REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 2666** *(CTA Case No. 9740)*
	Present:
- versus -	**DEL ROSARIO**, *PJ*, **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** *and* **FERRER-FLORES,** **ANGELES,** *JJ.*
KURIMOTO (PHILIPPINES) CORPORATION, *Respondent.*	**Promulgated:** OCT 11 2023 3:30 PM

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DECISION

REYES-FAJARDO, J.:

Before the Court *En Banc* is a Petition for Review[1] filed on July 28, 2022 by the Commissioner of Internal Revenue (CIR) assailing the Court of Tax Appeals (CTA) Second Division (Court in Division) Decision[2] promulgated on September 17, 2021 and Resolution[3] promulgated on June 22, 2022. The respective dispositions of the assailed Decision and Resolution read as follows:

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1 *Rollo*, pp. 5-20.

2 Penned by Associate Justice Jean Marie A. Bacorro-Villena with Associate Justice Juanito C. Castañeda, Jr. concurring. *Rollo*, pp. 27-67.

3 Penned by Associate Justice Jean Marie A. Bacorro-Villena with Associate Justices Juanito C. Castañeda, Jr. and Lanee S. Cui-David concurring. *Rollo*, pp. 69-74.

Assailed Decision

> **WHEREFORE**, premises considered, the present Petition for Review filed on 22 December 2017 by petitioner Kurimoto (Philippines) Corporation is hereby **PARTIALLY GRANTED**. Accordingly, respondent Hon. Caesar R. Dulay, in his capacity as the Commissioner of Internal Revenue, is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the total amount of **FOUR MILLION EIGHT HUNDRED TWENTY THOUSAND ONE HUNDRED SEVENTEEN PESOS and TWENTY SIX CENTAVOS** (P4,820,117.26), representing the unutilized and excess input value-added tax (VAT) attributable to its zero-rated sales for the third and fourth quarters of taxable year 2015.
>
> **SO ORDERED.**

Assailed Resolution

> **WHEREFORE,** the Motion for Partial Reconsideration filed by respondent Hon. Caesar R. Dulay, in his capacity as the Commissioner of Internal Revenue on 02 November 2021 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

FACTS

Petitioner CIR is vested with the power to decide on disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the 1997 National Internal Revenue Code (Tax Code), as amended, or other laws or portions thereof administered by the BIR.

On the other hand, respondent Kurimoto (Philippines) Corporation (KPC) is a domestic corporation duly organized and validly existing under the laws of the Philippines. It is registered as a Value-Added Tax (VAT) taxpayer.

Based on its Articles of Incorporation (AOI),[4] KPC is licensed to engage in the following activities:

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[4] Docket (CTA Case No. 9740) Vol. II, pp. 766-774.

Primary:

To enter into contracts related to construction, installation works, electric works, piping works, repairs & maintenance and staff service of various kinds of plants except for locally funded public works and defense related infrastructure and without engaging in local recruitment business.

Secondary:

To enter into agreements for the export, import, purchase, acquisition, and other disposition of equipment and machinery including construction equipment and materials in the various fields of mining, chemical, steel, ceramics, transportation, sheet metal processing and other kinds of industries and related products of every kind and description; to manufacture, assemble, trade distribute, and sell equipment and machinery including construction equipment and materials in the various fields of mining, chemical, steel, ceramics, transportation, sheet metal processing and other kinds of industries and related products of every kind and description on wholesale basis, for its own account as principal or in a representative capacity.[5]

KPC filed its Quarterly VAT Returns (BIR Form No. 2550-Q) relative to the third and fourth quarters of taxable year 2015 on October 7, 2015 and January 14, 2016, respectively. It amended each of these tax returns seven times thereafter.

In these quarters, KPC declared the following: (1) it had two sources of zero-rated sales, namely: (a) Sale of services to non-resident foreign corporation (NRFC) not engaged in trade or business in the Philippines (*i.e.*, Kurimoto Ltd., hereinafter referred to as "Kurimoto Japan"), and (b) Sale to a Philippine Economic Zone Authority (PEZA)-registered enterprise (*i.e.*, Taganito HPAL Nickel Corporation, hereinafter referred to as "THPAL"); and (2) it incurred unutilized input VAT attributable to its zero-rated sales (*i.e.*, domestic purchases of capital goods exceeding P1 Million, importation of goods other capital goods, amortization of capital goods).

On September 28, 2017, KPC filed an administrative claim[6] for refund/tax credit. It alleged that for the third and fourth quarters of 2015, it accumulated excess input VAT amounting to P11,666,047.12

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[5] Docket (CTA Case No. 9740) Vol. II, pp. 766-767.
[6] Docket (CTA Case No. 9740) Vol. I, pp. 37-41.

and that this amount had been attributable to zero-rated/effectively zero-rated sales. Thus, pursuant to Section 108 (B)(3), in relation to Section 112 (A), of the Tax Code, it was entitled to a refund or issuance of a tax credit certificate to the extent of such excess. Particularly, it alleged as follows:

> The company primarily generates its income from the sale of services to PEZA-registered entities, making is sales effectively zero rated. As stated in Section 108(B)(3) of the [Tax Code] x x x services rendered to persons or entities whose exemption under Special Law x x x effectively suggest that supply of such services to PEZA-registered entities is subject to zero percent (0%) rate.[7]
>
> x x x
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> Claim of the company emanates from input taxes on current portion of amortised capital goods and local purchase of goods and services. Majority of the purchase of goods and services relate to construction.[8]

In a letter[9] dated November 23, 2017, the BIR[10] denied KPC's administrative claim on account of its failure to submit supporting documents relative to alleged sales to Kurimoto LTD (Kurimoto Japan) to establish that the subject transactions were zero-rated sales; more specifically, that these were foreign currency-denominated sales. KPC received a copy of this denial on November 24, 2017.

This prompted KPC to file a Petition for Review before the Court on December 22, 2017 (judicial claim). It was docketed as CTA Case No. 9740.

Ruling of the Court in Division

In the Assailed Decision promulgated on September 17, 2021, at the outset, the Court in Division, enumerated the requisites for the grant of claim for refund/tax credit in connection with unutilized

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7 Docket (CTA Case No. 9740) Vol. I, p. 39.
8 Docket (CTA Case No. 9740) Vol. I, p. 40.
9 Docket (CTA Case No. 9740) Vol. II, p. 764.
10 Through Isabel A. Paulino, Revenue District Officer, Revenue Region No. 8-Makati, Revenue District Office No. 49-North Makati.

input VAT based on the pronouncement in *Luzon Hydro Corp. v. Commissioner of Internal Revenue*,[11] *viz.*:

> A claim for refund or tax credit for unutilized input VAT may be allowed only if the following requisites concur, namely: (a) the taxpayer is VAT-registered; (b) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (c) the input taxes are due or paid; (d) the input taxes are not transitional input taxes; (e) the input taxes have not been applied against output taxes during and in the succeeding quarters; (f) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (g) for zero-rated sales under Section 106(A)(2)(1) and (2);106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas; (h) 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; and (i) the claim is filed within two years after the close of the taxable quarter when such sales were made.

In the main, the Court in Division held the above requisites were satisfied in that KPC was engaged in zero-rated or effectively zero-rated sales and, in turn, incurred unutilized input VAT attributable thereto.

Its key findings are summarized below.

First, the nature of KPC's trade (*i.e.*, to enter into contracts related to construction, installation works, electric works, piping works, repairs and maintenance and staff service to various kinds of plants except for locally funded public works and defense related infrastructure and without engaging in local recruitment business) falls within the scope of "services other than processing, manufacturing or repacking of goods" contemplated under Section 108(B)(2) of the Tax Code.

Second, KPC's sales to **THPAL** qualify as zero-rated to the extent that these were declared and substantiated properly and in accordance with prevailing tax regulations. KPC presented a PEZA Certification showing that THPAL is a PEZA-registered Ecozone Export Enterprise with Registration Certificate No. 10-02 dated January 7, 2010.

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[11] G.R. No. 188260, November 13, 2013, 721 PHIL 202-217.

However, the sales to **Kurimoto Japan** cannot be regarded as zero-rated. On the one hand, KPC submitted Kurimoto Japan's AOI and the Securities and Exchange Commission (SEC) Certification of Corporate Filing/Information to establish that the latter was issued a Certificate of Withdrawal of License on July 6, 2011 and, more, particularly, that it is an NRFC not doing business in the Philippines. Nonetheless, KPC failed to substantiate the foreign currency remittances received from said foreign entity.

Third, KPC shall be allowed a refund/credit but only to the extent of **P4,820,117.26** or the portion it was able to substantiate properly and in accordance with prevailing tax regulations, and demonstrate attribution to valid zero-rated sales.

The Court in Division computed the amount for refund/credit as follows:

Input VAT claimed		₱11,666,047.12
Less Disallowed portions		
Per ICPA[12]	₱2,822,924.92	
Per Court's Verification	3,434,552.56	6,257,477.48
Input VAT available for refund/credit		₱5,408,569.64
Multiply by Percentage of valid zero-rated sales to total sales		
Zero-rated sales as validated by Court	₱109,429,245.73	
Divide by Zero-rated sales per KPC	122,787,858.99	89.12%
Input VAT allowed for refund/credit		**₱4,820,117.26**

After the Court in Division denied[13] its subsequent motion for reconsideration, the CIR filed the present petition.

Petitioner's Arguments

We summarize the CIR's arguments below.

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[12] Independent Certified Public Accountant.
[13] In the Assailed Resolution promulgated on June 22, 2022.

First, KPC's sales to **Kurimoto Japan** does not qualify as zero-rated sales.[14] The evidence presented by KPC, consisting of Kurimoto Japan's AOI and SEC Certification of Corporate Filing/Information do not establish said foreign entity's NRFC status.[15] Thus, Kurimoto Japan must be considered as doing business in the Philippines and the sales thereto subjected to VAT at the regular rate.[16]

Second, KPC's sales to **THPAL** also does not qualify as zero-rated sales. In case a PEZA-registered enterprise (*e.g.*, THPAL) avails of an income tax holiday (ITH), as provided under Executive Order (EO) No. 226, instead of the 5% preferential tax rate, as provided under Republic Act (RA) No. 7916, its tax exemption shall only cover income tax. It will remain to be subject to other national internal revenue taxes (*e.g.*, VAT).[17] In which case, THPAL would be subject to VAT and, consequently, its sales to KPC would have also been subject to VAT at the regular rate.[18]

Furthermore, a claimant is required to present (a) a certification of inward remittance as proof of the fact of payment "in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the BSP" and (b) its service agreement with the PEZA-registered enterprise it sold its goods or services to as proof of the nature and place where the service was rendered and goods consumed.[19] In this case, KPC failed to present these documents in connection with its sales to THPAL.[20] The presentation of the PEZA Certificate of Registration is not sufficient to show that KPC's sales to THPAL are zero-rated.[21]

Respondent's Arguments

KPC submits the following counter-arguments:

First, its sales to **THPAL**'s are zero-rated sales. The Certification of VAT Zero-Rating issued to THPAL establishes that it is a PEZA-

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[14] *Rollo*, p. 9.
[15] *Rollo*, p. 13.
[16] *Rollo*, p. 14.
[17] *Rollo*, p. 15.
[18] *Rollo*, p. 16.
[19] *Rollo*, p. 17.
[20] *Rollo*, p. 18.
[21] *Rollo*, p. 18.

registered enterprise and that its transactions with local suppliers of goods, properties, and services are also zero-rated.[22]

Second, its sales to **Kurimoto Japan** are zero-rated sales. The official receipts issued to Kurimoto Japan will show that KPC's sales to the former were paid for in acceptable foreign currency under the BSP rules and regulations.[23]

ISSUES

The primary question in the present controversy is: Did the Court in Division err in ruling that KPC is entitled to a refund/credit of unutilized input VAT amounting to P4,820,117.26?

To resolve this question, We must inquire into the sufficiency of evidence in establishing the following: *First,* whether KPC's sales to THPAL and/or Kurimoto Japan are zero-rated sales within the meaning provided under Section 108 of the Tax Code and, *second,* whether KPC incurred unutilized input VAT in connection with zero-rated sales.

OUR RULING

The Petition for Review is unmeritorious.

The present claim for refund/credit is anchored on Section 112(A)[24] of the Tax Code. The Supreme Court, in the recent case of *Chevron Holdings, Inc. v. Commissioner of Internal Revenue (Chevron),*[25]

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[22] *Rollo,* p. 101.

[23] *Rollo,* p. 98

[24] SECTION 112. Refunds or Tax Credits of Input Tax. – (A) Zero-rated or Effectively Zero-rated Sales. – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1),(2) and (B) and Section 108 (B)(1) and (2),the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP):Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods 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.

[25] G.R. No. 215159, July 5, 2022.

reiterated the requisites for the availment of a tax credit/refund under the aforementioned provision:

> Under Section 112(A) of the Tax Code, the taxpayer may claim for refund or issuance of tax credit certificate of unutilized input VAT attributable to zero-rated sales subject to the following conditions: (1) the taxpayer is VAT-registered; (2) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (3) the claim must be filed within two (2) years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

At the outset, We recognize that KPC's VAT registration and the timeliness of its administrative and judicial claims for refund/credit are no longer in question (*i.e.*, first and third requisites). Thus, Our pronouncement below deals more specifically with the second and fourth requisites in *Chevron*.

As will be discussed below, We agree with the Court in Division that KPC is entitled to a refund/credit of unutilized input VAT amounting to P4,820,117.26 for the following reasons: *First*, KPC's sales to THPAL are zero-rated sales pursuant to Section 108(B)(3) of the Tax Code. *Second*, it failed to establish the zero-rated character of its sales of services to Kurimoto Japan. *Third*, KPC incurred unutilized input VAT attributable to zero-rated sales.

KPC's sales to THPAL are zero-rated pursuant to Section 108(B)(3) of the Tax Code.

Under Section 108(B)(3) of the Tax Code, when a *VAT-registered person* renders services to a *person enjoying a tax exemption* that, in essence, subjects the supply of such services to zero percent rate, such supply or sale shall be regarded as zero-rated.

In this regard, Revenue Regulations (RR) No. 16-05, otherwise known as the Consolidated VAT Regulations of 2005 (VAT Regulations) is instructive:

> (c) "Sales to Persons or Entities Deemed Tax-exempt under Special Law or International Agreement". – Sales of goods or property to persons or entities who are tax-exempt under special laws, e.g. sales to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority (SBMA) pursuant to R.A. No. 7227, **sales to enterprises duly registered and accredited with the Philippine Economic Zone Authority (PEZA)** or international agreements to which the Philippines is signatory, such as, Asian Development Bank (ADB), International Rice Research Institute (IRRI), etc., shall be effectively subject to VAT at zero-rate.[26] (Emphasis supplied)

On the one hand, the above-cited regulation includes a PEZA-registered enterprise in the definition of *"person enjoying a tax exemption"* for purposes of VAT zero-rating. However, in the present case, petitioner submits that not all sales of services to PEZA-registered enterprises shall result automatically in the VAT zero-rating of such sales. It theorizes that the subsequent VAT zero-rating of sales of services to PEZA-registered enterprises depends on the type of tax exemption availed of by said enterprise: whether the 5% preferential rate under RA No. 7916 or the ITH under EO No. 226.

Petitioner's argument fails to convince Us.

In Revenue Memorandum Circular (RMC) No. 74-99,[27] the BIR clarified the tax treatment of sales of goods, property, and services by a supplier from the customs territory to a PEZA-registered enterprise, *viz*:

> SECTION 3. Tax Treatment Of Sales Made By A VAT Registered Supplier From The Customs Territory, To A PEZA Registered Enterprise. –
>
> (1) If the Buyer is a PEZA registered enterprise which is subject to the 5% special tax regime, in lieu of all taxes, except real property tax, pursuant to R.A. No. 7916, as amended:
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> (a) Sale of goods (i.e., merchandise). – This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT,

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[26] Section 4.106-5(c), RR No. 16-2005.

[27] *Tax Treatment of Sales of Goods, Property and Services Made by a Supplier from the Customs Territory to a PEZA Registered Enterprise; and Sale Transactions Made by PEZA Registered Enterprises Within and Without the ECOZONE*, October 15, 1999.

pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916, in relation to ART. 77(2) of the Omnibus Investments Code.

(b) Sale of service.– This shall be treated subject to zero percent (0%) VAT under the "cross border doctrine" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.

(2) If Buyer is a PEZA registered enterprise which is not embraced by the 5% special tax regime, hence, subject to taxes under the NIRC, e.g., Service Establishments which are subject to taxes under the NIRC rather than the 5% special tax regime:

(a) Sale of goods (i.e., merchandise). – This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916 in relation to ART. 77(2) of the Omnibus Investments Code.

(b) Sale of Service.– This shall be treated subject to zero percent (0%) VAT under the "cross border doctrine" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.

(3) In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to ART. 77(2) of the Omnibus Investments Code, **while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the "Cross Border Doctrine" of the VAT system.**

This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of the issuance of this Circular. (Emphases Supplied)

To underscore, **all** sales of goods, property or services by a VAT-registered supplier to a PEZA-registered enterprise, **regardless of the type of tax exemption availed of by the latter,** shall be subject to VAT at zero percent, not at the regular rate of 12%. To enjoy the benefit of

VAT zero-rating of its sales, **the supplier is not even required to secure a separate certification therefor**. RMC No. 74-99's provisions shall be sufficient basis for its entitlement to VAT zero-rating under Section 108(B)(3) of the Tax Code.

In the present case, that THPAL is a PEZA-registered enterprise is established by its PEZA Certificate of Registration. This certification, by itself, entitles KPC a VAT zero-rating with respect to its sales of services to THPAL.

Significantly, Section 108(B)(3) of the Tax Code only requires the **supplier** to show that its **client/purchaser** enjoys a tax exemption (e.g., by virtue of PEZA registration) to avail itself of VAT zero-rating over its sales of services to said client/purchaser. Thus, contrary to petitioner's standing, KPC is not required to present its service agreement with THPAL or even a certification of inward remittance showing that the transaction was paid in acceptable foreign currency. To be sure, these may be requirements for VAT zero-rating under Sections 108(B) subparagraphs (1) and (2). However, these are irrelevant if the availment is based on subparagraph (3), as in KPC's case.

KPC failed to establish the zero-rated character of its sales of services to Kurimoto Japan

We agree with the Court in Division's ruling that KPC's sales to Kurimoto Japan are not VAT zero-rated sales.

Primarily, sales of services in connection with the **processing, manufacturing, or repacking** of goods for persons doing business outside the Philippines are regarded as VAT zero-rated under subparagraph (1) of Section 108(B) of the Tax Code. On the other hand, sales of services **other than those specified in Section 108(B)(1)**, nonetheless, may qualify for VAT zero-rating, if the requisites as discussed by the Supreme Court in *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[28] concur, *viz*:

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[28] G.R. No. 234445, July 15, 2020.

> Conditions for Zero-rating of
> Sales of Services
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> Zero-rated sales are, for all intents and purposes, subject to VAT, only that the rate imposed upon them is 0%. Thus, while these sales will not mathematically yield output VAT, the input VAT arising therefrom is nonetheless creditable or refundable, as the case may be.
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> Sales of "other services," such as those qualifying services rendered by DKS to its foreign affiliates-clients, shall be zero-rated pursuant to Section 108 (B)(2) of the Tax Code if the following conditions are met: **First, the seller is VAT-registered. Second, the services are 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." Third, the services are "paid for in acceptable foreign currency and accounted for in accordance with [BSP] rules and regulations."**
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> x x x
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> Proof of NRFC Status
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> **For purposes of zero-rating under Section 108 (B)(2) of the Tax Code, the claimant must establish the two components of a client's NRFC status, viz.: (1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines.** To be sure, there must be sufficient proof of both of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines. (Emphasis supplied)

As found by the Court in Division, KPC did not meet two of the three above-enumerated requisites with reference to its sales to Kurimoto Japan. More specifically, KPC cannot avail of VAT zero-rating on its sales to Kurimoto Japan because it failed to adduce evidence to prove (a) the latter's NRFC status (i.e., that Kurimoto Japan is a foreign corporation *not* doing business in the Philippines) and (b) that the services had been "paid for in acceptable foreign currency and accounted for in accordance with [BSP] rules and regulations."

While KPC's sales of services to Kurimoto Japan are not subject to zero percent VAT, it does not follow that KPC shall be liable for 12% deficiency VAT on these transactions.

Verily, the courts have the power to **review** tax assessments issued by the CIR. However, it has no **assessment** powers and cannot, by itself, assess a taxpayer for deficiency taxes.[29] The law[30] vests sole authority to the CIR to make such assessments. And, as a matter of due process, an administrative remedial process[31] is mandated as a condition precedent to the judicial determination of liability for deficiency taxes. Certainly, We cannot allow the tax authorities "to use a claim for refund under Section 112 of the Tax Code as a means to assess a taxpayer for any deficiency VAT, especially if the period to assess had already prescribed."[32]

KPC incurred unutilized input VAT attributable to zero-rated sales

That KPC incurred unutilized input VAT attributable to zero-rated sales is no longer disputed. To be sure, petitioner focused on questioning the zero-rated character of KPC's sales and did not advance any argument to disprove that KPC incurred unutilized input VAT which qualify for refund/credit under Section 112(A) of the Tax Code.

In other words, the amount of refundable/creditable unutilized input VAT attributable to KPC's zero-rated sales is no longer at issue. Consequently, there is no reason for Us to disturb the Court in Division's disposition therefor.

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of merit. Accordingly, the assailed Decision promulgated on September 17, 2021 and Resolution promulgated on June 22, 2022 both rendered by the Second Division of this Court in CTA Case No. 9740 are **AFFIRMED**.

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29 *Commissioner of Internal Revenue v. Toledo Power Company*, G.R. Nos. 196415 & 196451, December 2, 2015.
30 Section 6, Tax Code.
31 Section 228, Tax Code.
32 *Commissioner of Internal Revenue v. Toledo Power Company*, G.R. Nos. 196415 & 196451, December 2, 2015.

SO ORDERED.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ON LEAVE
HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice