REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AVALOQ PHILIPPINES OPERATING HEADQUARTERS,	**CTA EB NO. 2746** (CTA Case No. 10119)
Petitioner,	Present:
- versus -	**DEL ROSARIO,** *PJ,* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 3 1 2024 4:15

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DECISION

FERRER-FLORES, J.:

Before this Court is a **Petition for Review (RE: Decision dated 09 January 2023 and Resolution dated 13 March 2023)** filed by petitioner **Avaloq Philippines Operating Headquarters (Avaloq)** against **Commissioner of Internal Revenue (CIR)**, assailing the Decision dated January 9, 2023[1] (assailed Decision) and Resolution dated March 13, 2023[2] (assailed Resolution) of the Court's Special Third Division in CTA Case No. 10119, the dispositive portions of which read:

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[1] Penned by (Ret.) Associate Justice Erlinda P. Uy ad concurred in by Associate Justices Ma. Belen M. Ringpis-Liban and Maria Rowena Modesto-San Pedro.

[2] *Id.*

Assailed Decision

> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for failure of petitioner to show that its sale of services for Q1 to Q2 of CY 2017 qualify for VAT zero-rating.
>
> **SO ORDERED.**

Assailed Resolution

> **WHEREFORE**, in light of the foregoing considerations, the instant Motion for Reconsideration (Re: 09 January 2023 Decision of the Honorable Court of Tax Appeals – Special Third Division) is **DENIED** for lack of merit.
>
> **SO ORDERED.**

Petitioner Avaloq is a regional operating headquarter (ROHQ) of Avaloq Group AG (head Office), a company organized and existing under the laws of Switzerland. It is licensed to transact business in the Philippines by the Securities and Exchange Commission (SEC) and is registered with the Bureau of Internal Revenue (BIR), Revenue District Office (RDO) No. 050, with Taxpayer's Identification Number (TIN) 008-637-771-000. Petitioner holds office at the 8th and 9th Floors of Robinsons Summit Center, Ayala Avenue, Makati City, and may be served with orders, notices, pleadings, and other court processes through its counsel, Cabrera and Company, at the 28t Floor Philamlife Tower, 8767 Paseo De Roxas, 1226 Makati City.

As an ROHQ, petitioner is primarily engaged in 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; product development; technical support and maintenance; data processing and communication; and business development.

Respondent CIR, on the other hand, is vested by the National Internal Revenue Code (NIRC) of 1997, as amended, with the authority, among others, to decide, approve and grant applications for the refund of excess or unutilized input value-added tax (VAT). He may be served with summons and other court processes at the BIR, National Office Building, Agham Road, Diliman, Quezon City.

FACTUAL ANTECEDENTS

The factual antecedents as culled from the Division records are as follows:[3]

> For Q1 and Q2 of CY 2017, petitioner generated gross receipts in the aggregate amount of ₱53,056,083.00. The total gross receipts of ₱53,056,083.00 were subjected to VAT at zero percent (0%) because allegedly, petitioner's services were rendered in the Philippines to its non-resident foreign affiliates (foreign clients) and will be billed and paid for in acceptable foreign currencies.
>
> Petitioner accumulated input VAT for Q1 and Q2 of CY 2017 in the aggregate amount of ₱3,196,739.74, as follows:

	Tax Base	Tax Due
VATable Sales/Receipts	₱ -	₱ -
Zero-rated Sales/Receipts	53,056,083.00	-
Total Output VAT liabilities (A)	₱ 53,056,083.00	₱ -
Less: Input VAT from Current Transactions (B)		
Purchases of Capital Goods not exceeding ₱1M		
Domestic Purchases of Goods other than Capital Goods	1,164,639.59	139,756.75
Domestic Purchases of Services	17,263,788.81	2,071,654.66
Services rendered by Non-residents	-	-
Subtotal (A-B)		(₱ 2,211,411.41)
Add: (Realized) Deferred Input Tax		(985,328.33)
TOTAL EXCESS/UNUTILIZED INPUT VAT		**(₱ 3,196,739.74)**

> On March 29, 2019, petitioner filed a Letter Request for Tax Refund and Application for Tax Credits/Refund (BIR Form No. 1914) for the refund of its accumulated (excess) input tax amounting to ₱3,196,739.74 with the BIR's VAT Credit Audit Division.
>
> On June 18, 2019, petitioner received a letter from the BIR dated June 4, 2019 informing petitioner that its claim for VAT refund of its accumulated (excess) input tax for Q1 and Q2 of CY 2017 was denied.
>
> Aggrieved, petitioner filed the instant *Petition for Review* on July 18, 2019.
>
> On October 22, 2019, respondent filed a *Motion for Leave to File and Admit Attached Answer* with attached *Answer*. xxx
>
> xxx xxx xxx
>
> On November 27, 2019, respondent filed her Compliance, transmitting the BIR Records of the instant case.
>
> After the Pre-Trial Conference held on August 25, 2020, the parties filed their *Joint Stipulation of Facts and Issues* on September 24, 2020. The

[3] *Rollo* pp. 33-37.

> same was approved by the Court in the Resolution dated October 2, 2020, and the Court subsequently issued the *Pre-Trial Order* dated November 24, 2020.
>
> During trial, petitioner presented the following witnesses: (1) Mary Lalaine Munar, petitioner's accountant; and (2) Krista V. Bambao, the Court-commissioned Independent Certified Public Accountant (ICPA).
>
> For her part, respondent presented a sole witness: Revenue Officer Jelly Anne T. Mateo.
>
> Thereafter, respondent filed her *Memorandum* on March 18, 2022, while petitioner filed its *Memorandum* on April 21, 2022. Thus, the instant case was submitted for decision in the Resolution dated April 27, 2022. Hence, this *Decision.*

As earlier mentioned, the Court Special Third Division denied petitioner's claim in the assailed *Decision*, and likewise denied petitioner's *Motion for Reconsideration* in the assailed Resolution.

Undeterred, on April 27, 2023, petitioner filed the instant *Petition for Review (RE: Decision dated 09 January 2023 and Resolution dated 13 March 2023).*[4] This Court ordered respondent CIR to file his comment/opposition thereon in the Resolution dated June 9, 2023.[5] Thereafter, the CIR filed his *Comment and Opposition (Re: Petition for Review [Re: Decision dated 09 January 2023 and Resolution dated 13 March 2023] dated 27 April 2023)* on June 21, 2024.[6]

This Court submitted this case for decision on July 12, 2023.[7] Hence, this Decision.

THE ISSUE

The sole issue petitioner raised in the instant case is whether the CTA Special Third Division erred in dismissing petitioner's claim for tax refund amounting to **Three Million One Hundred Ninety-Six Thousand Seven Hundred Thirty-Nine and 74/100 Pesos (₱3,196,739.74)** representing its unutilized input VAT attributable to its zero-rated sales for the First and Second Quarters (Q1and Q2) of calendar year (CY) 2017 or the period January 1, 2017 to June 30, 2017.

4 *Rollo,* pp. 6-18.
5 *Id.,* at 64-65.
6 *Id.,* at 82-85.
7 Resolution dated July 12, 2023, *Rollo,* p. 88.

Petitioner's Arguments

Petitioner staunchly argues that by its very nature as an ROHQ, it has sufficiently established the fact that the provision of services to its foreign clients are rendered in the Philippines. As an ROHQ, it is allowed to derive income in the Philippines by performing qualifying services to its foreign clients to be rendered in the Philippines.

Moreover, petitioner emphasizes that an ROHQ is a resident foreign corporation for income tax purposes which is subject to ten percent (10%) normal corporate income tax. By principle of law, this is in conformity with the inherent limitation of the power of taxation that its exercise is delimited by the principle of territoriality.

Petitioner's provision of services to its foreign clients rendered in the Philippines subjects the income generated from such services to normal corporate income tax. The provision of these services are substantial elements of the General Framework Services Agreement (GFSA) from which emanates the obligation of petitioner to render these services in the Philippines for its foreign clients.

Likewise, respondent's admission and failure to dispute petitioner's status as an ROHQ in its Joint Stipulation of Facts and Memorandum, respectively, cements the presumption that the ROHQ strictly complied with its Certificate of Registration and License issued by the SEC, which includes the rendition of the qualifying services here in the Philippines and not elsewhere.

It is, thus, submitted that the unrebutted testimonies of its witnesses corroborated by the registrations, licenses, Independent Certified Public Accountant (ICPA) report, and returns offered and admitted evidence during the trial are sufficient to prove that its services were rendered in the Philippines. Adding to this is respondent's failure to dispute nor negate petitioner's status as an ROHQ or its abidance to his nature as mandated by law.

Respondent's Arguments

Respondent, on the other hand, submits that the Court correctly ruled that petitioner is not entitled to a refund of ₱3,196,793.74 attributable to its zero-rated sales for the period January 1, 2017 to June 30, 2017. In support of its stance, respondent avers that petitioner failed to prove that it is a VAT-registered entity and was not able to submit proof that it is engaged in zero-rated or effectively zero-rated sales.

Additionally, respondent echoes the Court's ruling that petitioner failed to prove that the services were performed in the Philippines, thus the services rendered to its foreign clients cannot qualify as subject to zero percent (0%) VAT under Section 108 (B)(2) of the NIRC of 1997, as amended.

Lastly, the claimant has the burden of proof to establish the factual basis of its claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.

RULING OF THE COURT *EN BANC*

The petition is bereft of merit.

Although the Court agrees with petitioner that the totality of the evidence should be considered in weighing whether petitioner complied with the essential requisites for VAT refund, petitioner still was not able to prove by preponderance of evidence that its services were rendered in the Philippines.

We echo the ruling of the Special Third Division, to wit:

> With regard to the *fourth essential element*, petitioner is required to present evidence that the subject services are performed in the Philippines by a VAT-registered person.
>
> However, We find that the GFSA entered into by petitioner and its foreign clients, has no provision as to where the services are to be performed by petitioner.
>
> In the ICPA Report, the GFSA was evaluated as follows:
>
> "4. In addition to the above-enumerated documents, the General Framework Services Agreement ("GFSA") **(Exhibit P-23, as marked by counsel of Petitioner)** were [sic] evaluated during our review to ascertain the the [sic] nature of the services provided, **<u>the location where the services were provided</u>** as well as the fees to be paid for the services provided by Petitioner to these foreign clients.
>
> xxx xxx xxx
>
> - ***<u>Location Where the Services were Provided</u>*** – **<u>Not specified</u>**"
>
> The fact that there is no showing in the GFSA that the services rendered by petitioner were performed in the Philippines was reiterated by ICPA Krista V. Bambao in her *Judicial Affidavit*, to wit:

"25. Q: You mentioned that the sales were subjected to zero-rated VAT. What is the reason why these were subjected/classified as zero-rated transactions by Petitioner?

A: xxx xxx xxx

In addition to the above-enumerated documents, the General Framework Services Agreement ("GFSA") **(Exhibit P-23, as marked by counsel of Petitioner)** were [sic] evaluated during our review to ascertain the nature of the services provided, **the location where the services were provided** as well as the fees to be paid for the services provided by Petitioner to these foreign clients.

xxx xxx xxx

- ***Location Where the Services were Provided*** – **Not specified**"

The Court notes that in the same ICPA Report and *Judicial Affidavit of Krista V. Bambao*, ICPA Krista V. Bambao mentioned that petitioner's services were rendered in the Philippines, as follows:

ICPA Report

"3. Verification of the SLS **(Exhibit P-32)**, GL Account No. 2430 (Sales) **(Exhibit P-33)** and the VAT-registered O.R.s issued by Petitioner to substantiate the amount due to Petitioner for the services rendered during the covered period **(Exhibits P-34 to P-38)** would show that the transactions were considered as sales subject to VAT at zero percent (0%) because these pertain to fees collected **for services rendered in the Philippines** for the following entities ("foreign clients" for brevity):

a. Avaloq Evolution AG and Avaloq License AG, both of which are entities incorporated under the laws of Switzerland and is not registered as a corporation nor partnership in the Philippines;
b. Avaloq Australia Pty Ltd, an entity incorporated under the laws of Australia and is not registered as a corporation nor partnership in the Philippines; and
c. Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd., an entity incorporated under the laws of Singapore and is not registered as a corporation nor partnership in the Philippines."

Judicial Affidavit of Krista V. Bambao

"25. Q: You mentioned that the sales were subjected to zero-rated VAT. What is the reason why these were subjected/classified as zero-rated transactions by Petitioner?

A: As discussed in **Part III (3)** on pages 5 to 7 of my report, sales amounting to ₱53,056,083.00 were considered as sales

> subject to 0% VAT because these pertain to fees collected for services rendered in the Philippines for the following entities ("foreign clients" for brevity):
>
> a. Avaloq Evolution AG and Avaloq License AG, both of which are entities incorporated under the laws of Switzerland and is not registered as a corporation nor partnership in the Philippines;
> b. Avaloq Australia Pty Ltd, an entity incorporated under the laws of Australia and is not registered as a corporation nor partnership in the Philippines; and
> c. Avaloq Sourcing Asia Pacific (Singapore) Pte Ltd., an entity incorporated under the laws of Singapore and is not registered as a corporation nor partnership in the Philippines.
>
> However, despite ICPA Krista V. Bambao's claim in her ICPA report and in her *Judicial Affidavit* that petitioner's services were performed in the Philippines, the Court finds the same insufficient to establish that the services were performed by petitioner in the Philippines.
>
> Foremost, a careful examination of the GFSA reveals that the same lacks any indication that the services were performed in the Philippines. In fact, ICPA Krista V. Bambao herself stated in her ICPA Report and in her *Judicial Affidavit* that "Locaion Where the Services were Provided – Not Specified".
>
> Second, ICPA Krista V. Bambao's statements in her ICPA Report and *Judicial Affidavit* that *"sales amounting to ₱53,056,083.00 were considered as sales subject to 0% VAT because these pertain to fees collected for services rendered in the Philippines"* contradict her findings that the GFSA is silent as to the place where the services were rendered. Moreover, ICPA Krista V. Bambao cannot be considered a competent witness to testify as to where petitioner renders its services considering that she is not connected with petitioner and is not privy as to where petitioner renders its services.
>
> It must be noted that the issue as to whether or not petitioner performed services in the Philippines is a question of fact; hence, it must be proven by specific evidence. Although petitioner is an ROHQ of Avaloq Group AG (Head Office), it is still necessary on its part to prove that its services were performed in the Philippines. Thus, considering the foregoing, We find that petitioner failed to comply with the *fourth essential element. (Emphasis, underscoring, italics in the original; citations omitted)*

The Court is not convinced to rely on the testimony of ICPA Bambao to satisfy the requisite that petitioner's services were performed in the Philippines. There is no showing that ICPA Bambao has personal knowledge of such fact as she is not connected with petitioner. She merely examined petitioner's documents in coming up with the report, and as mentioned, the GFSA is silent as to the location of the services.

Section 22, Rule 130 of the 2019 Amendments to the 1989 Revised Rules on Evidence[8] states:

> Section 22. *Testimony confined to personal knowledge.* – A witness can testify only to those facts which he or she knows of his or her personal knowledge; that is, which are derived from his or her own perception. (36a)

In *Arriola vs. People of the Philippines,*[9] the Supreme Court's ruling on testimonial evidence is instructive:

> Section 36, Rule 130 of the Rules of Court does declare hearsay as generally inadmissible testimonial evidence:
>
> xxx xxx xxx
>
> Evidence is called hearsay when its probative force depends, in whole or in part, on the competency and credibility of some persons other than the witness by whom it is sought to produce it. A person who introduces a hearsay statement is not obliged to enter into any particular stipulation, to answer any question, to solve any difficulties, to reconcile any contradictions, to explain any obscurities, to remove any ambiguities; and that he/she entrenches himself/herself in the simple assertion that he/she was told so, and leaves the burden entirely upon the dead or absent author. For this reason, the rule against hearsay testimony rests mainly on the ground that there was no opportunity to cross-examine the declarant.

Further, in *Mancol, Jr. vs. Development Bank of the Philippines*,[10] the Supreme Court ruled, *viz*:

> It is a basic rule in evidence that a witness can testify only on the facts that he knows of his own personal knowledge, *i.e.*, those which are derived from his own perception. A witness may not testify on what he merely learned, read or heard from others because such testimony is considered hearsay and may not be received as proof of the truth of what he has learned, read or heard. Hearsay evidence is evidence, not of what the witness knows himself but, of what he has heard from others; it is not only limited to oral testimony or statements but likewise applies to written statements.
>
> The personal knowledge of a witness is a substantive prerequisite for accepting testimonial evidence that established the truth of a disputed fact. A witness bereft of personal knowledge of the disputed fact cannot be called upon for that purpose because his testimony derives its value not from the credit accorded to him as a witness presently testifying but from the veracity and competency of the extrajudicial source of his information.

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[8] A.M. No. 19-08-15-SC.
[9] G.R. No. 199975, February 24, 2020.
[10] G.R. No. 204289, November 22, 2017.

Moreover, the findings and conclusions of the ICPA shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.[11]

Notably, petitioner's accountant, Ms. Mary Lalaine Munar, also did not testify on the location of the performance of service. Therefore, the only testimonial evidence that petitioner can rely on with respect to the location of the performance of services is that of ICPA Bambao's, which the Court cannot consider for being hearsay.

The documentary evidence offered by petitioner likewise failed to establish that services were indeed rendered in the Philippines. To recall, the GFSA is silent on the location of performance of services.

Petitioner invokes this Court's ruling in *AIG Shared Services Corporation (Philippines) vs. Commissioner of Internal Revenue*[12] (*AIG*) as applicable to it. The Court, however, cannot apply the same ruling to the instant case. In *AIG*, there were unrebutted testimonies of AIG's witnesses wherein it was categorically declared that services were rendered in its offices in the Philippines through electronic means, among other pieces of evidence offered.

As a final word, tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government. Accordingly, it is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[13]

WHEREFORE, the instant **Petition for Review (RE: Decision dated 09 January 2023 and Resolution dated 13 March 2023)** is **DENIED** for lack of merit. The Decision dated January 9, 2023 and the Resolution dated March 13, 2023 in CTA Case No. 10119 are hereby **AFFIRMED**.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

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[11] Section 3, Rule 13 of the Revised Rules of the CTA.
[12] CTA EB Case Nos. 2424 and 2433 (CTA Case No. 8850), November 17, 2022.
[13] *Eastern Telecommunations Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan

(With due respect, please see my DO)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

ON LEAVE
LANEE S. CUI-DAVID
Associate Justice

HENRY S. ANGELES
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

EN BANC

AVALOQ PHILIPPINES OPERATING HEADQUARTERS,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2746
(CTA Case No. 10119)

Present:

DEL ROSARIO, *P.J.,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
JUL 3 1 2024

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DISSENTING OPINION

MANAHAN, *J.:*

With due respect to my esteemed colleagues, I respectfully dissent from the majority opinion which concluded that the present claim for refund should be denied for failure of the petitioner to prove that the services rendered by petitioner are considered VAT zero-rated.

While I concede that tax refunds are construed in *strictissimi juris* against the taxpayer, such claim for refund, if proven by a preponderance of evidence, should be granted as a matter of justice.

The present Petition for Review is an appeal from the denial of the respondent of a claim for refund of alleged unutilized input VAT for the first and second quarters of taxable year 2017 and is anchored on Section 108(B)(1) of the 1997 National Internal Revenue Code (NIRC), as amended, quoted as follows:

"Section 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* –

(B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

(2) Services other than those mentioned in the preceding paragraph, 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, 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);"

A reading of the facts and conclusions reached by the Special Third Division (Court in Division)[1] reveals that petitioner was able to sufficiently comply with the requisites provided by law and jurisprudence on claims of this nature. More importantly, it was able to prove that the recipients of its services are foreign corporations and that the latter were doing business outside the Philippines, or were non-residents not engaged in business in the Philippines when the services were performed. The ruling of the Court in Division and affirmed by the majority in the present *En Banc* Decision, however, denied the claim for refund because the General Framework Services Agreement (GSFA) entered into by petitioner with its foreign clients did not provide or stipulate where the services are to be performed and that the Independent Certified Public Accountant (ICPA)'s testimony as to the location of the rendition of services, is mere hearsay with little or no probative value.

With due respect, I humbly disagree with the majority opinion and submit that contrary to the above conclusion, the totality of the evidence presented in this case coupled with respondent's lack of objection on the location where said services were performed, are deemed sufficient to prove that the services (source of input VAT) were rendered by petitioner in the Philippines.

The facts show that petitioner is a foreign corporation licensed to do business in the Philippines as a Regional Operating Headquarters (ROHQ) and as such is allowed under its license to perform qualifying services to its affiliates,

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[1] CTA Case No. 10119 dated January 9, 2023.

branches and subsidiaries in the Philippines, in the Asia Pacific Region and in other foreign markets.[2] The records also show that petitioner reported service income received from its foreign clients during the period covered by the claim.[3] The service income would not have been reported for income tax purposes in the Philippines if said services were performed outside because foreign corporations are taxable only on their income derived in the country.

Respondent, on his part, did not raise the issue of lack of proof of the location of the performance of services. Said issue was not raised in the letter dated June 4, 2019 (Exhibit "R-6") denying the claim for refund of petitioner in the administrative level nor was it raised in his Answer filed in Court, focusing on the argument that the Court should confine itself to reviewing the documents petitioner submitted in its claim for refund filed in the administrative level and petitioner's alleged failure to comply with the invoicing requirements. During trial, respondent did not dispute nor present controverting evidence to the GSFA when petitioner offered the same in its Formal Offer of Evidence.

To my mind, the foregoing circumstances and lack of objection on the part of respondent on this particular issue are sufficient to find that petitioner performed the subject services in the Philippines which complies with one of the requirements to consider the sale of service as a zero-rated sale under Section 108(B)(2) of the 1997 NIRC, as amended.

The lack of a categorical statement in the Service Agreement or the GSFA that services are to be performed in the Philippines does not foreclose the possibility that the same were performed in the country in the face of other evidence pointing out to such fact.

Accordingly, I vote that this case be remanded to the Court in Division for the determination of the refundable amount due to petitioner.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

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[2] Section 2(3) of Republic Act No. 8756.
[3] See Note 11, Notes to Financial Statements, Audited Financial Statements (AFS) of petitioner for calendar years 2017 and 2016, pp. 217 to 237, BIR Records.