REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

ATLASSIAN PHILIPPINES, INC.,
Respondent.

CTA *EB* NO. 2654
(CTA Case No. 10011)

x- x

ATLASSIAN PHILIPPINES, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2664
(CTA Case No. 10011)

Present:

DEL ROSARIO, *P.J.,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
FEB 16 2024 9:51 a.m.

x- x

DECISION

MANAHAN, *J.*:

Before the Court *En Banc* are two (2) consolidated *Petitions for Review* docketed as CTA EB Nos. 2654 and 2664, both assailing the Decision dated October 6, 2021[1] and the

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[1] EB Docket (CTA EB No. 2654), pp. 120 to 162; EB Docket (CTA EB No. 2664), pp. 29 to 71.

Resolution dated June 22, 2022[2] promulgated by this Court's Second Division in CTA Case No. 10011, entitled "*Atlassian Philippines, Inc. vs. Commissioner of Internal Revenue,*" the dispositive portions of which, respectively read as follows:

Decision dated October 6, 2021:

> "**WHEREFORE**, premises considered, the present Petition for Review filed by petitioner Atlassian Philippines, Inc. on 18 January 2019 is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue, is hereby **ORDERED TO REFUND** in favor of petitioner the reduced amount of ₱5,228,551.41, representing unutilized input VAT attributable to its zero-rated sales for the first, second, third and fourth quarters of fiscal year ending 30 June 2017.
>
> **SO ORDERED**."

Resolution dated June 22, 2022:

> "**WHEREFORE**, with the foregoing, Atlassian Philippines, Inc.'s Motion for Reconsideration filed on 02 November 2021 and Commissioner of Internal Revenue's Motion for Partial Reconsideration filed on 02 November 2021 are both **DENIED** for lack of merit.
>
> **SO ORDERED**."

THE FACTS

The following facts are undisputed, *viz.*:

> "[Atlassian Philippines, Inc. (API)] is a domestic corporation duly organized and existing under Philippine laws, with principal office at 2nd Floor Building 3, Bonifacio High Street Central East, Fort Bonifacio Global City, Taguig City, Metro Manila.
>
> [The Commissioner of Internal Revenue (CIR)] is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund of tax credit certificates as provided by law.
>
> xxx xxx xxx

[2] EB Docket (CTA EB No. 2654), pp. 106 to 118; EB Docket (CTA EB No. 2664), pp. 73 to 85.

> [API] is registered with the Bureau of Internal Revenue (**BIR**) as a VAT taxpayer since 31 October 2013, as evidenced by its latest Certificate of Registration issued by Revenue District Office No. 44-Taguig City (**RDO 44**) under registration number OCN 9RC0000460963.
>
> For the FY ending 30 June 2017, petitioner filed with the BIR its quarterly VAT returns as follows:

Period Covered	Inclusive Months	Date Filed
1st quarter	July to September 2016	25 October 2016
2nd quarter	October to December 2016	24 January 2017
3rd quarter	January to March 2017	25 April 2017
4th quarter	April to June 2017	25 July 2017

> On 21 November 2016, petitioner filed with the BIR its Amended Quarterly VAT Return (BIR Form No. 2550-Q) for the 1st quarter of FY ending on 30 June 2017.
>
> During the said period, petitioner generated zero-rated sales from its services rendered to Atlassian Pty Ltd (**APL**), a non-resident foreign corporation (**NRFC**) established under the laws of Australia. At the same time, petitioner paid input VAT on its purchases of goods and services and amortized deferred input VAT on capital goods exceeding ₱1 Million in the aggregate amount of ₱14,212,395.13.
>
> On 28 September 2018, petitioner filed with the BIR RDO 44 its administrative claim for refund of input VAT amounting to ₱14,212,395.13, together with its supporting documents.
>
> A VAT Refund Notice dated 12 November 2018 (**VAT Refund Notice**) was issued to petitioner informing the latter that out of its total claim for VAT refund amounting to ₱14,212,395.13, only the amount of ₱2,836,316.77 has been approved."

On January 18, 2019, following the partial denial of its claim for refund, Atlassian Philippines, Inc. (API) filed a Petition for Review with the Court.[3] The case was docketed as CTA Case No. 10011.

Respondent Commissioner of Internal Revenue (CIR) filed his Answer on March 26, 2019.[4]

Trial then ensued.

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[3] Docket – Vol. I (CTA Case No. 10011), pp. 12 to 26.
[4] Docket – Vol. I (CTA Case No. 10011), pp. 121 to 129.

As already mentioned, on October 6, 2021, the Court's Second Division promulgated the assailed Decision,[5] partially granting API's claim for refund of its unutilized input value-added tax (VAT) attributable to its zero-rated sales for the 1st, 2nd, 3rd and 4th quarters of fiscal year (FY) ending June 30, 2017, in the amount of ₱5,228,551.41.

On November 2, 2021, API posted its Motion for Reconsideration, [6] praying, in effect, for the partial reconsideration of the Court in Division's Decision dated October 6, 2021.

For his part, on the same date, the CIR posted his Motion for Partial Reconsideration (of the Decision Dated 06 October 2021),[7] praying that the same Decision be partially reversed, and set aside and another one be rendered denying the Petition for Review filed by API for lack of factual and legal bases. Thereafter, API filed its Comment (to Respondent's Motion for Partial Reconsideration) on February 8, 2022.[8]

On June 22, 2022, this Court's Second Division promulgated the assailed Resolution, denying both parties' Motions.[9]

On July 12, 2022, the CIR filed his Motion for Extension (to File Petition for Review),[10] praying that he be allowed a fifteen (15)-day extension from July 14, 2022, or until July 29, 2022, within which to file his Petition for Review before the Court En Banc. The case was docketed as CTA *EB* No. 2654.

In the Minute Resolution dated July 13, 2022,[11] the Court *En Banc*, subject to the condition that the motion for extension is filed on time, granted the CIR a final and non-extendible period of fifteen (15) days from July 14, 2022, or until July 29, 2022, within which to file his Petition for Review.

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[5] EB Docket (CTA EB No. 2654), pp. 120 to 162; EB Docket (CTA EB No. 2664), pp. 29 to 71; Docket – Vol. II (CTA Case No. 10011), pp. 530 to 572.
[6] Docket – Vol. II (CTA Case No. 10011), pp. 573 to 586.
[7] Docket – Vol. II (CTA Case No. 10011), pp. 589 to 607.
[8] Docket – Vol. II (CTA Case No. 10011), pp. 613 to 615.
[9] EB Docket (CTA EB No. 2654), pp. 106 to 118; EB Docket (CTA EB No. 2664), pp. 73 to 85; Docket – Vol. II (CTA Case No. 10011), pp. 622 to 634.
[10] EB Docket (CTA EB No. 2654), pp. 1 to 3.
[11] EB Docket (CTA EB No. 2654), p. 4.

The CIR then posted his Petition for Review on July 29, 2022.[12]

On the other hand, API filed its Motion for Extension of Time to File Petition for Review on July 28, 2022,[13] and the case was docketed as CTA *EB* No. 2664.

In the Minute Resolution dated August 1, 2022,[14] the Court *En Banc*, subject to the condition that the motion for extension is filed on time, granted API a final and non-extendible period of fifteen (15) days from July 28, 2022, or until August 12, 2022, within which to file its Petition for Review.

On August 12, 2022, API posted its Petition for Review on August 22, 2022.[15]

In the Minute Resolution dated August 23, 2022,[16] this Court *En Banc* ordered the consolidation of CTA EB No. 2664, with CTA EB No. 2654—the case bearing the lower docket number.

Subsequently, on January 19, 2020, API posted its Comment (to Petition for Review in CTA Case EB No. 2654) on January 26, 2023.[17]

For his part, the CIR failed to file his comment on API's Petition for Review in CTA EB No. 2664.[18]

In the Resolution dated February 15, 2023,[19] this Court *En Banc* submitted the consolidated cases for decision.

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[12] EB Docket (CTA EB No. 2654), pp. 5 to 34.
[13] EB Docket (CTA EB No. 2664), pp. 1 to 4.
[14] EB Docket (CTA EB No. 2664), p. 6.
[15] EB Docket (CTA EB No. 2664), pp. 7 to 27.
[16] EB Docket (CTA EB No. 2664), p. 98.
[17] EB Docket (CTA EB No. 2654), pp. 169 to 175.
[18] Records Verification dated November 4, 2022 issued by the Judicial Records Division of this Court, EB Docket (CTA EB No. 2654), pp. 164.
[19] EB Docket (CTA EB No. 2654), pp. 179 to 181.

THE ISSUES / ASSIGNED ERRORS

In CTA *EB* No. 2654, the CIR raises the following issues for resolution of this Court *En Banc*:

> "Whether or not the Honorable Second Division of this Court erred in partially granting respondent's Petition for Review by ordering the refund of the reduced amount of FIVE MILLION TWO HUNDRED TWENTY EIGHT THOUSAND FIVE HUNDRED FIFTY ONE AND 41/100 (PHP 5,228,551.41) PESOS representing its unutilized input VAT attributable to its zero-rated sales for the first, second, third and fourth quarters of fiscal year ending 30 June 2017?
>
> Whether the Honorable Second Division of the Court erred in denying herein Petitioner's Motion for Partial Reconsideration?"[20]

On the other hand, in CTA EB No. 2664, API assigns the following errors supposedly committed by the Court in Division:

> "A. THE SECOND DIVISION ERRED IN HOLDING THAT RESPONDENT IS NOT REQUIRED BY LAW AND THE CONSTITUTION TO PROVIDE SUFFICIENT EXPLANATION AND SPECIFIC LEGAL BASES FOR ITS DENIAL OF CLAIM FOR VAT REFUND IN COMPLIANCE WITH DUE PROCESS BECAUSE IT IS NOT A COURT OF LAW[.]
>
> B. THE SECOND DIVISION ERRED IN DENYING THE AMOUNT OF PHP2,928,681.69 IN SPITE OF ITS FINDING THAT PETITIONER IS ENGAGED ONLY IN ZERO-RATED SALES AND HAS NO OTHER TAXABLE OR VAT-EXEMPT ACTIVITY[.]
>
> C. THE SECOND DIVISION ERRED IN DENYING THE AMOUNT OF PHP229,652.51 ON THE GROUND THAT THE INPUT TAX COVERED BY THE WITHHOLDING VAT RETURN (BIR FORM

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[20] Issue/s, *Petition for Review*, EB Docket (CTA EB No. 2654), p. 11.

NO. 1600) COULD ONLY BE CLAIMED IN THE PERIOD IN WHICH THE RETURN IS FILED AND THE TAX PAID."[21]

CTA EB No. 2654

CIR's arguments:

The CIR argues that to be entitled to a refund, API must comply with all the requisites required by law and based on the evidence presented by API, it failed to establish that the recipient of its services is not doing business in the Philippines. He avers that API was established for the sole purpose of rendering services to Atlassian Pty. Ltd. (APL) and that 99.4% of API's authorized capital stock is owned by its client, APL showing that API is an extension of APL's personality in the Philippines, hence, both entities should be considered as one and the same for purposes of taxation.

The CIR further maintains that API need not only prove that the recipient of its services is a foreign corporation, but it should also prove that it is not doing business in the Philippines and this it failed to do.

Overall, the CIR insists that API's claim for refund should be denied for not being fully substantiated by proper documents, and failure to comply with the requirements of the law, a primary example of which is API's big-ticket purchases which were not properly substantiated. It is the CIR's theory that if an administrative claim was dismissed by the Bureau of Internal Revenue (BIR) due to the taxpayer's failure to submit complete documents, then the judicial claim before this Court should be dismissed for the taxpayer's failure to substantiate the claim at the administrative level.

API's counter-arguments:

API counters that a subsidiary does not lose its separate personality by being a wholly-owned corporation of its parent company and points to a number of business process outsourcing (BPO) companies in the Philippines that are wholly-owned subsidiaries of their parent companies and which are,

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[21] Assignment of Errors, *Petition for Review*, EB Docket (CTA EB No. 2664), p. 10.

"invariably, their only customer." It further clarifies that the VAT is a neutral tax, hence it is not affected by the ownership structure of the buyer and the seller.

Lastly, API maintains that it was able to present documents that comply with the substantiation requirements of the law as well as its implementing regulations.

CTA EB No. 2664

API's arguments:

API argues that the filing of the Petition for Review and the partial grant of the claim for refund does not cure the due process rights violations allegedly committed by the CIR when he failed to inform it of the facts and the law upon which the denial (of the claim for refund) are based. API cites as an example, the BIR's failure to identify the specific input taxes that are being denied and allegedly, just lumped the amount of denied input taxes in their computation without any explanation.

On the substantive aspects of the denial of the claim for refund, API contends that that there is no need to allocate the valid input taxes to valid and invalid zero-rated sales because the allocation of input taxes is called for only if the taxpayer is engaged in taxable, zero-rated and exempt activities pursuant to Section 112 (A) of the 1997 National Internal Revenue Code (NIRC), as amended. It contends that if a taxpayer is engaged in only VAT zero-rated activities, then it follows that all of its input taxes are necessarily attributable to its zero-rated sales.

As regards the list of documents enumerated in Revenue Memorandum Circular (RMC) No. 42-2003, petitioner states that these are not cumulative and exclusive, and that either one of those documents, or any other documents proving that the payment was made through offsetting should be allowed. API further contravenes the finding of the Second Division of the Court and asserts that it could claim the input tax supported by BIR Form No. 1600 in the month of June 2017, even if the return itself was filed after, *i.e.*, on July 11, 2017.

THE COURT *EN BANC*'S RULING

We deny the CIR's Petition for Review for lack of merit and partially grant API's Petition for Review.

The CIR has not convincingly shown that APL and API are one and the same legal entity.

The CIR insists that API's evidence failed to establish that the recipient of its services is not doing business in the Philippines. He posits that API was established for the sole purpose of rendering services to APL, and 99.4% of API's authorized capital stock is owned by its client, APL, and thus, API is merely an extension of APL's personality in the Philippines.

The CIR's argument lacks merit.

A corporation has a separate and distinct personality from its corporate officers or stockholders.[22] Moreover, in the case of *Maricalum Mining Corporation vs. Florentino, et al.*, [23] the Supreme Court said:

> "...mere presence of control and full ownership of a parent over a subsidiary is not enough to pierce the veil of corporate fiction. It has been reiterated by this Court time and again that **mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality**." (*Emphasis supplied*)

Thus, the mere fact that APL owns 99.4% of API's authorized capital stock is not of itself a sufficient ground for disregarding the separate corporate personalities of APL and API.

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[22] *Zomer Development Company, Inc. vs. Special Twentieth Division of the Court of Appeals, Cebu City, et al.*, G.R. No. 194461, January 7, 2020.
[23] G.R. No. 221813, July 23, 2018.

Neither do we subscribe to the conclusion of the CIR that API was established for the sole purpose of rendering services to APL. Such a conclusion has no factual basis. While it is true that the primary purposes for API's incorporation are akin to the services being rendered by API to APL, there is no indication that the services being offered by the former is exclusively or only for the latter. Moreover, while in this case, APL is the only client of API, there is no showing that API is prohibited from accepting other clients, *i.e.*, apart from APL.

Nevertheless, the CIR further posits that API is an extension of APL's personality in the Philippines, since API performs administrative functions for APL. As this Court *En Banc* sees it, API's performance of administrative functions for APL is likewise an insufficient reason to conclude that API is now an extension of APL, for such an arrangement may fall under the business judgment rule.

To be sure, the "business judgment rule" simply means that the Securities and Exchange Commission (SEC) and the courts are barred from intruding into business judgments of corporations, when the same are made in good faith.[24]

In this case, the CIR has not shown that the performance of administrative functions by API in favor of APL was made in bad faith. Just because two companies closely work together on certain aspects of their respective business, the same cannot give rise to the conclusion that one is or was the conduit or extension of the other, thus, piercing the veil of corporate fiction.

To disregard the separate juridical personality of a corporation from its stockholders, the wrongdoing must be clearly and convincingly established. It cannot be presumed. The separate personality of the corporation may be disregarded or the veil of corporate fiction may be pierced only if the corporation is used as a cloak or cover for fraud or illegal acts, or to work injustice, or where necessary for the protection of creditors.[25] The CIR, however, has not convincingly nor empirically proven that the separate personalities of API and APL should be disregarded based on such grounds.

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[24] *Metroplex Berhad and Paxell Investment Limited vs. Sinophil Corporation, et al.*, G.R. No. 208281, June 28, 2021.
[25] *Marubeni Corporation, et al. vs. Lirag*, G.R. No. 130998, August 10, 2001.

API has sufficiently shown that APL is <u>not</u> doing business in the Philippines.

The CIR argues that copies of the Certificate of Registration, Certificate of Registration on Change of Name and Certificate of Non-Registration (issued by the SEC) presented by API are not enough to prove that APL is not doing business in the Philippines.

To support his stance, the CIR invokes the ruling of the High Court in *Accenture, Inc. vs Commissioner of Internal Revenue* ("*Accenture* case"),[26] and *Sitel Philippines Corporation vs. Commissioner of Internal Revenue* ("*Sitel Philippines* case").[27] In the *Accenture* and *Sitel Philippines* cases, the Supreme Court ruled that the taxpayer claiming a VAT refund or credit under Section 108(B) of the 1997 NIRC, as amended, has the burden of proving not only that the recipient of the service is a foreign corporation, but also that said corporation is doing business outside the Philippines.

We disagree with the CIR.

In *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.,*[28] the Supreme Court held as follows:

> "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[29] 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**.
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> xxx xxx xxx
>
> In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court *a quo*'s findings. To the Court's mind, the SEC Certifications of Non-Registration show that their affiliates are foreign

[26] G.R. No. 190102, July 11, 2012.
[27] G.R. No. 201326, February 8, 2017.
[28] G.R. No. 234445, July 15, 2020.
[29] "NRFC" stands for "non-resident foreign corporation".

> corporations. On the other hand, **the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines**.
>
> Proof of the above-mentioned second component sets the present case apart from *Accenture, Inc. vs Commissioner of Internal Revenue*[30] and *Sitel Philippines Corporation vs. Commissioner of Internal Revenue.*[31] In these cases, the claimants similarly presented SEC Certifications and client service agreements. However, the Court consistently ruled that documents of this nature only establish the *first* component (*i.e.*, that the affiliate is foreign). The absence of any other component evidence (*e.g.*, articles of association/certificates of incorporation) proving the second component (*i.e.*, that the affiliate is not doing business here in the Philippines) shall be fatal to a claim for credit or refund of excess input VAT attributable to zero-rated sales." (*Emphasis supplied*)

Based on the foregoing jurisprudence, it is clear that for purposes of zero-rating under Section 108(B)(2) of the 1997 NIRC, as amended, the claimant must establish the two components of its client's status as a non-resident foreign corporation, *viz.*: (1) that the said 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.

For the said second component, the articles of association/certificates of incorporation stating that the client/affiliate is registered to operate in its home country, outside the Philippines are *prima facie* evidence that the client/affiliate is not engaged in trade or business in the Philippines. Parenthetically, a *prima facie* evidence is one that will establish a fact or sustain a judgment unless contradictory evidence is produced.[32] Thus, unless contrary evidence is produced, the said articles of association/ certificates of incorporation are *prima facie* evidence that the client-affiliate is *not* doing business, or engaged in trade or business, in the Philippines.

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[30] 690 Phil. 679 (2012).
[31] 805 Phil. 464 (2017).
[32] Exhibit "P-6", BIR Records (CTA Case No. 10011), pp. 1347 to 1349.

In this case, as the CIR admits, API presented copies of APL's Certificate of Registration and Certificate of Registration on Change of Name[33] (which are equivalent to articles of association/certificates of incorporation), stating, in effect, that APL is registered to operate business in Australia. Considering that the said documents remain unrebutted or uncontradicted by the CIR, they sufficiently establish that APL is not doing business, or engaged in trade or business, in the Philippines.

Furthermore, the CIR cannot validly invoke the *Accenture* and *Sitel Philippines* cases since the rulings therein pertain to the non-submission of the above-stated second component which is not so in the present case.

Simply put, contrary to the CIR's supposition, API has sufficiently proven that APL is not doing business in the Philippines.

There is no indication of APL's intention to pursue and/or to establish a continuous business in the Philippines.

In arguing that APL shows an intention of continuity of conduct and to establish a continuous business in the Philippines, through API, the CIR invokes the ruling in *Commissioner of Internal Revenue vs. British Overseas Airways Corporation* ("*British Overseas* case"),[34] wherein the Supreme Court ruled as follows:

> "There is no specific criterion as to what constitutes 'doing' or 'engaging in' or 'transacting' business. Each case must be judged in the light of its peculiar environmental circumstances. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization. **In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local**

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[33] *Commissioner of Internal Revenue vs. Asalus Corporation*, G.R. No. 221590, February 22, 2017.
[34] G.R. Nos. L-65773-74, April 30, 1987.

> **agent, and not one of temporary character**." *(Emphasis added by the CIR)*

We are again unconvinced by the CIR's arguments.

While we are well aware of the above-quoted ruling, we fail to see that APL appointed API as an agent, or any local agent for that matter, so as to conclude that APL is doing or engaging in business in the Philippines.

In *International Exchange Bank Now Union Bank of the Philippines vs. Spouses Jerome and Quinnie Briones, et al.*,[35] the Supreme Court held as follows:

> "**In a contract of agency, 'a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.'**[36] Furthermore, Article 1884 of the Civil Code provides that 'the agent is bound by his acceptance to carry out the agency, and is liable for the damages which, through his non-performance, the principal may suffer.
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> *Rallos v. Felix Go Chan & Sons Realty Corporation*[37] lays down the elements of agency:
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> > Out of the above given principles, sprung the creation an acceptance of the *relationship of agency* whereby **one party, called the principal (*mandante*), authorizes another, called the agent (*mandatario*), to act for and in his behalf in transactions with third persons. The essential elements of agency are:** (1) there is consent, express or implied, of the parties to establish the relationship; **(2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for himself**; and (4) the agent acts within the scope of his authority. (Emphasis in the original, citation omitted)" *(Emphases and underscoring added)*

To reiterate, in an agency contract, the agent is authorized by the principal to transact with a third person; and the object of an agency is the execution of a juridical act in relation to the said third person.

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[35] G.R. No. 205657, March 29, 2017.
[36] G.R. No. 205657, March 29, 2017.
[37] G.R. No. 205657, March 29, 2017.

In this case, there is no indication that API was authorized by APL to act for and in the latter's behalf in transactions with third persons. Thus, the "local agent" being referred to in the *British Overseas* case cannot be applied in the case of API. Neither is there any evidence which shows that APL appointed any local agent or agent in the Philippines, to act for and in its behalf. Hence, this Court cannot conclude that APL had or has the intention to establish a continuous business in the Philippines.

The non-submission of documents required under Revenue Memorandum Order (RMO) No. 53-98, or even the amendment thereto, is not fatal. Moreover, the VAT system is invoice-based.

The CIR argues that API's big-ticket purchases were not properly substantiated. He invokes RMO No. 16-2007, which is an amendment to RMO No. 53-98, and disagrees with the application of the Supreme Court ruling in *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* ("*Pilipinas Total Gas* case"),[38] that "a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT".

We likewise disagree with the CIR.

Indeed, the issue of whether the non-submission of the documents enumerated under RMO No. 53-98 at the administrative level is fatal to the taxpayer's judicial claim for VAT refund is not novel.[39] In the cited *Pilipinas Total Gas, Inc.* case,[40] the Supreme Court said:

> "As can be gleaned from the above, RMO No. 53-98 is addressed to internal revenue officers and employees, for purposes of equity and uniformity, to guide them as to what documents they may require taxpayers to present **upon audit of their tax liabilities. Nothing stated in the issuance would show that it was intended to be a benchmark in determining whether the documents submitted by a**

[38] G.R. No. 207112, December 8, 2015.
[39] *Commissioner of Internal Revenue vs. Semirara Mining Corporation*, G.R. No. 202922, June 19, 2017.
[40] G.R. No. 207112, December 8, 2015.

> **taxpayer are *actually* complete to support a claim for tax credit or refund of excess unutilized excess VAT**. xxx.
>
> xxx xxx xxx
>
> Indeed, **a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT**. This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, **the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court**." (*Emphases supplied*)

To be sure, RMO No. 53-98 assumes relevance only on matters pertinent to an audit of tax liabilities.[41] Inasmuch as RMO No. 53-98 enumerates the documentary requirements during an audit investigation, its provisions do not apply to applications for tax refund or credit.[42]

Notably, as an amendment to RMO No. 53-98, RMO No. 16-2007 merely added procedures in the audit of input taxes claimed. This is readily apparent in the title/subject matter of RMO No. 16-2007, *viz.*:

> "**SUBJECT**: **Prescribing Additional Procedures in the Audit of Input Taxes Claimed in the VAT Returns By Revenue Officers and Amending 'Annex B' of Revenue Memorandum Order (RMO) No. 53-98 With Respect to the Checklist of Documents to be Submitted by a Taxpayer Upon Audit of His/Its VAT Liabilities As Well As the Mandatory Reporting Requirements to be Prepared by the Assigned Revenue Officer/s Relative Thereto, All of Which Shall Form an Integral Part of the Tax Docket**."

Thus, being an amendment to RMO No. 53-98, RMO No. 16-2007 just additionally prescribes audit procedures which are internal to the revenue officer handling the tax investigation. RMO No. 16-2007 was not intended to serve as a benchmark for the documents to be submitted by a taxpayer-claimant in

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[41] *Commissioner of Internal Revenue vs. Chevron Holdings, Inc. [Formerly Caltex (Asia) Limited]*, G.R. No. 233301, February 17, 2020.
[42] *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*, G.R. No. 234445, July 15, 2020.

support of its claim for tax credit or refund of excess unutilized excess VAT. Thus, it finds no application in the present API's claim for refund of its input VAT.

Corollarily, it must be pointed out that Section 112(A) of the 1997 NIRC, as amended, covers or allows only the refund of "creditable" input VAT. It provides, in part, 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: xxx." (*Emphasis supplied*)

Relative thereto, for an input VAT to be creditable, the same must be simply evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the 1997 NIRC, as amended. This is clear under Section 110(A) of the same Code, *viz.*:

> "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:
>
> (i) 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." (*Emphasis supplied*)

Our VAT system is invoice-based[43], *i.e.*, taxation relies on sales invoices or official receipts.[44] To be sure, input VAT attributable to zero-rated sales constitutes creditable input VAT, *i.e.*, input VAT evidenced by VAT invoice or official receipt which is creditable against output tax.[45] The reason for enforcing strict compliance with invoicing requirements is because only "VAT invoice/official receipt" can give rise to any input tax from domestic purchase of goods or service. Without input tax, there is nothing to refund.[46] So long as the input VAT being claimed for refund is supported by a VAT invoice or official receipt, which is issued in accordance with Section 113 of the 1997 NIRC, as amended, the same may be refunded, provided that all other conditions, under Section 112(A) of the same Code are met by the taxpayer-claimant.

Such being the case, the CIR cannot validly argue that API's big-ticket purchases were not properly substantiated because it failed to comply with RMO NO. 16-2007.

There was no violation of the prohibition against deprivation of property without due process of law under Section 1, Article III (Bill of Rights), 1987 Constitution.

API argues that the CIR's denial letter violated Section 1, Article III, of the 1987 Philippine Constitution which provides as follows:

> "SECTION 1. No person shall be deprived of life, liberty, or property without due process of law..."

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[43] Refer to *Panasonic Communications Imaging Corporation of the Philippines (Formerly Matsushita Business Machine Corporation of the Philippines) vs. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010; and *Applied Food Ingredients Company, Inc. vs. Commissioner of Internal Revenue, et seq.*, G.R. No. 184266, November 11, 2013.

[44] *Team Energy Corporation (Formerly: Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.

[45] *Commissioner of Internal Revenue vs. Taganito Mining Corporation, et seq.*, G.R. Nos. 219630-31 and 219635-36, December 7, 2021.

[46] *Commissioner of Internal Revenue vs. Philex Mining Corporation*, G.R. No. 230016, November 23, 2020.

The foregoing provision as articulated in the seminal case of *Ang Tibay vs. The Court of Industrial Relations* ("*Ang Tibay* case"),[47] and applied in *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue* ("*Avon* case"),[48] guarantees that no person shall be deprived of, *inter alia*, property without due process of law. In other words, the government is constitutionally prohibited to deprive any person of property without due process of law.

In this case, API is alleging that due to the failure of the BIR to inform it of the factual and legal bases for the denial of its refund claim, there was a violation of the constitutional prohibition against the deprivation of its property without due process of law.

API's stance is specious.

To be sure, the amount of refund being claimed by API has not become its property so as to be protected by the said constitutional guarantee. Plainly, the amount of refund claim in question has not come under API's right of ownership.

An indication that the amount being claimed by API is still *not* its property is that refunds need to be proven and their application raised in the right manner as required by law.[49] Being statutory in nature, its right to refund depends on the limitations provided by law. The burden of proof is upon the claimant to prove the factual and legal bases of its claim for refund. Tax refunds, similar to exemptions, are strictly construed against the taxpayer.[50]

Moreover, case law dictates that in a claim for tax refund or tax credit, the applicant must prove not only entitlement of the claim but also compliance with all documentary and evidentiary requirements therefor.[51] In fact, the taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative

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[47] 69 Phil. 635.
[48] G.R. Nos. 201418-19, October 3, 2018.
[49] Refer to *J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.
[50] *Taganito Mining Corporation vs. Commissioner of Internal Revenue*, G.R. No. 216656, April 26, 2021.
[51] *J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.

requirements to be entitled to the tax refund.[52] The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.[53]

Since a taxpayer merely applies for the granting of a refund or credit, the same may still be rejected by competent authorities, if not duly proven, or if there is no showing that said taxpayer strictly complied with the conditions therefor. If the taxpayer's entitlement to the said refund or credit is yet to be determined, then it follows that the amount of the claim is *not* yet the property of the taxpayer-applicant, so as to come under the purview of the above-stated constitutional guarantee.

In determining its entitlement to the refund being sought, the unreported zero-rated sales of API may be considered.

It is noted that the Court in Division disallowed API's zero-rated sales in the amount of ₱23,898,731.57, as evidenced by Official Receipt (OR) No. 1011 dated July 21, 2016,[54] for being unreported, on the basis of this Court *En Banc*'s Decision dated December 16, 2014 in *Commissioner of Internal Revenue vs. Northwind Power Dev't Corporation* ("*Northwind* case").[55] To counter the said disallowance, API argues as follows:

> "55. In its Decision, the Second Division cited the case of *Commissioner of Internal Revenue vs. Northwind Power Development Corp.*, CTA EB Case Nos. 1037 & 1042, December 16, 2014, in support of its conclusion in disallowing a portion of the valid input taxes. We believe that *Northwind* is no longer good law because of *Euro-Philippines*[56]. In any case, the justification for *Northwind* is that the Court 'will be disregarding the substantiation of petitioner's zero-rated sales thereby negating its effect on the amount of unutilized input VAT claimed for refund.' We believe such justification is relevant in the case of a tax assessment, where the transaction could either be treated as taxable or zero-rated. It has no relevance if the only customer involved is a non-resident foreign corporation not doing business in the

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[52] *Commissioner of Internal Revenue vs. Team Sual Corporation*, G.R. No. 194105, February 5, 2014.
[53] *Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018.
[54] Exhibit "P-16-21", USB (Exhibit "P-22"), p.1.
[55] CTA EB Nos. 1037 and 1042 (CTA Case No. 8119).
[56] Referring to the case of *Commissioner of Internal Revenue vs. Euro-Philippines Airline Services, Inc.* (G.R. No. 222436, July 23, 2018).

> Philippines because in such case, there is nothing in the Tax Code that treats an improperly documented export sale of services taxable at 12% VAT. Any failure in documentation would not make an export sale a domestic one. At most, it would only make the VAT return incorrect or understated but it will never result in a deficiency VAT assessment. Hence, reducing the refundable input VAT would be akin to a deficiency tax assessment."

On this matter, we find for API.

However, let it be emphasized that we do not agree with the reasoning of API, particularly, on its reliance on the *Commissioner of Internal Revenue vs. Euro-Philippines Airline Services, Inc.* ("*Euro-Philippines* case")[57]. This is so because the said case involves a tax assessment, and thus, presents a different context and factual milieu. More importantly, the *Euro-Philippines* case did not deal with the issue of whether the non-reporting of zero-rated sales in the VAT returns is a sufficient reason for the full or partial denial of an input VAT refund claim. *Apropos*, any issue, whether raised or not by the parties, but not passed upon by the Supreme Court, does not have any value as precedent.[58] Hence, the *Euro-Philippines* case cannot be used as authority on the said issue.

Neither can We give value to the *Northwind* case as a binding precedent. Suffice it to state that this Court's decisions do not constitute as precedents, and do not bind the Supreme Court or the public.[59] Only decisions of the Supreme constitute binding precedents, forming part of the Philippine legal system.[60]

In any event, the subject issue is no longer novel, and has already been settled by the Supreme Court.

Truth to tell, in *Southern Philippines Power Corporation vs. Commissioner of Internal Revenue* ("*South Philippines* case"),[61] the Supreme Court held as follows:

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[57] G.R. No. 222436, July 23, 2018.
[58] *Commissioner of Internal Revenue vs. Toledo Power Company*, G.R. Nos. 255324 and 255353, April 12, 2023.
[59] *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.*, G.R. Nos. 187485, 196113 and 197156, February 12, 2013.
[60] *Id.*
[61] G.R. No. 179632, October 19, 2011.

> "...**The Court finds that** [petitioner] **SPP failed to indicate its zero-rated sales in its VAT returns. But this is not sufficient reason to deny it its claim for tax credit or refund when there are other documents from which the CTA can determine the veracity of** [petitioner] **SPP's claim**.
>
> Of course, such failure if partaking of a criminal act under Section 255 of the NIRC could warrant the criminal prosecution of the responsible person or persons. **But the omission does not furnish ground for the outright denial of the claim for tax credit or refund if such claim is in fact justified**." (*Emphases supplied*)

Based on the foregoing, the failure of a taxpayer to indicate or report zero-rated sales in its VAT Returns is not a sufficient ground to deny outright a claim for input VAT refund. Thus, consistent with the above-quoted ruling, the disallowance of the amount of ₱23,898,731.57, as a zero-rated sale and evidenced by OR No. 1011 dated July 21, 2016, must *not* be sustained.

API's gross receipt in the amount of ₱23,898,731.57 which was received on July 13, 2017, may not be considered in the present claim for refund for the period ending June 30, 2017.

It is undisputed that the amount of ₱23,898,731.57, covered by OR No. 1023 dated **July 13, 2017**,[62] was reported in its VAT Returns for fiscal year 2017 (which ended on June 30, 2017), as part of the zero-rated sales of API. Relative thereto, the latter argues that there is no harm when a taxpayer advances the reporting of its sales because the government will never be put in a disadvantageous position.

We disagree with API.

Requiring the reporting of gross receipts subject to the zero percent (0%) VAT during the quarter they were received is not without reason.

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[62] Exhibit "P-16-19", USB (Exhibit "P-22"), p.12.

To quote anew for easy reference, Section 112(A) of the 1997 NIRC, as amended, provides, in part, 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: xxx." (*Emphasis supplied*)

Based on the foregoing provision, the application for the issuance of a tax credit certificate or refund of input VAT must be done within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. In other words, the two (2)-year prescriptive period for filing an administrative claim for refund begins to run from the close of the taxable quarter when the relevant sales were made (and not from the time the input VAT was incurred).[63] Thus, for the VAT-registered person to comply with the said period, it is crucial to determine when the said sales were made. Correspondingly, if the zero-rated or effectively zero-rated sales were made on a particular quarter, said sales must be reported therein. Otherwise, the taxpayer-claimant cannot validly comply with the above-stated provision, particularly with regard to the two (2)-year prescriptive period.

Considering that in this case, the amount of ₱23,898,731.57 was received by API on July 13, 2017 per OR No. 1023, the same could not be part of its zero-rated sales in the determination of the present claim for refund which covers only the FY 2017 (which ended on June 30, 2017). This is so because such zero-rated sale can only be considered in the 1st quarter of FY 2018, for purposes of Section 112(A) of the 1997, as amended. To be sure, the input VAT attributable thereto may only be claimed for refund in the said 1st quarter of FY 2018, in accordance with the same Section 112(A).

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[63] *Maibarara Geothermal, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 250479, July 18, 2022.

Thus, the Court in Division is correct in disallowing the said amount of ₱23,898,731.57 as part of API's zero-rated sales for FY 2017.

The supposed zero-rated sales paid through offsetting arrangements amounting to ₱3,983,667.37 are indeed not in accordance with RMC No. 42-2003.

Anent the disallowed zero-rated sales amounting to ₱3,983,667.37, API argues as follows:

> "62. We believe the conclusion of the Second Division that the journal entries are self-serving because it was the Petitioner who made the recording is surprising because all journal entries could only be done by the taxpayer, no one else. It would be impossible to find a journal entry in the books of a company that is not made by the company itself. These journal entries are made in the ordinary course of business and the Respondent was given the opportunity to cross-examine the ICPA and Petitioner's other witnesses. Therefore, to rule that these pieces of evidence are self-serving is not supported by any rules of evidence."

API misses the point of the Court in Division.

We quote with approval the Court in Division's disquisition on the matter, to wit:

> "Q-8 & A-8 of RMC No. 42-2003 enumerates the documents required in an offsetting arrangement, as follows:
>
> ...
>
> Q-8: With the full liberalization of the BSP rules on foreign exchange and trade transactions (CB Circular No. 1389 dated April 13, 1993 enunciated in RMC No. 57-97), the BIR requirement for full documentation of proofs of inward remittances of export proceeds should no longer be enforced. Accordingly, what should be the acceptable documentary requirements in the **processing of claims for TCC/refund, specifically on offsetting arrangements?**

A-8: In the case of offsetting arrangements, the following documents **should** be required:

a. Import documents which created liability accounts in favor of the foreign parent or affiliated company;
b. Other contracts with the foreign or affiliated company that brought about the liabilities which were offset against receivables from export sales;
c. Evidence of proceeds of loans, in case the claimant has received loans or advances from the foreign company;
d. Documents or correspondence regarding offsetting arrangements;
e. Confirmation of the offsetting arrangements by the heads of the business organizations involved;
f. Documents to prove actual export of goods; [and,]
g. Documents to prove that the sales are zero-rated sales.

...

To support its claim, [API] presented its Schedule of Offsetting and Intercompany Journal Entries for Offsetting. However, We find these two pieces of evidence to be self-serving[.] **Aside from the fact that it was petitioner itself that prepared and recorded them, there were also...not accompanied by any other supporting documents. We also take note that source documents such as credit card slips with third-party invoices or ORs bearing the details of APL, among others, were not adduced as evidence**.

In bears stressing that these advances were not provided nor mentioned in the Services Agreement between [API] and APL. The Services Agreement only provides for the calculation of [API]'s service fee wherein the latter would bill APL of the cost incurred in rendering services plus margin. Corollary, **there was no disclosure on the movement in related party trade payable in [API]'s Audited Financial Statements**.

Given the foregoing disquisition, [API] did not sufficiently establish its offsetting arrangement with APL in accordance with RMC No. 42-2003. Hence, the zero-rated sales that were not traced to the Certificate of Inward

> Remittance totaling ₱3,983,667.37 shall be disallowed and deducted from the amount of valid and substantiated zero-rated sales..." (*Emphases supplied*)

As can be gleaned from the foregoing, the amount of ₱3,983,667.37 was disallowed and deducted from the valid and substantiated zero-rated sales, not only for the reason that the subject evidence (*i.e.*, Schedule of Offsetting and Intercompany Journal Entries for Offsetting) were prepared and recorded by API, but also because said evidence were not accompanied by supporting documents. Thus, the same evidence are indeed self-serving.

If the said amount of ₱3,983,667.37 are indeed sales transactions of API, then why would there be no supporting documents therefor, apart from the said schedule and journal entries? The self-serving nature of the evidence in question is apparent from the fact that any person may simply prepare a "Schedule of Offsetting", or even record "Intercompany Journal Entries for Offsetting" involving inexistent transaction(s). Simply put, the Court in Division was correct in not giving any probative value to the said documents, and considered the same as self-serving.

Thus, we see no reason to reverse the Court in Division's disallowance of the amount of ₱3,983,667.37 as API's zero-rated sales.

API may not claim the input VAT supported by BIR Form No. 1600 in the month of June 2017, because the remittance return itself was filed in the subsequent month, or on July 11, 2017.

API argues that it could claim the input tax supported by BIR Form No. 1600 for the month of June 2017, even if the return was filed thereafter, *i.e.*, on July 11, 2017.

The Court disagrees with API.

We subscribe to the Court in Division's findings which ruled thus:

> "As can be gleaned from the afore-quoted provisions, the withholding VAT (**WVAT**) may be claimed as input tax credit **in the month such WVAT is withheld and remitted to the BIR** supported by BIR Form No. 1600. However, in the instant case, the June 2017 WVAT Return was remitted to the BIR on **11 July 2017**, which is outside the period of claim of 01 July 2016 to 30 June 2017."[64] *(Citations omitted)*

Subject to the foregoing disquisitions, We concur with the propriety of calculating the ratio to be applied to the excess input VAT in determining the refundable amount.

API believes that there is no need to allocate the valid input taxes between the valid and invalid zero-rated sales; and that the allocation of input taxes is called for only if the taxpayer is engaged in taxable, zero-rated and exempt activities as provided for under Section 112(A) of the 1997 NIRC, as amended, in order to determine how much of the taxpayer's input taxes could be refundable.

We disagree with API.

This Court *En Banc* concurs with the following ruling of the Court in Division, *viz.*:

> "...the Court emphasizes that in computing [API]'s entitlement to the refund, it did not allocate between zero-rated, subject to 12% VAT and exempt sales. Rather, the Court only determined which zero-rated sales are valid pursuant to existing laws and regulations.
>
> xxx xxx xxx
>
> ...the Court, by computing the valid zero-rated sales' proportion to the total zero-rated sales, did not make an assessment against [API]. Rather, the Court only determined

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[64] EB Docket (CTA EB No. 2654), at p.; EB Docket (CTA EB No. 2664), at p. 66; Docket – Vol. II (CTA Case No. 10011), at p. 567.

> the ratio to be applied to excess input tax (likewise found to be valid) in order to calculate the refundable amount due to petitioner."

And rightly so.

It would be illogical to include the unsubstantiated zero-rated sales in the amount of ₱3,983,667.37, and the out-of-period zero-rated sales amounting to ₱23,898,731.57. In the case of the former, this Court *En Banc* entertains serious doubt whether the same truly existed; and in the case of the latter, the same pertains to the 1st quarter of FY 2018, which is apparently not within the period of the present claim (*i.e.*, FY 2017).

Correspondingly, with the foregoing disquisitions, certain recomputations will have to be made.

API's total valid and substantiated zero-rated sales is then determined as follows:

Particulars		**Amount**
Zero-rated sales – FY 2017		₱ 180,483,961.05
Add: Unreported zero-rated sales		27,525,053.87
Total zero-rated sales		₱ 208,009,014.92
Less Disallowances:		
By the Court-commissioned Independent Certified Public Accountant (ICPA) – Out-of-period zero-rated Sales (per OR No. 1023 dated July 13, 2017)	₱ 23,898,731.57	
By the Court – Zero-rated sales not traced to the Certificate of Inward Remittance (No convincing evidence as to its existence)	3,983,667.37	27,882,398.94
Total valid and substantiated zero-rated sales		**₱ 180,126,615.98**

Moreover, out of API's claimed input VAT of ₱14,212,395.13 for FY 2017, only the amount of ₱10,993,549.87 represents the substantiated input VAT, determined as follows:

Particulars		Amount
Claimed input VAT		₱ 14,212,395.13
Less Disallowances:		
Per ICPA	₱ 2,892,764.23	
Per this Court's verification	326,081.03	3,218,845.26
Substantiated/Valid input VAT		**₱ 10,993,549.87**

However, the said substantiated/valid input VAT of ₱10,993,549.87 should be reduced, using the ratio of the total valid and substantiated zero-rated sales to the total zero-rated sales, *viz.*:

Particulars	Amount
Total zero-rated sales [A]	₱ 208,009,014.92
Total valid and substantiated zero-rated sales [B]	₱ 180,126,615.98
Ratio of total valid and substantiated zero-rated sales to the total zero-rated sales [C=B/A]	86.5955814%
Substantiated/Valid input VAT [D]	₱ 10,993,549.87
Excess input VAT attributable to valid zero-rated sales [E=C x D]	**₱ 9,519,928.43**

Furthermore, in determining the refundable amount to which API is entitled, the said amount of ₱9,519,928,43 shall be further reduced by the amount of ₱2,836,316.77, which represents BIR's previous partial approval of API's refund claim, to wit:

Particulars	Amount
Excess input VAT attributable to valid zero-rated sales	₱ 9,519,928.43
Less: Input VAT partially granted by the BIR	2,836,316.77
Input VAT for refund to API	**₱ 6,683,611.66**

WHEREFORE, in light of the foregoing considerations, the CIR's *Petition for Review* (CTA EB No. 2654) is **DENIED**, for lack of merit; while API's *Petition for Review* (CTA EB No. 2664) is **PARTIALLY GRANTED**.

Accordingly, the Court in Division's Decision dated October 6, 2021 in CTA Case No. 10011 is hereby **MODIFIED** to read as follows:

"**WHEREFORE**, premises considered, the present *Petition for Review* filed by petitioner Atlassian Philippines, Inc. on 18 January 2019 is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** in favor of petitioner the reduced amount of **₱6,683,611.66**, representing unutilized input VAT attributable to its zero-rated sales for the 1st, 2nd, 3rd and 4th quarters for fiscal year ending 30 June 2017."

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(On Leave)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice