

REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
QUEZON CITY

EN BANC

ASURION HONG KONG  
LIMITED-ROHQ,

Petitioner,

CTA EB NO. 2708  
(CTA Case No. 9852)

Members:

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

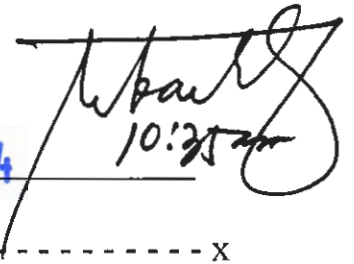
- versus -

COMMISSIONER OF INTERNAL  
REVENUE,

Respondent.

Promulgated:

JUN 11 2024



Handwritten signature and date stamp: 10:25 am

X ----- X

DECISION

**FERRER-FLORES, J.:**

This is a Petition for Review filed by petitioner **Asurion Hong Kong Limited-ROHQ (petitioner)** appealing the Court of Tax Appeals (CTA) Third Division's Decision, dated February 9, 2022,<sup>1</sup> (assailed Decision) and CTA Special Third Division's Resolution, dated September 20, 2022,<sup>2</sup> (assailed Resolution) denying its claim for the issuance of a tax credit certificate in the amount of **₱13,650,684.76**, representing unutilized input value-added tax (VAT) attributable to zero-rated sales of services for the first (1<sup>st</sup>) and second (2<sup>nd</sup>) quarters of calendar year (CY) 2016 or from January 1, 2016 to June 30, 2016. 1

<sup>1</sup> *Rollo*, pp. 32-59. Penned by Hon. Associate Justice Ma. Belen M. Ringpis-Liban with concurrence of Associate Justice Erlinda P. Uy and Associate Justice Maria Rowena Modesto-San Pedro.

<sup>2</sup> *Rollo*, pp. 61-63. Penned by Hon. Associate Justice Ma. Belen M. Ringpis-Liban with concurrence of Associate Justice Erlinda P. Uy and Associate Justice Maria Rowena Modesto-San Pedro.

## THE PARTIES

Petitioner is the regional operating headquarter (ROHQ) of Asurion Hong Kong Limited, a multinational company organized and existing under the laws of Hong Kong.<sup>3</sup> It is registered and licensed by the Securities and Exchange Commission (SEC) to transact business in the Philippines under SEC Registration No. FS201413422, dated July 17, 2014, with registered office address at 17/F ACCRALAW Tower, 30<sup>th</sup> Street and 2<sup>nd</sup> Avenue, Crescent West Park, Bonifacio Global City, Taguig City.<sup>4</sup> It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with Certificate of Registration No. 9RC0000505540 and Tax Identification Number 008-817-591-000.<sup>5</sup>

Respondent is the duly appointed **Commissioner of Internal Revenue (CIR/respondent)** vested with authority to carry out the functions, duties, and responsibilities of his Office including the duty to act upon claims for tax refund and credit pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules, and regulations.<sup>6</sup>


## THE FACTS

The facts as narrated by the Court in Division are as follows:<sup>7</sup>

On March 28, 2018, Petitioner filed with the BIR Revenue District Office ("RDO") No. 44, an administrative claim for the refund of its unutilized input VAT for the 1<sup>st</sup> and 2<sup>nd</sup> quarters of calendar year ("CY") 2016 amounting to Php13,650,684.76.

Thereafter, on April 5, 2018, Petitioner received the *Letter of Authority* ("LOA") No. AUDM04/018277/2018 (eLA201500087354) dated April 03, 2018, for the examination of its books of accounts and other accounting records for VAT, for the 1<sup>st</sup> and 2<sup>nd</sup> quarters of CY 2016.

On April 30, 2018, in compliance with the BIR's Tax Advisory No. 015294 dated March 27, 2018, Petitioner submitted the certified true copy of the Second Amended and Restated Charter of Asurion Insurance Services, Inc. ("AIS"), a copy of which was previously submitted together with the administrative claim for refund.

On May 10, 2018, Petitioner received the letter dated May 07, 2018 signed by Ms. Editha A. Calipusan, Revenue District Officer of RDO No. 

<sup>3</sup> Exhibit "P-1", Docket-Vol. 2, p. 647.

<sup>4</sup> *Id.*, p. 648.

<sup>5</sup> Exhibit "P-3", Docket-Vol. 2, p. 696.

<sup>6</sup> Paragraph 5, The Parties, Petition for Review, *Rollo*, p. 6.

<sup>7</sup> Citations omitted.

44, informing Petitioner that its claim was partially approved in the Net Refundable Amount of Php1,035,978.50.

Petitioner then filed the present *Petition for Review* on June 08, 2018. The case was raffled to the First Division of this Court.

Thereafter, on July 26, 2018, Petitioner received the letter dated July 18, 2019 issued by Regional Director Glen A. Geraldino, informing Petitioner that its refund claim is denied, based on the BIR's further evaluation and review of the pertinent records.

On September 03, 2018, Respondent posted his *Answer*, interposing the following special and affirmative defenses, to wit:

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On September 17, 2018, Petitioner filed its *Reply*.

Pursuant to the Order dated September 25, 2018, the present case was transferred to this Court's Third Division.

Respondent submitted the *BIR Records* of the case on October 18, 2018.

The Pre-Trial Conference was set and held on January 29, 2019. *Petitioner's Pre-Trial Brief* was filed on January 24, 2019, while *Respondent's Pre-Trial Brief* was submitted on January 28, 2019.

On February 22, 2019, the parties filed their *Joint Stipulation of Facts and Issues*. The Pre-Trial Order dated March 22, 2019 was then issued, deeming the termination of the Pre-Trial.

Trial then ensued.

Petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Mr. Santiago de Guzman II, Finance Manager of Petitioner; and (2) Mr. Enrico E. Baluyut, the Court commissioned Independent Certified Public Accountant ("ICPA").

The ICPA's *Report* was submitted on May 10, 2019.

Petitioner filed its *Formal Offer of Evidence (With Omnibus Motion)* on August 08, 2019. Respondent then filed his *Comment (To Petitioner's Formal Offer of Evidence)* on August 14, 2019. Thereafter, Petitioner filed a *Supplemental Formal Offer of Evidence* on December 02, 2019. On December 12, 2019, Respondent filed his *Comment (To Petitioner's Supplemental Formal Offer of Evidence Dated December 2, 2019)*.

In the Resolution on March 10, 2020, the Court admitted Petitioner's exhibits.

Respondent likewise presented his documentary and testimonial evidence. He presented his witness, Revenue Officer Ma. Josefe B. Macarubbo.

On November 10, 2020, *Respondent's Formal Offer of Evidence* was filed. Petitioner filed its *Comment (Re: Respondent's Formal Offer of Evidence)* on November 25, 2020. In the Resolution dated December 29, 2020, the Court admitted Respondent's exhibits, *except* for Exhibit "R-4", for not being found in the records of the case; and ordered the parties to file their respective memoranda within thirty (30) days from receipt thereof.

On February 15, 2021, the *Memorandum for Respondent* was posted; and on February 22, 2021, Petitioner's *Memorandum* was filed.

The present case was deemed submitted for decision on March 04, 2021.

On February 9, 2022, the CTA Third Division rendered its decision denying petitioner's claim for refund, the dispositive portion of which reads as follows:

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

**SO ORDERED.**

Unsatisfied, petitioner filed its *Motion for Reconsideration* but the CTA Special Third Division denied the same in the now assailed Resolution dated September 20, 2022. The *fallo* of which reads:

**WHEREFORE**, in light of the foregoing considerations, petitioner's **Motion for Reconsideration** is **DENIED** for lack of merit.

**SO ORDERED.**

Still unconvinced, petitioner filed the instant *Petition for Review*<sup>8</sup> before the Court *En Banc* on November 4, 2022 praying for the Court to: (1) reverse and set aside the assailed Decision and Resolution; and, (2) issue a decision ordering respondent to refund the amount of Thirteen Million Six Hundred Fifty Thousand Six Hundred Eighty-Four and 76/100 Pesos (Php13,650,684.76), representing excess and unutilized input VAT attributable to its zero-rated sales of services rendered in the Philippines for the 1<sup>st</sup> and 2<sup>nd</sup> quarters of CY 2016.<sup>9</sup>

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<sup>8</sup> *Rollo*, pp. 5-22.

<sup>9</sup> *Rollo*, p. 20.

On the other hand, respondent failed to file his comment/opposition to the instant petition per Records Verification dated March 3, 2023.<sup>10</sup>

This case was submitted for decision on April 19, 2023.<sup>11</sup>

### **THE ISSUE**

The lone issue for this Court's resolution is whether the Court in Division erred in denying petitioner's claim for refund of excess and unutilized input VAT attributable to its zero-rated sales of services on the ground that petitioner failed to sufficiently prove that the services it rendered to its sole client were performed in the Philippines.

### **THE ARGUMENTS OF PETITIONER**

Petitioner posits that, as an ROHQ, it renders its qualifying services to its clients in the Philippines only. The un rebutted testimony of petitioner's witness sufficiently proved that the services it rendered to its client were all rendered in the Philippines. The mere fact that the Service Agreement failed to indicate the place where the services are to be performed does not automatically mean that the same was not performed within the Philippines.

### **THE RULING OF THE COURT *EN BANC***

The Court *En Banc* grants the present *Petition for Review*.

#### ***Timeliness of the Petition for Review***

Before proceeding to the arguments of petitioner, the Court *En Banc* deems it necessary to delve on the timeliness of the instant *Petition for Review*.

Records show that, on February 23, 2022, petitioner received a copy of the assailed Decision of the CTA Third Division to which it timely filed its *Motion for Reconsideration* on March 9, 2022.

On September 20, 2022, the CTA Special Third Division issued the assailed Resolution denying petitioner's *Motion for Reconsideration* which

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<sup>10</sup> *Rollo*, p. 84.

<sup>11</sup> *Rollo*, p. 89.

was received by the latter on October 5, 2022. Consequently, petitioner had fifteen (15) days from its receipt, or until October 20, 2022, within which to file a petition for review before the CTA *En Banc*.

On October 20, 2022, petitioner filed a *Motion for Extension of Time to File Petition for Review* seeking an additional period of thirty (30) days from October 5, 2022, or until November 4, 2022, within which to file its petition.<sup>12</sup> The Court *En Banc* granted a final and non-extendible period of fifteen (15) days, however, counted from October 20, 2022, or until November 4, 2022 to file its Petition for Review<sup>13</sup> pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA).

On November 4, 2022, petitioner timely filed the instant *Petition for Review*.<sup>14</sup>

We shall now proceed to the merits of the case.

***Petitioner must comply with the requisites provided by law and jurisprudence.***

This Court, banking on the law and jurisprudence,<sup>15</sup> has already pronounced that, in order for the claim for refund of input taxes attributable to zero-rated sales of services to prosper, the following requisites must be observed by the taxpayer-claimant, to wit:

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

1. The claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;
2. In case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of one hundred twenty (120) days [*now ninety (90) days*], the judicial claim has been filed with this Court, within thirty (30) days from receipt of the decision or after the expiration of the said 120-day [*now ninety (90)-day*] period;

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<sup>12</sup> *Rollo*, pp. 1-3.

<sup>13</sup> Minute Resolution, dated October 21, 2022, *Rollo*, p. 4.

<sup>14</sup> *Rollo*, pp. 5-22.

<sup>15</sup> *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 155732, April 27, 2007; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.

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

3. The taxpayer is a VAT-registered person;

In relation to the taxpayer's output VAT:

4. The taxpayer is engaged in zero-rated or effectively zero-rated sales;

5. For zero-rated sales under Sections 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 BSP rules and regulations;

As regards the taxpayer's input VAT being refunded:

6. The input taxes are not transitional input taxes;
7. The input taxes are due or paid;
8. The input taxes have not been applied against output taxes during and in the succeeding quarters; and,
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 attributed to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.

We agree with the Court in Division that petitioner was able to comply with requisites numbers one, two, and three as discussed in the assailed Decision.<sup>16</sup> However, we differ in finding that petitioner was not able to establish that its sales of services to Asurion Insurance Services, Inc (AISI) were not rendered in the Philippines, thus, will not qualify as VAT zero-rated sales.

***Petitioner was able to establish that its sales of services for the period January 1, 2016 to June 30, 2016 were subject to VAT at zero percent (0%).***

In the assailed Decision, the Court in Division held that petitioner's sales of services to its sole client, AISI, will not qualify as VAT zero-rated sales. In rendering the said pronouncement, the Court *a quo* enumerated certain essential elements that must be complied with in order for a sale or

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<sup>16</sup> *Rollo*, pp. 45-46.


supply of services to be subject to VAT at zero percent (0%) under Section 108(B)(2) of the NIRC of 1997, as amended, *viz*:

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

The Court in Division held that petitioner was able to comply with all of the above elements except for the fourth element.<sup>17</sup>

The Court reasons that the "Performance of Services" clause of the Service Agreement<sup>18</sup> between petitioner and AISI did not categorically state that the supply of services is to be rendered in the Philippines. Neither did the evidence presented by petitioner indicate that its services were performed in the Philippines.

On the other hand, petitioner believes that it was able to prove that its qualifying services to AISI were rendered in the Philippines. Petitioner asserts that, by nature of its business as an ROHQ, its services necessarily require to be rendered in the Philippines. The performance of the qualifying services as an ROHQ raises a disputable presumption that the services are rendered in the Philippines. The un rebutted testimony of petitioner's witness sufficiently proved that the services it rendered to its client were all rendered in the Philippines. Absence of proof to the contrary, the disputable presumption should remain in its favor. It likewise avers that, absence of a provision in the Service Agreement regarding the place where the services are to be performed does not automatically mean that the same were not performed in the Philippines.

We agree with petitioner. 

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<sup>17</sup> *Rollo*, pp. 48-57.

<sup>18</sup> Exhibit "P-4", Docket-Vol. 2, pp. 697-702.



Section 108(B) of the NIRC of 1997, as amended, lists the instances when the service transactions are subject to zero percent (0%) VAT, to quote:

SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —

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

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) **Services other than those mentioned in the preceding paragraph, rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).**  
(Boldfacing supplied)

Records show that petitioner is a licensed ROHQ of Asurion Hong Kong Limited, a multinational company organized and existing under the laws of Hong Kong as evidenced by its SEC Certificate of Registration and License No. FS201413422. As an ROHQ, petitioner is authorized by the SEC “to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistics services; research and development services, and product development; technical support and maintenance; data processing and communication; and, business development”.

Section 2(3), Book III of Executive Order No. 226,<sup>19</sup> as amended by Republic Act No. 8756,<sup>20</sup> defines ROHQ as “a foreign business entity which is allowed to derive income in the Philippines by performing qualifying services to its affiliates, subsidiaries or branches in the Philippines, in the

<sup>19</sup> THE OMNIBUS INVESTMENTS CODE OF 1987.

<sup>20</sup> AN ACT PROVIDING FOR THE TERMS, CONDITIONS AND LICENSING REQUIREMENTS OF REGIONAL OR AREA HEADQUARTERS, REGIONAL OPERATING HEADQUARTERS, AND REGIONAL WAREHOUSES OF MULTINATIONAL COMPANIES, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF EXECUTIVE ORDER NO. 226, OTHERWISE KNOWN AS THE OMNIBUS INVESTMENTS CODE OF 1987.

*Asia-Pacific Region and in other foreign markets.*” Petitioner, by its nature as an ROHQ and as licensed by the SEC, is authorized to derive income in the Philippines by performing the qualifying services. However, as to whether the petitioner’s sales of services rendered to AISI are transactions subject to VAT at zero percent (0%) requires evaluation of petitioner’s evidence.

The Court previously cited the four (4) elements that must be complied with by a taxpayer-claimant in order to prove that its sales are zero-rated; hence, petitioner must show its compliance with those elements.

After scrutiny of petitioner’s exhibits, this Court strongly believes that petitioner was able to do so.

*1. The recipient of petitioner’s services, AISI, is a foreign corporation and doing business outside the Philippines.*

Petitioner complied with this first requirement.

Petitioner’s sole client, AISI, is a non-resident foreign corporation doing business outside the Philippines as evidenced by: (1) Certificate of Non-registration of Company, dated January 15, 2019, issued by the SEC, the latter attesting that AISI is not registered as a corporation or partnership in the Philippines based on its record;<sup>21</sup> and, (2) Second Amended and Restated Charter of AISI, which was certified to by the Secretary of State of Nashville, Tennessee, showing that AISI is doing business in the State of Tennessee.<sup>22</sup> These documents are sufficient to establish that petitioner’s recipient of services, AISI, is a foreign corporation and doing business outside the Philippines.<sup>23</sup>

*2. The petitioner’s services were paid in acceptable foreign currency accounted for in accordance with BSP rules and regulations.*

We agree with the Court *a quo*, that petitioner was able to prove that its sales of services to AISI were supported by valid VAT zero-rated official

<sup>21</sup> Exhibit “P-6”, Docket – Vol. 2, p. 731.

<sup>22</sup> Exhibit “P-5”, Docket – Vol. 2, pp. 703-730.

<sup>23</sup> *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*, G.R. No. 234445, July 15, 2020.

receipts,<sup>24</sup> which were compliant with the invoicing requirements under VAT law<sup>25</sup> and its implementing revenue regulations.<sup>26</sup>

Similarly there is no question that petitioner's sales of services were paid for in acceptable foreign currency as evidenced by the Certificate of Inward Remittance issued by Bank of America certifying that the remittances of AISI were received in US Dollars, via telegraphic transfer, and were credited to petitioner's account.<sup>27</sup>

*3. The services rendered by petitioner are other than "processing, manufacturing or repacking goods".*

The services rendered by petitioner to AISI based on Exhibit "A" of the Service Agreement were:

- corporate advisory services;
- training and personnel management;
- research and development services and product development;
- technical support and maintenance; and,
- data processing and communication.

The above services fall within the scope of "*services other than processing, manufacturing or repacking of goods*" which under Section 108(B)(2) of the NIRC of 1997, as amended, are transactions subject to VAT at zero percent (0%).

*4. Petitioner is a VAT-registered person whose services were performed in the Philippines.*

The parties already stipulated that petitioner is a VAT registered person with Tax Identification Number 008-817-591-000.<sup>28</sup> Such fact was corroborated by the Certificate of Registration issued by the BIR.<sup>29</sup>

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<sup>24</sup> Exhibits "P-26-A", "P-26-B", "P-26-C", "P-27-A", "P-27-B", and "P-27-C", softcopies stored in the USB flash drive resubmitted to the Court on October 17, 2019, Docket-Vol. 2, pp. 789-799.

<sup>25</sup> Sections 113(A) and (B) of the NIRC of 1997, as amended.

<sup>26</sup> Section 4.113-1(A) and (B), Revenue Regulations No. 16-05, as amended.

<sup>27</sup> Exhibit "P-7", Docket - Vol. 2, pp. 830-831.

<sup>28</sup> Paragraph 3, Stipulated Facts, Joint Stipulation of Facts and Issues, Docket-Vol. 2, p. 520.

<sup>29</sup> *Supra* at note 5.

Likewise, the services of petitioner to AISI were rendered in the Philippines. This fact is evident in the Sworn Statement of Mr. Santiago De Guzman II,<sup>30</sup> petitioner's Finance Manager and witness for this case, pertinent portions of which read:

**Q4: What is the nature of Petitioner's business?**

A: Petitioner is a Philippine Branch Office – Regional Operating Headquarters (ROHQ) of a multinational company organized and existing under the laws of Hong Kong. Petitioner is engaged in performing general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistics services; research and development services, and product development; technical support and maintenance; data processing and communication; and, business development.

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**Q15: As the Finance Manager, what do you know, if any, regarding this case?**

A: This case involves Petitioner's claim for the refund of or the issuance of a Tax Credit Certificate (TCC) in the amount of Thirteen Million Six Hundred Fifty Thousand Six Hundred Eighty Four and 76/100 Pesos (Php13,650,684.76) representing Petitioner's excess and unutilized input value-added tax (VAT) attributable to its zero-rated sales of service for calendar year (CY) 2016.

**Q16: What services were covered by these zero-rated sales of services for CY 2016?**

A: *Petitioner rendered corporate advisory services, training and personnel management, research and development services and product development, technical support and maintenance, and data processing and communication services in the Philippines to Asurion Insurance Service, Inc. (AIS), a corporation duly established and doing business under the laws of Nashville, Tennessee, United States of America (USA). Petitioner rendered these services pursuant to its Service Agreements with AISI effective as of July 17, 2014.*

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**Q24: Based on item 1 of the Service Agreement, AISI appointed Petitioner to provide certain services in the Philippines, can you please explain these statements?**

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<sup>30</sup> Exhibit "P-23", Docket-Vol. 1, pp. 228, 230, 231, and 233.

A: Since AISI is organized and doing business in USA and not engaged in business in the Philippines, *AISI appointed Petitioner to perform the services enumerated in the service agreements in the Philippines.*

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**Q33: How did Petitioner incur the excess and unutilized input VAT which it is claiming refund for?**

A: *Petitioner incurred excess and unutilized input taxes during the 1<sup>st</sup> and 2<sup>nd</sup> quarters of CY 2016 in the course of rendering corporate advisory services, training and personnel management, research and development services and product development, communication services in the Philippines to AISI.* (Italics and underlining supplied)

The absence of a provision in the Service Agreement regarding the place of the performance of petitioner's services does not mean that the services were not rendered in the Philippines. The unrebutted and uncontradicted testimony of petitioner's witness stating that the services were rendered in the Philippines is sufficient to establish such fact.<sup>31</sup>

It is to be noted that the BIR, in its earlier letter dated May 7, 2018, even partially granted petitioner's claim for refund.<sup>32</sup> The respondent's eventual denial of petitioner's claim was not even on the ground that the services were not rendered in the Philippines but on its belief that AISI is a related entity of petitioner, hence, there were no zero-rated sales to speak of but an intercompany transaction. This latter ground of respondent was already categorially addressed and negated by the Court *a quo* in the assailed Decision.<sup>33</sup>

Prescinding from the above, this Court holds that petitioner was able to prove that its qualifying services are transactions subject to VAT at zero percent (0%) pursuant to Section 108(B)(2) of the NIRC of 1997, as amended.

In as much as petitioner presented evidence that may establish its entitlement to the refund of input VAT, it is best that this case be remanded to the Court *a quo* for the continuation of its evaluation on petitioner's compliance with the remaining requisites in claiming refund of input VAT and for proper determination of the refundable amount. ¶

<sup>31</sup> *Bienvenido Yap vs. The Solicitor General*, G.R. No. L-1602, September 9, 1949, *People of the Philippines vs. Elroswell Manzano y Brebonera*, G.R. No. 138303, November 26, 2001, and *People of the Philippines vs. Pedro Perreras*, G.R. No. 139622, July 31, 2001.

<sup>32</sup> Paragraph 8, Stipulated Facts, Joint Stipulation of Facts and Issues, Docket-Vol. 2, p. 520 and Exhibit "P-20", Docket-Vol. 2, p. 758.

<sup>33</sup> See assailed Decision, *Rollo*, pp. 50-51.

It is a cardinal rule in taxation that a claim for tax refund partakes the nature of a tax exemption which cannot be allowed unless granted in the most explicit and categorical language. Being in the nature of an exemption from taxation, a claim for refund is strictly construed against the claimant and the failure to discharge the burden is fatal to the claim.<sup>34</sup>

**WHEREFORE**, in light of the foregoing considerations, the Petition for Review is **PARTIALLY GRANTED**.

Let CTA Case No. 9852 be **REMANDED** to the CTA Special Third Division for the proper determination of the refundable amount of value-added tax for the first and second quarters of calendar year 2016.

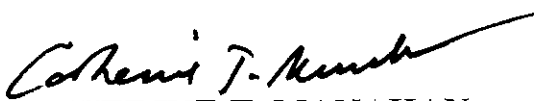
**SO ORDERED.**

  
**CORAZON G. FERRER-FLORES**  
Associate Justice

**WE CONCUR:**

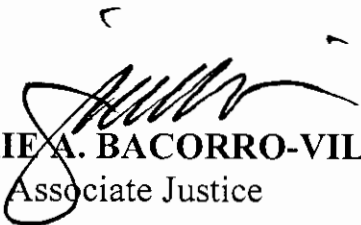
  
**ROMAN G. DEL ROSARIO**  
Presiding Justice

  
**MA. BELEN M. RINGPIS-LIBAN**  
Associate Justice

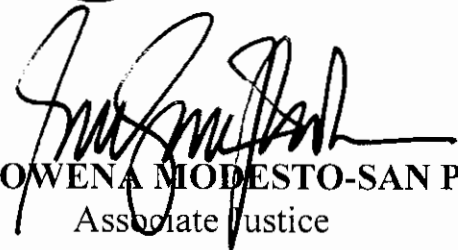
  
**CATHERINE T. MANAHAN**  
Associate Justice

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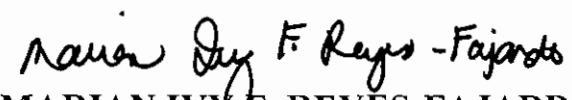
<sup>34</sup> *Emmanuel and Zenaida Aguilar vs. Commissioner of Internal Revenue*, CA-G.R. SP 16432, March 30, 1990.



**JEAN MARIE A. BACORRO-VILLENA**  
Associate Justice



**MARIA ROWENA MODESTO-SAN PEDRO**  
Associate Justice



**MARIAN IVY F. REYES-FAJARDO**  
Associate Justice



**LANEE S. CUI-DAVID**  
Associate Justice



**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