

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SECOND DIVISION

**NIPPON EXPRESS
PHILIPPINES
CORPORATION,**

Petitioner,

- versus -

CTA CASE NO. 10574

Members:

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

**COMMISSIONER OF
INTERNAL REVENUE,**

Respondent.

Promulgated:

MAY 29 2025

X ----- X

4:00 p.m.

DECISION

MODESTO-SAN PEDRO, J.:

The Case

The *Petition for Review* prays that the Court render judgment ordering respondent to refund to the petitioner its unutilized input VAT for the period from October 1, 2018 to December 31, 2018 in the aggregate amount of PhP10,872,529.10.¹

The Parties

Petitioner Nippon Express Philippines Corporation is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal address at Lot 85 A & B Avocado Road, Food Terminal Inc. Complex, East Service Road, Taguig City 1630 Metro Manila.² It is also registered with the Bureau of Internal Revenue ("BIR") as a value-

¹ Statement of the Case, Pre-Trial Order, Docket – Vol. I, p. 289.

² Par. 3.1, *Petition for Review*, *id.* at 7; Exhibit "P-1" and "P-2" (Amended Articles of Incorporation), *id.* at 479 to 493.

added tax (“VAT”) taxpayer, with Taxpayer’s Identification No. (“TIN”) 004-669-434-00000.³

Respondent is the Commissioner of the Bureau of Internal Revenue, vested by law to enforce and implement the provisions of the NIRC, as amended, as well as related statutes and their implementing rules and regulations. Respondent holds office at the BIR National Office Building. He may be served with summons and other court processes at Room 703 Litigation Division, BIR National Office Building, BIR Road, Diliman Quezon City.⁴

The Facts

Petitioner filed its Amended 4th Quarterly VAT Returns for the period October 1, 2018 to December 31, 2018 on March 21, 2019.⁵

On February 15, 2021, petitioner filed with the BIR an Application for Tax Credits/Refunds (BIR Form No. 1914) and a Letter dated February 11, 2021,⁶ based on *Section 112(A) of the National Internal Revenue Code of 1997 (“NIRC”), as amended by Republic Act (“RA”) No. 10963,⁷* for the period from October 1, 2018 to December 31, 2018 amounting to ₱10,872,529.10.

On June 17, 2021, petitioner received the VAT Refund Notice dated May 18, 2021,⁸ with attached annexes, denying the claim for refund for lack of factual and legal basis.

Petitioner thus filed a Petition for Review (“Petition”) before this Court on July 8, 2021,⁹ appealing the denial of its claim for refund.

On November 25, 2021, within the extended time granted by the Court,¹⁰ respondent filed his Answer,¹¹

³ Exhibit “P-3”, *id.* at 494 to 496.

⁴ Par. 1, Joint Stipulation of Facts and Issues, *id.* at 255.

⁵ Exhibit “P-21”, *id.* at 513 to 514.

⁶ Exhibit “P-33” to “P-34”, *id.* at 537 to 563.

⁷ 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 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 No. 8424, Otherwise Known as the National Internal Revenue Code of 1997, as Amended, and for Other Purposes. Otherwise known as the “Tax Reform for Acceleration and Inclusion (TRAIN)” Law.

⁸ Exhibit “P-36”, Docket – Vol. I, pp. 565 to 571.

⁹ Docket – Vol. I, pp. 5 to 51.

¹⁰ Motion for Extension of Time to File Answer filed by respondent on October 29, 2021 and Resolution dated November 12, 2021, Docket – Vol. I, pp. 180 to 183 and 187, respectively.

¹¹ Docket – Vol. I, pp. 188 to 200.

Thereafter, Pre-Trial Conference was set and held on April 28, 2022.¹² Prior thereto, the Pre-Trial Brief for petitioner and Respondent's Pre-Trial Brief were filed on April 19, 2022 and April 22, 2022, respectively.¹³

On May 25, 2022, the parties submitted their Joint Stipulation of Facts and Issues,¹⁴ which was approved and adopted in the Pre-Trial Order issued and dated 8 March 2021.¹⁵

Trial then ensued, with the parties presenting and offering their respective documentary and testimonial evidence.

Petitioner offered the testimonies of the following individuals: (1) Ms. Elizabeth Quingquing,¹⁶ petitioner's Finance Manager; and (2) Mr. Neil; U. Sison,¹⁷ the Court-commissioned Independent Certified Public Accountant ("ICPA").¹⁸

The Report of the ICPA was submitted on October 27, 2022.¹⁹

Petitioner filed its Formal Offer of Exhibits on March 8, 2023.²⁰ Respondent then posted his Comment Re: Petitioner's Formal Offer of Evidence on March 17, 2023.²¹ The Court resolved thereon in a Resolution dated June 13, 2023.²²

On June 29, 2023, petitioner filed a Motion for Reconsideration to the Resolution dated June 13, 2023,²³ without respondent posting any comment.²⁴ The Court resolved thereon in a Resolution dated November 6, 2023.²⁵

Meanwhile, on March 10, 2022, respondent transmitted to this Court the BIR Records of the case, consisting of 395 pages.²⁶

¹² Notice of Pre-Trial Conference dated December 14, 2021, Minutes of the hearing held on, and Order dated, April 28, 2022, Docket – Vol. I, pp. 207 to 208, 250 and 252 to 253, respectively.

¹³ Docket – Vol. I, pp. 229 to 241 and 244 to 247, respectively.

¹⁴ Docket – Vol. I, pp. 255 to 266.

¹⁵ *Id.*, pp. 289 to 296.

¹⁶ Exhibit "P-38", Docket – Vol. I, pp. 54 to 78; Minutes of the hearing held on, and Order dated August 4, 2022, Docket – Vol. I, pp. 304 and 306 to 307, respectively.

¹⁷ Exhibit "P-41", Docket – Vol. I, pp. 409 to 447; Minutes of the hearings held on January 24, 2023, Docket – Vol. I, p. 449.

¹⁸ Oath of Commission dated August 4, 2022, Docket – Vol. I, p. 305; Minutes of the hearing held on, and Order dated August 4, 2022, Docket – Vol. I, pp. 304 and 306 to 307, respectively.

¹⁹ Exhibit "P-40", Docket – Vol. I, pp. 331 to 354.

²⁰ Docket – Vol. I, pp. 463 to 477.

²¹ Docket – Vol. I, pp. 574 to 576.

²² Docket – Vol. I, pp. 581 to 583.

²³ Docket – Vol. II, pp. 584 to 588.

²⁴ Records Verification dated September 15, 2023 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 595.

²⁵ Docket – Vol. II, pp. 599 to 602.

²⁶ Compliance dated March 4, 2022, Docket – Vol. I, p. 224 to 226.

For his part, respondent offered the testimony of Revenue Officer Dexter C. Bustillos.²⁷

Respondent then submitted his Formal Offer of Evidence on February 16, 2024,²⁸ with petitioner's Comment/Opposition (To the Respondent's Formal Offer of Evidence) filed on February 23, 2024.²⁹ The Court resolved thereon in a Resolution dated April 19, 2024.³⁰

Respondent filed his Memorandum on May 24, 2024,³¹ while petitioner's Memorandum was submitted on May 27, 2024.³² Thus, in the Minute Resolution dated May 30, 2024, the case was deemed submitted for decision.

Hence, this Decision.

The Issue

The parties submitted the following sole issue in this case:

WHETHER OR NOT PETITIONER IS ENTITLED TO THE CLAIM FOR REFUND ON THE EXCESS AND UNUTILIZED INPUT VALUE ADDED TAX (VAT) FOR THE PERIOD OCTOBER 1, 2018 TO DECEMBER 31, 2018 AMOUNTING TO ₱10,872,529.10³³

Arguments of the Parties

Petitioner's Arguments:

Petitioner argues that its claim for VAT refund should be granted because it complied with all the elements thereto and that the disallowances and imputations of output VAT on its transactions lack factual and legal basis.

Respondent's Counter-arguments:

Respondent counter-argues that the petition must be dismissed for failure of petitioner to substantiate its administrative claim for refund; and that tax refunds are construed strictly against the taxpayer and the claimant has the

²⁷ Exhibit "R-7", Docket – Vol. I, pp. 213 to 219; Minutes of the hearing held on, and Order dated, February 8, 2024, Docket – Vol. II, pp. 603 to 604, respectively.

²⁸ Docket – Vol. II, pp. 605 to 609.

²⁹ *Id.*, pp. 611 to 612.

³⁰ *Id.*, pp. 615 to 616.

³¹ Docket – Vol. II, pp. 678 to 693.

³² Docket – Vol. II, pp. 617 to 576.

³³ JSFI, Docket – Vol. I, pp. 255 to 256.

burden of proof to establish the factual basis of his claim for tax credit or refund.

The Ruling of the Court

The Petition must be **PARTIALLY GRANTED**.

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, as amended by RA No. 10963*, which reads as follows:

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)³⁴ and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

....

(C) Period within which Refund of Input Taxes shall be Made. — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: Provided, however, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code. (Italics, Ours.)

³⁴ In view of the amendments introduced by RA No. 10963, Section 106(A)(2)(a)(2) is now renumbered as Section 106(A)(2)(a)(3), while Section 106(A)(2)(b) is now deleted.

Based on the aforequoted provision, jurisprudence has laid down certain requisites which the taxpayer-applicant must comply with to successfully obtain a credit/refund of input VAT. Said requisites may be classified into certain categories as follows:

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

1. the refund claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;³⁵
2. in case of full or partial denial of the refund claim rendered within a period of 90 days from the date of submission of the official receipts or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within 30 days from receipt of the decision;³⁶

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

3. the taxpayer is a VAT-registered person;³⁷

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;³⁸
5. for zero-rated sales under *Section 106(A)(2)(a)(1) and (2)*;³⁹ *106(B)*;⁴⁰ and *108(B)(1) and (2)*, the acceptable foreign

³⁵ 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. vs. Commissioner of Internal Revenue, G.R. No. 182364, August 3, 2010.

³⁶ Refer to Energy Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 203367, March 17, 2021; Commissioner of Internal Revenue vs. CE Casecan Water And Energy Company, Inc., G.R. No. 212727, February 1, 2023; and Commissioner of Internal Revenue vs. Vestas Services Philippines, Inc., G.R. No. 255085, March 29, 2023.

³⁷ 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., vs. Commissioner of Internal Revenue, *supra*.

³⁸ *Ibid.*

³⁹ *Supra.* at Note 37.

⁴⁰ Section 106(B) cited in Section 112(A) of RA No. 8424 was later amended by RA No. 9337 to pertain to Section 106(A)(2)(b). Accordingly, Section 112(A), as amended by RA No. 9337, reads as follows:

“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

currency exchange proceeds have been duly accounted for in accordance with the Bangko Sentral ng Pilipinas (BSP) rules and regulations;⁴¹

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;⁴²
7. the input taxes are due or paid;⁴³
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;⁴⁴ and
9. the input taxes have not been applied against output taxes during and in the succeeding quarters.⁴⁵

At this juncture, it must be emphasized that cases filed before the Court of Tax Appeals ("CTA") are litigated *de novo*; as such, party-litigants should prove every minute aspect of their case by presenting, formally offering, and submitting to the CTA all evidence required for the successful prosecution of its claim.⁴⁶ The review of the CTA is not limited to whether or not respondent committed gross abuse of discretion, fraud, or error of law. As evidence is considered and evaluated again, the scope of the CTA review covers factual findings.⁴⁷ Consequently, the CTA may give credence to all evidence presented by petitioner, including those that may not have been submitted to

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 or 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." (*Emphasis supplied*)

However, in view of the amendments introduced by RA No. 10963, Section 106(A)(2)(b) is now deleted (*Supra.* at Note 37).

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, *supra*; and San Roque Power Corporation vs. Commissioner of Internal Revenue, *supra*.

⁴⁵ 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. vs. Commissioner of Internal Revenue, *supra*.

⁴⁶ Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.), G.R. No. 231581, 10 April 2019.

⁴⁷ Philippine Airlines, Inc. v. Commissioner of Internal Revenue, G.R. No. 206079-80 and 206309, 17 January 2018.

respondent, as the case is being essentially decided in the first instance.⁴⁸ 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 tax refund or tax credit of input VAT before the BIR, within two (2) years from the close of the quarter when the sales were made.

The present claim covers the 4th quarter of the taxable year 2018, covering the period October 1, 2018 to December 31, 2018. Counting two years from the close of the said quarter, the last day for the filing of the administrative claim pursuant to *Section 112(A) of the NIRC, as amended*, is on December 31, 2020.

However, petitioner filed its administrative claim on February 15, 2021.⁴⁹ Nevertheless, the same was timely made as it was filed within the extended period for filing VAT refund claims for the calendar quarter ending December 31, 2018 under *Revenue Regulations ("RR") No. 27-20*, which was set until February 15, 2021, in light of the implementation of *RA No. 11469, otherwise known as "Bayanihan to Heal As One Act"*, particularly on the extension of statutory deadlines and timeliness for the filing and submission of any document and the payment of taxes. Thus, petitioner complied with the *first requisite*.

As for the *second requisite*, the same necessitates that the judicial claim must have been filed within 30 days from receipt of respondent's decision fully or partially denying the taxpayer's administrative claim for refund under *Section 112(C) of the NIRC, as amended*.

The VAT Refund Notice denying petitioner's administrative claim was received on June 17, 2021.⁵⁰ Counting 30 days therefrom, petitioner had until July 17, 2021 to file its judicial claim before the CTA. It is thus apparent that petitioner complied with the *second requisite* when it filed the present Petition before the Court on July 8, 2021.⁵¹

⁴⁸ Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.), *supra*.

⁴⁹ Exhibit "P-33" to "P-34", *id.* at 537 to 563.

⁵⁰ Exhibit "P-36", Docket – Vol. I, pp. 565 to 571.

⁵¹ *Id.* at 5 to 51.

Given the foregoing, petitioner complied with the *first and second requisites* that the administrative and judicial claims should be timely filed.

Petitioner is a VAT-registered taxpayer.

As for its compliance with the *third requisite*, petitioner has fulfilled the same by establishing that it is a VAT-registered taxpayer with the BIR under TIN 004-669-434-00000, as evidenced by BIR Certificate of Registration No. 125RC20220000000391.⁵²

Petitioner was engaged in zero-rated or effectively zero-rated sales for the 4th quarter of CY 2018 but only to the extent of ₱91,198,770.25.

The *fourth and fifth requisites* require that the taxpayer be engaged in zero-rated or effectively zero-rated sales and that for zero-rated sales under *Sections 106(A)(2)(a)(1) and (3), and 108(B)(1) and (2) of the NIRC, as amended*, the acceptable foreign currency exchange proceeds thereof have been duly accounted for in accordance with BSP rules and regulations.

Petitioner reported total sales amounting to ₱1,375,157,200.26 for the 4th quarter of calendar year (“CY”) 2018, which is comprised of VATable sales amounting to ₱757,887,128.49 and zero-rated sales amounting to ₱617,270,071.77.⁵³

Petitioner’s zero-rated sales amounting to ₱617,270,071.77 is broken down, as follows:⁵⁴

Nature	Amount
Sales to PEZA, CDC, SBMA, FAB and foreign corporations	₱483,657,015.01
Freight revenue	133,151,600.86
Inter-branch sales	461,455.82
Total	₱617,270,071.69

Based on the foregoing, petitioner’s zero-rated sales were derived from the following types of sale of services to: 

⁵² Exhibit “P-3”, *id.* at 494 to 496.

⁵³ Exhibit “P-21”, *id.* at 513 to 514.

⁵⁴ Exhibit “P-40” (ICPA Report, p. 8), *id.* at 513 to 514.

- 1.) Foreign corporations which are not engaged in business in the Philippines and who were outside the Philippines when the services were performed; and
- 2.) Entities registered with Philippine Economic Zone Authority (“PEZA”), Clark Development (“CDC”), Subic Bay Metropolitan Authority (“SBMA”), Freeport Area of Bataan (FAB), and Bureau of Internal Revenue (“BIR”);
- 3.) Freight revenue; and
- 4.) Interbranch sales.

For the *first and second types of sales*, petitioner claims that it is engaged in zero-rated or effectively zero-rated sale of services under *Section 108(B)(2) and (3) of the NIRC, as amended*, which reads as follows:

SEC. 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:

(1) Processing, manufacturing or repacking 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 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);*

(3) *Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;*
(Italics, Ours.)

The foregoing provision is implemented by *Section 4.108-5 (b)(2) and (3) of Revenue Regulations (“RR”) No. 16-2005, as amended by RR No. 13-18*, which provides that:

SEC. 4.108-5. *Zero Rated Sale of Services.* — 

....

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

....

(2) Services other than processing, manufacturing or repacking 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 BSP;

(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;

On the other hand, petitioner failed to provide legal basis and sufficient corroborating evidence on the entitlement to VAT zero-rating of its *third and fourth types of sales* aggregating ₱133,613,056.58. Consequently, the Court cannot sufficiently determine whether these sales indeed qualify for VAT zero-rating under the *NIRC, as amended*. Accordingly, the alleged zero-rated sales amounting to ₱133,613,056.58 must be disallowed outright.

Moving forward, with respect to the sale of services to be subject to the VAT rate of zero percent (0%) under *Section 108(B)(2) of the NIRC, as amended*, certain *essential elements* must be present, to wit:

1. The services fall under any of the categories under *Section 108(B)(2)*,⁵⁵ or simply, the services rendered should be “*other than processing, manufacturing or repacking goods*”;⁵⁶
2. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a non-resident person not engaged in business who is outside the Philippines when the services were performed;⁵⁷

⁵⁵ Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), G.R. No. 152609, 29 June 2005.

⁵⁶ Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., *supra*.

⁵⁷ Sitel Philippines Corporation (Formerly Clientlogic Phils. Inc.) vs. Commissioner of Internal Revenue, G.R. No. 201326, February 8, 2017; Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 153205, 22 January 2007; Accenture, Inc. vs. Commissioner of Internal Revenue, G.R. No. 190102, 11 July 2012.

3. The services must be performed in the Philippines⁵⁸ by a VAT-registered person; and
4. The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.⁵⁹

However, petitioner failed to comply with the *first, third, and fourth essential elements* as it did not present any proof that its sale of services were indeed “*other than processing, manufacturing or repacking goods*”, that the same were performed in the Philippines, and that the payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.

As for the *second essential element*, petitioner must show that: (1) the client was established under the laws of a foreign country; and, (2) it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of **both** of these requirements to establish that the clients are foreign corporations and are not doing business in the Philippines.⁶⁰

Thus, petitioner must submit for its NRFC client, at the very least, **both** (1) the Philippine Securities and Exchange Commission (“SEC”) Certificate of Non-Registration of Corporation/Partnership; **and** (2) Proof of Certificate/Articles of Foreign Incorporation/Association showing the state/province/country where the entity was organized.

The SEC Certificate of Non-Registration shows that the foreign client is not engaged in trade or business in the Philippines. On the other hand, the Certificate/Articles of Foreign Incorporation/Association proves that the client was established under the laws of a foreign country. Together, these two (2) documents prove the two (2) requisites necessary to establish the NRFC status of a client.

However, petitioner submitted only Certifications of Non-Registration as a corporation in the Philippines issued by the SEC,⁶¹ which is far from proving its compliance with the *second essential element*.

⁵⁸ Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., *supra*; Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), *supra*.

⁵⁹ Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., *supra*; Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), *supra*.

⁶⁰ Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd., G.R. No. 234445, 15 July 2020.

⁶¹ Exhibit “P-39-N-1” to “P-39-N-59”, USB marked as Exhibit “P-40-2”.

Verily, petitioner's sale of services to foreign corporations cannot qualify as zero-rated for its failure to prove compliance with all the elements essential under *Section 108(B)(2) of the NIRC, as amended*.

On the other hand, with respect to petitioner's sale of services to qualify for zero-rating under *Section 108(B)(3) of the NIRC, as amended*, it must comply with the following essential elements:

- 1) the sale was made by a VAT registered person; and
- 2) the sale was made to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate.

The *first essential requisite* that petitioner must be a VAT-registered person was already established earlier.

As for the *second essential requisite*, petitioner complied therewith by presenting the Certifications of VAT Zero-Rating of its customers issued by PEZA, CDC, SBMA, FAB, and BIR,⁶² thereby proving that its sales thereto indeed qualify for VAT zero rating under *Section 108(B)(3) of the NIRC, as amended*.

Further, in proving its zero-rated sales, petitioner must comply with the pertinent invoicing requirements, containing all the required information under *Section 113(A) and (B) of the NIRC, 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); 

⁶² Exhibit "P-39-M-1" to "P-39-N-252", USB marked as Exhibit "P-40-2".

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: Provided, That:

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

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

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

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the 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 (₱1,000) 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 Tax Code are further implemented by *Section 4.113-1(A) and (B) of RR No. 16-05, as amended*, as follows:

“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;

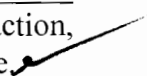
(b) If the sale is exempt from VAT, the term “VAT-exempt sale” shall be written or printed prominently on the invoice or receipt;

(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 peso (P1,000.00) 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, 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.

Petitioner accordingly submitted the relevant ORs and supporting documents to prove that its zero-rated sales to entities registered with PEZA, CDC, SBMA, and FAB and foreign corporations amounting to ₱483,657,015.01 are in compliance with the foregoing invoicing requirements. These documents were examined by the Court-commissioned ICPA, who noted the following exceptions on zero-rated sales amounting to ₱375,420,025.13, which must rightfully be disallowed:

ICPA Exhibit Reference	Finding	Amount
P-39-BI	Zero-rated sales of services to entities but the total amount of billing statements are not equal to OR	₱ 79,027,649.41
P-39-AZ	Zero-rated sales of services to entities but out-of-period	154,548,407.37
P-39-BA	Zero-rated sales of service to entities but unreadable document	521,484.85
P-39-BB	Zero-rated sales of services to entities but invalid	2,591,930.30
P-39-BC	Zero-rated sales of services to entities not supported by a valid document	138,106,337.13
P-39-BD	Zero-rated sales of services to entities but with no OR number and OR date per schedule	14,970.86
P-39-BF	Zero-rated sales of service to entities not supported with valid document and billing statements	591,770.97
P-39-BG	Zero-rated sales of services to entities supported but with incorrect customer name per OR	2,800.00
P-39-BH	Zero-rated sales of services to entities cancelled OR	14,674.24
	Total	₱375,420,025.13

Further, as discussed earlier, sales to the following foreign corporations amounting to ₱17,038,219.71 must be disallowed for petitioner's failure to prove its entitlement to zero-rating under *Section 108(B)(2) of the NIRC, as amended*:

Exhibit Reference	Foreign Corporation Client	Sales Amount	OR No.	OR Date
P-39-AW-67	NIPPON EXPRESS (M) SDN BHD	₱ 239,358.57	60026	12/11/2018

P-39-AW-68	NIPPON EXPRESS (AUSTRALIA) PTY	13,838.29	60027	12/11/2018
P-39-AW-69	PT NIPPON EXPRESS INDONESIA	122,062.21	60033	12/11/2018
P-39-AW-70	NIPPON EXPRESS CANADA LTD	3,456.72	60023	12/11/2018
P-39-AW-277	AJATO CO., LTD.	26,500.00	65294	10/29/2018
P-39-AW-423	ST MICROELECTRONICS INC.	1,400.00	65920	11/12/2018
P-39-AW-654	AN CORPORATION	17,255.59	66681	11/15/2018
P-39-AW-660	PANASONIC IND'L DEVICES SALES M SDN BHD	89,356.25	66694	11/29/2018
P-39-AW-707	PANASONIC IND'L DEVICES SALES M SDN BHD	51,370.00	66877	12/03/2018
P-39-AW-752	TEIJIN FRONTIER CO., LTD.	83,216.06	66957	12/26/2018
P-39-AW-754	CITIZEN SYSTEMS JAPAN CO. LTD.	136,133.00	66959	12/20/2018
P-39-AW-755	AJATO CO., LTD.	19,000.00	66960	12/20/2018
P-39-AW-758	INABATA & CO., LTD.	81,000.00	66963	12/14/2018
P-39-AW-767	TOKAI ENGEI CO.LTD.	11,175.68	66997	12/12/2018
P-39-AW-833	ST MICROELECTRONICS INC.	1,400.00	67188	12/17/2018
P-39-AW-954	MEKTEC CORPORATION SIN PTE.LTD	33,591.45	67658	12/26/2018
P-39-AW-965	STMICROELECTRONICS, INC.	337,592.55	67681	12/21/2018
P-39-AW-966	STMICROELECTRONICS, INC.	16,644.75	67683	12/10/2018
P-39-AW-971	NIPPON EXPRESS CO. LTD.	5,403.00	85656	10/22/2018
P-39-AW-972	NIPPON EXPRESS (SHENZHEN) CO.	24,790.50	85657	11/29/2018
P-39-AW-973	ROHM SEMICONDUCTOR SINGAPORE PTE LTD	36,750.00	85658	11/23/2018
P-39-AW-974	CANON INC.	291,096.96	85662	11/20/2018
P-39-AW-975	NITTSU NEC LOGISTICS, LTD.	43,764.30	85696	12/03/2018
P-39-AW-976	CANON INC.	4,179.76	85700	12/20/2018
P-39-AW-977	CASIO COMPUTER CO., LTD.	2,226.86	85703	12/28/2018
P-39-AW-978	MITSUMI ELECTRIC CO LTD	653,443.77	85705	12/27/2018
P-39-AW-979	CASIO COMPUTER CO., LTD.	2,784.43	85707	12/03/2018
P-39-AX-2	NIPPON EXPRESS CO. LTD.	5,832,405.03	60021	12/11/2018
P-39-AX-3	NIPPON EXPRESS USA INC	2,685,850.05	60022	11/12/2018
P-39-AX-4	NIPPON EXPRESS (SIN) PTE LTD	1,497,663.84	60024	12/11/2018
P-39-AX-5	NIPPON EXPRESS (TAIWAN)	744,084.40	60028	12/11/2018
P-39-AX-6	NIPPON EXPRESS (THAI.) CO LTD	539,462.86	60029	12/11/2018
P-39-AX-7	NIPPON EXPRESS (CHINA) CO LTD	1,307,802.74	60030	12/11/2018
P-39-AX-8	PT NIPPON EXPRESS INDONESIA	3,483.20	60031	12/11/2018
P-39-AX-9	NIPPON EXPRESS(VIETNAM) CO.,	855,624.22	60032	12/11/2018
P-39-AX-10	NIPPON EXPRESS KOREA CO., LTD.	88,025.56	60034	12/11/2018
P-39-AX-11	NIPPON EXPRESS (SOUTH ASIA - OCEANIA PTE LTD	464,171.80	60035	12/11/2018
P-39-AX-12	NIPPON EXPRESS SHANGHAI CO LTD	399,253.85	60048	12/21/2018
P-39-AX-23	PANASONIC INDUSTRIAL DEVICES SALES ASIA	30,239.20	65643	11/19/2018
P-39-AX-28	CITIZEN SYSTEMS JAPAN CO. LTD.	180,557.04	65839	11/20/2018
P-39-AX-31	MEKTEC CORPORATION SIN PTE LTD	60,805.22	66856	11/26/2018
	Total	P 17,038,219.71		

In fine, the pieces of evidence show that out of the total zero-rated sales reported by petitioner amounting to ₱617,270,071.69 in the 4th quarter of CY 2018, only the amount of ₱367,072,900.54 ultimately qualifies as zero-rated sales under *Sections 108(B)(2) and (3) of the NIRC, as amended*, computed as follows:

Zero-rated sales per VAT return		₱617,270,071.77
Less:		
Disallowed zero-rated sales for lack of legal basis and corroborating evidence	₱133,613,056.68	
Disallowed zero-rated sales as noted by the ICPA	375,420,025.13	
Disallowed zero-rated sales as found by the Court	17,038,219.71	526,071,301.52
Valid zero-rated sales		₱91,198,770.25

Having found that petitioner had VAT zero-rated sales in the total amount of ₱91,198,770.25 for the subject period of claim, the Court shall proceed to determine whether petitioner complied with the following remaining requisites:

- a. *sixth requisite*: the input taxes are due or paid;
- b. *seventh requisite*: the input taxes are not transitional input taxes;
- c. *eighth requisite*: 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 attributed to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and
- d. *ninth requisite*: the input taxes have not been applied against output taxes during and in the succeeding quarters.

Petitioner declared a total of ₱101,818,984.51 available input VAT for the 4th quarter of CY 2018,⁶³ broken down as follows:

Domestic purchases of goods other than capital goods	₱ 2,856,147.56
Domestic purchases of services	97,984,808.86
Total current purchases	100,840,956.42
Input tax deferred on capital goods exceeding P1 million from previous quarter	3,339,236.18
Purchase of capital goods exceeding P1 million	1,585,430.54
Less: Input tax deferred on capital goods exceeding P1 million deferred for the succeeding period	3,946,638.63
Input tax amortized for the 4th quarter of CY 2018	978,028.09

⁶³ Exhibit "P-21", *id.* at 513 to 514.

Available input VAT

₱ 101,818,984.51

Out of the reported available input VAT of ₱101,818,984.51, petitioner claims for refund of the excess input VAT amount of ₱10,872,529.10 after deducting the output VAT due amounting to ₱90,946,455.42.⁶⁴ The claim amounting to ₱10,872,529.10 is computed as follows:

		% to Total Sales
Zero-rated sales	₱ 617,270,071.69	44.89%
VATable Sales	757,887,128.57	55.11%
Total Sales	₱1,375,157,200.26	100%
Input tax allocable to zero-rated sales (Php101,818,984.51 x 44.89%)		
		₱45,703,728.90
Less:		
Output VAT Payable	₱ 90,946,455.42	
Less: Input tax allocable to VATable sales (Php101,818,984.51 x 55.11%)		
	56,115,255.62	34,831,199.80
Net refundable amount		₱10,872,529.10

The input VAT being claimed does not appear to be transitional input taxes.

The above input taxes do *not* appear to be transitional input taxes, as understood under *Section 111(A) of the NIRC, as amended*, to wit:

SEC. 111. Transitional/Presumptive Input Tax Credits. –

(A) *Transitional Input Tax Credits.* – A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory according to the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to two percent (2%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax.

Parenthetically, transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisitions of their beginning inventory of goods, materials, and supplies ✓

⁶⁴ Exhibit “P-21”, *id.* at 513 to 514.

During the period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer.⁶⁵

Since there is no showing that the above-stated input VAT are transitional input VAT, petitioner has complied with the *sixth* requisite for the grant of an input VAT refund.

The input taxes being claimed are due and paid.

Anent this *sixth requisite* in claiming VAT refund, it is of critical importance for petitioner to provide supporting documents to prove the input taxes claimed during the 4th quarter of CY 2018 are actually due or paid in accordance with *Section 110(A) of the NIRC, as amended*, which provides that:

SEC. 110. *Tax Credits.* —

(A) *Creditable input Tax.* —

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods:

(1) For sale; or

(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or

(iii) For use as supplies in the course of business; or

(iv) For use as materials supplied in the sale of service; or

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

(b) Purchase of services on which a value-added tax has actually been paid.

(2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

⁶⁵ *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 158885 and 170680, April 2, 2008.

- (b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (₱1,000,000); *Provided*, however, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided*, finally, That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

The above provisions are implemented by *Sections 4.110-1 to 4.110-3 of RR No. 16-05*, which provide as follows:

SECTION 4.110-1. *Credits For Input Tax*. — “Input tax” means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the Tax Code.

It includes input taxes which can be directly attributed to transactions subject to the VAT plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.

Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Secs. 113 and 237 of the Tax Code shall be creditable against the output tax:

- (a) Purchase or importation of goods

(1) For sale; or

(2) For conversion into or intended to form part of a finished product for sale, including packaging materials; or

(3) For use as supplies in the course of business; or

(4) For use as raw materials supplied in the sale of services;

or

(5) For use in trade or business for which deduction for depreciation or amortization is allowed under the Tax Code,

(b) Purchase of real properties for which a VAT has actually been paid;

(c) Purchase of services in which a VAT has actually been paid; ✓

- (d) Transactions “deemed sale” under Sec. 106 (B) of the Tax Code;
- (e) Transitional input tax allowed under Sec. 4.111 (a) of these Regulations;
- (f) Presumptive input tax allowed under Sec. 4.111 (b) of these Regulations;
- (g) Transitional input tax credits allowed under the transitory and other provisions of these Regulations.

SECTION 4.110-2. *Persons Who Can Avail of the Input Tax Credit.* — The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:

- (a) To the importer upon payment of VAT prior to the release of goods from customs custody;
- (b) To the purchaser of the domestic goods or properties upon consummation of the sale; or
- (c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee.

SECTION 4.110-3. *Claim for Input Tax on Depreciable Goods.* — Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million pesos (₱1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:

(a) If the estimated useful life of a capital good is five (5) years or more — The input tax shall be spread evenly over a period of sixty (60) months and the claim for input tax credit will commence in the calendar month when the capital good is acquired. The total input taxes on purchases or importations of this type of capital goods shall be divided by 60 and the quotient will be the amount to be claimed monthly.

(b) If the estimated useful life of a capital good is less than five (5) years — The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of the capital good. The claim for input tax credit shall commence in the calendar month that the capital goods were acquired.

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed One million pesos (₱1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition; Provided, however, that the total amount of input taxes (input tax on depreciable capital goods plus other allowable input taxes) allowed to be claimed against the output tax in the quarterly VAT Returns shall be subject to the limitation prescribed under Sec. 4.110-7 of these Regulations.

The aggregate acquisition cost of a depreciable asset in any calendar month refers to the total price agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired in installment for an acquisition cost of more than ₱1,000,000.00 will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed ₱1,000,000.00.

....

If the depreciable capital good is sold/transferred within a period of five (5) years or prior to the exhaustion of the amortizable input tax thereon, the entire unamortized input tax on the capital goods sold/transferred can be claimed as input tax credit during the month/quarter when the sale or transfer was made but subject to the limitation prescribed under Sec. 4.110-7 of these Regulations.

Meanwhile, *Section 4.110-8 of RR No. 16-05* provides for the substantiation requirements of input tax credits, as follows:

SECTION 4.110-8. *Substantiation of Input Tax Credits.* —

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

(1) For the importation of goods — import entry or other equivalent document showing actual payment of VAT on the imported goods.

(2) For the domestic purchase of goods and properties — invoice showing the information required under Secs. 113 and 237 of the Tax Code.

(3) For the purchase of real property — public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.

(4) For the purchase of services — official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code.

(b) Transitional input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.

(c) Input tax on “deemed sale” transactions shall be substantiated with the invoice required under Sec. 4.113-2 of these Regulations.

(d) Input tax from payments made to non-residents (such as for services, rentals and royalties) shall be supported by a copy of the Monthly Remittance Return of Value Added Tax Withheld (BIR Form 1600) filed by the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor.

(e) Advance VAT on sugar shall be supported by the Payment Order showing payment of the advance VAT.

The above provisions categorically state that in order to be entitled to input tax credits, the same must be evidenced by VAT invoices or ORs issued in accordance with *Section 113 of the NIRC, as amended*.

Thus, in order to prove entitlement to credits for input taxes due and paid, petitioner must not only present the supporting documents prescribed under *Section 4.110-8 of RR No. 16-05*, but more importantly, these documents must comply with the invoicing requirements of *Section 113(A) and (B), 237 and 238 of the NIRC, as amended*, as implemented by *Sections 4.113-1(A) and (B) of RR No. 16-05*.

Accordingly, petitioner submitted VAT SIs and ORs to support its input taxes from domestic purchases of goods and services. These documents were examined by the Court-commissioned ICPA in order to verify petitioner's compliance with the substantiation and invoicing requirements prescribed by the NIRC, as amended, and its implementing rules, who noted the following disallowances amounting to ₱6,129,708.05:

ICPA Exhibit Reference	Finding	Input VAT
P-39-T	Domestic purchase of goods and services wherein the amount of VAT overclaimed	₱ 111,149.30
P-39-U	Domestic purchase of goods and services properly substantiated by VAT Invoices/VAT ORs not within the taxable quarter/year subject for audit.	824,770.45
P-39-V	Domestic purchase of goods and services properly substantiated by VAT Invoices/VAT ORs but unreadable.	11,590.00
P-39-W	Domestic purchase of goods and services not supported by a valid document.	7,379.96
P-39-X	Domestic purchase of goods and services with Invalid or Outdated authority to print (ATP) or no BIR Permit.	891,949.80
P-39-Y	Domestic purchase of goods and services wherein VAT is not separately indicated in the face of the Invoice or ORs.	44,543.88
P-39-Z	Domestic purchase of goods and services without TIN of the Petitioner.	121,457.83
P-39-AA	Domestic purchase of goods and services with Missing or Unsupported.	1,615,883.88

P-39-AB	Domestic purchase of goods and services supported by valid document with alteration but without countersign.	40,876.78
P-39-AC	Domestic purchase of goods and services with no OR date.	3,046.80
P-39-AD	Domestic purchase of goods and services with Incorrect TIN of the Petitioner.	367,281.09
P-39-S	Domestic purchase of goods or service supported by VAT Invoices/VAT ORs with alterations but countersigned by suppliers . Without Certification of authorized representative of the suppliers.	1,504,997.47
P-39-AG	Domestic Purchase of Capital Goods substantiated by VAT Invoices not within the taxable quarter/year subject for audit.	1,426.02
P-39-AH	Domestic Purchase of Capital Goods with Invalid or Outdated authority to print (ATP) or no BIR Permit.	292.26
P-39-AI	Domestic Purchase of Capital Goods for Local Invoices wherein VAT is not separately indicated in the face of the Invoice or ORs.	196.91
P-39-AJ	Domestic Purchase of Capital Goods for Missing Document/ Unsupported.	1,936.92
P-39-AK	Purchase of Capital Goods for Local Invoices wherein the amount of VAT claimed is not equal to the amount of VAT per documents.	40,050.64
P-39-AL	Purchase of Capital Goods for Local Invoices with Incorrect TIN of the Petitioner.	18,803.08
P-39-AM	Purchase of Capital Goods for Local Invoices with alterations but countersigned by suppliers authorized representative of the supplier.	60,860.36
P-39- AT	Domestic Purchase of Capital Goods with unreadable sales invoice	16,000.87
P-39-AN	Domestic Purchase of Capital Goods with Invalid or Outdated authority to print (ATP) or no BIR Permit.	3,259.63
P-39-AO	Domestic Purchase of Capital Goods for Local Invoices wherein VAT is not separately indicated in the face of the Invoice or ORs.	663.56
P-39-AQ	Domestic Purchase of Capital Goods for Missing Document/ Unsupported.	4,226.40
P-39- AP	Purchase of Capital Goods for Local Invoices with Incorrect TIN OR No TIN of the Petitioner.	4,553.57
P-39- AS	Purchase of Capital Goods for Local Invoices with alterations but countersigned by suppliers authorized representative of the supplier.	430,002.84
P-39-AU	Purchase of Capital Goods for Local Invoices not qualified as capital asset subject for defer.	2,507.75
	Total	₱6,129,708.05

Thus, out of the total available input VAT amounting to ₱101,818,984.51 for the 4th quarter of CY 2018, only ₱95,689,276.46⁶⁶ pertains to valid input VAT.

Since there are types of sales other than zero-rated or effectively zero-rated sales, the said amount of ₱95,689,276.46 shall be proportionately allocated on the basis of sales volume.

To reiterate, the *eighth* requisite is to the effect that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are zero-rated or effectively zero-rated sale and taxable 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.

In this case, for the subject period of the claim, there exist taxable sales and zero-rated sales for the 4th quarter of CY 2018.

As can be recalled, petitioner reported total sales in the amount of ₱617,270,071.69. However, since its input VAT cannot be directly or entirely attributed to any of the transactions, we shall allocate the valid input VAT of ₱95,689,276.46 proportionately on the basis of the volume of its sales. Thus:

	Amount per VAT Returns		Allocation Factor	Valid Input VAT Allocation	
	[A]		[C]	[D]	
			(A ÷ B)	(D x C)	
Taxable sales	₱ 757,887,128.49		55.11%	₱52,737,004.14	
Zero-rated sales	617,270,071.77		44.89%	42,952,272.32	
Total	₱1,375,157,200.26	[B]	100.00%	₱95,689,276.46	[D]

Since petitioner's valid input VAT allocated to taxable sales in the amount of ₱52,737,004.14 is not enough to cover its output VAT liability for the 4th quarter of CY 2018 in the amount of ₱90,946,455.42, the substantiated input VAT attributable to zero-rated sales in the amount of ₱42,952,272.32 shall be utilized against the remaining output VAT of ₱38,209,451.28. Thus, only the remaining input VAT of ₱4,742,821.04 can be attributed to the entire zero-rated sales declared by petitioner in the amount of ₱617,270,071.77, as computed below:

⁶⁶ ₱101,818,984.51 total available input VAT – ₱6,129,708.05 disallowances.

Output VAT per VAT returns	₱90,946,455.42
Less: Valid input VAT allocated to taxable sales	52,737,004.14
Output VAT still due	₱38,209,451.28

Valid input VAT allocated to zero-rated sales	₱42,952,272.32
Less: Output VAT still due	38,209,451.28
Excess input VAT attributable to zero-rated sales	₱ 4,742,821.04

However, out of the total zero-rated sales declared by petitioner amounting to ₱617,270,071.77, only the amount of ₱91,198,770.25 qualifies as valid zero-rated sales. Hence, out of the excess input VAT attributable to zero-rated sales amounting to ₱4,742,821.04, only the amount of ₱700,729.66 is attributable to the valid zero-rated sales of ₱91,198,770.25, as computed below:

Excess input VAT attributable to zero-rated sales	₱ 4,742,821.04
Divided by declared zero-rated sales	617,270,071.77
Multiply by valid zero-rated sales	91,198,770.25
Input VAT attributable to valid zero-rated sales	₱ 700,729.66

The subject input taxes have not been applied against output taxes in the succeeding quarters.

Finally, in compliance with the *ninth* requisite, to ensure that the present input VAT claim for refund will no longer be available for application to future output VAT liabilities, it was ascertained that while petitioner carried-over the input VAT subject of this claim amounting to ₱10,872,529.10 in the succeeding quarters, the same was ultimately deducted as VAT Refund/TCC Claimed (Line 23D) in its 3rd Quarterly VAT Returns for CY 2020.⁶⁷

In sum, petitioner is entitled to refund in the amount of ₱700,729.66.

ACCORDINGLY, in light of the foregoing considerations, the *Petition for Review* is **PARTIALLY GRANTED**. Respondent is ordered to refund petitioner the amount of **₱700,729.66** representing its unutilized input VAT arising from its zero-rated sales for the period October 1, 2018 to December 31, 2018. ✓

⁶⁷ Exhibit "P-32", Docket – Vol. I, pp. 535 to 536.

SO ORDERED.

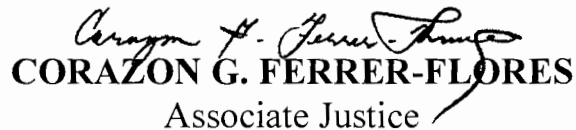


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:



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.



MA. BELEN M. RINGPIS-LIBAN
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