REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

MACQUARIE OFFSHORE SERVICES PTY. LTD. – PHILIPPINE BRANCH,	**CTA *EB* NO. 2431** *(CTA Case No. 9722)*
Petitioner,	Present: **DEL ROSARIO, P.J., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** *and* **FERRER-FLORES,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE,	Promulgated: JAN 25 2023 3:15 pm
Respondent.	

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a Petition for Review,[1] filed on 24 February 2021, under ***Section 4(b), Rule 8***[2] ***of the Revised Rules of the Court of Tax Appeals ("RRCTA"),***[3] seeking the reversal and setting aside of: a) the Decision[4] by the Second Division ("Court in Division"), dated 12 March 2020 ("assailed Decision"), which denied petitioner's claim for value added tax (VAT) refund for the 1st to 4th quarters of fiscal year (FY) ended 31 March 2016; and b) the Resolution,[5] dated 14 January 2021 ("assailed Resolution"), which denied petitioner's Motion for Reconsideration.

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1 See Petition for Review, *Rollo,* pp. 7-411, with annexes.

2 "SECTION 4. *Where to appeal; mode of appeal.* —
xxx xxx xxx
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal."

3 A.M. No. 05-11-07-CTA, 22 November 2005.

4 *Rollo,* p. 32-82.

5 *Rollo,* p. 97-103.

The Parties

Petitioner is a foreign corporation registered and licensed with the Securities and Exchange Commission for the establishment of its regional operating headquarters (ROHQ) in the Philippines, under Company Registration Number FS200805155.[6]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") who holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City. He is empowered to perform duties of said office, including, among others, the power to decide claims for refund and/or tax credits, pursuant ***to Section 4 of the National Internal Revenue Code (NIRC)***, as amended.[7]

The Facts

On 29 June 2017, petitioner filed with the BIR an *Application for Tax Credits / Refunds (BIR Form No. 1914)* with corresponding Checklist of Mandatory Requirements for Claims for VAT Credit/Refund, and letter dated 29 June 2017, claiming for refund of its alleged excess and unutilized input VAT in the total amount of Php85,098,492.89, for FY 2016.

Due to the inaction of the respondent, the petitioner filed the original Petition for Review docketed as CTA Case No. 9722, on 24 November 2017.[8] The case was assigned to the Second Division of this Court.

On 5 March 2018, respondent filed his Answer, interposing certain special and affirmative defenses, to wit:

a) Petitioner's claim for VAT refund / tax credit has no legal and factual basis;[9]
b) Administrative claim for refund is exclusively cognizable by the CIR that is subject to the exclusive appellate jurisdiction of the Court of Tax Appeals;[10] and
c) Claims for refund are construed strictly against the taxpayer and in favor of the government.[11]

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6 See the Decision, *Rollo*, p. 32.
7 *Id.*, p. 33.
8 *Id.*
9 *Id.*
10 *Id.*, p. 35.
11 *Id.*, p. 37.

The pre-trial conference was initially set to 26 April 2016, but was cancelled, reset to and held on 24 May 2018.[12] Subsequently, on 17 May 2018 and 7 August 2018, the respondent transmitted the BIR Records.[13]

On 16 May 2018, respondent submitted his Pre-Trial Brief, while petitioner submitted its Pre-Trial Brief on 18 May 2018.[14]

Thereafter, the parties submitted their Joint Stipulation of Facts and Issued (JSFI) on 13 June 2018. The Pre-Trial Order was then issued on 22 June 2018 approving and adopting the said JSFI, and thereby deeming the pre-trial terminated.[15]

The trial of the case then proceeded.

During trial, petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following: (1) Ms. Ailyn B. Perocho, petitioner's Head of Finance; and (2) Mr. Edward L. Roguel, the Court-commissioned Independent Certified Public Accountant (ICPA). The ICPA Report was submitted on 1 August 2018.[16]

For his part, respondent presented no witnesses in this case.[17]

Respondent filed his Memorandum on 13 March 2019, while petitioner filed its Memorandum with Motion to Reopen on 28 March 2019.[18]

The Court in Division initially denied the petitioner's Motion to Reopen in its Resolution dated 6 June 2019.[19] However, upon reconsideration, the Court in Division granted petitioner's Motion to Reopen and ordered for the recall of petitioner's witness, Mr. Roguel, the Court-commissioned ICPA,[20] who testified on direct examination by way of Supplemental Sworn Statement at the hearing held on 21 October 2019.[21]

Thereafter, petitioner filed its Supplemental Formal Offer of Evidence, while respondent failed to file his comment.[22] The Court admitted the exhibits covered by the petitioner's Supplemental Formal Offer of Evidence in its Resolution dated 6 December 2018. In the same Resolution, the Court in

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[12] *Id.*, p. 38.
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*, p. 39.
[17] *Id.*, p. 60.
[18] *Id.*, p. 61.
[19] *Id.*
[20] *Id.*, p. 62.
[21] *Id.*
[22] *Id.*

Division gave the parties fifteen (15) days from notice within which to file their respective memorandum.[23]

On 2 January 2020, petitioner filed its Compliance, stating that it is adopting the Memorandum it filed on 28 March 2019, while respondent failed to file his supplemental memorandum.[24]

The Court in Division submitted CTA Case No. 9722 anew for decision on 24 January 2020.[25]

On 12 March 2020, the Court in Division promulgated the assailed Decision,[26] denying the original Petition for Review for lack of merit.

Aggrieved, petitioner filed a Motion for Reconsideration on 26 March 2020, praying that the Court in Division reverse and reconsider its Decision, dated 12 March 2020 and promulgate a new Decision granting petitioner's claim for input VAT refund for FY 2016 in the total amount of Php85,098,492.89. Respondent then filed his comment, dated 21 October 2020.

In the assailed Resolution, dated 14 January 2021,[27] the Court in Division denied petitioner's Motion for Reconsideration for lack of merit.

The assailed Resolution was received by the petitioner on 25 January 2021. Thus, it had until 9 February 2021 to file a Petition for Review before the Court *En Banc*.

On 08 February 2021, petitioner filed a Motion for Extension of Time (Re: Filing of Petition for Review),[28] requesting an additional fifteen (15) days within which to file its Petition for Review. The motion was granted by the Court *En Banc* on 11 February 2021.[29]

Thus, on 24 February 2021, petitioner filed the instant Petition for Review.

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[23] *Id.*, p. 63.
[24] *Id.*
[25] *Id.*
[26] See the Decision, *Rollo*, pp. 32-82.
[27] See the Resolution, *Rollo*, pp. 97-103.
[28] See Motion for Extension of Time, *Rollo*, pp. 1-3.
[29] *Rollo*, p. 6.

In the Resolution,[30] dated 7 July 2021, the Court *En Banc* ordered respondent to file his Comment to the Petition for Review. Respondent then filed his Comment (On Petitioner's Petition for Review) on 15 September 2021.[31]

On 10 January 2022, the Court *En Banc* issued the Resolution submitting the case for decision.

Hence, this *Decision.*

The Issues[32]

I.

WHETHER THE COURT IN DIVISION ERRED IN CONCLUDING THAT THE PAYMENTS FOR THE VAT ZERO RATED SALES WERE NOT DULY ACCOUNTED FOR IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE BSP BECAUSE –

A. THE ICPA REPORT CONTAINED A DETAILED ACCOUNTING OF THE INWARD REMITTANCE.

B. THE ICPA REPORT IS BASED ON THE EVIDENCE THAT WERE ADMITTED BY THE COURT.

II.

ASSUMING THAT AS FOUND BY THE COURT IN DIVISION ONLY THE AMOUNT OF USD11,548,329.10 WHICH IS EQUIVALENT TO PHP537,611,641.02 QUALIFIED AS ZERO-RATED SALES, THE COURT SHOULD HAVE APPLIED SECTION 112(A) OF THE NIRC AND ALLOWED A PROPORTIONATE PART OF THE CLAIM.

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[30] See the Resolution, *Rollo,* pp. 438-439.
[31] See the Comment, *Rollo,* pp. 440-444.
[32] See Grounds for the Allowance of the Petition in the Petition for Review, *Rollo,* pp. 16-17.

Arguments of the Parties

Petitioner's Arguments[33]

Petitioner argues that the ICPA Report and its supporting schedules contain a precise answer to the Court in Division's difficulties in ascertaining whether the amounts reflected in the Certificates of Inward Remittances correspond to the zero-rated sales declared by the petitioner.

In support of this, petitioner emphasizes that one of the ICPA's stated objectives in his audit procedures is to ascertain that the foreign currency inward remittances, as supported by the official receipts (ORs) issued by the Company, are reflected in the bank statements.

At the outset, petitioner raises the contractual considerations in lumpsum remittances of payments. It insists that its right to instruct the Service Recipient to pay for the petitioner's services through Macquarie Financial Holdings Limited ("MFHL") is legal as it is simply akin to an act of appointing an agent in charge of processing and remitting payments to petitioner.

In the ICPA Report, the ICPA discussed the arrangement by which petitioner is paid by its non-resident foreign clients, as reflected in the Minor Services Agreement (MSA) between the parties, to wit:

> "We noted that the remitter under the Certificate of Inward Remittances were all under the name of MFHL even if the Company's VAT ORs were issued under the name of the respective customers. This arrangement is in accordance with the Minor Services Agreement (MSA) between other Macquarie entities x x x. The MSA provides that the recipient of services may instruct MFHL to settle any amounts due to them on behalf of the Macquarie entities. The said agreement also provides that MFHL shall be the finance center of the other Macquarie entities from which all of the payments due to the entities rendering the services are processed, paid and remitted in Australian Dollars."[34]

Petitioner then claims that the evidence on record is so detailed that it leaves no doubt that the inward remittances correspond to the VAT zero rated sales made by petitioner. It emphasizes the ICPA's findings that the remittances were properly reflected in the Certificates of Inward Remittances.

Petitioner also raises that the ICPA's schedules contain a breakdown of the amounts indicated in the Certificates of Inward Remittances into the individual zero-rated sales made by the petitioner to its client. These schedules further indicate other details such as the sales invoice number and date, the official receipt number and date, the amount of the sales in both the foreign

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[33] See Petition for Review, *Rollo*, pp. 17-24.
[34] ICPA Report, CTA Case No. 9722, p. 7.

currency and local currency, the date when payment was remitted and the bank credit memo number of the remittance.

Petitioner insists that the relevant information in these schedules allow one to trace which payments were included in which remittance. Thus, taken together, the documents presented by petitioner, and the ICPA show that petitioner is engaged in zero-rated sales of services under ***Section 108(B)(2) of the NIRC,*** as amended, that petitioner was actually paid for these services, and the payments made were properly accounted for.

In view of the foregoing, petitioner invokes ***Section 2, Rule 13 of the RRCTA*** to convince the Court to adopt the findings of the ICPA.

Petitioner recognizes that the Court has the discretion on whether to adopt the ICPA's findings. However, it argues that while the Court may otherwise substitute its own findings as gathered from the records, it may only do so for valid reasons; that is, where the ICPA has applied illegal principles to the evidence submitted thereby disregarding a clear preponderance of evidence. Further, petitioner insists that the ICPA Report and the findings stated therein are based on evidence admitted by the Court.

Finally, petitioner avers that even granting *arguendo* that not all of petitioner's zero-rated sales had been proved, the Court in Division should have granted a refund in an amount proportionate to the zero-rated sales that were duly established.

Respondent's Counter-Arguments[35]

Respondent alleges that petitioner's arguments are mere reiterations of the allegations which the Court in Division had already ruled upon on its Resolution dated 14 January 2021.

As to the petitioner's claim that the ICPA Report has sufficiently detailed the accounting the of inward remittance, and that the same is based on evidence that were admitted by the Court, respondent counter-argues that the findings and conclusions of the ICPA are not conclusive upon the Court.

Respondent invokes the established principle consistently held by the Court that tax refunds are in the nature of tax exemptions which represent a loss of revenue to the government; thus, must be strictly construed against the taxpayer. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken.

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[35] See Comment on Petitioner's Petition for Review, *Rollo*, pp. 440-442.

The Ruling of the Court

After reviewing the records and considering the arguments raised by the petitioner, the Court *En Banc* finds the instant petition unmeritorious.

As duly discussed by the Court in Division in the assailed Decision, the following requisites must be complied with by the taxpayer-applicant in a claim for refund or issuance of tax credit certificate of excess unutilized input VAT:

> As to the timeliness of the filing of the administrative and judicial claims:
> 1. the claim with the BIR should be filed within two ("2") years reckoned from the close of the taxable quarter when the pertinent zero-rated sales were made;[36]
> 2. that in case of full or partial denial of the refund claim, or the failure on the part of the respondent to act on the said claim within a period of one hundred twenty ("120") days, the judicial claim should be filed with this Court, within thirty ("30") days from receipt of the decision or after the expiration of the said 120-day period;[37]
>
> With reference to the taxpayer's registration with the BIR:
> 3. the taxpayer is a VAT-registered person;[38]
>
> In relation to the taxpayer's output VAT:
> 4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[39]
> 5. for zero-rated sales under Sections 106(A)(2)(a)(1), (2), and (b) and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[40]
>
> As regards the taxpayer's input VAT being refunded:
> 6. the input taxes are not transitional input taxes;[41]
> 7. the input taxes are due or paid;[42]
> 8. the input taxes have not been applied against output taxes during and in the succeeding quarters; and[43]

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[36] Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue, G.R. No. 191495, 23 July 2018.
[37] *Id.*
[38] Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 166732, April 27, 2007; Southern Philippines Power Corporation v. Commissioner of Internal Revenue, G.R. No. 179632, 19 October 2011; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, 25 November 2009.
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.*

9. 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]

The Court in Division found that the *first* to *third* requisites were fully complied with by the petitioner. However, the *fourth* and *fifth* requisites were put into issue, as the Court in Division ruled that petitioner failed to comply with these requirements. The findings are summarized as follows:

First requisite – petitioner's administrative claim, covering the four ("4") quarters of FY ending 31 March 2016, was filed with the BIR on 29 June 2017 which is within two ("2") years after the close of the quarter when the sales were made. Thus, the said application was timely filed, as shown by the table below:

FY 2016	**Period**	**Close of the Taxable Quarter**	**Last Day to File Administrative Claim**
1st Quarter	1 April 2015 to 30 June 2015	30 June 2015	30 June 2017
2nd Quarter	1 July 2015 to 30 September 2015	30 September 2015	30 September 2017
3rd Quarter	1 October 2015 to 31 December 2015	31 December 2015	31 December 2017
4th Quarter	1 January 2016 31 March 2016	31 March 2016	31 March 2018

Second requisite – petitioner's original Petition for Review was filed with the Court on 24 November 2017 which is within the thirty ("30")-day period from the receipt of the BIR's decision or after the expiration of the 120-day period under ***Section 112(C) of the NIRC***, as amended, shown as follows:

Date of Filing of Administrative Claim	**End of 120 days for the CIR to decide the claim**	**End of 30 days from expiration of 120 days**
29 June 2017	27 October 2017	26 November 2017

Third requisite – petitioner's BIR Registration Payment Forms, standing alone, may be considered as evidence of petitioner's VAT registration. This must be so because the said payment forms are to the effect that what are being paid are petitioner's annual "VAT registration" fees. A taxpayer will not pay such fees, if one is not a VAT-registered person.

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[44] *Id.*

Fourth and *fifth* requisites – As discussed by the Court in Division in the assailed Decision, certain elements must be present for the sale or supply of services to be subject to the VAT rate of zero percent (0%), under ***Section 108(B)(2) of the NIRC***, as amended, to wit:

1) The services fall under any of the categories under ***Section 108(B)(2)***,[45] or simply, the services rendered should be other than "processing, manufacturing, or repacking goods";[46]
2) The service must be performed in the Philippines[47] by a VAT-registered person;
3) 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;[48] and
4) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[49]

As regards the *first* essential element, the Court in Division found that petitioner entered into a number of MSAs with its foreign affiliates. Based on the Court in Division's review of the MSAs, the services performed by petitioner are not in the same category as "processing, manufacturing or repacking of goods".

As for the *second* essential element, the Court in Division found that the MSAs establish that the parties to the contracts have agreed that petitioner's services shall be performed in the Philippines. Thus, there being no indication that the services were not performed in the Philippines, petitioner complied with the said second essential element.

Anent the *third* essential element, the Court in Division held that to be considered a non-resident foreign corporation doing business outside the Philippines, each entity must be supported at the very least by **both** SEC Certificate of Non-Registration of Corporation/Partnership **and** proof of incorporation/registration in a foreign country (e.g., Articles/Certificate of Incorporation/Registration and/or Tax Residence Certificate). Moreover, there should be no other indication which would disqualify said entity in being classified as a non-resident foreign corporation.

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[45] Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch), G.R. No. 152609, 29 June 2005.

[46] Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. 153205, 22 January 2007.

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

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

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

In this regard, the Court in Division found that only the following clients of petitioner for the four quarters of FY 2016 shall be considered non-resident foreign corporation doing business outside the Philippines:

Name of Clients/Affiliate	**Service Agreement**	**SEC Certificate of Non-Registration**	**Proof of Incorporation / Registration / Residence outside the Philippines**
Macquarie Bank Limited (Hong Kong Branch)	"P-56"	"P-142"	"P-55"
Macquarie Bank Limited (London Branch)	"P-58"	"P-143"	"P-57"
Macquarie Group Services Australia Pty Ltd	"P-60"	"P-165"	"P-59"
Macquarie Bank Limited Singapore Branch	"P-65"	"P-144"	P-64"
Macquarie Financial Holdings Limited	"P-78"	"P-163"	"P-75"
Pt. Macquarie Capital Securities Indonesia	"P-92"	"P-151"	"P-87"; "P-88"; "P-89"; "P-90"; "P-91"

Meanwhile, as to the *fourth* essential element, petitioner submitted the schedule of inward remittances and certifications of inward remittances from Hongkong and Shanghai Banking Corporation (HSBC) purportedly showing the remittances of its foreign clients.

However, equally important to consider is that the said foreign currency remittances referred to under ***Section 108(B)(2)*** must be duly supported by VAT zero-rated official receipts in accordance with ***Section 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC***, as amended, which provide that a VAT taxpayer, like herein petitioner, shall for every lease of goods or properties, and for every sale, barter or exchange of services, issue a VAT official receipt which must contain the information stated in the said provision.

Based on the Court in Division's verification, it was found that only the sales of US$11,548,329.10 which is equivalent to ₱537,611,641.02, was earned from the following clients, which as determined earlier qualify as non-resident foreign entities doing business outside the Philippines, and are duly supported by official receipts:

Name of Clients	**OR Exhibit No.**	**OR No.**	**Zero-Rated Sales (in US$)**	**Zero-Rated Sales (in Peso)**
Third Quarter				
Macquarie Bank Limited (Hong Kong Branch)	"P-35-8"	001043	171,468.00	7,830,305.82
			151,141.10	7,063,429.56

Macquarie Bank Limited Singapore Branch	"P35-10"	001045	67,802.90	3,096,306.26
			63,379.80	2,961,992.15
Macquarie Bank Limited (London Branch)	"P-35-11"	001046	167,472.80	7,647,859.83
			144,768.80	6,765,626.45
PT Macquarie Capital Securities Indonesia	"P-35-37"	001072	344.30	16,090.51
Macquarie Group Services Australia Pty. Ltd.	"P-35-38"	001073	2,490,198.70	113,718,112.48
			2,483,005.80	116,040,816.07
Subtotal			**US$5,739,582.20**	**₱265,140,39.13**
Fourth Quarter				
Macquarie Bank Limited (Hong Kong Branch)	"P-38-8"	001086	194,540.50	9,160,954.36
			194,439.30	9,137,135.88
Macquarie Bank Limited Singapore Branch	"P-38-9"	001087	46,736.80	2,187,872.95
			67,984.40	3,194,738.42
Macquarie Bank Limited (London Branch)	"P-38-10"	001088	150,153.30	7,029,072.31
			245,733.40	11,547,559.95
PT Macquarie Capital Securities Indonesia	"P-38-36"	001114	2,592.70	121,371.12
			1,030.70	48,434.89
Macquarie Group Services Australia Pty. Ltd.	"P-38-37"	001115	2,361,363.40	110,541,654.01
			2,543,910.60	119,544,026.27
PT Macquarie Capital Securities Indonesia	"P-38-75"	001153	261.80	12,281.72
Subtotal			**US$5,808,746.90**	**₱272,471,101.89**
TOTAL			**US$11,548,329.10**	**₱537,611,641.02**

However, despite having been duly supported by official receipts, the Court in Division found that petitioner was unable to sufficiently prove that the payments were duly reflected in the Certificates of Inward Remittances. Thus, the Court in Division was unable to determine whether the payments were accounted for according to the rules and regulations of the BSP. The pertinent portion of the assailed Decision states:

> "Nevertheless, while petitioner was able to present the schedule of inward remittances and certifications of inward remittances from HSBC purportedly showing the remittances of its foreign clients, **the Court cannot ascertain whether the amounts reflected therein correspond to the zero-rated sales as determined above. It bears stressing that the amounts reflected in the certifications are in lump sum. As these amounts were not itemized, there is no way for the Court to determine whether the payment for the zero-rated sales of ₱537,611,641.02 were indeed "accounted for in accordance with the rules and regulations of the BSP"**.
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> In sum, petitioner also failed to fulfill the fourth requisite for the successful prosecution of the instant refund claim. Correspondingly, it becomes unnecessary to determine whether petitioner fulfilled the remaining requisites for granting a credit/refund of input VAT for the periods from April 1, 2015 to March 31, 2016 or for the four (4) quarters of FY ending March 31, 2016."[50]
> (Emphasis supplied.)

Sixth to *ninth* requisites – in view of the failure to fulfill the fourth and fifth requirements, the Court in Division deemed it unnecessary to determine petitioner's compliance with the *sixth* to *ninth* requisites for claiming input VAT credit or refund.

Aggrieved by the findings of the Court in Division particularly on holding that the zero-rated sales cannot be traced to the Certificates of Inward Remittances, petitioner now invokes the findings of the ICPA. Specifically, the ICPA Report states:

> "e. With respect to procedure 1.e, **we ascertained that the remittances from its customers covering the collection/gross receipts** for the period covering the first to fourth quarters of the fiscal year ended March 31, 2016, as supported by the Company's issued VAT ORs, **were properly reflected in the Certificates of Inward Remittances.** (refer to Exhibits P-46 to P-51)."[51]
> (Emphasis supplied.)

The Court, however, is not convinced.

Section 3, Rule 13 of the RRCTA states that the Court is not bound by the findings of the ICPA, to wit:

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[50] See Decision, *Rollo*, p. 80.
[51] ICPA Report, CTA Case No. 9722, p. 7.

> "Sec. 3. Findings of independent CPA – The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party processing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.**"

Clearly, the ICPA's findings are not conclusive upon the Court as the same are subject to its verification, to determine its accuracy, veracity, and merit.[52] The Court may either adopt or reject the ICPA Report, wholly or partially, depending on the outcome of its own independent verification.[53] Thus, petitioner cannot insist that the ICPA's findings are sufficient to support its refund claim. It is essential for the petitioner to present evidence to support its compliance with the requirements of ***Section 108(B)(2) of the NIRC***, as amended, in order to pursue its claim for credit or refund.

The Court *En Banc* recognizes that the ICPA Report includes schedules which show the petitioner's list of zero-rated sales, the service invoices, and official receipts, among others. All information indicated in these schedules are still subject to the Court's verification and appreciation based on the documents submitted by the petitioner.

For this purpose, petitioner submitted its schedule of inward remittances[54] and Certificates of Inward Remittances from HSBC.[55]

The Certificates of Inward Remittances, as found by the Court in Division, are in lumpsum and do not contain details as to which zero-rated sale each certificate relates to.

Meanwhile, for the schedule of inward remittances, the Court notes that the details therein include OR number, invoice number, the remitter, the receiver, date of remittance, currency, amount in foreign currency, exchange rate, amount in Philippine peso, bank account number, Certificate of Inward Remittance reference number and total amount in Australian dollars, and the corresponding BIR Form No. 2550 return.

The Court verified the amounts reflected in the schedule of remittances *vis à vis* the Certificates of Inward Remittances, and observed the following:

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52 Takenaka Corporation Philippine Branch v. Commissioner of Internal Revenue, G.R. No. 211589, 12 March 2018; Aecom Philippines Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2454, 9 December 2022

53 Procter & Gamble Asia Pte. Ltd., v. Commissioner of Internal Revenue, C.T.A CEB Case No. 2301, 24 November 2021.

54 Exhibits "P-42" to "P-45", *Compliance (Re: Sworn Statement of Ailyn B. Perocho)* – Folder I.

55 Exhibits "P-46" to "P-51", *Compliance (Re: Sworn Statement of Ailyn B. Perocho)* – Folder I.

Date of Remittance	Amount Remitted in AUD per Certificate of Inward Remittances[56]	Total Payments in AUD per Schedule of Remittances[57]	Difference in AUD
27 April 2015	13,160,948.32	18,895,855.00[58]	5,734,906.68
29 June 2015	24,346,632.04	29,191,964.24[59]	4,845,332.20
17 August 2015	23,502,705.89	Total amount in AUD cannot be verified due to mixed transactions in USD and AUD, and lack of information on the exchange rate used from USD to AUD	
01 December 2015	14,633,711.01		
02 February 2016	17,431,004.12		
14 March 2016	16,544,144.46		

For the remittances dated 27 April 2015 and 29 June 2015, covered by Certificates of Inward Remittances with reference numbers *49117423*[60] and *5082286*,[61] respectively, the Court observed that the total amounts paid in AUD per schedule and amounts of remittances per certificates do not match. Moreover, the schedules do not provide any explanation as to resulting differences in the amounts reflected therein.

On the other hand, for remittances dated 17 August 2015, 01 December 2015, 02 February 2016, and 14 March 2016, covered by Certificates of Inward Remittances with reference numbers *52660780*,[62] *TT*

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[56] See Column *"CIR Amount in AUD"*, Exhibits "P-42" to "P-45", *Compliance (Re: Sworn Statement of Ailyn B. Perocho)* – Folder I; Exhibits "P-46" to "P-51", *Compliance (Re: Sworn Statement of Ailyn B. Perocho)* – Folder I.

[57] See Column *Amount in Foreign Currency"*, Exhibits "P-42" to "P-45", *Compliance (Re: Sworn Statement of Ailyn B. Perocho)* – Folder I.

[58] Computed as follows:

Date of Remittance	Pre-printed Invoice No.	Amount in Foreign Currency
27-Apr-15	1147	507,266.45
27-Apr-15	1148	59,303.20
27-Apr-15	1150	8,111,270.49
27-Apr-15	1151	537,759.75
27-Apr-15	1152	53,563.40
27-Apr-15	1153	122,909.41
27-Apr-15	1154	9,503,782.30
TOTAL		**18,895,855.00**

[59] Computed as follows:

Date of Remittance	Pre-printed Invoice No.	Amount in Foreign Currency
29-Jun-15	1156	535,251.78
29-Jun-15	1157	53,035.40
29-Jun-15	1159	9,719,470.24
29-Jun-15	1162	487,972.88
29-Jun-15	1163	66,696.92
29-Jun-15	1164	885,638.91
29-Jun-15	1165	3,488,072.44
29-Jun-15	1166	53,197.23
29-Jun-15	1167	5,028,291.29
29-Jun-15	1168	8,874,337.15
TOTAL		**29,191,964.24**

[60] Exhibit "P-51", *Compliance (Re: Sworn Statement of Ailyn B. Perocho)* – Folder I.

[61] Exhibit "P-46", *Compliance (Re: Sworn Statement of Ailyn B. Perocho)* – Folder I.

[62] Exhibit "P-47", *Compliance (Re: Sworn Statement of Ailyn B. Perocho)* – Folder I.

SNW860084MNL,[63] *58528630*,[64] and *59986341*,[65] respectively, the Court is unable to verify whether the total sales transaction amount in AUD would equate to the AUD amount per Certificates of Inward Remittances. The transactions which allegedly correspond to these remittances involve USD and AUD. Hence, the Court cannot simply add the transaction amounts and compare the total to the amount of remittance per Certificates of Inward Remittances due to foreign exchange rate considerations which were not reflected in the schedules.

Based on the foregoing, the Court *En Banc* finds that We cannot rely on the amounts and other information reflected in the documents submitted by petitioner to prove that the payments were duly reflected in the Certificates of Inward Remittances, and that these payments were accounted according to the rules and regulations of the BSP.

Moreover, even assuming that the Court *En Banc* would opt to rely solely on the ICPA Report, as insisted by the petitioner, We likewise observed unexplained discrepancies in the ICPA's schedules[66] and findings.

Upon reviewing the schedule of zero-rated sales prepared by the ICPA for FY2016, We noted the following:

Quarter	**Total Amount in AUD per OR[67]**	**Amount Remitted in AUD per Certificate of Inward Remittances[68]**	**Difference in AUD**
1st quarter	37,507,580.36	37,507,580.36	0
2nd quarter	23,502,705.89	23,502,705.89	0
3rd quarter	14,791,510.39	14,633,711.01	157,799.38
4th quarter	34,017,510.58	33,975,148.58	42,362.00

As explained by the ICPA, the total amount per OR already takes into consideration the "offsetting of cross border recoveries and general expenses," foreign exchange revaluations and bank charges. The ICPA claims that the offsetting of expenses is supported by Credit Notes issued by MFHL.

However, despite already factoring in these amounts, there are still unaccounted differences between payments per OR versus the values per Certificates of Inward Remittances, as shown in the table above. The Court

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[63] Exhibit "P-48", *Compliance (Re: Sworn Statement of Ailyn B. Perocho)* – Folder I.
[64] Exhibit "P-49", *Compliance (Re: Sworn Statement of Ailyn B. Perocho)* – Folder I.
[65] Exhibit "P-50", *Compliance (Re: Sworn Statement of Ailyn B. Perocho)* – Folder I.
[66] See Schedule of Zero-Rates Sales, ICPA Report, CTA Case No. 9722.
[67] See Column "Official Receipt", sub-heading "Total", Schedule of Zero-rated Sales.
[68] See Column "Inward Remittances", sub-heading "Net of Charges in AUD", Schedule of Zero-rated Sales; Exhibits "P-46" to "P-51", *Compliance (Re: Sworn Statement of Ailyn B. Perocho)* – Folder I.

finds that the unexplained differences negate the meritoriousness of the ICPA's findings that all payments for the claimed zero-rated sales were duly accounted and traced in the respective Certificates of Inward Remittances.

It is well-settled that tax refunds are in the nature of a claim for exemption and, therefore, the law is construed in *strictissimi juris* against the taxpayer. Accordingly, the pieces of evidence presented entitling a taxpayer to an exemption must also *strictissimi* scrutinized and must be duly proven.[69] In this case, petitioner was not able to prove with competent evidence its entitlement to a refund or issuance of a tax credit certificate.

In view of the foregoing, this Court finds no reason to disturb the findings of the Court in Division.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Court in Division's Decision, dated 12 March 2020, and the Resolution, dated 14 January 2021, are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[69] Atlas Consolidated Mining and Development Corporation v. CIR, G.R. No. 159490, 18 February 2008.

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice