REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

BSM CREW SERVICE CENTRE PHILIPPINES, INC., Petitioner,	**CTA EB NO. 2788** (CTA Case No. 10135)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 25 2025 2:02 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

Under the *situs-of-service* principle, the place where the service is performed or to be performed determines the jurisdiction to impose value-added tax (**VAT**), either at 12% or 0% rate.[1]

At bar is a Petition for Review[2] filed by BSM Crew Service Centre Philippines, Inc. (**petitioner**) on 18 August 2023, pursuant to Section

[1] See Victorino C. Mamalateo, Value Added Tax 2007 Edition, p. 150 (2007).
[2] *Rollo*, pp. 5-16.

3(b)[3], Rule 8, in relation to Section 2(a)(1)[4], Rule 4 of the Revised Rules of the Court of Tax Appeals[5] (**RRCTA**), assailing the Decision dated 29 March 2023[6] (**assailed Decision**) and Resolution dated 19 July 2023[7] (**assailed Resolution**) both issued by the Court of Tax Appeals (**CTA**) Special Third Division[8] (**Court in Division**) in CTA Case No. 10135. entitled *BSM Crew Service Centre Philippines, Inc. v. Commissioner of Internal Revenue*, which totally denied petitioner's claim for refund from the Bureau of Internal Revenue (**BIR**) in the amount of ₱4,788,317.31.

PARTIES OF THE CASE

Petitioner is a corporation duly organized and existing under the laws of the Philippines. It is registered with the BIR as a value-added tax (**VAT**) taxpayer, with address at 1965 BSM House, Leon Guinto Street, Brgy. 692, Zone 075, Malate, Manila 1004, under Taxpayer Identification Number (**TIN**) 000-139-083-000, as a taxpayer engaged in the business of labor recruitment and provision of personnel *per* Certificate of Registration (**COR**) OCN 1RC0000525766.[9]

Respondent, on the other hand, is the duly-appointed Commissioner of Internal Revenue (**respondent/CIR**) empowered to perform the duties of the said office including, among others, the power to decide, approve, and grant tax refunds or tax credits as provided for

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3 **SEC. 3**. *Who may appeal; period to file petition.*
...
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.
...

4 **SEC. 2.** *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:
...
(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.]
...

5 A.M. No. 05-11-07-CTA.

6 *Rollo*, pp. 20-43.

7 Id., pp. 45-49.

8 Penned by Associate Justice Ma. Belen M. Ringpis-Liban, with Associate Justices Erlinda P. Uy (Ret.) and Maria Rowena Modesto-San Pedro, concurring.

9 Exhibit "P-7", Division Docket, Volume II, p. 678.

by law. He or she holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[10]

FACTS OF THE CASE

On 29 March 2019, petitioner, through a letter of even date and accompanied by an Application for Tax Credits/Refunds (**BIR Form No. 1914**), filed with BIR's VAT Credit Audit Division (**VCAD**) an administrative claim seeking the refund of unutilized input VAT arising from its domestic purchases of goods other than capital goods, services, and capital goods exceeding ₱1 million, attributable to alleged zero-rated transactions for the period beginning 01 January 2017 until 31 December 2017 or calendar year (**CY**) 2017 in the aggregate amount of ₱4,788,317.31.[11]

On 26 June 2019, petitioner received the BIR Letter dated 07 June 2019 (**Denial Letter**), issued by the Assistant Commissioner Assessment Service, Maria Luisa I. Belen (**Asst. Comm. Belen**).[12] Asst. Comm. Belen denied petitioner's claim for refund due to the following reasons: (1) violation of invoicing requirements pursuant Section 113(A)[13] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, Revenue Memorandum Order (**RMO**) No. 16-07[14] and Revenue Memorandum Circular (**RMC**) No. 42-03[15]; (2) out of period purchases; (3) imputed output VAT on other income and reimbursement; and (4) disallowed input VAT attributable to zero-rated sales with insufficient supporting documents.[16]

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10 Paragraph 1, Stipulation of Facts, Joint Stipulation of Facts and Simplification of Issues (JSFSI), id., Volume I, p. 416.

11 Exhibits "P-9" and "P-10", id., Volume II, pp. 680-681.

12 Exhibit "P-6", id., pp. 675-677.

13 **SEC. 113.** *Invoicing and Accounting Requirements for VAT-Registered Persons.*

14 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.

15 Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters.

16 Supra at note 12, p. 676.

PROCEEDINGS BEFORE THE COURT IN DIVISION

Undaunted, petitioner filed a Petition for Review[17] before the Court in Division on 25 July 2019 essentially stating that it has complied with all the requisites for the entitlement to a VAT refund under Section 112[18] of the NIRC of 1997, as amended. Thus, it prayed that respondent be ordered to refund or issue a tax credit certificate (**TCC**) in the aggregate amount of ₱4,788,317.31, representing its input VAT attributable to its alleged zero-rated sales for CY 2017. On 24 September 2019, respondent filed his or her Answer[19] thereto, interposing the following special and affirmative defenses: (1) petitioner failed to substantiate its claim for refund at the administrative level; and (2) claims for refund are construed in *strictissimi juris* against the taxpayer and in favor of the government.

Later, the Pre-Trial Conference was held on 04 February 2020[20], following the submission of petitioner's Pre-Trial Brief[21] on 28 January 2020, and respondent's Pre-Trial Brief[22] on 31 January 2020.

On 19 February 2020, both parties submitted a Joint Stipulation of Facts and Simplification of Issues (**JSFSI**)[23], which the Court in Division admitted and approved through a Resolution dated 21 February 2020[24], effectively terminating the Pre-Trial Conference. A Pre-Trial Order[25] was subsequently issued on 11 March 2020.

During the trial, petitioner called two (2) witnesses who all testified *via* their respective judicial affidavits:[26] Jennifer Mendoza (**Mendoza**), its Senior Accounts Officer, and the Court-commissioned Independent Certified Public Accountant (**ICPA**), Gerardo S. Teofilo, Jr. (**Teofilo**), whose ICPA Report was submitted on 06 November 2020.[27]

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17 Division Docket, Volume I, pp. 10-20.
18 **SEC. 112.** *Refunds or Tax Credits of Input Tax.*
19 Division Docket, Volume I, pp. 142-150.
20 See Notice of Pre-Trial Conference dated 07 October 2019, id., pp. 163-164; Minutes of the hearing held on, and Order dated, 04 February 2020, id., pp. 412 and 413-415, respectively.
21 Id., pp. 168-172.
22 Id., pp. 406-409.
23 Id., pp. 416-418.
24 Id., p. 420.
25 Id., pp. 467-475.
26 See Orders dated 27 October 2020 and 26 November 2020, id., Volume II, pp. 509-510 and 544-545, respectively.
27 Exhibits "P-32" and "P-33", id., pp. 511-522.

On the witness stand, Mendoza declared that: (1) petitioner is a company duly registered entity and engaged in the business of acting as representative, agent, charterer or broker of ships or vessel for owners and/or operators, whether individual or corporate; (2) petitioner duly filed its quarterly VAT return for the 1st to 4th quarter of CY 2017 and has unutilized input VAT in the amount of ₱4,788,317.31 after deducting the VAT refund it claimed for CY 2016; (3) it duly filed the required VAT Returns covering CY 2017; (4) it duly applied for VAT Refund in the amount of ₱4,788,317.31 covering CY 2017; (5) petitioner submitted the required supporting documents and attested the completeness and authenticity of the documentary requirement submitted; (6) petitioner's total claim of VAT Refund/TCC for CY 2017 was not applied as tax refund or carried over to the succeeding period; (7) on 26 June 2019, petitioner received the decision dated 07 June 2019, denying petitioner's application for VAT refund covering CY 2017 in the amount of ₱4,788,317.31; and (8) petitioner was constrained to file a petition for review with the CTA within the thirty (30)-day period from the receipt of the decision denying the claim.[28]

No cross-examination was conducted.[29]

Upon the completion of Mendoza's testimony, petitioner presented ICPA Teofilo. He testified that: (1) he examined and verified petitioner's supporting documents relative to the latter's claim for refund; (2) he prepared the "Re: Independent CPA Report BSM Crew Service Centre Philippines, Inc. (Petitioner) vs. Commissioner of Internal Revenue (Respondent) [CTA Case No. 10135]" dated 03 November 2020[30] (which the Court received on 06 November 2020) enclosing the audit procedures performed and the findings of the verification, and a USB[31] containing the scanned copies of the documents examined; (3) out of the total claim of ₱4,788,317.31, petitioner only properly supported ₱3,493,691.39 with relevant documents; and (4) the difference of ₱1,294,625.92 pertains to claims supported by documents that do not comply with the invoicing requirements and claims not substantiated by relevant documents.[32]

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28 See Judicial Affidavit of Jennifer Mendoza dated 28 January 2020, Exhibit "P-31", id., Volume I, pp. 173-183.

29 TSN dated 27 October 2020, p. 6.

30 Supra at note 27.

31 Exhibit "P-33.1".

32 See Judicial Affidavit of Mr. Gerardo S. Teofilo, Jr. dated 17 November 2020, Exhibit "P-34", Division Docket, Volume II, pp. 524-541.

No cross-examination was conducted.[33]

On 22 December 2020, petitioner filed its "Formal Offer of Evidence (for the Petitioner)"[34] (**FOE**). Respondent posted his or her "Comment (Re: [FOE] for the Petitioner)"[35] on 11 January 2021.

On 09 February 2021, the Court in Division issued a Resolution admitting petitioner's FOE, except for "ICPA-P2-740" and "ICPA-P2-741"[36], for being illegible.[37]

On 05 March 2021, petitioner filed a "Motion for Partial Reconsideration (of the Resolution dated February 09, 2021)"[38] (**MPR**), praying for the admission of the exhibits. Without respondent's comment[39], the Court in Division, in its Resolution dated 15 November 2021 granted the said motion thereby admitting Exhibits "ICPA-P2-740" and "ICPA-P2-741".[40]

As for respondent, Revenue Officer (**RO**) Jan Kevin S. Bautista (**Bautista**), through his judicial affidavit, declared that: (1) he is with the BIR's Tax Audit Review Division (**TARD**) and was the RO who conducted the examination and review of petitioner's refund claim; and (2) he recommended the denial of petitioner's claim and prepared a memorandum report therefor (which report was adopted in the Denial Letter issued against petitioner).[41]

In his cross-examination, RO Bautista clarified that the VCAD is the BIR division that has jurisdiction over the processing and acceptance of VAT refund claims. As such, it is responsible for receiving the

33 TSN dated 26 November 2020, p. 7.
34 Division Docket, Volume II, pp. 546-567.
35 Id., pp. 853-855.
36

Exhibit No.	Description
"ICPA-P2-740"	Purchases – Local Suppliers' Official Receipts and Invoices.
"ICPA-P2-741"	

37 Division Docket, Volume II, pp. 860-861.
38 Id., pp. 862-864.
39 See Records Verification Report dated 12 June 2021, id., p. 871.
40 Id., pp. 875-876.
41 Exhibit "R-7", id., Volume I, pp. 445-450.

documents enumerated Mandatory Checklist required for claiming a VAT refund and for evaluating the submitted documents.[42]

No redirect examination was conducted.[43]

On 22 March 2022, respondent filed his or her FOE[44], to which petitioner filed its Comment[45] on 28 March 2022. In the Resolution dated 28 April 2022[46], the Court in Division admitted respondent's exhibits and directed the parties to file their respective memoranda within 30 days from receipt thereof.

Respondent and petitioner then filed their respective Memoranda on 07 June 2022[47] and 16 June 2022[48], respectively. Thereafter, on 21 June 2022, the case was submitted for decision.[49]

In the assailed Decision, the Court in Division denied petitioner's Petition for Review for lack of merit.[50] The pertinent portion thereof reads:

> ...
> Hence, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements. Unfortunately for petitioner, it has failed to prove such entitlement.
>
> In sum, in this case, petitioner not only failed to establish that its administrative claim should have been granted by respondent in the first place, it also failed to show that it has zero-rated sales or effectively zero-rated sales for calendar year 2017. Correspondingly, the present *Petition for Review* must perforce fail.
>
> **WHEREFORE**, in light of the foregoing consideration, the present *Petition for Review* is **DENIED** for lack of merit.

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42 TSN dated 03 March 2022, pp. 5-6.
43 Id., p. 6.
44 Division Docket, Volume II, pp. 880-883.
45 Id., pp. 885-886.
46 Id., pp. 890-891.
47 Id., pp. 892-898.
48 Id., pp. 901-909.
49 See Resolution dated 21 June 2022, id., p. 911.
50 Supra at note 6; citations omitted and emphasis and italics in the original text.

SO ORDERED.

...

The Court in Division ratiocinated that: (1) petitioner failed to present or show that the documents submitted before it are the same documents submitted to respondent in its administrative claim for refund; and (2) petitioner failed to prove that the services were performed in the Philippines as the Manning Agreements failed to indicate that the services of petitioner were limited within the Philippines, hence it denied petitioner's claim for refund.

On 11 May 2023, petitioner filed its "[MR] (of the Decision dated March 29, 2023)"[51] contending that: (1) it has provided sufficient documentary evidence to establish that its two (2) clients, namely Bernhard Schulte Shipmgt Hongkong Ltd Pte and Bernhard Schulte Shipmgt Cyprus Ltd (Hammonia) are nonresident foreign corporations (**NRFCs**) not doing business in the Philippines; and (2) the provisions of the service agreements would suggest that the services were to be performed in the Philippines *sans* any categorical statement to that effect.

On 14 June 2023, respondent filed his or her "Opposition (Re: [MR] of the Decision dated 29 March 2023"[52], echoing the assailed Decision. Thereafter, the Court in Division denied petitioner's MR in the assailed Resolution.[53] The pertinent portion thereof declares:

...

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by petitioner in its Motion for Reconsideration, the Court finds no compelling reason to reverse, amend, or modify the Decision promulgated on March 29, 2023.

WHEREFORE, in light of the foregoing considerations, petitioner's Motion for Reconsideration (of the Decision dated March 29, 2023) is **DENIED** for lack of merit.

SO ORDERED.

...

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51 Division Docket, Volume II, pp. 938-944.
52 Id., pp. 976-983.
53 Supra at note 7; emphasis in the original text.

In denying the MR, the Court in Division echoed the well-settled rule that the CTA is not bound to adopt the ICPA's findings, including the ICPA's determination that all of petitioner's clients are NRFCs not doing business in the Philippines. As to the issue of whether the provisions of the services agreements suggest that the subject services were to be performed in the Philippines, the Court in Division maintained its ruling since there is no categorical statement which says that the subject services were to be performed in the Philippines.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Following petitioner's receipt of a copy of the assailed Resolution on 16 August 2023[54], it filed the instant Petition for Review"[55] with the Court *En Banc* on 18 August 2023, seeking the reversal of the Court in Division's assailed Decision[56] and Resolution.[57]

Subsequently, on 26 September 2023, the Court *En Banc* directed respondent to file a comment on the instant Petition for Review.[58] However, respondent failed to file his or her comment on the petition.[59] On 20 November 2023, the Court *En Banc* thereafter deemed the case submitted for decision.[60]

ISSUES

Petitioner raised the following issues for the Court *En Banc*'s resolution: [61]

I.

WHETHER THE COURT IN DIVISION ERRED WHEN IT RULED THAT PETITIONER BSM CREW SERVICE CENTRE PHILIPPINES, INC.'S SALES FAILED TO QUALIFY FOR VALUE-ADDED TAX (VAT) ZERO-RATING FOR FAILURE TO SUBMIT CERTAIN DOCUMENTS;

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54 *Rollo*, p. 44.
55 Supra at note 2.
56 Supra at note 6.
57 Supra at note 7.
58 See Notice dated 26 September 2023, *rollo*, p. 117.
59 See Records Verification dated 08 November 2023, id., p. 118.
60 See Notice dated 20 November 2023, id., p. 119.
61 See Assignment of Errors, Petition for Review, supra at note 2, p. 9.

II.

WHETHER THE COURT IN DIVISION ERRED WHEN IT RULED THAT THE COURT OF TAX APPEALS (CTA) IS FREE TO ADAPT OR DISREGARD COMPLETELY OR PARTIALLY, THE FINDINGS OF THE DULY COURT-COMMISSIONED INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT (ICPA); AND,

III.

WHETHER THE COURT IN DIVISION ERRED WHEN IT RULED THAT THE SERVICE AGREEMENTS SUBMITTED BY PETITIONER BSM CREW SERVICE CENTRE PHILIPPINES, INC. AS EVIDENCE DO NOT SERVE AS PROOF THAT THE SERVICES WILL BE PERFORMED IN THE PHILIPPINES.

ARGUMENTS

Before the Court *En Banc*, petitioner contends that it has sufficiently established that Bernhard Schulte Shipmgt Hongkong Ltd Pte and Bernhard Schulte Shipmgt Cyprus Ltd (Hammonia) are NRFCs not doing business in the Philippines by proffering as evidence the related Securities and Exchange Commission (**SEC**) Certification of Non-Registration and Memorandum and Articles of Association.

Furthermore, petitioner asserts that the ICPA correctly concluded that "Bernhard Schulte Shipmgt Hongkong Ltd Pte" is identical to "Bernhard Schulte Shipmanagement (Hongkong) Limited Partnership" and that the corporate names "Bernhard Schulte Shipmanagement (L) Limited", "Bernhard Schulte Shipmanagement (Cyprus) Limited", and "Bernhard Schulte Shipmanagement (Cyprus) Limited (Hammonia)" all refer to the same entity, which the CTA should have adopted.

Finally, petitioner argues that specific provisions of its service agreements demonstrate that its services were to be rendered in the Philippines.

RULING OF THE COURT *EN BANC*

Before delving into the merits of the case, the Court *En Banc* shall first ascertain whether the instant Petition for Review was timely filed.

THE INSTANT PETITION FOR REVIEW WAS TIMELY FILED.

Section 18 of Republic Act (**RA**) No. 1125[62], as amended by RA 9282[63], provides that a party adversely affected by a resolution of a Division of the CTA on motion for reconsideration or new trial, may file a Petition for Review with the CTA *En Banc*.

Section 3(b)[64], Rule 8 of the RRCTA states that the party affected should file the Petition for Review within fifteen (15) days from receipt of a copy of the questioned decision or resolution. This is without prejudice to the authority of the Court to grant an additional 15-day period[65] from the expiration of the original period, within which to file the Petition for Review.

Applying the foregoing, petitioner received the assailed Resolution on 16 August 2023.[66] Counting 15 days therefrom, petitioner had until 31 August 2023 to file the present Petition for Review before the Court *En Banc*. On 18 August 2023, petitioner filed the instant Petition for Review, well within the 15-day reglementary period.[67] Therefore, the Court *En Banc* successfully acquired jurisdiction over the instant case.

We, thus, proceed to discuss petitioner's arguments in support of this instant petition.

PETITIONER'S COMPLIANCE WITH THE REQUISITES FOR THE ENTITLEMENT TO A VALUE-ADDED TAX (VAT) REFUND UNDER SECTION 112(A) OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED.

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62 AN ACT CREATING THE COURT OF TAX APPEALS.

63 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

64 Supra at note 3.

65 Id.

66 Supra at note 54.

67 Supra at note 2.

Claims for refund of input taxes find basis in Section 110(B), in relation to Section 112(A) and (C) of the NIRC of 1997, as amended by RA 10963[68], otherwise known as the Tax Reform for Acceleration and Inclusion (**TRAIN**) and subsequent laws. The said provisions read as follows:

> ...
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> **Sec. 110.** *Tax Credits.* —
>
> ...
>
> (B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however,* That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.
>
> ...
>
> **Sec. 112.** *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated* or *Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> ...

68 AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.
>
> ...

In *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[69] (**Deutsche Knowledge Services**), the Supreme Court laid down the requisites for the entitlement to tax refund or credit of excess input VAT attributable to zero-rated sales, to wit:

> ...
>
> Under Section 4.112-1(a) of Revenue Regulations No. (RR) 16-05, otherwise known as the Consolidated VAT Regulations of 2005, in relation to Section 112 of the Tax Code, a claimant's entitlement to a tax refund or credit of excess input VAT attributable to zero-rated sales hinges upon the following requisites: "(1) the taxpayer must be VAT-registered; (2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated; (3) the claim must be filed within two 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."
>
> ...

The second (2nd) requisite for petitioner's entitlement to a tax refund or credit of excess input VAT is at issue in the present case.

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69 G.R. No. 234445, 15 July 2020; citations omitted.

SECOND (2[ND]) REQUISITE:
PETITIONER MUST BE ENGAGED IN SALES WHICH ARE ZERO-RATED OR EFFECTIVELY ZERO-RATED.

The 2[nd] *requisite* requires that the taxpayer is engaged in zero-rated or effectively zero-rated sales and, for zero-rated sales under Sections 106(A)(2)(a)(1) and (3)[70], and 108(B)(1) and (2)[71] of the NIRC[72] of 1997, as amended, the acceptable foreign currency exchange proceeds must have been duly accounted for in accordance with BSP rules and regulations.

Relative thereto, petitioner maintains that during CY 2017, it rendered "other services" under Section 108(B)(2) of the NIRC of 1997, as amended, by acting as representative, agent, charterer or broker of

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70 **SEC. 106.** *Value-Added Tax on Sale of Goods or Properties.* –

(A) *Rate and Base of Tax.* – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to twelve percent (12%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

...

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* - The term '*export sales*' means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

...

(3) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)[.]

...

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

...

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

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

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

...

72 As amended by TRAIN.

ships, vessels for owners and/or operators, whether individual or corporate. Thus, according to petitioner, its sale of services is subject to zero percent (0%) VAT.[73]

In *Deutsche Knowledge Services*[74], the Supreme Court held that in order for the sales of "other services"[75] to be considered VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended, the taxpayer-claimant must prove the following conditions:

> ...
> ***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***, services are "paid for in acceptable foreign currency and accounted in accordance with [BSP] rules and regulations.
> ...

In addition to the foregoing, as laid down under Section 108(B)(2)[76] of the NIRC of 1997, as amended, the "other services" must be performed in the Philippines (***4th condition***).[77]

Undeniably, petitioner is a VAT-registered taxpayer with TIN 000-139-083-000, as shown in its BIR Certificate of Registration Number OCN 1RC0000525766. Thus, petitioner complied with the ***1st condition***.

As regards the ***2nd condition*** which requires that the recipient of such services must be engaged in business conducted outside the Philippines or not engaged in business and is outside the Philippines when the services are performed, in *Deutsche Knowledge Services*[78], the Supreme Court discussed the two (2) components that the claimant must establish to prove a client's status as an NRFC, to wit:

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73 See Pars. 8-11, Petition for Review, supra at note 2, p. 7.
74 Supra at note 69; citations omitted, emphasis supplied and italics in the original text.
75 Supra at note 71
76 Supra at note 71.
77 See *Manila Peninsula Hotel, Inc. v. Commissioner of Internal Revenue*, G.R. No. 229338, 17 April 2024.
78 Supra at note 69; citations omitted, emphasis supplied and italics in the original text.

> ...
> (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.
> ...
>
> Proof of the above-mentioned second component sets the present case apart from *Accenture, Inc. v. Commissioner of Internal Revenue* and *Sitel Philippines Corp. v. Commissioner of Internal Revenue*. 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 competent 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.**
> ...

Based on *Deutsche Knowledge Services*, there must be sufficient proof of both components – (1) that petitioner's clients are **foreign corporations** which can be proven by the SEC Certifications of Non-Registration; and (2) that they are **not doing business in the Philippines** (the *prima facie* proof of which is the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines).

In this regard, petitioner asseverates that it sufficiently established that "Bernhard Schulte Shipmgt Hongkong Ltd Pte". and "Bernhard Schulte Shipmgt Cyprus Ltd (Hammonia)" are NRFCs not doing business in the Philippines. Petitioner also contends that the CTA should have given weight to the ICPA's finding that the said entities qualify as NRFCs not doing business in the Philippines.

In evaluating petitioner's claim for refund, the Court in Division found that petitioner failed to present as evidence the Foreign Articles of Incorporation or any similar document for "Bernhard Schulte Shipmgt Hongkong Ltd Pte". It also failed to present as evidence both

the SEC Certificate of Non-Registration and the Foreign Articles of Incorporation of "Bernhard Schulte Shipmgt Cyprus Ltd (Hammonia)."

The Court *En Banc* finds partial merit in petitioner's arguments.

An assiduous review of the records of the case shows that the correct name of petitioner's client **as clearly reflected in petitioner's official receipts (ORs)**[79] **and billing invoices**[80] is "Bernhard Schulte Shipmanagement (Hongkong) Limited Partnership". It then follows that when petitioner presented as evidence the Memorandum and Articles of Incorporation of "Bernhard Schulte Shipmanagement (Hongkong) Limited Partnership"[81], it has sufficiently established that Bernhard Schulte Shipmanagement (Hongkong) Limited Partnership is not doing business in the Philippines, thereby satisfying the requirements set forth in *Deutsche Knowledge Services*.

As to Bernhard Schulte Shipmgt Cyprus Ltd (Hammonia), petitioner's pieces of evidence fail to convince us that the findings of the Court in Division must be reversed. The documents used to prove the status of "Bernhard Schulte Shipmgt Cyprus Ltd (Hammonia)" as an NRFC not doing business in the Philippines indicate the following different corporate names:

Billing Invoices[82]	**Proof of foreign incorporation**[83]	**SEC Certificate of Non-Registration**[84]
Hammonia Shipmanagement (Cyprus) Ltd.	Bernhard Schulte Shipmanagement (Cyprus) Limited	Bernhard Schulte Shipmanagement (Cyprus) Limited

Moreover, according to the Affidavit executed by certain Pavlos Varnavas[85], Bernhard Schulte Shipmanagement Cyprus Ltd.'s Director, "the Articles of Incorporation of Bernhard Schulte Shipmanagement

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79 Exhibits "ICPA-P1-55", "ICPA-P1-112", "ICPA-P1-168", "ICPA-P1-209", "ICPA-P1-258", "ICPA-P1-331", "ICPA-P1-388", "ICPA-P1-450", "ICPA-P1-516", "ICPA-P1-575", "ICPA-P1-627", "ICPA-P1-672", USB.

80 Exhibits "ICPA-P1-56", "ICPA-P1-113", "ICPA-P1-169", "ICPA-P1-210", "ICPA-P1-259", "ICPA-P1-332", "ICPA-P1-389", "ICPA-P1-451", "ICPA-P1-517", "ICPA-P1-576", "ICPA-P1-628", "ICPA-P1-673", id.

81 Exhibits "ICPA-P3-35" to "ICPA-P3-60", id.

82 Exhibits "ICPA-P1-692", "ICPA-P1-695", "ICPA-P1-698", "ICPA-P1-701", id.

83 Exhibits "ICPA-P3-13" to "ICPA-P3-24", id.

84 Exhibit "ICPA-P3-3", id.

85 Exhibits "ICPA-P3-231", id.

Cyprus LTD and Bernhard Schulte Shipmanagement Cyprus (Greece) LTD are the one and the same document". Notably, however, there was no mention of "Hammonia Shipmanagement (Cyprus) Ltd". All things considered, other than its own bare allegations, petitioner did not present any proof that the names in the supporting documents refer to the same client it alleged to be an NRFC.

The fact that ICPA Teofilo already reviewed, verified and accepted the same set of documents as sufficient should not bar the Court from doing its own independent determination of the merit and probative value of the same set of documents.[86]

It bears stressing that this Court is not bound by the findings of the court-commissioned ICPA. The ICPA Report is but a tool or guide to aid the Court in the resolution of the case. It is only persuasive in nature and not conclusive upon the Court. Section 3, Rule 13 of the RRCTA, provides:

> ...
> SEC. 3. *Findings of independent CPA.* – The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA** may be challenged by the parties and **shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.**[87]
> ...

Thus, while the ICPA is commissioned to assist the Court in determining the merits of a taxpayer's case, its findings and conclusions are not conclusive upon the Court. The Court remains free to either fully or partially adopt, or entirely disregard, the ICPA's findings after conducting its own verification and evaluation of the evidence on record.[88] In other words, the Court will still examine and verify the documents that the ICPA audited or reviewed. Moreover, in the exercise

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86 See *Commissioner of Internal Revenue v. Deutsche Knowledge Services, Pte. Ltd.*, G.R. Nos. 226548 & 227691, 15 February 2023.

87 Italics in the original text, emphasis and underscoring supplied.

88 See *Tullett Prebon (Philippines Inc.) v. Commissioner of Internal Revenue*, G.R. Nos. 257219 (Formerly UDK No. 16941), 15 July 2024.

of its sound discretion, the Court may render judgment without considering the ICPA Report. Clearly, petitioner cannot rely solely on the ICPA's findings to substantiate its claim, as the ultimate determination rests with the Court based on the evidence submitted by the parties.

Before proceeding to the *3rd* ***condition***, which requires that payment for such services must be in acceptable foreign currency duly accounted for in accordance with the rules and regulations of the BSP, We must evaluate first petitioner's compliance with the ***4th condition*** (subject services were performed in the Philippines), which is one of the issues raised in petitioner's Assignment of Errors[89] in the assailed Decision.

Petitioner alleged that the services it rendered for CY 2017 were all performed in the Philippines. As proof, petitioner presented the Manning Agreements it executed with the following NRFCs:

1. Bernhard Schulte Shipmanagement (China) Company Limited[90];
2. Hanseatic Shipping Company, Ltd., Limassol[91];
3. Bernhard Schulte Shipmanagement (UK) Ltd.[92];
4. Bernhard Schulte Shipmanagement Deutschland GmbH & Co. KG[93];
5. Bernhard Schulte Shipmanagement (India) Pvt. Ltd.[94];
6. Bernhard Schulte Shipmanagement (Singapore) Pte. Ltd.[95]; and
7. Bernhard Schulte Shipmanagement Bermuda Limited Partnership.[96]

The Court in Division ultimately denied petitioner's claim for its failure to prove that the services were performed in the Philippines as the Manning Agreements failed to indicate expressly or categorically

89 Supra at note 61.
90 Exhibits "ICPA-P8-2" to "ICPA-P8-6", USB.
91 Exhibits "ICPA-P8-12" to "ICPA-P8-16", id.
92 Exhibits "ICPA-P8-17" to "ICPA-P8-20", id.
93 Exhibits "ICPA-P8-21" to "ICPA-P8-24", id.
94 Exhibits "ICPA-P8-40" to "ICPA-P8-43", id.
95 Exhibits "ICPA-P8-46" to "ICPA-P8-49", id.
96 Exhibits "ICPA-P8-78" to "ICPA-P8-85" *cf.* Exhibit "ICPA-P8-75", id.

that the services of petitioner were to be performed within the Philippines.

Petitioner's arguments are bereft of merit.

The requirement that the services subject of the zero-rated sales must be performed in the Philippines finds support in the *situs-of-service* principle, which states that the place where the service is performed or to be performed determines the jurisdiction to impose VAT, either at 12% or 0% rate.[97] Accordingly, services done outside the Philippines shall be exempt from VAT and no successful VAT refund claim may arise therefrom.

Like any other requisites, the *locus* of the actual services rendered by petitioner during the claim period, *i.e.*, CY 2017, must be established by sufficient and competent evidence and the same is *strictissimi* scrutinized.[98] Here, petitioner only presented the Manning Agreements it executed with a few of its NRFC clients.[99] Sale of services to the following NRFC clients were *not* supported with any contract:

a. Bernhard Schulte Shipmgt Cyprus (Greece) Ltd.
b. Bernhard Schulte Shipmgt Isle of Man Ltd.
c. Bernhard Schulte Shipmgt Hongkong Ltd. Pte.
d. Bernhard Schulte Shipmgt Cyprus Ltd. (Hammonia)

Moreover, petitioner is *not* exclusively engaged in manning services. As can be gleaned from petitioner's Articles of Incorporation, petitioner is primarily engaged in the business of acting as representative, agent, charterer or broker of ships, vessels for owners and/or operators, whether individual or corporate.[100] In fact, ICPA Teofilo had determined that petitioner's principal activity is to engage in the aforesaid activities.[101] Clearly, petitioner can act as a general agent for any of its principals.

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97 Supra at note 1.

98 See *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, 19 February 2018, citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, 18 February 2008.

99 Supra at p. 19.

100 Exhibits "ICPA-P7-1" to "ICPA-P7-34", USB.

101 Supra at note 27, p. 516.

Additionally, a careful scrutiny of petitioner's ORs and billing invoices[102] reveals that none of them made reference to any of the Manning Agreements, nor is there any indication that they exclusively pertain to petitioner's manning services. Notably, all the ORs show "Agency Fee" as the "nature of services". Moreover, petitioner's billing invoices, bearing the particulars "Agency fee as *per* attached summary & computations", refer to additional attachments, which were not submitted for the Court's review and scrutiny. Consequently, the Court was unable to ascertain the actual nature of the services that petitioner rendered during the claim period.

More importantly, a perusal of petitioner's Audited Financial Statements[103] (*albeit* in accrual basis) shows that petitioner has **three (3) main sources of revenue** – *Agency Fees* (which pertain to the monthly fees paid by the principals for the services rendered by the crews recruited by the Company), *Lump-sum income* (which pertains to the fees earned for the manning contract with Hammonia Shipmanagement Inc.) and *Recruitment income* (which pertains to the excess of the income earned by petitioner from additional crews embarked on the principal's vessel during the year over the expenses incurred in embarking these crews).[104] It would, thus, appear that only the last two (2) revenue sources are relevant to the income earned (or collections made) from selection, hiring and deployment (which is covered by the proffered Manning Agreements).

Assuming *arguendo* that petitioner was able to prove that the Manning Agreements may suggest that the manning services contemplated therein were intended to be performed in the Philippines, petitioner still failed to establish **any nexus or connection between the Manning Agreements and the ORs and invoices presented**.

Lastly, the Court is not unaware that the ORs[105] submitted by petitioner shows its business address, *i.e.*, 1965 BSM House Leon Guinto St, Brgy. 692, Zone 075, Malate, Manila. However, the same could not be used as evidence to satisfy the ***4th condition***, since the same only connotes that such is the registered address of petitioner with the BIR. ORs, at most, serve merely as evidence of payment and do not, in any

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102 Exhibits "ICPA-P1-1" to "ICPA-P1-703", USB.
103 Exhibits "ICPA-P6-1" to "ICPA-P6-60", id.
104 Notes 16 and 17, Exhibits "ICPA-P6-38" and "ICPA-P6-39", id.
105 Supra at note 102.

manner, provide an indication as to where the services were performed.[106] It is important to distinguish that the place of payment for the services is entirely separate and distinct from the place where the services were rendered.

En totale, petitioner failed to sufficiently establish that the services it rendered to its foreign clients for CY 2017 were performed in the Philippines.

At the risk of being repetitive, the Court *En Banc* must underscore that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the pieces of evidence presented to entitle a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer-claimant to show that it has strictly complied with the conditions for the grant of the tax refund or credit.[107]

For failure to substantiate the alleged zero-rated sales, petitioner cannot claim for refund the input taxes attributable thereto.

Accordingly, the Court *En Banc* finds it unnecessary to determine whether petitioner complied with the remaining requisites under Section 112[108] of the NIRC of 1997, as amended. Further discussion or resolution of this matter would be a futile exercise.

WHEREFORE, in view of the foregoing, the instant Petition for Review filed by petitioner BSM Crew Service Centre Philippines, Inc. on 18 August 2023 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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106 See Revenue Memorandum Order (**RMO**) No. 16-2003, 20 May 2003; See *Kepco Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 181858, 24 November 2010.

107 Supra at note 98.

108 Supra at pp. 12-13.

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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 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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

BSM CREW SERVICE CENTRE PHILIPPINES, INC., *Petitioner,*	**CTA EB NO. 2788** (CTA Case No. 10135)
-versus-	Present: **DEL ROSARIO**, *P.J.*, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, **FERRER-FLORES**, and **ANGELES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 25 2025 2:02 p.m.

x - x

CONCURRING OPINION

***DEL ROSARIO, P.J.*:**

I concur with the conclusion of the *ponencia* in denying the Petition for Review filed by BSM Crew Service Centre Philippines, Inc.

With due respect, I submit that petitioner's claim for refund of input value-added tax (VAT) attributable to zero-rated sales must also be denied for petitioner's failure to comply with the invoicing requirements under Section 113(B)(2)(c) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Section 113(B)(2)(c) and (d) of the NIRC of 1997, as amended, reads:

"SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –

xxx xxx xxx

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* - The following information **shall** be indicated in the VAT invoice or VAT official receipt:

xxx xxx xxx

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

(d) If the sale involved goods, properties or services some of which are **subject to and some of which are VAT zero-rated or VAT exempt**, the invoice or receipt shall clearly indicate the **break-down** of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale. x x x" (*Boldfacing supplied*)

The above provision is implemented by Section 4.113-1 of Revenue Regulations (RR) No. 16-2005, as amended, which reads:

"SEC. 4.113-1. Invoicing Requirements. --

xxx xxx xxx

(B) Information contained in VAT invoice or VAT official receipt. – The following information **shall** be indicated in VAT invoice or VAT official receipt:

xxx xxx xxx

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

xxx xxx xxx

(c) **If the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt**;

(d) If the sale involves goods, properties or services some of which are **subject to and some of which are VAT zero-rated or VAT-exempt**, the invoice or receipt shall clearly indicate the **break-down** of the sale price between its taxable, exempt and zero-rated

> components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale." (*Boldfacing supplied*)

From the foregoing, it is a requirement that for any VAT invoice or official receipt (OR) evidencing a zero-rated transaction, the term **"zero-rated sale" should be written or printed prominently thereon**. Failure to comply with the invoicing requirements is sufficient ground to deny the claim for refund or tax credit.[1]

The Supreme Court has settled, in a number of cases,[2] that the writing or imprinting of the term "zero-rated sale" on the VAT invoice or OR is **indispensable** for a valid claim for refund of unutilized input tax. Such requirement was traced by the Supreme Court from Section 4.108-1 of RR No. 7-95, which has been incorporated in Section 113(B)(2)(c) of the NIRC of 1997, as amended, by virtue of the amendments introduced by RA No. 9337, which confirms the validity of the imprinting requirement on VAT invoices or official receipts, *viz*:[3]

> "**RR 7-95, which took effect on 1 January 1996, proceeds from the rule-making authority granted to the Secretary of Finance** by the NIRC for the efficient enforcement of the same Tax Code and its amendments. In *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue*, we ruled that this provision is 'reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services.' Moreover, we have held in *Kepco Philippines Corporation v. Commissioner of Internal Revenue* that **the subsequent incorporation of Section 4.108-1 of RR 7-95 in Section 113 (B)(2)(c) of R.A. 9337 actually confirmed the validity of the imprinting requirement on VAT invoices or official receipts – a case falling under the principle of legislative approval of administrative interpretation by reenactment.**" (*Boldfacing supplied*)

Revenue Memorandum Circular No. 42-2003 provides that if the refund claim is based on the existence of zero-rated sales but the

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

[2] *Panasonic Communications Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010; *J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 177127, October 11, 2010; *Hitachi Global Storage Technologies Philippines Corp. vs. Commissioner of Internal Revenue*, G.R. No. 174212, October 20, 2010; *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181858, November 24, 2010; *Silicon Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011; *Western Mindanao Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181136, June 13, 2012; *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

[3] *Western Mindanao Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181136, June 13, 2012.

taxpayer fails to comply with the invoicing requirements, such claim should be **denied**, *viz.*:

> "Q-13: Should penalty be imposed on TCC application for failure of claimant to comply with certain invoicing requirements, (e.g., sales invoices must bear the TIN of the seller)?
>
> A-13: **Failure by the supplier to comply with the invoicing requirements** on the documents supporting the sale of goods and services will result to the **disallowance** of the claim for input tax by the purchaser-claimant." (*Boldfacing and underscoring supplied*)

A scrutiny of **all of the ORs** submitted by petitioner reveals that the words **"zero-rated sale" were not separately written or imprinted prominently thereon**. What appears on record are VAT ORs that are exclusively intended for mixed transactions, that is -- for sales subject to VAT and some which are VAT zero-rated or VAT exempt. In other words, notwithstanding the fact that petitioner indicated in the breakdown of the VAT ORs the amount pertaining to the "zero-rated sale", such however **did not in any way cure its failure to comply with the imprinting requirement**.

Verily, when the transaction involves a purely VAT zero-rated sale, the VAT OR should prominently bear the phrase "zero-rated sale" in accordance with **Paragraph (c)** of Section 113(B)(2) of the NIRC of 1997, as amended. However, when the transaction is mixed, *i.e.,* a combination of VATable, VAT-exempt or VAT zero-rated sales, the breakdown requirement under **Paragraph (d)** of Section 113(B)(2) may apply. **In the case at bar, all of petitioner's VAT ORs pertain to purely VAT zero-rated sales, yet the imprinting of the required phrase "zero-rated sale" remained lacking**.

If the breakdown format is intended by law to be sufficient in all types of transactions- whether **mixed transactions or purely "zero-rated sales" transactions**, then the law does not make sense in crafting **separate provisions**, one, in requiring the use of "breakdown format", and another, mandating a separate format that requires imprinting of "zero-rated sale" in purely VAT zero-rated sale transactions.

Section 113 of the NIRC of 1997, as amended, in both its previous form under Republic Act (RA) No. 9337, which is applicable to this case, and present form as introduced by RA No. 11976, otherwise known as "Ease of Paying Taxes Act", requires the use of two (2) formats, that is, either the use of invoices bearing prominently the phrase "zero-rated sale" **or** the use of invoices bearing the

"breakdown format" **(depending upon the nature or type of sale involved)**. Section 113 of the NIRC of 1997, as amended by RA No. 9337 and RA No. 11976 read as follows:

RA No. 9337	**RA No. 11976**
SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* –	Section 113. Invoicing and Accounting Requirements for VAT-Registered Persons.-
(A) *Invoicing Requirements.* - A VAT-registered person shall issue: (1) A VAT invoice for every sale, barter or exchange of goods or properties; and (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.	(A) Invoicing Requirement. - A VAT-registered person shall issue a VAT invoice for every sale, barter, exchange, or lease of goods or properties, and for every sale, barter or exchange of services.
(B) *Information Contained in the **VAT Invoice or VAT Official Receipt***. — The following information shall be indicated in the VAT invoice or VAT official receipt:	(B) Information Contained in the VAT Invoice. - The following information shall be indicated in the **VAT invoice**:
xxx xxx xxx	xxx xxx xxx
(c) If the sale is subject **to zero percent (0%)** value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;	(c) If the sale is subject to **zero percent (0%)** value-added tax, the term **'zero-rated sale' shall be written or printed on the invoice**;
(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, **the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt**: *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.	(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, **the invoice shall clearly indicate the breakdown of the sale price between its taxable, exempt, and zero-rated components**, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice: *Provided,* That the seller may issue separate invoices for the taxable, exempt, and zero-rated components of the sale.
xxx	xxx

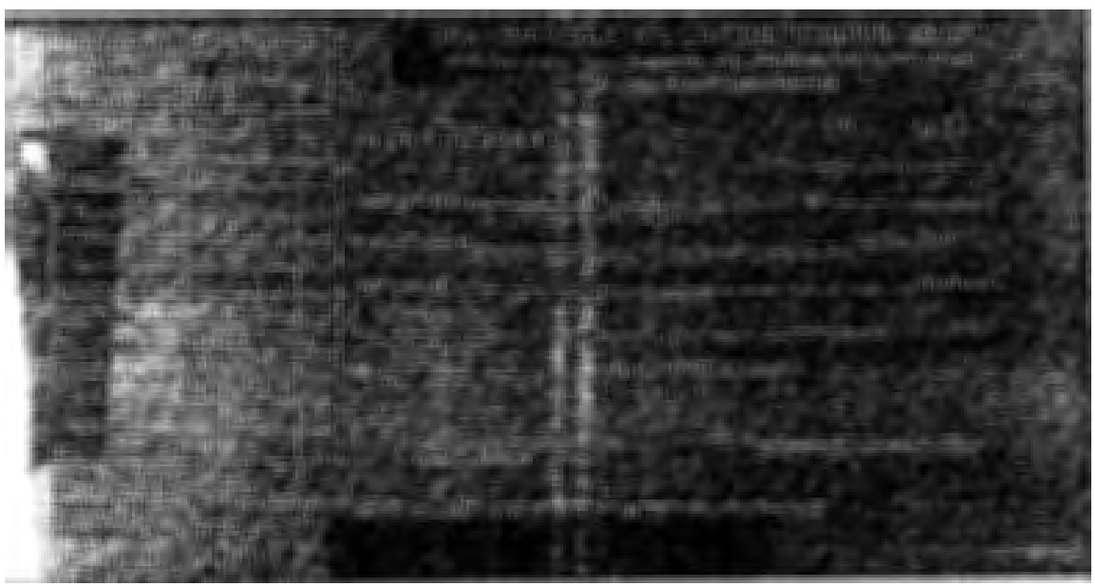
Interestingly, the Ease of Paying Taxes Act,[4] **has retained specific but separate provisions on the type of sales subject to imprinting "zero-rated sale" and those that are subject to "breakdown format"**, albeit with a minor modification on the

[4] RA No. 11976.

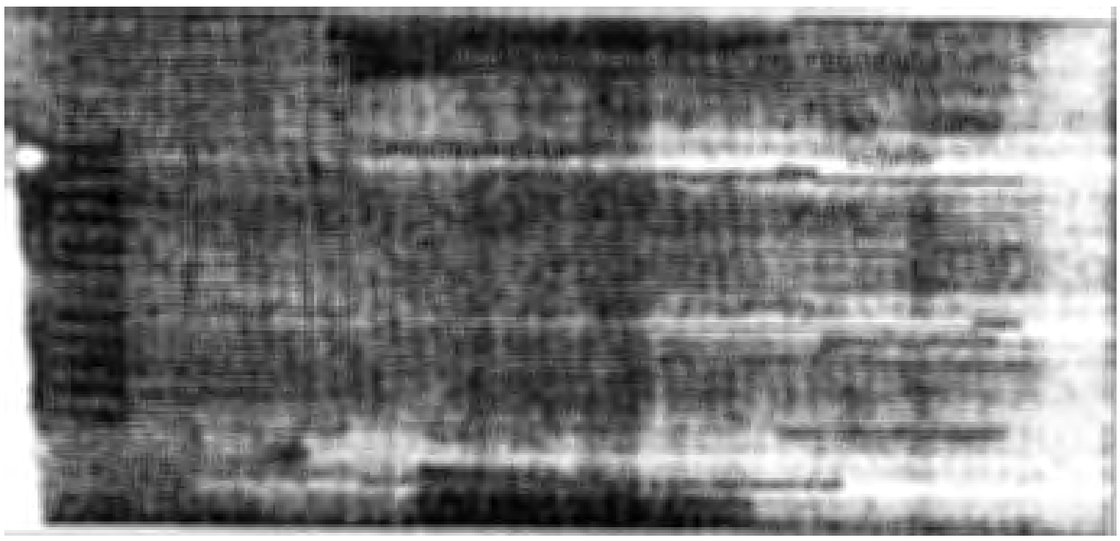
imprinting requirement, *i.e.*, the omission of the word "prominently" to qualify the requirement. The retention of both requirements supports the interpretation that the **format requiring the imprinting of "zero-rated sales" is indeed separate and distinct from the format requiring "breakdown" for mixed transactions**.

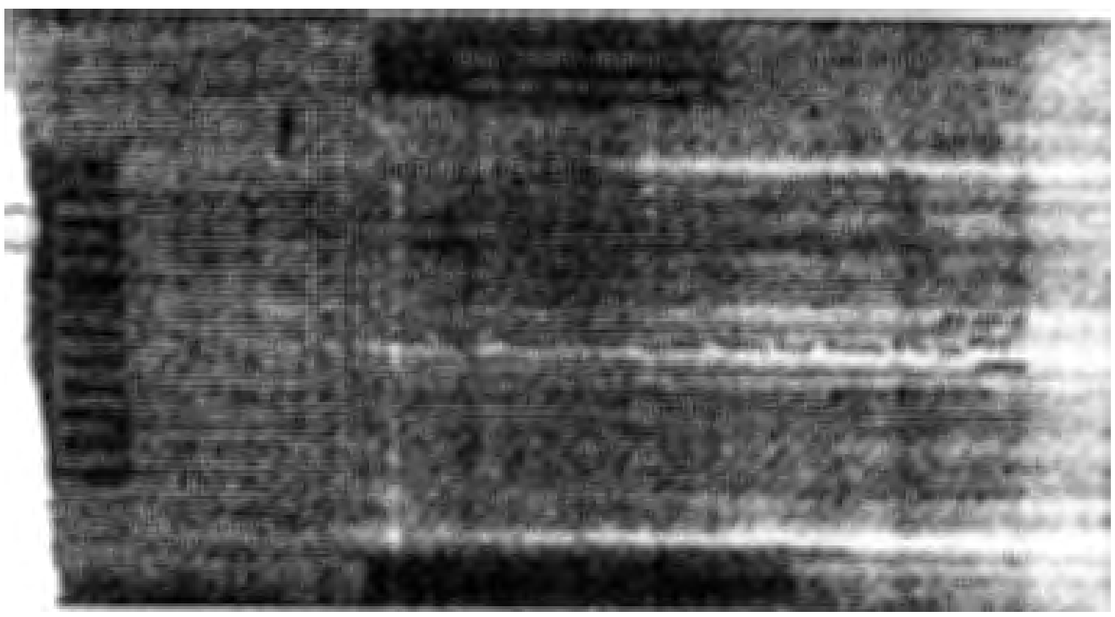
In numerous VAT refund cases, this Court had allowed erasures and corrections in invoices or ORs as long as they are made by an authorized signatory. Such treatment of allowing erasures and corrections in invoices or ORs, especially on the parts where the types and amounts of sales are shown, creates a risk that ill-intentioned taxpayers may manipulate zero-rated sale transactions who make use of the "breakdown format" without "zero-rated sale" separately and prominently written in the ORs by altering such invoices or receipts to appear as VATable transactions, thus eventually allowing them to be entitled to input tax credits. **To prevent such abuse, which cannot simply be discounted, the requirement of stamping or imprinting the term "zero-rated sales" in receipts involving purely zero-rated sale transaction is and should be implemented. This measure ensures that alterations cannot easily convert zero-rated sales into VATable sales, and thus prevent the evil, *i.e.*, the use of credits against output tax liability, or worse, refund of taxes not actually incurred or paid.**

Aside from the absence of the stamp or imprint of the words, "zero-rated sales", the amount of zero-rated sales indicated in the breakdown format in several VAT ORs were ambiguously handwritten or they were not in the proper row. As shown in the following sample VAT ORs[5], petitioner further failed to comply with the invoicing requirements, to wit:



[5] Exhibits ICPA-P1-112, ICPA-P1-148, and ICPA-P1-156.





In view thereof, petitioner is not entitled to its claim for refund or issuance of a tax credit certificate on account of its failure to comply with Section 113(B)(2)(c) and (d) of the NIRC of 1997, as amended

ALL TOLD, I *VOTE* to **DENY** the Petition for Review for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice