, Par. 3, p. 520.
5 *Id.*, JSFI, Stipulated Facts, Par. 2, pp. 519 to 520.
6 *Id.*, JSFI, Stipulated Facts, Par. 5, p. 520; Exhibits "P-16" to "P-17", pp. 750 to 755.
7 *Id.*, JSFI, Stipulated Facts, Par. 6, p. 520.

("AISI"), a copy of which was previously submitted together with the administrative claim for refund.[8]

On May 10, 2018, Petitioner received the letter dated May 07, 2018 signed by Ms. Editha A. Calipusan, Revenue District Officer of RDO No. 44, informing Petitioner that its claim was partially approved in the Net Refundable Amount of Php1,035,978.50.[9]

Petitioner then filed the present *Petition for Review* on June 08, 2018.[10] The case was raffled to the First Division of this Court.

Thereafter, on July 26, 2018, Petitioner received the letter dated July 18, 2019 issued by Regional Director Glen A. Geraldino,[11] informing Petitioner that its refund claim is denied, based on the BIR's further evaluation and review of the pertinent records.

On September 03, 2018, Respondent posted his *Answer*,[12] interposing the following special and affirmative defenses, to wit:

> "SPECIAL AND AFFIRMATIVE DEFENSES
>
> 11) Respondent reiterates and re-pleads the preceding paragraphs of this Answer as part of the Special and Affirmative Defenses
>
> *THIS INSTANT PETITION FOR REVIEW FOR CLAIM FOR TAX REFUND MUST BE DENIED FOR LACK OF MERIT*
>
> 12) This Petitioner's instant case for tax refund must be dismissed because after investigation, the BIR denied Petitioner's application for administrative tax refund. It must be noted that BIR Records, specifically the BIR's Letter dated July 16, 2018 addressed to the President of Asurion Hong Kong Limited — ROHQ, and Memorandum for the Regional Director dated July 16,

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[8] *Id.*, JSFI, Stipulated Facts, Par. 7, p. 520.
[9] *Id.*, JSFI, Stipulated Facts, Par. 8, p. 520; Exhibit "P-20", p. 758.
[10] *Id.*, pp. 10 to 21.
[11] *Id.*, Exhibit "P-22", pp. 761 to 762.
[12] *Id.*, pp. 97 to 106.

2018 disclosed that Petitioner's application for administrative tax refund was denied.

Attached herein and forms integral part hereof as Annex 'A' and 'B' are the Letter addressed to the President of Asurion Hong Kong Limited — ROHQ dated July 16, 2018, and Memorandum for the Regional Director dated July 16, 2018, respectively, both documentary evidence that show the summary of investigation, basis, and, denial of the Petitioner's administrative tax refund.

13) Based on the aforementioned Memorandum for the Regional Director dated July 16, 2018 signed by Glen A. Geraldino, Regional Director of BIR, Revenue Region 8, the Petitioner's administrative tax refund was denied, as shown by the 'RESULT OF INVESTIGATION' and 'RECOMMENDATION' in the aforementioned Memorandum for the Regional Director dated July 16, 2018 signed by Glen A. Geraldino, to wit:

> 'RESULT OF INVESTIGATION
>
> Verification disclosed that the zero-rated sales claimed on VAT returns of Asurion Hong Kong Limited ROHQ for the 1st and 2nd quarters of taxable year 2016 were received from Asurion Insurance Services Inc., an entity which cannot be categorized as 'Other Person' doing business outside the Philippines since the former and the latter are related entities and the transaction was merely intercompany as can be gleaned from the billing (Intercompany Invoice). Hence, the foreign currency remittance should not be classified as zero-rated sales as what has been held in CIR vs. Institutional Shareholder Services Inc. - Philippine ROHQ, CTA Case No. 7662 dated June 3, 2010 and November 4, 2010, it was stated, among others that:
>
> 'Accordingly, this Court shall determine whether ISSI-USA can be categorized as other person doing business outside the Philippines mentioned in Section 108(1) and (2) of the NIRC of 1997, as amended by RA 9337, on the basis of the definition of an 'ROHQ' provided for under R.A. 8756 as well as other significant provisions of R.A. 8756.'

'It is noteworthy that R.A. 8756 did not provide for the statutory definition of an affiliate, a subsidiary, and a branch. Thus, this Court will presume that the words in the statute are to be used to express their meaning in common usage or treat the same in their plain or ordinary meaning.'

'An 'affiliate company' is defined as company effectively controlled by another or associated by others under common ownership or control. On the other hand, a 'subsidiary' is a company wholly controlled by another that owns more than half of its voting stocks. While a 'branch office' of a foreign company carries out the business activities of the Head Office and derived income from the host country.'

'In this case, ISSI-USA, the mother company of the ROHQ (herein Petitioner), may not be considered as an affiliate, subsidiary or branch on the basis of the above-mentioned definition for the simple reason that Petitioner ROHQ and ISSI-USA must be considered as one and the same entity for purposes of taxation'

'On the basis of the foregoing discussion, it may be deduced that ISSI-USA may not be considered as other 'person doing business outside the Philippines' not only because ISSI-USA fails to qualify as 'other person' since ISSI-USA and Petitioner are considered as one and the same entity, but more importantly, because ISSI-USA is considered as doing business in the Philippines through its 'Regional Operating Headquarters' (Emphasis Supplied)'

The Court of Tax Appeals ruling clearly stated that a parent company and its ROHQ is considered as one and the same entity for taxation purposes. Therefore, the foreign remittances received by the subject claimant from its parent company, Asurion Insurance Services Inc., should not be classified as zero-rated sales.

RECOMMENDATION

Based on the evaluation and review of the 'foregoing facts, the undersigned respectfully recommends that the above taxpayers request for refund of the excess creditable taxes withheld amounting to P13,650,684.76 be DENIED and this case be filed for future reference.'

14) It must be noted that in this instant case the zero-rated sales claimed on VAT returns of Asurion Hong Kong Limited ROHQ for the 1st and 2nd quarters of taxable year 2016 were received from Asurion Insurance Services Inc., an entity which cannot be categorized as 'Other Person' doing business outside the Philippines since the former and the latter are related entities and the transaction was merely intercompany as can be gleaned from the billing (Intercompany Invoice) and in view of the fact that Asurion Insurance Services Inc., cannot be considered as 'other person doing business outside the Philippines' as mentioned in Section 108(1) and (2) of the NIRC of 1997, as amended by RA. 9337, on the basis of the definition of an 'ROHQ' provided for under R.A. 8756 as well as other significant provisions of R.A. 8756. Thus, Petitioner's claim for tax refund must be denied.

15) Attached herein and forms integral part hereof as Annex 'C' are documentary evidence submitted by the Petitioner to the BIR consisting of photocopies of Certified True Copy of Official Receipt No. 0069, Official Receipt No. 0070, Official Receipt No. 0071, Official Receipt No. 0072, Official Receipt No. 0073, Official Receipt No. 0074, and Official Receipt No. 0075, as well as, photocopies of Certified True Copy of Intercompany Invoice No. ICROH-AIS-Dec15-01, Intercompany Invoice No. ICROH-AIS-Jan 16-01, Intercompany Invoice No. ICROH-AIS-Feb16-01, Intercompany Invoice No. ICROH-AIS-Mar16-01, Intercompany Invoice No. ICROH-AIS-Apr16-01, and Intercompany Invoice No. ICROH-AIS-Mayl6-01, as proof of that zero-rated sales claimed on VAT returns of Asurion Hong Kong Limited ROHQ for the 1st and 2nd quarters of taxable year 2016 were received from Asurion Insurance Services Inc.

16) Attached herein and forms integral part hereof as Annex 'D' is the photocopy of the Certified True Copy of

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Independent Auditor's Report of the Petitioner conducted by Isla Lipana & Co. as proof that parent company of the Petitioner is New Asurion Corporation, a company based in the United States of America.

17) Attached herein and forms integral part hereof as Annex 'E' is the photocopy of Petitioner's Letter dated April 27, 2018 indicating Petitioner's submission of the certified true copy of the Certificate of Incorporation of the Non-Resident Foreign Corporation (NRFC) buyers of services of the VAT Refund applicant-taxpayer. And Annex 'F' is the photocopy of the Certified True Copy of the Certificate of Incorporation of the of Asurion Insurance Services, Inc. Annexes 'E' and 'F' are submitted as proof that the Petitioner is related to Asurion Insurance Services.

18) Applicable in this case arc the consolidated CTA Case No. 8432, 8498 8534 and 8581 entitled 'Chartis Technology &. Operations Management Corporation (Philippines) vs. CIR' promulgated on November 6, 2015, it was discussed and ruled therein that the taxpayer applying for tax refund must prove that services must be rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed.

19) Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable.

20) Petitioner's claim for refund in the amount of unutilized input VAT for the Period of Claim amounting to Php 13,650,684.76 representing unutilized input VAT for the period January 1, 2016 to June 30, 2016 were not fully substantiated by proper documents.

21) It is incumbent upon the Petitioner to show that it has complied with the provisions of Sections 108 (B)(2), in relation to Sections 110(B) and 112(A) and (C) of the Tax Code, as amended.

22) In a claim for tax refund or tax credit, taxpayer must prove not only entitlement to the grant of the claim under substantive law, it must also show satisfaction of all the documentary and evidentiary requirements for an administrative

claim for a refund or tax credit (Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, 518 SCRA 425).

23) Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such, they are looked upon with disfavour (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).

On September 17, 2018, Petitioner filed its *Reply*.[13]

Pursuant to the Order dated September 25, 2018, the present case was transferred to this Court's Third Division.[14]

Respondent submitted the *BIR Records* of the case on October 18, 2018.[15]

The Pre-Trial Conference was set and held on January 29, 2019.[16] *Petitioner's Pre-Trial Brief* was filed on January 24, 2019,[17] while *Respondent's Pre-Trial Brief* was submitted on January 28, 2019.[18]

On February 22, 2019, the parties filed their *Joint Stipulation of Facts and Issues*.[19] The Pre-Trial Order dated March 22, 2019 was then issued,[20] deeming the termination of the Pre-Trial.

Trial then ensued.

Petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Mr. Santiago de Guzman

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13 *Id.*, pp. 209 to 214.
14 *Id.*, pp. 209 to 214.
15 *Id.*, Transmittal letter, = p. 223.
16 *Id.*, Notice of Pre-Trial Conference dated September 18, 2018, pp. 219 to 220; Minutes of the hearing held on, and Order dated, January 29, 2019, pp. 385, and 387 to 389, respectively.
17 *Id.*, pp. 365 to 378.
18 *Id.*, pp. 379 to 384.
19 *Id.*, pp. 519 to 531.
20 *Id.*, pp. 562 to 569.

II,[21] Finance Manager of Petitioner; and (2) Mr. Enrico E. Baluyut,[22] the Court-commissioned Independent Certified Public Accountant ("ICPA").[23]

The ICPA's *Report* was submitted on May 10, 2019.[24]

Petitioner filed its *Formal Offer of Evidence (With Omnibus Motion)* on August 08, 2019.[25] Respondent then filed his *Comment (To Petitioner's Formal Offer of Evidence)* on August 14, 2019.[26] Thereafter, Petitioner filed a *Supplemental Formal Offer of Evidence* on December 02, 2019.[27] On December 12, 2019, Respondent filed his *Comment (To Petitioner's Supplemental Formal Offer of Evidence Dated December 2, 2019)*.[28]

In the Resolution on March 10, 2020,[29] the Court admitted Petitioner's exhibits.

Respondent likewise presented his documentary and testimonial evidence. He presented his witness, Revenue Officer Ma. Josefe B. Macarubbo.[30]

On November 10, 2020, *Respondent's Formal Offer of Evidence* was filed.[31] Petitioner filed its *Comment (Re: Respondent's Formal Offer of Evidence)* on November 25, 2020.[32] In the Resolution dated December 29, 2020,[33] the Court admitted Respondent's exhibits, *except* for Exhibit "R-4", for not being found in the records of the case; and ordered the parties to file their respective memoranda within thirty (30) days from receipt thereof.

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[21] *Id.*, Exhibit "P-23", pp. 227 to 245; Minutes of the hearing held on, and Order dated, July 24, 2019, pp. 611 to 613; Exhibit "P-58", pp. 811 to 814; Minutes of the hearing held on, and Order dated, November 19, 2019, pp. 820 to 822.
[22] *Id.*, Exhibit "P-24", , pp. 596 to 606; Minutes of the hearing held on, and Order dated, May 16, 2019, pp. 608 to 610.
[23] *Id.*, Oath of Commission dated March 26, 2019, p. 571; Minutes of the hearing held on, and Order dated, March 26, 2019, pp. 570, and 572 to 573, respectively.
[24] *Id.*, Exhibit "P-25", pp. 574 to 592.
[25] *Id.*, p. 614 to 646.
[26] *Id.*, pp. 763 to 764.
[27] *Id.*, pp. 826 to 829.
[28] *Id.*, pp. 836 to 837.
[29] *Id.*, pp. 842 to 849.
[30] *Id.*, Exhibit "R-8", pp. 397 to 407; Minutes of the hearing held on, and Order dated, October 28, 2020, pp. 873 to 875.
[31] *Id.*, pp. 876 to 878.
[32] *Id.*, pp. 883 to 885.
[33] *Id.*, pp. 892 to 893.

On February 15, 2021, the *Memorandum for Respondent* was posted;[34] and on February 22, 2021, Petitioner's *Memorandum* was filed.[35]

The present case was deemed submitted for decision on March 04, 2021.[36]

## The Issue

The parties submit the following issue to be resolved in this case, to wit:

> "WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OF OR THE ISSUANCE OF A TCC[37] FOR ITS EXCESS AND UNUTILIZED INPUT VAT ATTRIBUTABLE TO ITS ZERO-RATED SALES OF SERVICE FOR THE 1st AND 2nd QUARTERS OF CY 2016 IN THE AMOUNT OF PHP13,650,684.76."[38]

The foregoing main issue is further broken down by the parties into the following sub-issues, to wit:

> "(a) Whether or not Petitioner paid and incurred input taxes on its purchases of goods and services attributable to zero-rated sales of services in the 1st and 2nd quarters of CY 2016.
>
> (b) Whether or not the excess input taxes paid and incurred by Petitioner in the 1st and 2nd quarters of CY 2016 duly supported by VAT invoices and official receipts.
>
> (c) Whether or not the input taxes paid and incurred by Petitioner in the 1st and 2nd quarters of CY 2016 amounting to Php13,650,684.76 were applied against any output taxes or carried over to succeeding taxable periods.
>
> (d) Whether or not Petitioner's administrative and judicial claims for refund or issuance of TCC for its excess and unutilized input taxes were filed within the period prescribed by law."[39]

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[34] *Id.*, pp. 920 to 935.
[35] *Id.*, pp. 895 to 919.
[36] *Id.*, Resolution dated March 04, 2021, p. 945.
[37] That is, "tax credit certificate".
[38] *Id.*, JSFI, Issue, Par. 9, p. 521.
[39] *Id.*, JSFI, Issue, Par. 10, p. 521.

***Petitioner's arguments:***

Petitioner argues that it is a VAT-registered entity; that its sales of services to its customers outside the Philippines are zero-rated sales; that Petitioner paid or incurred input VAT during the period of claim which are properly substantiated in accordance with law and regulations; that the input VAT paid or incurred by Petitioner are attributable to zero-rated sales or effectively zero-rated sales; that the input VAT have not been applied against output taxes during and in the succeeding periods; and that Petitioner's claim for refund was filed within the mandatory period provided under the law.

***Respondent's counter-arguments:***

Respondent counter-argues that as a rule, services rendered by Petitioner, an ROHQ based in the Philippines, to its parent company outside the Philippines and its related company do not fall under the transactions subject to zero-percent VAT rate; that this Court must take note of the observations/finding of fact of the BIR in denying the administrative tax refund; that AISI is an entity which cannot be categorized as "other person" doing business outside the Philippines, since AISI and Petitioner are related entities; that Petitioner and AISI share the same corporate officers; that Asurion, LLC, one of the affiliates, subsidiaries or branch offices of Petitioner, share the same address with AISI; and that this Court must take note that Petitioner must comply with certain procedural and documentary requirements.

**Discussion/Ruling**

The instant *Petition for Review* lacks merit.

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

Section 112 of the National Internal Revenue Code ("NIRC") of 1997, as amended by Republic Act ("RA") No. 10963[40] [otherwise known as the Tax Reform for Acceleration and Inclusion Act (TRAIN)], provides as follows:

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[40] 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

"SEC. 112. *Refunds or Tax Credits of Input Tax.* —

(A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

xxx xxx xxx

(C) *Period within which Refund 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

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SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

within the ninety (90)-day period shall be punishable under Section 269 of this Code."

Pursuant to the above provision, certain requisites must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT. Said requisites are classified into certain categories, to wit:

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

1. the claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[41]
2. that in case of full or partial denial of the refund claim, or the failure on the part of Respondent to act on the said claim within a period of ninety (90) days, the judicial claim has been filed with this Court, within thirty (30) days from receipt of the decision or after the expiration of the said 90-day period;[42]

With reference to the taxpayer's registration with the BIR:

3. the taxpayer is a VAT-registered person;[43]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[44]
5. for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with *Bangko Sentral ng Pilipinas* ("BSP") rules and regulations;[45]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[46]
7. the input taxes are due or paid;[47]

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[41] Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 166732, April 27, 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, November 25, 2009; and AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182364, August 03, 2010.

[42] Steag State Power, Inc. (Formerly State Power Development Corporation) v. Commissioner of Internal Revenue, G.R. No. 205282, January 14, 2019; Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue, G.R. No. 168950, January 14, 2015.

[43] Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 166732, April 27, 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, November 25, 2009; and AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182364, August 03, 2010.

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.*

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;[48] and
9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[49]

Relative to the foregoing, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[50] Thus, it behooves Petitioner to show compliance with each of the foregoing requisites. As a corollary, the absence of *any* of the said requisites is already a valid ground to deny the refund claim.

***Petitioner's administrative and judicial claims were timely filed.***

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

The instant claim covers the 1st and 2nd quarters of CY 2016. Counting two (2) years from the respective close of the said quarters, the respective last day for the filing of the administrative claim therefor, is shown below:

| **CY 2016** | **Close of the Taxable Quarter** | **Last Day to File Administrative Claim** |
|---|---|---|
| 1st Quarter | March 31, 2016 | **March 31, 2018** |

48 Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 166732, April 27, 2007; and San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, November 25, 2009.

49 Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 166732, April 27, 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, November 25, 2009; and AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182364, August 03, 2010.

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

| | | |
|---|---|---|
| 2nd Quarter | June 30, 2016 | **June 30, 2018** |

Considering that Petitioner's administrative claim covering the said quarters was filed on March 28, 2018,[51] the same was timely made within the two (2)-year prescriptive period.

As for the *second* requisite, the same necessitates that the judicial claim must have been filed before this Court within thirty (30) days from receipt of Respondent's decision or after the expiration of the 90-day period under Section 112(C) of the NIRC of 1997, as amended. Thus, from the filing of Petitioner's administrative claim on March 28, 2018, Respondent had ninety (90) days or until July 26, 2018, to act on the said claim.

Respondent, through Revenue District Officer Editha A. Calipusan, issued the letter dated May 07, 2018[52] (within the 90-day period) informing Petitioner that its claim was partially approved in the Net Refundable Amount of Php1,035,978.50.

Considering that Petitioner received the said letter on May 10, 2018,[53] the filing of the present *Petition for Review* on June 08, 2018[54] was timely made.

Such being the case, the Court finds that Petitioner complied with the above-stated *first* and *second* requisites.

***Petitioner is a VAT-registered taxpayer.***

Petitioner likewise complied with the *third* requisite considering that it is registered with the BIR as a VAT taxpayer, with TIN 008-817-591-000.[55]

***However, Petitioner failed to establish that it was engaged in zero-rated or effectively zero-rated sales during the 1st and 2nd quarters of CY 2016.***

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[51] Docket, JSFI, Issue, Par. 5, p. 520; Exhibits "P-16" to "P-17", pp. 750 to 755.
[52] *Id.*, JSFI, Issue, Par. 8, p. 520; Exhibit "P-20", p. 758.
[53] *Id.*
[54] *Id.*, pp. 10 to 21.
[55] *Id.*, JSFI, Issue, Par. 3, p. 520; Exhibit "P-3", p. 696.

The *fourth* requisite requires that the taxpayer is engaged in zero-rated or effectively zero-rated sales.

In its amended Quarterly VAT Returns for the 1st and 2nd quarters of CY 2016, Petitioner declared total sales/receipts of Php356,106,090.00, allegedly consisting entirely of zero-rated sales/receipts, broken down as follows:

| CY 2016 | Declared Zero-Rated Sales/Receipts |
|---|---|
| 1st Quarter | Php180,604,090.00[56] |
| 2nd Quarter | 175,502,000.00[57] |
| **Total** | **Php356,106,090.00** |

Relative thereto, Petitioner claims that its sales of services to AISI, a non-resident foreign corporation, are subject to zero percent (0%) VAT pursuant to Section 108(B)(2) of the NIRC of 1997, as amended.

This Court, however, does not agree. We explain below.

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

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT- registered persons shall be subject to zero percent (0%) rate:
>
> (1) Processing, manufacturing or repacking of goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> (2) **Services other than those mentioned in the preceding paragraph rendered to a person engaged in**

56 *Id.*, Exhibit "P-10", pp. 738 to 739.
57 *Id.*, Exhibit "P-11", pp. 740 to 741.

> **business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)**..." *(Emphases added)*

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

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

2) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules and regulations;[59]

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

4) The services **must be performed in the Philippines**[61] by a VAT-registered person.

Anent the *first* essential element, in order to be considered as a non-resident foreign corporation doing business *outside* the Philippines, each entity must be supported, at the very least, by **both** a *Certification of Non-Registration of Corporation/Partnership* issued by the Philippine SEC, **and** proof of

58 Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue, G.R. No. 201326, February 08, 2017; Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 153205, January 22, 2007; Accenture, Inc. v. Commissioner of Internal Revenue, G.R. No. 190102, July 11, 2002.

59 Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 153205, January 22, 2007; Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), G.R. No. 152609, June 29, 2005.

60 Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 153205, January 22, 2007.

61 Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 153205, January 22, 2007; Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), G.R. No. 152609, June 29, 2005.

incorporation/registration in a foreign country (*e.g.*, Articles/Certificate of Incorporation/Registration and/or Tax Residence Certificate). The former establishes that the recipient of the service has no registered business in the Philippines, and that it is not engaged in trade or business within the Philippines; while the latter proves that the said recipient of the service is indeed foreign. The said documents have been consistently required by this Court, for purposes of the said *first* essential element. In fact, in *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*,[62] the Supreme Court affirmed the necessity of presenting the said documents in this wise:

> "**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[63] status, *viz.*: (1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of both of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines.**
>
> **<u>Such proof must be especially required from ROHQs</u>** such as DKS. **That the law expressly authorizes ROHQs to render services to local and foreign affiliates alike only stresses the ROHQ's burden to distinguish among their clients' nationalities and actual places of business operations and establish that they are seeking refund or credit of input VAT only to the extent of their sales of services to foreign clients doing business outside the Philippines.**
>
> To recall, the CTA found that the SEC Certification of Non-Registration of Company and Authenticated Articles of Association and/or Certificates of Registration/Good Standing/Incorporation sufficiently established the NRFC status of 11 of DKS's affiliates clients.
>
> The Court upholds these findings.
>
> The Court accords the CTA's factual findings with utmost respect, if not finality, because the Court recognizes that it has necessarily developed an expertise on tax matters. Significantly,

[62] G.R. No. 234445, July 15, 2020.
[63] That is, "Nonresident foreign corporation".

> both the CTA Division and CTA *En Banc* gave credence to the aforementioned documents as sufficient proof of NRFC status. The Court shall not disturb its findings without any showing of grave abuse of discretion considering that the members of the tax court are in the best position to analyze the documents presented by the parties.
>
> In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court *a quo*'s findings. **To the Court's mind, the SEC Certifications of Non-Registration show that these affiliates are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines.**" *(Emphasis and underscoring added)*

In the instant case, Petitioner satisfied the *first* essential element as it proved that its sole client for the subject period of claim, AISI, is a non-resident foreign corporation doing business outside the Philippines, by virtue of the following documents:

> a) Certificate of Non-registration of Company dated 15 January 2019 issued by the Philippine SEC,[64] stating that the records of the latter do not show the registration of Petitioner's client, AISI, as a corporation or partnership; and
>
> b) Second Amended and Restated Charter of AISI certified by the Secretary of the State of Nashville, Tennessee.[65]

As to Respondent's assertion that Petitioner's client, AISI, is an entity which cannot be categorized as *"other person doing business outside the Philippines"* pursuant to this Court's ruling in the case of *Institutional Shareholder Services, Inc. (ISSI) – Philippine ROHQ vs CIR, CTA Case No. 7662 dated June 3, 2010* (ISSI case), the same is without merit.

As correctly pointed out by Petitioner,[66] Respondent's reliance on the ISSI case is misplaced as Respondent disregarded the actual affiliation of the service

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64 *Id.*, Exhibit "P-6", p.731.
65 *Id.*, Exhibit "P-5", pp. 703 to 730.
66 *Id.*, Petitioner's Reply to Respondent's Answer, Par. 9 to 12, pp. 209 to 211.

provider and service recipient therein, and simply applied this Court's ruling to the facts of this case.

In the said case, Institutional Shareholder Services, Inc. – Philippine ROHQ ("ISSI-ROHQ") is the ROHQ of Institutional Shareholder Services, Inc. ("ISSI-US"), a foreign multinational company organized under the laws of New York, United States of America. ISSI-ROHQ rendered services solely and exclusively to its head office, ISSI-US. In this regard, this Court held that the parent company of an ROHQ may not be considered an affiliate, subsidiary or branch since the ROHQ and its parent company are treated as one and the same entity for the purposes of taxation. Consequently, ISSI-US may not be considered *"other person doing business outside the Philippines"* not only because ISSI-US and ISSI-ROHQ are considered one and the same entity, but more importantly because ISSI-US is considered doing business in the Philippines through ISSI-ROHQ. Hence, ISSI-ROHQ's services to ISSI-US cannot qualify for VAT zero-rating.

Contrary to Respondent's assertion, the ruling in the ISSI case may not be applied to the present case, since unlike ISSI-ROHQ, Petitioner rendered services not to its parent company in Hong Kong but to AISI, a corporation doing business and established in the United States of America ("USA").

Records show that Petitioner was registered with the Philippine SEC as an ROHQ of Asurion Hong Kong Limited, a multinational company organized and existing under the laws of Hong Kong.[67] On the other hand, AISI is a corporation duly established and doing business under the laws of Nashville, Tennessee, USA.[68] Clearly, Petitioner is not the ROHQ of AISI; neither is the latter the parent company of Petitioner. Correspondingly, Petitioner and AISI cannot be considered as one and the same entity.

Simply put, Petitioner sufficiently proved that its sole client for the subject period of claim, AISI, qualifies as *"other person doing business outside the Philippines"* as contemplated under Section 108(B)(2) of the NIRC of 1997, as amended.

As to the *second* essential element and in relation to the *fifth* requisite for the granting of the input VAT refund, Petitioner presented the *Certificate of Inward Remittance* from the Bank of America[69] purportedly showing the remittances of its non-resident foreign client-affiliate. It is noteworthy that the certification of

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[67] *Id.*, Exhibits "P-1" and "P-2", pp. 647 to 695.
[68] *Id.*, Exhibit "P-5", pp. 703 to 730.
[69] *Id.*, Exhibit "P-7", pp. 830 to 831.

inward remittances attests to the fact of payment "*in acceptable foreign currency ... and accounted for in accordance with the rules and regulations of the BSP*".[70]

In any event, the foreign currency remittances referred to under Section 108(B)(2) must not only be duly accounted for in accordance with the rules and regulations of the BSP, but must also comply with the pertinent invoicing requirements, containing all the required information under Section 113(A) and (B) of the NIRC of 1997, as amended, to wit –

> "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;

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[70] Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 166732, April 27, 2007.

(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 break-down 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.

(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 (Php1,000) 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."

These provisions of the NIRC of 1997, as amended, are further implemented by Section 4.113-1(A) and (B) of Revenue Regulations (RR) No. 16-05, as amended, to wit –

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

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

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

(2) A 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 Receipt shall not give rise to any input tax.

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

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

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

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

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

(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 pesos (Php1,000.00) 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."

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

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."

Since Petitioner's reported sales are in the nature of sales of services under Section 108(B)(2) of the NIRC of 1997, as amended, Petitioner is required to issue BIR-registered VAT ORs for the foreign currency proceeds of each sales transaction, the information contained therein must be in compliance with the applicable provisions previously cited, such as the word "zero-rated" and the taxpayer's TIN-VAT number.

In the present claim, aside from the *Certificate of Inward Remittance* from the Bank of America, Petitioner also presented its *Schedule of Zero-Rated Sales* for the 1st and 2nd quarters of CY 2016,[71] and the corresponding VAT zero-rated ORs,[72]

[71] Exhibits "P-26" and "P-27".
[72] Exhibits "P-26-A" to "P-26-C" and "P-27-A" to "P-27-C".

proving that for services rendered to AISI for the 1st and 2nd quarters of CY 2016, Petitioner was paid in the amount of US$3,846,000.00 and US$3,750,000.00, respectively (with the respective Philippine Peso equivalent of Php180,604,090.00 and Php175,502,000.00), to wit:

1st Quarter-CY 2016

| Exhibit | Declared Zero-Rated Sales/Receipts | Exhibit Reference | OR Number | OR Date | Amount Per OR | |
|---|---|---|---|---|---|---|
| | | | | | In US$ | In PhP |
| "P-26" | Php 40,353,040.00 | "P-26-A" | 0069 | January 7, 2016 | $ 843,500.00 | Php 40,353,040.00 |
| | 38,215,050.00 | "P-26-B" | 0070 | February 5, 2016 | 802,500.00 | 38,215,050.00 |
| | 102,036,000.00 | "P-26-C" | 0071 | March 4, 2016 | 2,200,000.00 | 102,036,000.00 |
| | **Php180,604,090.00** | | | | **$3,846,000.00** | **Php180,604,090.00** |

2nd Quarter-CY 2016

| Exhibit | Declared Zero-Rated Sales/Receipts | Exhibit | OR Number | OR Date | Amount Per OR | |
|---|---|---|---|---|---|---|
| | | | | | In US$ | In PhP |
| "P-27" | Php 56,148,000.00 | "P-27-A" | 0072 | April 8, 2016 | $1,200,000.00 | Php 56,148,000.00 |
| | 44,346,000.00 | "P-27-B" | 0073 | May 5, 2016 | 950,000.00 | 44,346,000.00 |
| | 75,008,000.00 | "P-27-C" | 0075 | June 8, 2016 | 1,600,000.00 | 75,008,000.00 |
| | **Php175,502,000.00** | | | | **$3,750,000.00** | **Php175,502,000.00** |

A scrutiny of the supporting VAT zero-rated official receipts shows that the same are compliant with the invoicing requirements under the VAT law and regulations cited earlier.

Likewise, Petitioner was able to prove compliance with the *third* essential element. As reflected in its Service Agreement with AISI,[73] Petitioner shall

[73] *Id.*, Exhibit "P-4", pp. 697 to 702.

provide the latter with corporate advisory, training and personnel management, research and development, product development, technical support and maintenance, and data processing and communication services effective July 17, 2014, and will continue indefinitely until terminated by AISI with 120 days advance notice to Petitioner. These services clearly fall within the scope of *"services other than processing, manufacturing or repacking of goods"* contemplated by the afore-mentioned provision.

However, with regard to the *fourth* essential element, Petitioner failed to establish its compliance thereto. The Service Agreement[74] between Petitioner and AISI does not bear any indication that the subject services were to be performed by Petitioner in the Philippines. Particularly, the *"Performance of Services"* clause in the Service Agreement does not categorically state that the contracted Services listed in "Exhibit A" thereof shall be performed by the Petitioner in the Philippines. Moreover, Petitioner's evidence are bereft of any indication that the subject services were performed in the Philippines by Petitioner. Thus, for failure of Petitioner to establish that the subject services were performed in the Philippines, it is clear that it failed to comply with the said *fourth* essential element.

Verily, at this juncture, Petitioner has already fallen short in establishing that its sales or supply of services qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended for the 1st and 2nd quarters of CY 2016 in the respective amounts of Php180,604,090.00 and Php175,502,000.00, or in the total amount of Php356,106,090.00.

Needless to state, it is only when the sales of a VAT-registered person are zero-rated or effectively zero-rated that such person may have the option of applying for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales.[75]

Considering Petitioner's failure to establish its zero-rated or effectively zero-rated sales for the subject periods of claim, the present *Petition for Review* must necessarily fail.

As a corollary, it becomes unnecessary to look into Petitioner's compliance with the other remaining requisites.

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[74] *Id.*

[75] Refer to Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 222428, July 19, 2018.

It must be emphasized that actions for tax refund or credit, as in the present case, are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[76] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[77] Hence, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[78] Unfortunately for Petitioner, it has failed to prove such entitlement.

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

**SO ORDERED.**

**MA. BELEN M. RINGPIS-LIBAN**
*Associate Justice*

**WE CONCUR:**

**ERLINDA P. UY**
*Associate Justice*

**MARIA ROWENA MODESTO-SAN PEDRO**
*Associate Justice*

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[76] Commissioner of Internal Revenue v. S.C. Johnson & Son, Inc., G.R. No. 127105, June 25, 1999.

[77] Kepco Philippines Corporation v. Commissioner of Internal Revenue, G.R. No. 179961, January 31, 2011 *citing* Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue, G.R. No. 159490, February 18, 2008.

[78] Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 183531, March 25, 2015 *citing* J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 171307, August 28, 2013.

## 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.

**ERLINDA P. UY**
*Associate Justice*
*Chairperson*

## CERTIFICATION

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

**ROMAN G. DEL ROSARIO**
*Presiding Justice*