REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

OFFSOURCING PHILIPPINES, INC., *Petitioner,*	**CTA CASE NO. 10257**
	Members:
-versus-	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 05 2024 3:59 pm

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

The instant case involves a claim for refund of petitioner's alleged excess and/or unutilized input value-added tax ("VAT") arising from its zero-rated sales during the 3rd quarter of the calendar year ("CY") 2017 (*i.e.,* July 1, 2017 to September 30, 2017) in the total amount of Php2,160,771.56.[1]

The Parties

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines with principal office address at 238 Araullo Street corner Jacinto Extension, Davao City. It is primarily engaged in the business of providing customer support, outsourcing solutions, consultancy, and ancillary services to foreign clients only. Petitioner is registered with the

1 See Statement of the Case, Pre-Trial Order, Records, p. 291.

Bureau of Internal Revenue ("BIR") – Revenue District Office ("RDO") No. 132 under Taxpayer Identification Number ("TIN") 424-614-546-000.[2]

Meanwhile, respondent is the duly appointed Commissioner of Internal Revenue ("CIR") empowered to perform the duties of the said office, including, among others, the power and authority to decide, approve, and grant applications/claims for refund and/or issuance of tax credit certificate ("TCC") of erroneously paid or overpaid taxes, as provided by law, particularly the *National Internal Revenue Code, as amended ("NIRC")*. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

The Facts

As reflected in petitioner's 3rd quarter VAT return for CY 2017,[4] for the third quarter of CY 2017 or during the months of July 1, 2017 to September 30, 2017, petitioner generated total sales of Php185,154,488.07. Out of these total sales, Php184,759,162.24 was treated as sales subject to VAT at 0% rate since these represent revenues earned from services sold to its non-resident foreign affiliates which were billed and paid using acceptable foreign currencies. The Php395,325.83 remaining sales during the third quarter of CY 2017 were subjected to 12% VAT because these pertain to disposal of certain properties of petitioner.[5]

Petitioner filed, through registered mail on September 30, 2019, its administrative claim for the refund of its accumulated (excess) input tax arising from zero rated sales amounting to Php2,160,771.56 with the BIR's VAT Credit Audit Division ("VCAD").[6]

On January 8, 2020, petitioner received a Letter, dated December 6, 2019, from respondent, effectively denying its administrative claim for VAT refund (hereinafter, referred to as "Denial Letter").[7]

Following such denial of its administrative claim, petitioner filed the instant Petition for Review ("Petition") before this Court on February 7, 2020.[8] Considering the various extensions allowed by the Court in consideration of the COVID-19 pandemic, respondent was only able to file his Answer through registered mail on July 1, 2020.[9]

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2 See Stipulation of Facts, Pre-Trial Order, *id.,* p. 292; Exhibits "P-1" and "P-2", Records, pp. 322-342; Exhibit "P-3", Records, p. 240.
3 See Stipulation of Facts, Pre-Trial Order, Records, p. 293.
4 Exhibit "P-4", Records, pp. 343-344.
5 See Stipulation of Facts, Pre-Trial Order, Records, p. 292.
6 *Ibid;* Exhibit "P-5", Records, pp. 31-34; Exhibit "P-6, Records, p. 247.
7 Exhibit "P-7", Records, pp. 248-250.
8 Records, pp. 6-38.
9 *Id.,* pp. 48-60.

On July 9, 2020, a Notice of Pre-Trial Conference was issued setting the Pre-Trial Conference on November 17, 2020.[10]

On September 4, 2020, respondent elevated the BIR Records.[11]

On November 16, 2020, petitioner filed a Motion for Commissioning of Independent Certified Public Accountant ("ICPA") submitting the credentials and qualifications of Mr. Christian Gene A. Rasos and moving for the appointment of the latter as the ICPA who would summarize the voluminous documents relevant to the present case.[12] On the same day, petitioner filed its Pre-Trial Brief.[13]

Respondent, on February 2, 2021, filed his Pre-Trial Brief.[14] On same date, respondent submitted the Judicial Affidavit of Revenue Officer ("RO") Jerome C. Manuncia.[15]

The Pre-Trial Conference ensued on February 18, 2021[16] after the initial schedule on November 17, 2020 was postponed as moved by petitioner.[17] On similar date, Mr. Rasos was commissioned by the Court as the ICPA for the instant case.[18]

On March 10, 2021, the parties filed a Joint Stipulation of Facts and Issues.[19]

On May 17, 2021, Mr. Rasos submitted his ICPA Report summarizing his findings for the instant judicial claim for VAT refund.[20] Petitioner then submitted the Judicial Affidavit of Ms. Christie Therese Luy, who identified the various pieces of documentary evidences presented by petitioner in support of the instant judicial claim for VAT refund, and the Judicial Affidavit of Mr. Rasos, which tackled the ICPA Report he prepared, on May 24, 2021.[21]

This Court issued a Pre-Trial Order on June 28, 2021.[22]

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[10] *Id.*, pp. 61-62.
[11] *Id.*, pp. 67-69.
[12] Exhibit "P-8", Records, pp. 76-86.
[13] Records, pp. 88-99.
[14] *Id.*, pp. 113-118.
[15] Exhibit "R-5", Records, pp. 119-129.
[16] Records, pp. 135-140.
[17] See Resolution, dated November 17, 2020, Records, pp. 100-104.
[18] Records, pp. 135-140.
[19] Records, pp. 141-146.
[20] Exhibit "P-11-2", Records, pp. 157-219.
[21] Exhibits "P-12" and "P-10", Records, pp. 220-281.
[22] Records, pp. 289-297.

On June 29, 2021, petitioner presented its witness, Ms. Luy, who was cross-examined based on her testimony contained in her Judicial Affidavit.[23]

On November 23, 2021, petitioner presented Mr. Rasos who was cross-examined based on his testimony in relation to the ICPA Report.[24]

Petitioner filed its Formal Offer of Evidence on January 4, 2022,[25] to which respondent interposed no objections.[26] In a Resolution, dated March 17, 2022, this Court admitted all of petitioner's Exhibits except Exhibits "P-11-3", "P-12", "P-13", "P-14", "P-15", "P-47", "P-48 to P-59" and "P-1427 to P-1724", for failure to present the originals for comparison.[27] Petitioner then moved for the reconsideration of the denial of admission of Exhibit "P-47".[28] In a Resolution, dated January 26, 2023, this Court admitted Exhibit "P-47".[29]

During the Hearing conducted on March 7, 2023, respondent presented his lone witness, RO Manuncia,[30] before filing his Formal Offer of Evidence on March 20, 2023.[31] Petitioner interposed no objections to the same.[32] In a Resolution, dated May 26, 2023, this Court admitted all of respondent's Exhibits.[33]

On June 2, 2023, respondent filed his Memorandum.[34] Meanwhile, petitioner filed its Memorandum on July 3, 2023.[35] Thus, in a Resolution, dated July 13, 2023, the instant case was submitted for Decision.[36]

Hence, this Decision.

<u>The Issue</u>[37]

Whether or not petitioner is entitled to the claim for refund in the amount of Php2,160,771.56 representing alleged excess

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[23] *Id.*, pp. 298-300.
[24] *Id.*, pp. 304-306.
[25] *Id.*, pp. 313-346.
[26] *Id.*, pp. 348-350.
[27] *Id.*, pp. 351-354.
[28] *Id.*, pp. 355-364.
[29] *Id.*, pp. 407-410.
[30] *Id.*, pp. 411-414.
[31] *Id.*, pp. 415-419.
[32] *Id.*, pp. 421-423.
[33] *Id.*, pp. 425-427.
[34] *Id.*, pp. 428-437.
[35] *Id.*, pp. 441-473.
[36] *Id.*, p. 474.
[37] See Issue, Pre-Trial Order, Records, p. 293.

and/or unutilized input VAT attributable to its zero-rated sales for the 3rd quarter of CY 2017.

Arguments of the Parties

Petitioner's Arguments[38]

Petitioner avers that it is entitled to a refund of excess and unutilized input VAT. Petitioner posits the following arguments:

Petitioner's claim for refund of its accumulated (excess) input VAT finds legal support in *Section 108 (B) (2) in relation to Sections 110 (B) and 112 (A) of the NIRC*;

Based on the aforesaid provisions of the *NIRC*, in order to be entitled to a refund of excess and/or unutilized input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

a) That the taxpayer is VAT-registered;

b) That the administrative and judicial claim for refund was filed within the prescriptive period provided under the pertinent provisions of the *NIRC;*

c) That the taxpayer is engaged in zero-rated or effectively zero-rated sales and that the sales were paid for in acceptable foreign currency exchange and the proceeds have been duly accounted for in accordance with rules and regulations of the Bangko Sentral ng Pilipinas ("BSP");

d) That the input taxes directly attributable to zero-rated sales were duly supported with purchase documents issued in accordance with *Section 113 and 237 of the NIRC;* and

e) That the input VAT credits applied for refund were not used as credits against any output tax liabilities of the taxpayer-claimant for the succeeding periods;

Petitioner is a VAT-registered entity as required under *Section 112 (A) of the NIRC*;

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[38] Records, pp. 445-471.

The administrative and judicial claim for refund were filed within the prescriptive period provided under the *NIRC*, and its implementing rules and regulations. There is no law or administrative issuance requiring the personal filing of administrative claims for VAT refunds before the BIR. Even in the absence of an issuance, the date of mailing (by registered mail) should be considered the date of filing;

Petitioner is engaged in zero-rated or effectively zero-rated transactions as required under the *NIRC*, the sales were paid for in acceptable foreign currency exchange, and the proceeds have been duly accounted for in accordance with rules and regulations of the BSP;

The input taxes due from the purchases of goods and services directly attributable to zero-rated sales of petitioner were duly supported by VAT invoices or official receipts ("ORs"); and

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

Respondent's Arguments[39]

In refutation, respondent alleges that the instant Petition must be dismissed for failure of petitioner to substantiate its administrative claim for refund. Petitioner failed to prove before this Court that it is indeed entitled to a VAT refund amounting to Php2,160,771.56.

The Ruling of the Court

The instant Petition is **DENIED** for lack of merit.

Requisites for claiming unutilized input VAT attributable to zero-rated sales.

The provision that governs the present claim for refund of excess and/or unutilized input VAT attributable to zero-rated sales is *Section 112 (A) and (C) of the NIRC*, which reads:

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

[39] *Id.*, pp. 429-434.

(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.

(B)...

(C) Period within which Refund or Tax Credit 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 ninety (90) days period shall be punishable under Section 269 of this Code."
(Italics, Ours.)

Based on the foregoing provisions, jurisprudence has laid down the following requisites that must be complied with by the taxpayer-applicant to successfully obtain a tax refund/credit:

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

1. the refund claim is filed with the BIR within 2 years after the close of the taxable quarter when the sales were made;[40]

[40] Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 155732, 27 April 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, 25 November 2009; AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182364, 3 August 2010.

2. the judicial claim is filed with this Court within 30 days from receipt of an adverse decision (*i.e.*, partial or full denial of the administrative claim),[41] or upon the lapse of the period given to the CIR to act on an administrative claim (*i.e.*, 90 days from the filing of such claim) wherein the CIR failed to act on the same within such period (in which case, the claim for refund is deemed denied by the CIR), whichever comes first;[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 *Section 106(A)(2)(1) and (2), 106(B), and 108(B)(1) and (2) of the NIRC,* the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with 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]

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

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[41] Steag State Power, Inc. vs. Commissioner of Internal Revenue, G.R. No. 205282, 14 January 2019; Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue, G.R. No. 168950, 14 January 2015.

[42] Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue, G.R. No. 182737, 2 March 2016.

[43] Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 155732, 27 April 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, 25 November 2009; AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182364, 3 August 2010.

[44] *Ibid.*

[45] *Ibid.*

[46] *Ibid.*

[47] *Ibid.*

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]

At this juncture, it must be emphasized that cases filed before the Court of Tax Appeals ("CTA") are litigated *de novo*.[50] Parties are thus expected to litigate and prove every minute aspect of their case anew by presenting, formally offering, and submitting to the CTA all evidence required for the successful prosecution of its claim.[51] Consequently, petitioner must competently establish its claim for refund or tax credit following the foregoing requisites.

Petitioner's judicial claim for refund was not timely filed.

Pursuant to *Sections 112 (A) and (C) of the NIRC*, the refund of unutilized input VAT attributable to zero-rated or effectively zero-rated sales must be administratively filed with the BIR within two years counted from the close of the taxable quarter when the relevant sales were made. Meanwhile, the judicial claim for refund must be filed in Court within 30 days from either: (1) receipt of respondent's decision but such decision must be rendered and received by the taxpayer within the 90-day period to resolve; or (2) after the expiration of the 90-day period, in which case there is a deemed denial of the claim.

Applying the foregoing, the table below summarizes the relevant dates pertaining to the filing of the administrative and judicial claims for refund:

[48] Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 155732, 27 April 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, 25 November 2009.

[49] Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 155732, 27 April 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, 25 November 2009; AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182364, 3 August 2010.

[50] Commissioner of Internal Revenue v. Univation Motor Philippines, Inc., G.R. No. 231581, 10 April 2019.

[51] *Id.;* Philippine Airlines, Inc. v. Commissioner of Internal Revenue, G.R. No. 206079-80 and 206309, 17 January 2018.

Period of claim	**Close of the taxable quarter**	**Last day for filing of the administrative claim**	**Date of filing of the administrative claim**	**Last day of the CIR to act on the administrative claim (90 days)**	**Date of receipt of the CIR's denial of the administrative claim**	**Last day for filing of the judicial claim (30 days)**	**Date of filing of judicial claim**
3rd Quarter of CY 2017	September 30, 2017	September 30, 2019	September 30, 2019[52]	December 29, 2019	January 8, 2020[53]	January 28, 2020	February 7, 2020[54]

The present case covers the 3rd quarter of CY 2017. Counting two years from close of the 3rd quarter of CY 2017 on September 30, 2017, petitioner had until September 30, 2019 to file its administrative claim for VAT refund for the 3rd quarter of CY 2017.

Petitioner, in the instant case, filed its administrative claim for refund by registered mail. This type of filing of a VAT refund claim is not proscribed by either the *NIRC* or its implementing rules and regulations. Accordingly, as it is not expressly prohibited, a VAT refund claim can be filed before respondent through registered mail.

A question now arises: at what point is a submission deemed filed when filing is made through registered mail? *Section 3, Rule 13 of the Rules of Court* provides that the filing of submissions through registered mail is deemed filed on the date the submission is mailed.

Applying this in the present case, petitioner is deemed to have filed its VAT refund claim with the BIR's VCAD on September 30, 2019, which is the date that it mailed such VAT refund claim.

Since petitioner filed the VAT refund claim on the last day allowed by the *NIRC* for filing VAT refund claims pertaining to the 3rd quarter of CY 2017, petitioner timely filed its administrative VAT refund claim.

However, the same cannot be equally said with respect to the filing of the judicial claim. Petitioner belatedly filed the instant Petition.

Counting 90 days from the filing of the administrative claim on September 30, 2019, respondent had until December 29, 2019 within which to act on petitioner's administrative VAT refund claim.

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[52] See Stipulation of Facts, Pre-Trial Order, Records, p. 292; Exhibit "P-5", Records, pp. 31-34; Exhibit "P-6, Records, p. 247.
[53] Exhibit "P-7", Records, pp. 248-250.
[54] Records, pp. 6-38.

Since petitioner did not receive an actual decision from respondent granting or denying its VAT refund claim as of December 29, 2019 (*i.e.,* petitioner received the Denial Letter only on January 8, 2020), petitioner should have treated its administrative VAT refund claim as deemed denied by respondent. This should be the case despite the fact that respondent actually issued the Denial Letter on December 6, 2019, considering that the same was only received by petitioner on January 8, 2020. As stated in *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*, "[t]he judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the [90]-day period, whichever is sooner."

Petitioner, as the taxpayer-claimant, is duty bound not to sleep on its rights especially since the timely filing of the VAT refund claims either before the BIR or with this Court is jurisdictional. Accordingly, when petitioner did not receive any correspondence communicating respondent's actual denial of its VAT refund claim on December 29, 2019, petitioner should have treated its claim as already deemed denied.

The 30-day period to file a judicial appeal of a denied administrative VAT refund claim began to run on December 29, 2019. Petitioner, then, had only until January 28, 2020 within which to file an appeal before this Court. Unfortunately, petitioner only filed the instant Petition on February 7, 2020.

For failing to timely file the instant judicial claim for VAT refund, this Court has no jurisdiction to entertain the present Petition. Petitioner's judicial claim for VAT refund, as such, cannot be granted.

This Court deems it unnecessary to discuss the remaining requisites, considering the above.

ACCORDINGLY, the Petition for Review filed by petitioner **OFFSOURCING PHILIPPINES, INC.** is hereby **DENIED** for lack of jurisdiction.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

(on leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

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

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice
Acting Chairperson

CERTIFICATION

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