REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION
****

VESTAS SERVICES PHILIPPINES, INC., Petitioner,	**CTA Case No. 9544**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** NOV 11 2020 10:10 a.m.

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DECISION

UY, J.:

Before this Court is a *Petition for Review*[1] filed on February 27, 2017 by petitioner Vestas Services Philippines, Inc., against respondent Commissioner of Internal Revenue (CIR), seeking the refund of the total amount of ₱186,802,326.96, allegedly representing its excess and/or unutilized input value-added tax (VAT) credits for the third quarter of calendar year (CY) 2014.

THE FACTS

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission.[2] It is registered with the Bureau of Internal Revenue (BIR) for VAT purposes, pursuant to Certificate of Registration No. OCN 9R0000382508 with Revenue

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[1] Docket – Vol. 1, pp. 10 to 35.
[2] Par. 1.1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 2, p. 860.

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District Office (RDO) No. 50 in 2014 and currently under Certificate of Registration No. OCN 9RC0000777961E with RDO No. 51.[3]

As stated in its Amended Articles of Incorporation, petitioner is primarily engaged in the business of installation and construction services (except contracts for the construction of locally funded public works and contracts for the construction of defense related structures), including entering into subcontracting arrangements, and service of wind power systems *i.e. Wind Turbine Generators*, Spare Parts and activities related thereto.[4]

On the other hand, respondent is the Chief of the BIR, and is empowered by law to act upon and approve claims for refund, or for the issuance of tax credit.[5]

On October 23, 2014, petitioner filed its Quarterly VAT return for the third quarter of CY 2014.[6]

On September 30, 2016, petitioner filed with BIR RDO No. 50, an *Application for Tax Credits/Refunds* (BIR Form No. 1914)[7], together with the *Checklist of Mandatory Requirement for Claims for VAT Credit/Refund*[8], requesting for the refund of its input VAT for the 3rd quarter of 2014 in the total amount ₱186,802,326.96.

On February 3, 2017, petitioner received a Letter of Denial dated January 27, 2017 from the BIR, signed by Deputy Commissioner Nestor S. Valeroso, denying petitioner's claim for refund.[9]

Thereafter, petitioner filed the instant *Petition for Review*[10] on February 27, 2017, praying that the Court grant petitioner's claim for tax credit of input VAT and direct respondent to issue a tax credit certificate in the amount of ₱186,802,326.96.

Within the thirty day (30) extension period granted by the Court

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[3] Par. 1.3, Stipulation of Facts, *JSFI*, Docket – Vol. 2, p. 860.
[4] Exhibit "P-2", Docket – Vol. 1, p. 236.
[5] Par. 1.2, Stipulation of Facts, *JSFI*, Docket – Vol. 2, p. 860.
[6] Exhibit "P-9", Docket – Vol. 1, pp. 255 to 256.
[7] Exhibit "P-5", Docket – Vol. 1, p. 248.
[8] Exhibit "P-6", Docket – Vol. 1, p. 249.
[9] Exhibit "P-21", Docket – Vol. 2, pp. 747 to 748.
[10] Docket – Vol. 1, pp. 10 to 34.

respondent filed his *Answer*[11], through registered mail on April 20, 2017, which the Court received on May 9, 2017, interposing special and affirmative defenses. According to respondent, petitioner's claim for tax refund failed to comply with the substantiation requirements prescribed under Revenue Regulations (RR) No. 16-2005 in relation to Revenue Memorandum Circular (RMC) No. 54-2014 and RMC No. 2-2014, as well as, the conditions/requirements prescribed under Sections 112(A)(C)(D), 113 and 237 of the National Internal Revenue Code (NIRC) of 1997. Allegedly, petitioner failed to comply with the conditions prescribed under Revenue Memorandum Order (RMO) No. 16-07 and RMC No. 29-2009; and that the amount subject of the claim for tax refund of petitioner does not pertain in full to its input VAT attributable to its zero-rated sales for the 3rd quarter of 2014. Respondent also claims that he has already denied petitioner's claim for refund for lack of factual and legal basis.

On May 12, 2017, petitioner filed its *Reply*[12], arguing that contrary to respondent's allegations, the instant *Petition for Review* was filed in accordance with the RRCTA and the NIRC; that its right to claim for refund of its excess and unutilized input VAT for the 3rd quarter of 2014 is expressly granted by Section 112 (A) of the NIRC. Respondent's reliance on the presumption that taxes correctly paid and collected are not refundable is allegedly misplaced. Further, petitioner insists that contrary to respondent's claim, it has complied with the substantiation requirements prescribed under the law; and has submitted all the relevant official receipts. Petitioner likewise argues that the denial by respondent of its claim for refund does not bind this Court, and that the denial of an administrative claim does not automatically translate to a denial of the judicial claim.

The Pre-Trial Conference was set on August 1, 2017[13].

On May 13, 2017, respondent filed *via* registered mail and received by the Court on May 25, 2017, a *Manifestation and Motion (For Additional Period to Comply with the Resolution dated 21 April 2017)*[14] requesting for an additional period of thirty (30) days from May 10, 2017 or until June 9, 2017, within which to submit the BIR Records of this case. In the Resolution[15] dated June 1, 2017, the Court granted respondent's *Motion*, and ordered respondent to certify

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[11] Docket – Vol. 1, pp. 94 to 97.
[12] Docket – Vol. 1, pp. 101 to 115.
[13] Notice of Pre-Trial Conference, Docket – Vol. 1, pp. 99 to 100.
[14] Docket – Vol. 118 to 119.
[15] Docket – Vol. 1, pp. 122 to 123.

and elevate the entire BIR Records of this case on or before June 9, 2017.

On June 9, 2017, respondent filed an *Urgent Omnibus Motion: A. For Second Extension of Time to Comply with the Resolution dated 1 June 2017; B. For Leave to Issue a Subpoena Duces Tecum*[16] *via* registered mail and received by the Court on June 23, 2020, praying (1) for a second extension of fifteen (15) days from June 9, 2017 or until June 24, 2017, within which to comply with the Resolution dated June 1, 2017; and (2) for the Court to issue a Subpoena *Duces Tecum* to the Chief, Assessment Division of BIR Regional Office No. 8 - Makati, or his authorized representative, compelling the latter to bring and to produce immediately before this Court, the complete BIR Records bearing the report of investigation of the concerned BIR examiners on petitioner's claim for refund of excess input VAT for the 3rd quarter of 2014.

On June 22, 2017, respondent transmitted the complete BIR Records and original documents bearing the BIR report of investigation on the claim for refund/credit of petitioner's unitized input VAT for the 3rd quarter of 2014.[17]

On July 18, 2017, respondent filed *an Urgent Omnibus Motion (a. To Reset Pre-Trial Conference) (b. To Conduct a Hearing Before a Commissioner)*[18], praying (1) that the Pre-Trial Conference initially set on August 1, 2017 be cancelled and reset to September 12, 2017 or September 19, 2017 to give respondent ample time and opportunity to confer personally with his intended witness and to prepare his Judicial Affidavit; (2) that a Commissioner's Hearing for the comparison and pre-marking of respondent's documentary evidence be set on August 22, 2017.

In the Resolution[19] dated July 20, 2017, respondent's *Omnibus Motion* filed on June 9, 2017 was rendered moot in view of the elevation of the BIR Records on June 22, 2017.

On July 31, 2017, the Court issued a Resolution[20] granting respondent's *Omnibus Motion* filed on July 18, 2017. The Pre-Trial

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[16] Docket – Vol. 1, pp. 126 to 128.
[17] Docket – Vol. 1, p. 125.
[18] Docket – Vol. 1, pp. 135 to 137.
[19] Docket – Vol. 1, pp. 140 to 141.
[20] Docket – Vol. 1, p. 143.

Conference previously scheduled on August 1, 2017 was cancelled and reset to November 14, 2017 and a Commissioner's Hearing was set on August 22, 2017 for comparison and pre-marking of respondent's documentary evidence.

Meanwhile, respondent filed his *Pre-Trial Brief*[21] on July 6, 2017; while petitioner filed its *Pre-Trial Brief*[22] on March 8, 2018.

In the Resolution[23] dated November 9, 2017, the Court reset the Pre-Trial Conference previously scheduled on November 14 2017 to March 13, 2018, in view of Proclamation No. 332 dated October 23, 2017, declaring November 13 to 15, 2017 as Special (Non-Working) days in the National Capital Region, Province of Bulacan and Province of Pampanga.

Thereafter, the parties filed their *Joint Stipulation of Facts and Issue* (JSFI) on March 28, 2018[24]. Pursuant thereto, the Court issued the *Pre-Trial Order* on April 12, 2018. [25]

During trial, petitioner presented the following witnesses: (1.) Ian Jasper E. Monteras, its Accounting Assistant[26]; and (2) Glenn Ian D. Villanueva, the Court-commissioned Independent Certified Public Accountant (ICPA)[27];

On July 20, 2018, petitioner filed *a Motion to A. Admit Amended Judicial Affidavit of Ian Jasper E. Monteras dated 18 July 2018; B. Transfer the Exhibits Attached to Judicial Affidavit dated 13 February 2018; C. Re-mark the Independent Certified Public Accountant's Judicial Affidavit; and D. Amend the Pre-Trial Order dated 12 April 2018 Accordingly.*[28]

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[21] Docket – Vol. 1, pp. 131 to 133.
[22] Docket – Vol. 1, pp. 150 to 171.
[23] Docket – Vol. 1, p. 147.
[24] Docket – Vol. 2, pp. 860 to 876.
[25] Docket - Vol. 2, pp. 897 to 903.
[26] *Amended Judicial Affidavit of Ian Jasper E. Monteras* dated July 18, 2018, Exhibits "P-35" and "P-35-A", Docket – Vol. 3, pp. 1099 to 1139.
[27] *Judicial Affidavit of Mr. Glenn Ian D. Villanueva* dated March 26, 2018, Exhibits "P-32" and "32-A", Docket – Vol. 2, pp. 882 to 887; *Judicial Affidavit of Mr. Glenn Ian D. Villanueva* dated July 19, 2018, Exhibits "P-288" and "P-288-A", Docket – Vol. 3, pp. 1009 to 1020.
[28] Docket – Vol. 3, pp. 1092 to 1097.

In the Resolution[29] dated September 6, 2018, the Court partially granted petitioner's *Motion*. The Court (1) admitted the *Amended Judicial Affidavit of Ian Jasper E. Monteras* dated July 18, 2018 as part of the record of the case; (2) set a Commissioner's Hearing for the correction of markings in the Judicial Affidavits of Jasper Ian E. Monteras and ICPA Glenn Ian D. Villanueva on September 18, 2018; (3) directed the ICPA to make the necessary rectification in his Judicial Affidavit; (4) ordered that the Pre-Trial Order be amended to reflect the corrections in the sub-markings on petitioner's documentary exhibits; and (5) directed petitioner to file its formal offer of evidence within fifteen (15) days from September 18, 2018.

On September 25, 2018, petitioner filed a *Motion for (A.) Additional Schedule for Commissioner's Hearing; and (B) the Deferment of Submission of the Formal Offer of Evidence*[30], stating that it was unable to correct the markings in the judicial affidavits of Jasper Ian E. Monteras and ICPA Glenn Ian D. Villanueva, during the Commissioner's Hearing held on September 18, 2018.

On October 2, 2018, petitioner filed a *Manifestation*[31], stating that its original marked Exhibits "P-23-A" and "P-23-B" are found in the BIR Records that have been elevated to the CTA and were duly marked on May 24, 2018; and that there is no need to rectify the markings of the documentary evidence identified in the ICPA's Judicial Affidavit.

Petitioner filed its *Formal Offer of Evidence*[32] on October 3, 2018.

In the Resolution dated October 9, 2018, the Court (1) noted petitioner's *Manifestation* filed on October 2, 2018; (2) ruled that petitioner's *Motion for (A.) Additional Schedule for Commissioner's Hearing; and (B) the Deferment of Submission of the Formal Offer of Evidence* filed on September 25, 2018, is considered moot; and (3) ordered respondent to file his comment to petitioner's *Formal Offer of Evidence*.[33]

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[29] Docket – Vol. 3, pp. 1146 to 1149.
[30] Docket – Vol. 3, pp. 1151 to 1156.
[31] Docket – Vol. 3, pp. 1157 to 1159.
[32] Docket – Vol. 3, pp. 1163 to 1185.
[33] Docket – Vol. 3, p. 1199.

On October 10, 2018, respondent filed his *Comment/Opposition (Petitioner's Formal Offer of Evidence)*[34] *via* registered mail and received by the Court on October 22, 2018.

In the *Resolution* dated March 15, 2019,[35] the Court admitted most of petitioner's documentary evidence, but denied the others for failure to present the originals for comparison.

Thereafter, respondent presented Revenue Officer Moises B. Besol, as his lone witness.[36]

On September 6, 2019, respondent filed his *Formal Offer of Evidence*[37] *via* registered mail which was received by the Court on September 18, 2019.

On September 23, 2019, petitioner filed its *Comment to the Respondent's Formal Offer of Evidence.*[38]

In the Resolution[39] dated October 9, 2019, the Court admitted all of respondent's exhibits.

In the Resolution dated December 27, 2019,[40] this case was submitted for decision, taking into consideration the *Memorandum* of petitioner filed on November 13, 2019[41], without respondent's memorandum as per *Record's Verification Report*[42] dated November 28, 2019.

Hence, this Decision.

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[34] Docket – Vol. 3, pp. 1207 to 1208.
[35] Docket – Vol. 3, pp. 1212 to 1214.
[36] *Judicial Affidavit of Revenue Officer Moises B. Besol* dated August 8, 2019, Docket – Vol. 3, pp. 1218 to 1225.
[37] Docket – Vol. 3, pp. 1251 to 1256.
[38] Docket – Vol. 3, pp. 1259 to 1268.
[39] Docket – Vol. 3, pp. 1274 to 1275.
[40] Docket – Vol. 3, p. 1309.
[41] Docket – Vol. 3, pp. 1276 to 1304.
[42] Docket – Vol. 3, p. 1307.

THE ISSUE

The parties stipulated a sole issue[43] for this Court's resolution, to wit:

> "Whether VSPI [petitioner] is entitled to a refund or to the issuance of tax credit certificate in the amount of ₱186,802,326.96 representing its excess and/or unutilized input VAT attributable to its zero-rated sales of goods ad services for the third quarter of CY 2014."

Petitioner's arguments:

Petitioner argues that it is entitled to the refund of its excess and/or unitized input VAT in the amount of ₱186,802,326.96 which is attributable to its zero-rated sales for the third quarter of CY 2014. According to petitioner, it is a VAT-registered taxpayer and that its sales and gross receipts for the third quarter of CY 2014 are VAT zero-rated.

Further, petitioner asserts that its input taxes are directly attributable to its zero-rated sales and ere not applied to any output VAT liability.

As regards the timeliness of the filing of its claim, petitioner alleges that it filed its administrative claim for refund within two (2) years from the close of the taxable quarter when the sales were made; while its judicial claim was filed within thirty (30) days from the expiration of the 10-day period and within thirty (30) days from its receipt of respondent's decision denying its claim for refund.

Petitioner likewise contends that respondent's denial of its claim is incorrect and without basis. Allegedly, petitioner has no obligation to submit secondary evidence to substantiate the authenticity of its purchases from Scan Global and that the submission of secondary evidence is superfluous, as petitioner already submitted all the relevant official receipts.

In addition, petitioner asserts that the input VAT noted by the ICPA as exceptions should be allowed and recognized. Allegedly,

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[43] Stipulation of the Issue, *JSFI*, Docket – Vol. 2, p. 861.

the excluded input taxes should be allowed on the ground that these are minor errors which cannot be taken against petitioner.

Finally, petitioner claims that the out-of-period transactions should be allowed considering that these pertained to the sales recognized during the third quarter of CY 2014.

Respondent's counter-arguments:

Respondent counter-argues that taxes paid and collected are presumed to have been made in accordance with law and hence, not refundable.

Allegedly, petitioner's claim for tax refund failed to comply with the substantiation requirements prescribed under RR No. 16-2005 in relation to RMC No. 54-2014 and RMC No. 2-2014, as well as, the conditions/requirements prescribed under Section 112(A)(C)(D), 113 and 237 of the NIRC of 1997.

Furthermore, petitioner also failed to comply with the conditions prescribed under RMO No. 16-2007 and RMC 29-09.

Respondent likewise claims that the amount subject of the claim for tax refund of petitioner does not pertain in full to its input VAT attributable to its zero-rated sales for the 3rd quarter of 2014. Additionally, respondent avers that he has already denied petitioner's claim for refund for lack of factual and legal basis.

Finally, respondent submits that claims for refund are construed strictly against petitioner for the same partakes the nature of tax exemption; and that petitioner has the burden to prove with the required quantum of evidence its entitlement to the claimed refund.

THE COURT'S RULING

After careful and thorough evaluation of the applicable laws, rules and regulations in the instant case, and the evidence presented by petitioner, the Court finds that the instant *Petition for Review* must be denied for insufficiency of evidence.

Requisites for the grant of refund or issuance of tax credit certificate under the law.

In an action claiming for the refund or issuance of tax credit certificate for input taxes such as the instant petition, Section 112 of the NIRC of 1997, as amended, provides:

> "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: xxx.
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty

(30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Further, the Supreme Court has jurisprudentially established certain requisites which must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT, and said requisites may be classified into certain categories, *to wit*:

<u>As to the timeliness of the filing of the administrative and judicial claims</u>:

1. the claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[44]

2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner of Internal Revenue (CIR) to act on the said claim within a period of 120 days, the judicial claim has been filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[45]

<u>With reference to the taxpayer's registration with the BIR</u>:

3. the taxpayer is a VAT registered person;[46]

<u>In relation to the taxpayer's output VAT</u>:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[47]

5. for zero-rated sales under Section 106(A)(2)(a)(1) and

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[44] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc.*, G.R. No. 182364, August 3, 2010.

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

[46] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.

[47] *Ibid.*

(2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[48]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are due or paid;[49]

7. 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;[50] and

8. the input taxes have not been applied against output taxes during and in the succeeding quarters.[51]

First and second requisites: Petitioner timely filed its administrative and judicial claims.

The *first requisite* pertains to the filing of the claim for tax credit and refund of input VAT before the BIR, within two years after the close of the taxable quarter when the sales were made.

The instant claim covers the third quarter of 2014. Counting two (2) years from the close of the said quarter, petitioner had until September 30, 2016, within which to file its administrative claim for refund or issuance of TCC for its input VAT.

Thus, petitioner's administrative claim [Application for Tax Credits/Refunds (BIR Form No. 1914)] [52], covering the third quarter of 2014, filed with the BIR on September 30, 2016, was timely filed.

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[48] *Ibid.*
[49] *Ibid.*
[50] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.
[51] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.
[52] Exhibit "P-5", Docket – Vol. 1, p. 248.

The *second requisite* pertains to the timeliness of the judicial claim and is taken from Section 112 (C) of the NIRC of 1997, as amended. The legal provision speaks of two periods: (1) the period of 120 days, which serves as a waiting period to give time for the BIR Commissioner to act on the administrative claim for refund or tax credit; and (2) the period of 30 days which refers to the period for filing a judicial claim with this Court.[53]

In this case, counting from the filing of petitioner's administrative claim on September 30, 2016, respondent had 120 days or until January 28, 2017 to act on the said claim. Within the said 120-day period, the CIR through Deputy Commissioner Nestor S. Valeroso issued a *Letter* dated January 27, 2017, denying petitioner's administrative claim. The said denial Letter was received by petitioner on February 3, 2017[54]. Thus, petitioner had a period of thirty (30) days from February 3, 2017 or until March 5, 2017 to file its judicial claim.

It appearing that the instant *Petition for Review*[55] was filed on February 27, 2017, the judicial claim was likewise filed on time.

Correspondingly, petitioner complied with the *first* and *second* requisites.

Third requisite: Petitioner is VAT-registered.

The *third* requisite pertains to the taxpayer's VAT registration.

As stipulated by both parties' counsels, petitioner is a VAT-registered taxpayer.[56] Notably, petitioner presented its Certificate of Registration issued by BIR with TIN 007-533-154-000, indicating that it is liable for VAT.[57]

Thus, petitioner also complied with the *third* requisite.

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[53] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015
[54] Exhibit "P-21", Docket – Vol. 2, pp. 747 to 748.
[55] Docket – Vol. 1, pp. 10 to 35.
[56] JSFI, Stipulation of Facts, Docket – Vol. 2, p.860.
[57] Exhibit "P-3", BIR Records, p. 691.

Fourth and fifth requisites: Petitioner failed to prove that it was engaged in zero-rated or effectively zero-rated sales for the third quarter of CY 2014.

The *fourth* and *fifth* conditions, respectively, require that the taxpayer is engaged in zero-rated or effectively zero-rated sales; and that for zero-rated sales under Section 106(A)(2)(a)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations.

Petitioner alleges that for the third quarter of CY 2014, it generated gross receipts from sale of services to EDC Wind Power Corporation (or EDC) amounting to ₱1,494,848,562.00, as declared in its Quarterly VAT Return[58] for the same period.

According to petitioner, its sales to EDC are considered zero-rated sales pursuant to Section 15(G) of Republic Act No. 9513 or the Renewable Energy Act of 2008; and Part III Rule 5 Section 13.G of the Implementing Rules and Regulations (IRR) of RA 9513, to wit:

> **<u>Section 15(g) of RA No. 9513 (Renewal Energy Act of 2008)</u>:**
>
> "Section 15. *Incentives for Renewable Energy Projects and Activities.* - RE developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:
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> xxx xxx xxx
>
> (g) *Zero Percent Value-Added Tax Rate.* - The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National

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[58] Exhibit "P-9", Docket – Vol. 1, pp. 255 to 256.

Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.

All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.

This provision shall **also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power**, **<u>including but not limited to the services performed by subcontractors and/or contractors</u>**." (*Emphasis and underscoring ours*)

<u>Part III Rule 5 Section 13.G of the IRR of RA 9513[59]:</u>

"SEC. 13. Fiscal Incentives for Renewable Energy Projects and Activities

DOE-certified existing and new RE Developers of RE facilities, including Hybrid Systems, in proportion to and to the extent of the RE component, for both Power and Non-Power Applications, shall be entitled to the following incentives:

xxx xxx xxx

G. Zero Percent Value-Added Tax Rate

The following transactions/activities shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337:

xxx xxx xxx

(b) **Purchase of local goods, properties and services needed for the development, construction, and installation of the plant facilities of RE Developers;**

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[59]Department Circular No. DC2009-05-0008 dated May 25, 2009 issued by the Department of Energy (DOE).

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(c) **Whole process of exploration and development of RE sources up to its conversion into power, <u>including, but not limited to, the services performed by subcontractors and/or contractors</u>.**" (*Emphasis ours*)

Based on the foregoing, RE developers shall be entitled to zero-rated VAT on its <u>*purchases*</u> of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities. It is likewise provided that the services performed by subcontractors and/or contractors in the exploration and development of RE sources up to its conversion into power is subject to zero percent VAT.

However, in order to avail of the incentives under RA 9513, *i.e. VAT zero-rating*, the conditions set forth under Part III, Rule 5 of the IRR of RA 9513 must be complied with. The pertinent provisions are as follows:

"SEC. 18. Conditions for Availment of Incentives and Other Privileges

A. Registration/ Accreditation with the DOE

For purposes of entitlement to the incentives and privileges under the Act, **<u>existing and new RE Developers</u>**, and manufacturers, fabricators, and suppliers of locally-produced RE equipment **<u>shall register with the DOE, through the Renewable Energy Management Bureau (REMB)</u>**. The following certifications shall be issued:

*(1) **DOE Certificate of Registration** - issued to an RE Developer holding a valid RE Service/Operating Contract.*

For existing RE projects, the new RE Service/Operating Contract shall pre-terminate and replace the existing Service Contract that the RE Developer has executed with the DOE subject to the Transitory Provision in Rule 13, Section 39.

The DOE Certificate of Registration shall be issued immediately upon award of an RE Service/Operating Contract covering an existing or new RE project or upon approval of additional investment.

Any investment added to existing RE projects shall be subject to prior approval by the DOE.

(2) DOE Certificate of Accreditation – issued to RE manufacturers, fabricators, and suppliers of locally-produced RE equipment, upon submission of necessary requirements to be determined by the DOE, in coordination with the DTI.

B. Registration with the Board of Investments (BOI)

The RE sector is hereby declared a priority investment sector that will regularly form part of the country's Investment Priority Plan (IPP), unless declared otherwise by law.

To qualify for the availment of the incentives under Sections 13 and 15 of this IRR, **<u>RE Developers</u>** and manufacturers, fabricators, and suppliers of locally produced RE equipment, **<u>shall register with the BOI</u>.**

The registration with the BOI shall be carried out through an agreement and an administrative arrangement between the BOI and the DOE, with the end-view of facilitating the registration of qualified RE facilities. The applications for registration shall be favorably acted upon immediately by the BOI, on the basis of the certification issued by the DOE.

C. Certificate of Endorsement by the DOE

<u>RE Developers</u>, and manufacturers, fabricators, and suppliers of locally-produced RE equipment **shall be qualified to avail of the incentives provided for in the Act <u>only after securing a Certificate of Endorsement</u> from the DOE, through the REMB, on a per transaction basis.**

The DOE, through the REMB, shall issue said certification within fifteen (15) days upon request of the RE Developer or manufacturer, fabricator, and supplier; Provided, That the certification issued by the DOE shall be without prejudice to any further requirements that may be

> imposed by the government agencies tasked with the administration of the fiscal incentives mentioned under Rule 5 of this IRR." (Emphasis and underscoring supplied.)

Accordingly, for purposes of availment of the zero percent VAT on RE developer's _purchases_ of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities, the following documents must be secured:

1. Certificate of Registration issued by the DOE;
2. Registration with BOI; and
3. Certificate of Endorsement issued by the DOE, on a per transaction basis.

Corollary thereto, sales made by suppliers of goods and services to RE developers may only be considered for VAT zero-rating when all the foregoing documentary requirements are obtained.

In the instant case, petitioner alleges that EDC is a RE developer registered with the DOE and BOI, and as such its sales thereto are considered zero-rated sales.

We are not convinced.

The Court finds that petitioner failed to establish that its sales transaction with EDC are subject to zero-rated VAT. While it appears that the DOE has issued Certificate of Registration No. WESC-2009-09-004[60] dated February 4, 2011, and the BOI has issued Certificate of Registration No. 2011-135, both in favor of EDC, petitioner, however, failed to present the requisite Certificate of Endorsement issued to EDC by the DOE, on a per transaction basis.

Likewise, a cursory reading of petitioner's *Formal Offer of Evidence* filed on October 3, 2018[61] , shows that petitioner did not offer any specific evidence to establish that said Certificate of Endorsement was issued to EDC.

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[60] Exhibit "P-11", BIR Records, p. 587
[61] Division Docket – Vol. 3, pp. 1163 to 1185.

Absent the said certificate, the Court cannot treat petitioner's gross receipts of ₱1,494,848,562.00, representing its sales to EDC, as subject to VAT zero-rating under the law.

It bears emphasis that as cases filed before the Court are litigated de novo, party-litigants should prove every minute aspect of their cases.[62] It is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[63]

Further, in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[64], the Supreme Court ruled that actions for tax refund are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.

Clearly, petitioner failed to fulfill the *fourth and fifth requisites.* Such being the case, the subject refund claim on petitioner's alleged excess and unutilized input VAT must perforce fail.

Correspondingly, it is no longer necessary to determine whether petitioner fulfilled the remaining requisites for granting a credit/refund of input VAT for the subject periods.

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

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[62] *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.
[63] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[64] G.R. No. 159490, February 18, 2008.

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

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