REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

FOUNDEVER PHILIPPINES CORPORATION (Formerly: SITEL PHILIPPINES CORPORATION),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2799
(CTA Case No. 10136)

Present:

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

Promulgated:
APR 1 1 2025 2:20 pm

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DECISION

BACORRO-VILLENA, J.:

In the resolution of the case at bar, central is the query - what is the proper interpretation of the term 'VAT-registered person' as used in Section 112[1] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, in relation to Section 236[2] of the NIRC of 1997, as amended?

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1 SEC. 112. *Refunds or Tax Credits of Input Tax.*
2 SEC. 236. *Registration Requirements.*

Before the Court *En Banc* is a Petition for Review[3] filed on 13 October 2023[4], pursuant to Section 3(b)[5], Rule 8, in relation to Section 2(a)(1)[6], Rule 4 of the Revised Rules of the Court of Tax Appeals[7] (**RRCTA**), assailing the Decision dated 19 May 2023[8] (**assailed Decision**) and Resolution dated 04 September 2023[9] (**assailed Resolution**) of the Special Third Division[10] in Court of Tax Appeals (**CTA**) Case No. 10136, entitled *Sitel Philippines Corporation v. Commissioner of Internal Revenue*, which totally denied petitioner's claim for refund from the Bureau of Internal Revenue (**BIR**) in the amount of ₱2,822,622.75.

PARTIES OF THE CASE

Petitioner is a corporation duly organized and existing under Philippine laws, with principal place of business at One Julia Vargas Building, Ortigas Home Depot Complex, One Julia Vargas Avenue, Barangay Ugong, Pasig City.[11] It is registered with the BIR, with Taxpayer Identification Number (**TIN**) 208-780-708-000[12], as a taxpayer engaged in the business of call center services *per* Certificate of Registration (**COR**) OCN 8RCoooo065770 issued by the BIR's Large Taxpayer Service.

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3 *Rollo*, pp. 39-61.

4 The Petition for Review was filed subsequent to the grant of a fifteen (15)-day extension by the Court *En Banc* pursuant to a "Motion for Extension of Time to File Petition for Review" *per En Banc* Minute Resolution dated 29 September 2023, id., p. 38.

5 **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.

...

6 **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[.]

...

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

8 *Rollo*, pp. 5-32.

9 Id., pp. 33-36.

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

11 Exhibits "P-1" to "P-1.3" and "P-2", Division Docket, Volume II, pp. 826-900.

12 Exhibit "P-2", id., p. 900.

Petitioner is also registered with the Philippine Economic Zone Authority (**PEZA**) as an Information Technology (**IT**) Enterprise with numerous sites located at the Baguio Economic Zone, Wynsum Corporate Plaza, One Julia Vargas Building, Eastwood City Cyberpark, Robinsons Cyberpark, Eton Cyberpod Corinthian, Robinsons Luisita, and SM Baguio Cyberzone Building.[13] It has established a facility at Puerto Princesa, Palawan (**Palawan Site**), which was registered with the BIR as a "*Facility*" on 09 August 2017[14] but not registered with PEZA[15] (as its location is not a PEZA site).

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

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 value-added tax (**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 first (1st) quarter of calendar year (**CY**) 2017 in the aggregate amount of ₱2,822,622.75.[16]

On 27 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**).[17] Asst. Comm. Belen denied petitioner's claim for refund due to the following reasons: (1) violation of invoicing requirements pursuant Section 113(A)[18] of the NIRC of 1997, as amended and Revenue Memorandum [Order] (**RMO**)

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13 Exhibits "P-34" to "P-34.5", id., Volume III, pp. 1047-1063.
14 Exhibit "P-30", id., p. 1043.
15 Paragraph 7, Statement of Facts, Petition for Review, id., Volume I, p. 12.
16 Exhibits "P-25" and "P-26", id., Volume III, pp. 1026-1033.
17 Exhibit "P-27", id., pp. 1034-1035.
18 SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.*

No. 16-07[19]; and (2) non-registration of the Palawan Site during the relevant period of claim.

PROCEEDINGS BEFORE THE COURT IN DIVISION

Aggrieved, petitioner filed a Petition for Review[20] before the Court in Division on 26 July 2019. On 06 September 2019, respondent filed his or her Answer thereto.[21]

Following the submission of respondent's Pre-Trial Brief[22] on 16 September 2019, and petitioner's Pre-Trial Brief[23] on 20 November 2019, the Pre-Trial Conference was held on 26 November 2019.[24]

On 20 December 2019, both parties submitted a Joint Stipulation of Facts and Issues[25] (**JSFI**), which the Court in Division admitted and approved through a Resolution dated 09 January 2020[26], effectively terminating the Pre-Trial Conference. A Pre-Trial Order[27] was subsequently issued on 28 January 2020.

During the trial that thereafter ensued, petitioner presented two (2) witnesses who both testified *via* their respective judicial affidavits:[28] Ronald Portula (**Portula**), its Senior Tax Analyst, and the Court-commissioned Independent Certified Public Accountant (**ICPA**), Madonna Mia S. Dayego (**Dayego**), whose ICPA Report was submitted on 06 March 2020.[29]

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19 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.

20 Division Docket, Volume I, pp. 10-28.

21 Id., pp. 71-78.

22 Id., Volume I, pp. 87-89.

23 Id., pp. 431-444.

24 TSN dated 26 November 2019, pp. 6-8.

25 Division Docket, Volume I, pp. 457-469.

26 Id., pp. 478-479.

27 Id., Volume II, pp. 510-520.

28 See Order dated 05 February 2020, id., pp. 529-530

29 Exhibit "P-40", id., pp. 541-576.

On the witness stand, Portula declared essentially that: (1) petitioner rendered business process solutions services in the Philippines to its nonresident affiliate entities engaged in business conducted outside the Philippines during the period of claim; (2) the services it rendered were paid in acceptable foreign currency and accounted for accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (**BSP**); (3) it incurred input VAT attributable to zero-rated sales in the amount of ₱2,822,622.75 during the 1st quarter of CY 2017; and (4) the said input VAT was directly attributable to the zero-rated sales that petitioner rendered within its Palawan *Facility* (which is outside any economic zone).[30]

In his cross-examination, Portula clarified that the Amended and Re-stated Service Agreement[31] was just a photocopy because they could not find the original copy.[32]

No redirect examination was conducted.[33]

Upon the completion of Portula's testimony, petitioner presented ICPA Dayego. She testified that: (1) she examined and verified petitioner's supporting documents relative to the latter's claim for refund; (2) she prepared the "Report to the [CTA]" dated 06 March 2020[34] (which the Court received on even date) enclosing the audit procedures performed and the findings of the verification, and a USB[35] containing the scanned copies of the documents examined; (3) out of the total claim of ₱2,822,622.75, petitioner only properly supported ₱2,220,066.74 with relevant documents; and (4) the difference of ₱602,556.01 pertains to claims supported by documents that do not comply with the invoicing requirements and claims not completely supported by relevant documents, among others.[36]

No cross-examination was conducted.[37]

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30 See Judicial Affidavit dated 19 November 2019, Exhibit "P-45", id., Volume I, pp. 109-138.
31 Marked as Exhibit "P-13".
32 TSN dated 23 July 2020, pp. 7-10.
33 Id., p. 10.
34 Supra at note 29.
35 Exhibit "P-41".
36 See Judicial Affidavit dated 03 June 2020, Exhibit "P-43", Division Docket, Volume II, pp. 685-689.
37 TSN dated 23 July 2020, p. 24.

On 11 August 2020, petitioner filed *via* email its "Formal Offer of Evidence (**FOE**) With Motion to Set Commissioner's Hearing".[38] Respondent filed his or her "Comment (Re: Petitioner's [FOE])"[39] on 17 August 2020.

On 08 October 2020, the Court in Division issued a Resolution admitting petitioner's FOE, except for Exhibits "P-13", "P-34.1" and "P-34.2"[40], for failure to present the originals for comparison.[41]

On 03 November 2020, petitioner filed a Motion for Reconsideration (**MR**) of the Resolution dated 08 October 2020[42], praying for the admission of the exhibits as duplicates. Without respondent's comment, the Court in Division, in its Resolution dated 06 December 2021, granted the said motion thereby admitting Exhibits "P-13", "P-34.1" and "P-34.2".[43] Petitioner was then declared to have rested its case.

As for respondent, Revenue Officer (**RO**) Denise R. Dayanan (**Dayanan**), through her judicial affidavit, declared that: (1) she 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; (2) she recommended the denial of petitioner's claim and prepared a memorandum report therefor (which report was adopted in the letter of denial later issued against petitioner); and (3) apart from unsupported sales, purchases, and input taxes, another reason for the denial was the belated and erroneous registration of petitioner's Palawan Site as a "*Facility*". She pointed out that petitioner should have registered the same as a "*Branch*".[44]

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38 Division Docket, Volume II, pp. 705-763.

39 Id., Volume III, pp. 1074-1076.

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Exhibit No.	Description
"P-13"	Amended and Restated Services Agreement between Sitel Philippines Corporation and Sitel Operating Corporation signed by latter on 17 November 2012.
"P-34.1 "	PEZA Certificate No. 2017-0443 dated 27 December 2016.
"P-34.2"	PEZA Certificate No. 2017-0582 dated 27 December 2016.

41 Division Docket, Volume III, pp. 1110-1112.

42 Id., pp. 1113-1121.

43 Id., pp. 1130-1133.

44 Exhibit "R-6", id., Volume I, pp. 96-101.

In her cross-examination, RO Dayanan clarified that: (1) respondent is aware that petitioner is a business process outsourcing company that provides contact center services to non-resident foreign affiliates; (2) petitioner's head office is registered as VAT taxpayer in 2000; (3) the Palawan Site is deemed the source of zero-rated sale; (4) petitioner only issues receipts and invoices in its head office in Pasig City; and (4) payments made by petitioner's non-resident foreign affiliates were inwardly remitted.[45]

No redirect examination was conducted.[46]

On 17 March 2022, respondent filed his or her FOE[47], to which petitioner filed its Comment[48] on 07 April 2022. In the Resolution dated 10 May 2022[49], the Court in Division admitted respondent's exhibits and directed the parties to file their respective memoranda within thirty (30) days from receipt thereof.

Respondent and petitioner then filed their respective Memoranda on 03 June 2022[50] and 17 June 2022[51], respectively. Thereafter, on 22 June 2022, the case was submitted for decision.[52]

In the assailed Decision, the Court in Division denied petitioner's Petition for Review for lack of merit.[53] 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.
>
> **WHEREFORE**, the present *Petition for Review* is **DENIED** for lack of merit.

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45 TSN dated 16 March 2022, pp. 6-8.
46 Id., p. 8.
47 Division Docket, Volume III, pp. 1137-1140.
48 Id., pp. 1143-1145.
49 Id., p. 1150.
50 Id., pp. 1151-1157.
51 Id., pp. 1160-1189.
52 See Resolution dated 22 June 2022, id., p. 1192.
53 Supra at note 8; citations omitted, emphasis and italics in the original text.

SO ORDERED.

...

The Court in Division found that: (1) petitioner failed to present or show that the documents submitted before the Court are the same documents submitted to respondent in its administrative claim for refund; and (2) petitioner cannot be considered as a "VAT-registered person" because it failed to register with the appropriate respondent's RDO its Palawan Site which should have been registered with BIR as a *Branch* (since it was generating sales).

On 19 June 2023, petitioner filed its MR[54] contending that: (1) respondent's acceptance of its administrative claim for VAT refund establishes that it has submitted all documentary and evidentiary requirements for administrative claim pursuant to Revenue Memorandum Circular (**RMC**) No. 17-18[55]; (2) it can present additional documents before the CTA to substantiate its claim for refund, *albeit* the same were not presented at the administrative level, because the CTA is a court of record and cases filed before it are *litigated de novo*; (3) the Palawan Site need not have a separate VAT registration as all sales generated by the said site is accounted, recorded and reported by the main office, *i.e.,* already VAT-registered as early as 14 December 2000; and (4) it properly registered its Palawan Site as a *Facility*, upon the consideration that it had not conducted any sales activities or sales transactions therein.

On 11 July 2023, respondent filed his or her "Opposition (Re: [MR] of the Decision dated 19 May 2023)"[56], echoing the assailed Decision. Thereafter, the Court in Division proceeded to promulgate its now assailed Resolution[57] of 04 September 2023, denying petitioner's MR. The pertinent portion thereof declares:

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54 Division Docket, Volume III, pp. 1223-1250.

55 Amending Revenue Memorandum Circular (RMC) No. 89-2017 and Certain Provisions of RMC No. 54-2014 Regarding the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) in Relation to Amendments Made in the National Internal Revenue Code of 1997, as Amended by Republic Act No. 10963, Known as the Tax Reform for Acceleration and Inclusion (TRAIN).

56 Division Docket, Volume III, pp. 1243-1249.

57 Supra at note 9; emphasis in the original text.

...

> **WHEREFORE**, premises considered, petitioner's Motion for Reconsideration (of the Decision dated May 19, 2023) is **DENIED** for lack of merit.
>
> Petitioner's Manifestation dated July 13, 2023 is **NOTED**.
>
> **SO ORDERED.**

...

In denying the MR, the Court in Division reiterated that petitioner failed to prove a proper BIR registration during the period of claim, as its Palawan Site was registered only as a *"Facility"* and not authorized to generate sales. With no new substantial issues raised, the Court in Division upheld the assailed Decision.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Following petitioner's receipt of a copy of the assailed Resolution on 13 September 2023[58], it filed a "Motion for Extension of Time to File Petition for Review"[59] with the Court *En Banc* on 28 September 2023. On 13 October 2023 or within the extended period granted, petitioner filed the instant Petition for Review[60] seeking the reversal of the Court in Division's assailed Decision and Resolution.

On 27 December 2023, the Court *En Banc* directed petitioner to submit a verification that is compliant with Section 4, Rule 7 of the 2019 Rules of Court (**ROC**), as amended, along with the authorization of the affiant to act on behalf of petitioner.[61]

Then, on 09 January 2024, the Court *En Banc* received the "Compliance (Re: Resolution dated December 27, 2023)"[62] containing the revised "Verification and Certification against Forum Shopping"[63] and a photocopy of the "Secretary's Certificate".[64]

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58 Division Docket, Volume III, p. 1258.
59 *Rollo*, pp. 1-4.
60 Supra at note 3.
61 See Resolution dated 27 December 2023, *rollo*, pp. 118-119.
62 Id., pp. 120-121
63 Id., pp. 122-123.
64 Id., pp. 124-125.

Subsequently, on 26 January 2024, the Court *En Banc* directed petitioner to submit the original copy of the "Secretary's Certificate" dated 17 October 2023.[65] On 06 February 2024, the Court *En Banc* received the "Compliance (Re: Resolution dated January 26, 2024)"[66], including the original copy of the "Secretary's Certificate".[67]

On 12 February 2024, the Court *En Banc* directed respondent to file a comment on the instant Petition for Review.[68] Respondent filed his or her "Comment (Re: Petition for Review)"[69] on 23 February 2024 and the Court *En Banc* thereafter deemed the case submitted for decision.[70]

ISSUES

Petitioner raised the following issues for the Court *En Banc*'s resolution:[71]

> I.
>
> WHETHER PETITIONER FOUNDEVER PHILIPPINES CORPORATION (FORMERLY: SITEL PHILIPPINES CORPORATION) HAS FULLY COMPLIED WITH THE DOCUMENTARY REQUIREMENTS FOR AN ADMINISTRATIVE CLAIM;
>
> II.
>
> WHETHER PETITIONER FOUNDEVER PHILIPPINES CORPORATION (FORMERLY: SITEL PHILIPPINES CORPORATION) IS A "VAT-REGISTERED PERSON" FOR PURPOSES OF CLAIMING REFUND OF UNUTILIZED INPUT VALUE-ADDED TAX (VAT); AND,
>
> III.
>
> WHETHER PETITIONER FOUNDEVER PHILIPPINES CORPORATION (FORMERLY: SITEL PHILIPPINES CORPORATION) PROPERLY REGISTERED ITS PALAWAN SITE AS FACILITY.

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65 See *En Banc* Minute Resolution dated 26 January 2024, id., p. 128.
66 Id., pp. 129-130.
67 Id., pp. 131-132.
68 See *En Banc* Minute Resolution dated 12 February 2024, id., p. 135.
69 Id., pp. 136-144.
70 See *En Banc* Minute Resolution dated 13 March 2024, id., p. 146.
71 See V. Statement of Issues, Petition for Review, supra at note 3, p. 48.

ARGUMENTS

In the instant Petition for Review, petitioner maintains that it has complied with all the requisites for a valid claim for VAT refund and is entitled to the amount being claimed, *i.e.*, ₱2,822,622.75 or in the alternative, the reduced amount of ₱2,220,066.74.

Petitioner asserts that the CTA, as a court of record under Republic Act No. (**RA**) 1125[72], conducts trial *de novo*, requiring parties to present and formally offer evidence anew. Petitioner cites *Philippine Airlines, Inc. (PAL) v. Commissioner of Internal Revenue*[73] (**PAL**) and *Commissioner of Internal Revenue v. Manila Mining Corporation*[74], to support its argument that the CTA may consider new evidence beyond what was submitted to the BIR.

Moreover, petitioner argues that it complied with RMC No. 017-18, which mandates the submission of complete supporting documents. The acceptance of its claim by the BIR, along with submitted records, proves compliance.

Anent the issue of being a non-VAT-registered entity, petitioner submits that it properly registered its Palawan Site as a *Facility* since it is merely a "cost center" that incurs production costs but does not actually generate any sales. Relative thereto, it refers to BIR Revenue Regulations (**RR**) No. 7-2012[75] that defines a *Branch* and a *Facility*. According to petitioner, as part of the definition[76] in RR No. 7-2012, a *Facility* shall be registered as a *Branch* whenever sales transactions/ activities are conducted thereat. It further argues that the registration of a *Facility* with no sales activity, as opposed to a *Branch*, is not subject to any payment of Annual Registration Fee (**ARF**).

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72 AN ACT CREATING THE COURT OF TAX APPEALS.

73 G.R. Nos. 206079-80 and 206309, 17 January 2018.

74 G.R. No. 153204, 31 August 2005.

75 Amended Consolidated Revenue Regulations on Primary Registration, Updates, and Cancellation.

76 **SEC. 3. DEFINITION OF TERMS.** For purposes of these Regulations, the following words and/or phrases shall be defined as follows:

...

8. "***Facility***" – may include but not limited to place of production, showroom, warehouse, storage place, garage, bus terminal, or real property for lease *with no sales activity*. A facility shall be registered as a branch whenever sales transactions/activities are conducted thereat. Registration of the "Facility" with no sales activity is not subject to payment of Annual Registration Fee (ARF).

...

While reliant on the definition of a *Branch* or *Facility* in the aforesaid RR, petitioner points out that the same regulation does not define what constitutes a "sales activity". It also posits that the term should be understood to pertain to the perfection of a sale by the mere acceptance of orders and the consequent issuance of a sales invoice or official receipt (**OR**). To bolster its stance, petitioner refers to its practice across its numerous operational sites (including its Palawan Site). It asserts that its sites cannot operate independently from its main office that issues the billing statements and ORs.

Reacting to the Court in Division's finding that the registration of the Palawan Site as a *Facility* was only finalized in August 2017 or after the subject period of claim, *i.e.*, 1st quarter of CY 2017, petitioner explains that this lapse should only be imposed with administrative penalties and not with an outright rejection of its refund claims.

Respondent counters, citing *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[77] (**Total Gas**), that when a judicial claim for refund or tax credit is an appeal of an unsuccessful administrative claim, such as the instant case, the taxpayer has to convince the CTA that respondent had no reason to deny petitioner's claim. Respondent further said that in order for the CTA to determine whether an administrative claim should have been granted in the first place, the review must only cover the very same documents which were submitted to the BIR and petitioner's failure to show that the documents proffered as evidence before the CTA were the same documents submitted to the BIR is fatal to petitioner's case.

Respondent also asseverates that the Court in Division correctly ruled that petitioner cannot be considered a VAT-registered entity. Respondent contends that under Section 236 of the NIRC of 1997, as amended, any person subject to internal revenue tax must register with the BIR. This includes facilities where sales transactions occur, which must also pay an annual registration fee of ₱500.00.

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77 G.R. No. 207112, 08 December 2015.

Furthermore, respondent asserts that a tax refund is in the nature of a tax exemption and must be strictly construed against the taxpayer. The burden of proof rests on petitioner to substantiate its claim with convincing evidence. Since petitioner failed to establish its entitlement to a tax refund or credit, respondent maintains that the claim was rightfully denied.

<u>RULING OF THE COURT *EN BANC*</u>

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 RA 1125[78], as amended by RA 9282[79], 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)[80], Rule 8 of the RRCTA states that the party affected should file the Petition for Review within 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 fifteen (15)-day period[81] from the expiration of the original period, within which to file the Petition for Review.

Applying the foregoing, petitioner received the assailed Resolution on 13 September 2023.[82] Counting fifteen (15) days therefrom, petitioner had until 28 September 2023 to file the present Petition for Review before the Court *En Banc*. On 28 September 2023, petitioner filed a "Motion for Extension of Time to File Petition for Review"[83] which the

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78 Supra at note 72.
79 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.
80 Supra at note 5.
81 Id.
82 Supra at note 58.
83 Supra at note 59.

Court eventually granted[84], pushing the deadline to file the petition to 13 October 2023.

The instant petition filed on 13 October 2023[85] has, therefore, been timely filed and 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.

THE COURT OF TAX APPEALS (CTA) IS AUTHORIZED TO CONDUCT TRIAL *DE NOVO*.

Foremost, the Court *En Banc* finds merit in petitioner's contention that this Court is not confined to reviewing the same documents it submitted in the administrative level as this goes against the nature of the CTA's function as a "court of record" pursuant to Section 8[86] of RA 1125[87], as amended by RA 9282.[88]

As a "court of record", the CTA is authorized to conduct trial *de novo*, where, as applied in this particular case, the judicial determination of a taxpayer's entitlement to a claim for refund is not limited to the documents it submitted or (failed to submit) in the administrative level. Parties who come to court are required to prove every aspect of their case if they want the Court to take such evidence into consideration.[89]

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84 See *En Banc* Minute Resolution dated 29 September 2023, *rollo*, p. 38.

85 Supra at note 3.

86 **Sec. 8.** ***Court of record; seal; proceedings.*** — **The Court of Tax Appeals shall be a court of record** and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence. (Emphasis supplied)

87 Supra at note 72.

88 Supra at note 79.

89 *Philippine Airlines, Inc. (PAL) v. Commissioner of Internal Revenue*, supra at note 73; *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, 29 September 2014; *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, 31 August 2005.

In the case of *PAL*[90], the Supreme Court ruled that being a court of record, the CTA's power to exercise its appellate jurisdiction does not preclude it from considering evidence that was not presented in the administrative claim before the BIR. This is consistent with the Supreme Court's subsequent pronouncements in the case of *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*[91] (cited in *Commissioner of Internal Revenue v. Philippine Bank of Communications*[92] and *Commissioner of Internal Revenue v. CE Casecnan Water and Energy Company, Inc.*[93]), stating that cases filed in the CTA are litigated *de novo*; thus, it may consider all evidence submitted before it, even those not submitted to the BIR, *viz*:

> ...
>
> The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. Thus, the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. **The claimant may present new and additional evidence to the CTA to support its case for tax refund.**
>
> Cases filed in the CTA are litigated *de novo* as such, respondent "should prove every minute aspect of its case by presenting, formally offering and submitting ... to the Court of Tax Appeals all evidence ... required for the successful prosecution of its administrative claim." **Consequently, the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.**
>
> ...

Accordingly, petitioner's failure to submit documents in support of its administrative claim is not fatal to its present judicial claim since the case is litigated *de novo* and decided based on what has been presented and formally offered by the parties during trial.

In addition, *Total Gas* is not on all fours with the instant case.

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90 Supra at note 73.
91 G.R. No. 231581, 10 April 2019; citations omitted and emphasis supplied.
92 G.R. No. 211348, 23 February 2022.
93 G.R. No. 212727, 01 February 2023.

Firstly, the former was decided under RMC No. 49-2003[94], which permitted respondent to request additional documents from taxpayers to substantiate their claims. In contrast, the latter falls under RMC No. 54-2014[95], which mandates that a complete set of supporting documents must accompany the application for a refund at the administrative level.

Secondly, the *ratio decidendi* in *Total Gas* squarely resolves the issue of when to reckon the running of the 120 (now 90)-day period, whereas the instant case concerns the submission of additional documents before the CTA.

Thirdly, while *Total Gas* underscores the taxpayer's duty to establish compliance with "all the documentary and evidentiary requirements for an administrative claim" such compliance may be discerned from the Revised Checklist of Mandatory Requirements for Claims for VAT Refund (**Checklist**)[96], which is a prescribed requirement under RMC No. 54-2014. The said Checklist shows that petitioner submitted **complete documents** before the BIR VCAD. Notably, the Court in Division admitted[97] the Checklist into evidence when it was formally offered[98] to show petitioner's compliance with A.1 of RMC No. 17-2018 and respondent did not object to its admissibility.[99]

Lastly, the ruling in *Total Gas* on the exclusion of additional evidence submitted before the Court is premised on the existence of a prior request for additional documents at the administrative level. In contrast, in this case, respondent neither made such request, nor were the missing documents identified in the Denial Letter[100] that respondent issued.

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94 Amending Answer to Question Number 17 of Revenue Memorandum Circular No. 42-2003 and Providing Additional Guidelines on Issues 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-DOF) by Direct Exporters.

95 Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, As Amended.

96 Exhibit "P-25.1", Division Docket, Volume III, p. 1032.

97 Supra at note 41.

98 Supra at note 38 *cf.* supra at note 30, p. 131.

99 Supra at note 39.

100 Supra at note 17.

All things considered, petitioner's failure to show that the documents submitted before this Court are the same or identical to those submitted at the administrative level is **not fatal** to its claim.

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.

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[101], otherwise known as the Tax Reform for Acceleration and Inclusion (**TRAIN**) and subsequent laws. The said provisions read as follows:

> ...
>
> **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

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101 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.

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.

...

(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.*[102] (**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

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

> 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."
>
> ...

Applying the foregoing principle, the Court *En Banc* shall evaluate petitioner's compliance with the aforementioned requisites. For an orderly discussion, We shall start with the third (3rd) requisite, followed by the first (1st) and second (2nd) requisites, then the fourth (4th) requisite.

THIRD (3RD) REQUISITE:
THE CLAIM MUST BE FILED WITHIN TWO (2) YEARS AFTER THE CLOSE OF THE TAXABLE QUARTER WHEN SUCH SALES WERE MADE.

Pursuant to the above-cited Section 112(A) and (C)[103] of the NIRC of 1997, as amended, the administrative claim for refund of excess input tax must be filed within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

As to the judicial claim, a 30-day period to file an appeal is counted from the taxpayer's receipt of an adverse decision rendered within the ninety (90)-day period for the BIR to decide the claim, or within 30 days after the lapse of such (90)-day period, whichever comes earlier.[104]

We echo the Court in Division's findings which aptly concluded[105] that both of petitioner's administrative and judicial claims were timely filed, *viz*:

> ...
>
> The present claim covers the 1st quarter of taxable year 2017. Counting two (2) years from the close of the said quarter, the following table indicates the pertinent last day for the filing of an administrative claim, to wit:

---

103 Supra at pp. 17-18.
104 Id.
105 Supra at note 8, pp. 21-22; citations omitted and emphasis supplied.

2017	Period	Close of Taxable Quarter	Last Day to File Administrative Claim
1st quarter	January 1, 2017 to March 31, 2017	March 31, 2017	March 31, 2019

Considering that petitioner's **administrative claim** covering the said period, **was filed with the BIR on March 29, 2019, the same was timely made.**

...

Notably, respondent is deemed to have acted on petitioner's administrative claim within the said ninety (90)-day period from March 29, 2019, since the BIR, through OIC-Assistant Commissioner Ma. Luisa I. Belen, issued the letter dated June 7, 2019, denying petitioner's administrative claim.

Considering that petitioner received the said letter dated June 7, 2019 on June 27, 2019, the former had until July 27, 2019 within which to appeal the same before this Court. Since **the present judicial claim was filed on July 26, 2019, the same is likewise timely made.**

...

FIRST (1ST) REQUISITE:
PETITIONER MUST BE VALUE-ADDED TAX (VAT)-REGISTERED.

Section 110(B)[106], in relation to Section 112(A) and (C)[107] of the NIRC of 1997, as amended, clearly states that **only VAT-registered person** has the option to apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to zero-rated or effectively zero-rated.

RATIONALE FOR THE RULE

The reason for such a requirement can be gleaned from the very nature of Philippine VAT. It is a broad-based consumption tax imposed at every stage of the production and distribution chain—from

106 Supra at p. 17.
107 Supra at pp. 17-18.

manufacturers and producers to distributors.[108] Ultimately, the tax burden is passed on to the final consumer.[109]

Consumption occurs when the taxpayer does not resell the goods, properties, or services, either because they are the final consumer or because the transaction is exempt from VAT, such as the sale of agricultural food products in their original state.[110] Consequently, input VAT shifted by the sellers to the buyers are credited against the buyers' output VAT when they, in turn, sell taxable goods or services, following the *tax credit method*.[111]

Since VAT applies only to the value added at each stage, input VAT can only be credited against output VAT if the taxpayer is within the Philippine VAT system. A non-VAT-registered entity cannot claim input VAT because it does not generate any output VAT liability (save for VAT-registrable entities). Having no creditable input VAT, no refund may also be demanded.

VAT REGISTRATION AS A REQUISITE

As a corollary, Section 236(G) of the NIRC of 1997, as amended, lays down the persons required to register for VAT:

> ...
> SEC. 236. Registration Requirements. –
>
> (A) Requirements. - Every person subject to any internal revenue tax shall register once with the appropriate Revenue District Office:
>
> (1) Within ten (10) days from date of employment, or
>
> (2) On or before the commencement of business, or
>
> (3) Before payment of any tax due, or

---

108 See *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, G.R. No. 153866, 11 February 2005.
109 Id.
110 See Victorino C. Mamalateo, Value Added Tax 2007 Edition, p. 6, (2007).
111 See *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, supra at note 108.

(4) Upon filing of a return, statement or declaration as required in this Code.

...

A person maintaining a head office, branch or facility shall register with the Revenue District Officer having jurisdiction over the head office, brand or facility. For purposes of this Section, the term 'facility' may include but not be limited to sales outlets, places of production, warehouses or storage places.

...

(C) **Registration of Each Type of Internal Revenue Tax.** – Every person who is required to register with the Bureau of Internal Revenue under Subsection (A) hereof, shall **register each type of internal revenue tax for which he is obligated**, shall file a return and shall pay such taxes, and shall update such registration of any changes in accordance with Subsection (E) hereof.

(D) Transfer of Registration. - In case a registered person decides to transfer his place of business or his head office or branches, it shall be the person's duty to update his registration status by merely filing an application for registration information update in the form prescribed therefor.

(E) Other Updates. - Any person registered in accordance with this Section shall, whenever applicable, update his registration information with the Revenue District Office where he is registered, specifying therein any change in tax type and other taxpayer details.

(F) Cancellation of Registration. –

(1) General Rule. - The registration of any person who ceases to be liable to a tax type shall be cancelled upon filing with the Revenue District Office where he is registered an application for registration information update in a form prescribed therefor.

...

(G) **Persons Required to Register for Value-Added Tax.** —

(1) Any person who, in the course of trade or business, sells, barters or exchanges goods or properties, or engages in the sale or exchange of services, shall be liable to register for value-added tax if:

(a) His gross sales or receipts for the past twelve (12) months, other than those that are exempt under Section

109[(1)](A) to (U) have exceeded One million nine hundred nineteen thousand five hundred pesos (₱1,919,500); or

(b) There are reasonable grounds to believe that his gross sales or receipts for the next twelve (12) months, other than those that are exempt under Section 109[(1)](A) to (U) will exceed One million nine hundred nineteen thousand five hundred pesos (₱1,919,500);

(2) Every person who becomes liable to be registered under paragraph (1) of this Subsection shall register with the Revenue District Office which has jurisdiction over the head office or branch of that person, and shall pay the annual registration fee prescribed in Subsection (B) hereof. If he fails to register, he shall be liable to pay the tax under **Title IV as if he were a VAT-registered person**, but without the benefit of input tax credits for the period in which he was not properly registered.

(H) Optional Registration for Value-Added Tax of Exempt Person.

(1) Any person who is not required to register for value-added tax under Subsection (G) hereof may elect to register for value-added tax by registering with the **Revenue District Office that has a jurisdiction over the head office of that person, and paying the annual registration fee in Subsection (B) hereof.**

(2) Any person who elects to register under this Subsection shall not be entitled to cancel his registration under Subsection (F)(2) for the next three (3) years.

For purposes of Title IV of this Code, any person who has registered value-added tax as a tax type in accordance with the provisions of Subsection (C) hereof shall be referred to as a "VAT-registered person" who shall be assigned only one Taxpayer Identification Number (TIN).[112]

...

Section 9.236-1(a) of RR No. 16-2005, which implements the foregoing, reads:

---

112 Emphasis and underscoring supplied.

...

SEC. 9.236-1. *Registration of VAT Taxpayers.* –

(a) In general. - Any person who, in the course of trade or business, sells, barters, exchanges goods or properties, or engages in the sale of services subject to VAT imposed in Secs. 106 and 108 of the Tax Code shall register with the appropriate RDO using the appropriate BIR forms and pay an annual registration fee in the amount of Five Hundred Pesos (₱500) using BIR Form No. 0605 for every separate or distinct establishment or place of business (save a warehouse without sale transactions) before the start of such business and every year thereafter on or before the 31st day of January.

"Separate or distinct establishment" shall mean any branch or facility where sales transactions occur.

"Branch" means a fixed establishment in a locality which conducts sales operation of the business as an extension of the principal office.

...

Any person who maintains a **head or main office and branches** in different places **shall register with the RDO** which has jurisdiction over the place wherein the main or head office or branch is located.

Each VAT-registered person shall be assigned only one TIN. The branch shall use the 9-digit TIN of the Head Office plus a 3-digit Branch Code.

"VAT-registered person" refers to any person registered <u>in accordance with this section</u>.[113]

...

In the assailed Decision, the Court in Division ruled that petitioner cannot be deemed a 'VAT-registered person' because its Palawan Site was not registered in accordance with Section 9.236-1(a) of RR No. 16-2005.[114] Since the site generated the subject zero-rated sales, it should have been registered as a *Branch* with the BIR prior to the commencement of business operations.

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113 Emphasis and underscoring supplied.
114 Supra at note 8, pp. 29-30.

The Court in Division primarily relied on the last sentence of Section 9.236-1(a) of RR No. 16-2005[115], which implies that if an entity is not registered in accordance with the entire Section[116], it cannot be considered a 'VAT-registered person.' Given that petitioner's Palawan Site was not registered at the time of the refund claim period (*i.e.*, 1st quarter of CY 2017) yet was generating sales, petitioner was found to be in violation of the registration requirement. Consequently, the Court in Division concluded that petitioner could not be recognized as a 'VAT-registered person' for the purposes of the claim.

The Court *En Banc* holds otherwise.

Firstly, a closer perusal of **the provision of the law reveals that Section 236 of the NIRC of 1997, as amended, *only* requires the registration of VAT as one of the tax types of a taxpayer. However, Section 9.236-1(a) of RR No. 16-2005, mandates the proper registration of a taxpayer's branch or facility for VAT purposes.** This contravenes the explicit language of Section 236 of the NIRC of 1997, as amended. **The rule improperly imposes an additional requirement not contemplated by the statute. *Verba legis non est recedendum, index animi sermo est.* There should be no departure from the words of the statute, because speech is the index of intention.**[117]

Secondly, RR No. 7-2012[118], which provides for the updated and consolidated procedures relative to primary registration, updates, and cancellation procedures, states:

> ...
> SECTION. 9. REQUIREMENT FOR THE REGISTRATION OF EACH TYPE OF INTERNAL REVENUE TAX. — ...
> ...
>
> For purposes of determining the proper tax type (i.e., whether VAT or other percentage taxes) based on the nature of the business activity of the taxpayer, the following rules shall apply:

115 Consolidated Value-Added Tax Regulations of 2005.
116 SEC. 9.236-1. *Registration of VAT Taxpayers.*
117 *Limson v. Wack Wack Condominium Corporation*, G.R. No. 188802, 11 February2011.
118 Supra at note 75.

> i. VAT Registration, in General. — Any person who, in the course of trade or business, sells, barters, exchanges goods or properties, or engages in the sale of services subject to VAT imposed in Sections 106 and 108 of the Code, as amended, **shall register the VAT tax type with the BIR district office having jurisdiction over the HO [head office]**.
>
> ...
>
> With respect to business entities with branch/es, the rules on the **registration of tax types** as provided hereunder shall be observed:
>
> 1) Registration shall be with the **HO [head office] only**
>
> i. Income Tax
>
> **ii. VAT**[119]
>
> ...

A careful examination of **the afore-quoted provision shows that the registration of VAT as one of the taxpayer's tax types can *only* be done with the head office**. This supports the conclusion that the NIRC of 1997 does not recognize branches as separate VAT-registered entities.

Thirdly, a person, as defined in the Tax Code (*albeit* under Title II) means an "individual, a trust, estate or corporation." Notably, **Section 236(F)(2) of the NIRC of 1997, as amended, prescribes mandatory VAT registration for *persons* exceeding the statutory threshold of aggregate gross sales or receipts. However, the provision does *not* impose an additional requirement for VAT registration of branches or facilities**. The absence of such a mandate in the statute implies a legislative intent that VAT registration pertains solely to the taxpayer as a single entity, be it an individual, trust, estate or corporation, rather than to its individual operational units.

Fourthly, the Senate Deliberation of RA 9337 provides:[120]

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119 Emphasis and underscoring supplied.

120 I Record, Senate, 13th Congress, 1st Session, (31 March 2005), p. 62; emphasis supplied.

> ...
>
> Senator Recto: ... By and large, there are **only two types of persons: a VAT-registered person and a non-VAT-registered person.**
>
> There is another section with regard to who should register as a VAT-registered person so they should operate together.
>
> ...

Evidently, as contemplated by the legislators, **once a person includes VAT as one of its, his or her registered tax types, it, he or she is considered a VAT-registered person. Conversely, if VAT is not one of the tax types of the taxpayer, it, he or she is not considered a VAT-registered person.**

Lastly, **a taxpayer's head office and its branches are considered as one under the eyes of the law.**[121] Accordingly, the VAT-registration of the head office necessarily extends to its branches and facilities, obviating the need for separate registration of each branch for VAT purposes.

Here, it is undisputed that petitioner's head office registered VAT as one of its tax types[122] in accordance with RR No. 7-2012, thereby satisfying the *1st requisite.* **The question of whether petitioner failed to register as required under Section 236 of NIRC of 1997, as amended or engaged in the unlawful pursuit of business under Section 258 of NIRC of 1997, as amended, is a separate issue. This distinction must not be conflated with the requirement of VAT registration as a prerequisite for claiming a VAT refund under Section 112(A) of the NIRC of 1997, as amended.**

To reiterate, for purposes of VAT zero-rating qualification, VAT registration of a taxpayer's head office is sufficient.

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121 See *Philippine Deposit Insurance Corporation v. Citibank, N.A. and Bank of America, S.T. & N.A.*, G.R. No. 170290, 11 April 2012.

122 Supra at note 12.

We are not unaware of the Court *En Banc*'s cases[123] finding petitioner as a non-VAT-registered entity. However, it is elementary that the decisions of this Court do not constitute precedent and do not bind the public.[124] Only decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.[125]

Nonetheless, as petitioner failed to comply with the 2nd *requisite*, it still failed to establish its entitlement to its claim of refund.

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

The 2nd *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)[126], and 108(B)(1) and (2)[127] of the

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123 *Foundever Philippines Corporation v. Commissioner of Internal Revenue*, CTA EB No. 2710 (CTA Case No. 10012), 25 June 2024; *Foundever Philippines Corporation v. Commissioner of Internal Revenue*, CTA EB No. 2678 (CTA Case No. 10076), 13 December 2023.

124 *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*, G.R. No. 197525, 04 June 2014.

125 See *Philippine Deposit Insurance Corporation v. Citibank, N.A. and Bank of America, S.T. & N.A.*, supra at note 121.

126 **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, 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)[.]
...

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

NIRC[128] of 1997, as amended, the acceptable foreign currency exchange proceeds must have been duly accounted for in accordance with BSP rules and regulations.

As indicated in petitioner's Quarterly VAT Return for the 1st quarter of CY 2017[129], petitioner declared total sales/receipts of ₱2,209,270,468.48 which included zero-rated sales generated in petitioner's Palawan Site in the amount of ₱8,513,380.41, as follows:[130]

Site / Facility	Amount of Sales (in PHP)
Zero-Rated Sales	
Puerto Princesa, Philippines	₱8,513,380.41
Manila, Philippines (Eton)	20,838,253.79
Manila, Philippines (Eton)	114,314,117.00
Manila, Philippines (Eton)	111,506,055.82
Manila, Philippines (Eton)	17,328,112.67
Manila, Philippines (Eton)	231,321.28
Manila, Philippines (Eton)	37,382,469.81
Manila, Philippines (Pioneer II EDSA)	47,676,135.22
Tarlac, Philippines	12,161,047.97
Manila, Philippines (Eton)	82,238,726.21
Corp Philippines	17,851,888.87
Manila, Philippines (Pioneer II EDSA)	22,253,014.65
Manila, Philippines (Eton)	61,324,999.84
Manila, Philippines (Eton)	39,594,291.81
Manila, Philippines (Eton)	3,824,985.07
Manila, Philippines (Pioneer II EDSA)	14,039,404.34
Tarlac, Philippines	39,798,338.94
Baguio, Philippines (Cyber)	36,944,045.64
Subtotal	*687,820,589.34*
Exempt Sales	**1,521,449,879.14**
Total Sales	**₱2,209,270,468.48**

(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)

...

128 As amended by TRAIN.
129 Exhibit "P-6", Division Docket, Volume II, pp. 911-912.
130 Exhibit "P-54", USB.

Moreover, upon verification by ICPA Dayego, all zero-rated sales of ₱8,513,380.41 allegedly generated by petitioner's Palawan Site were made to Sitel Operating Corporation (**SOC**).[131]

Relative to the *2nd requisite*, petitioner maintains that during the 1st quarter of CY 2017, it provided outsourced call center services from the Philippines to domestic and offshore business, particularly nonresident affiliates; and that the services were paid in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP. Thus, according to petitioner, its sale of services to SOC is subject to zero percent (0%) VAT, pursuant to Section 108(B)(2) of the NIRC of 1997, as amended.[132]

In *Deutsche Knowledge Services*[133], the Supreme Court held that in order for the sales of "other services"[134] 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)[135] of the NIRC of 1997, as amended, the "other services" must be performed in the Philippines (***4th condition).***

As to the ***1st condition***, it was already established earlier that petitioner is a VAT-registered person.

As regards the ***2nd condition*** which requires that the recipient of such services must be engaged in business conducted outside the

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131 Id.
132 Par. 21, Petition for Review, supra at note 3, p. 44.
133 Supra at note 102; citations omitted and italics in the original text.
134 Supra at note 126.
135 Supra at note 126.

Philippines or not engaged in business and is outside the Philippines when the services are performed, in *Deutsche Knowledge Services*[136], the Supreme Court discussed the two (2) components that the claimant must establish to prove a client's status as a nonresident foreign corporation (**NRFC**), to wit:

> ...
> (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 the instant case, to prove that it rendered services to NRFCs doing business outside the Philippines, petitioner presented SOC's SEC Certification of Non-Registration[137] and proof of incorporation/

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136 Supra at note 102; citations omitted, emphasis supplied and italics in the original text.
137 Exhibit "P-17", Division Docket, Volume III, p. 1101.

registration in a foreign country.[138] Consequently, the ***2nd condition*** is satisfied.

With respect to the ***3rd condition*** that payment for such services must be in acceptable foreign currency duly accounted for in accordance with the rules and regulations of the BSP, petitioner presented documents such as: (1) OR No. 000281, which was issued to SOC[139]; (2) Certificate of Inward Remittance issued by the Bank of America Merrill Lynch[140]; (3) Schedule of Zero-Rated Sales – Collections[141]; and (4) Summary of Comparison of Schedule of Inward Remittances of Zero-Rated Sales With Breakdown of Remittances.[142]

As ICPA Dayego noted, petitioner's zero-rated sales of ₱8,513,380.41 were paid for in acceptable foreign currency (*i.e.*, USD) and traceable to the Certificate of Inward Remittance provided.[143]

Additionally, the foreign currency remittances referred to under Section 108(B)(2), must not only be duly accounted for in accordance with the BSP rules and regulations, they must likewise be compliant with the pertinent invoicing requirements, containing all the required information under Sections 113(A)(1), (B)(1) and (2)(c) of the NIRC of 1997, as amended[144], and Sections 4.113-1(A)(1), (B)(1) and (2)(c) of RR No. 16-2005[145], which respectively provide:

> ...
> **SEC. 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**

138 Exhibit "P-16", id., p. 1098.
139 Exhibit "P-14", id., p. 998.
140 Exhibit "P-58-3", USB
141 Exhibit "P-53", id.
142 Exhibit "P-58", id.
143 Supra at note 29, pp. 556-557.
144 Prior to the changes brought about by Republic Act No. 11976 or "Ease of Paying Taxes Act".
145 Supra at note 115.

(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:

1. A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);

2. The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:

   (a) The amount of the tax shall be shown as a separate item in the invoice or receipt;
   (b) If the sale is exempt from value-added tax, the term '**VAT-exempt 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 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 **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.[146]

...

SEC. 4.113-1. *Invoicing Requirements.* —

(A) *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.**

   Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or official receipts. Said documents shall be considered as a 'VAT Invoice' or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

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146 Emphasis supplied and italics in the original text.

> VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.
>
> (B) *Information contained in VAT invoice* or ***VAT official receipt.*** — The following information shall be indicated in VAT invoice or VAT official receipt:
>
> 1. A statement that the seller is a VAT-registered person, followed by his TIN;
> 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:
>
>   a. The amount of tax shall be shown as a separate item in the invoice or receipt;
>   b. If the sale is exempt from VAT, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;
>   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.[147]
>
> ...

In addition to the above requirements, the ORs supporting the sale of services to NRFCs must be duly registered with the BIR and must contain all the required information, pursuant to Sections 237 and 238 of the NIRC of 1997, as amended, *viz*:

> ...
>
> **SEC. 237.** *Issuance of* ***Receipts*** *or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date

[147] Emphasis supplied and italics in the original text.

> of transaction, quantity, unit cost and description of merchandise or nature of service. ...
>
> ...
>
> **SEC. 238.** *Printing of* ***Receipts*** *or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.
>
> No authority to print **receipts** or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.[148]
>
> ...

To summarize the foregoing requirements, the following information should be reflected in the VAT OR:

1. A statement that the seller is a VAT-registered person, followed by its TIN;

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: (**a**) the amount of tax shall be shown as a separate item in the invoice or receipt; (**b**) if the sale is exempt from VAT, the term "VAT exempt sale" shall be written or printed prominently on the invoice or receipt; (**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; or (**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 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;

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[148] Emphasis supplied and italics in the original text.

3. In the case of sales in the amount of ₱1,000.00 or more, where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client;

4. Date of transaction; and,

5. Quantity, unit cost and description of merchandise or nature of service.

Tellingly, RMC No. 42-03[149] expressly provides that a taxpayer's failure to comply with the invoicing requirements will result in the disallowance of the claim for input tax, as follows:

> ...
> 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 [in] the disallowance of the claim for input tax by the purchaser-claimant.
>
> If the claim for refund/TCC is based **on the existence of zero-rated sales by the taxpayer** but **it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g., failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied** considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer.[150]
>
> ...

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149 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.

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

Thus, only zero-rated receipts supported by the above-stated documents shall qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

A review of OR No. 000281[151] shows that it is compliant with the aforementioned invoicing requirements.

Lastly, anent the ***4th condition***, it is incumbent upon petitioner to show that the subject services were performed in the Philippines. However, since petitioner has numerous sites[152], the majority of which are registered with Philippine Economic Zone Authority (**PEZA**)[153], it must further demonstrate that the services were specifically performed at a non-PEZA-registered site.

Settled is the rule that based on the Cross-Border Doctrine, PEZA-registered enterprises, such as petitioner's PEZA-registered sites, are VAT-exempt and no VAT can be passed on to them.[154] Concomitantly, it is incumbent upon petitioner to show that subject sales were performed at a non-PEZA-registered site, *e.g.*, Palawan Site. Otherwise, such sales are exempt from VAT and no VAT should have been imposed on the related purchases. Accordingly, no successful VAT refund may be granted.

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151 Supra at note 139.

152

Site	Is it PEZA-registered?
Eastwood	Yes
Baguio Site 1	Yes
Pioneer Site 1	Yes
Pasig City	Yes
Baguio Site 2	Yes
One Julia Vargas	Yes
Baguio Site 3	Yes
Pioneer Site 2	Yes
Eton 1	Yes
Eton 2	Yes
Tarlac	Yes
Baguio Site 4	Yes
Technopoint	No
Palawan	**No**

153 Exhibit "P-55-1-2", USB; Exhibits "P-34" to "P-34.5", Division Docket, Volume III, pp. 1047-1063.

154 *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*, G.R. No. 157594, 09 March 2010.

In the instant case, petitioner offered as evidence the testimony of Portula to prove that the services subject of the sales were performed within petitioner's Palawan Site. However, Portula's lack of personal knowledge insofar as where the services subject of the sales were performed, is clear in this case: (1) it was not shown that he was stationed at the Palawan Site; in fact, he testified that he resides in Mandaluyong City, Manila[155]; (2) it is not within his duties as a Senior Tax Analyst to oversee which personnel of specific petitioner's sites are assigned to specific accounts[156]; and (3) he began working with petitioner on 20 February 2017—halfway through the 1st quarter of CY 2017[157], *i.e.*, the period relevant to the claim. A witness can testify only to those facts which he or she knows of his or her personal knowledge, which means those facts which are derived from his or her own perception.[158] Consequently, a witness may not testify as to what he [or she] merely learned from others either because he [or she] was told or read or heard the same.[159] Such testimony whether objected to or not, cannot be given credence for it has no probative value.[160]

Additionally, OR No. 000281[161], which indicates "PALAWAN-61IN-145-2017" in its description is not sufficient. Aside from being self-serving, no corroborating evidence was presented. Petitioner could have presented its Operations Manager who directly oversaw its operations in Palawan to testify that the subject sales were indeed rendered at the Palawan Site during the relevant period.

Moreover, the Amended and Restated Services Agreement[162] executed between petitioner and SOC does not specify where the services would be rendered. Notably, SOC also engages with various sites, *e.g.*, Eton, Pioneer II, Tarlac and Baguio, among others.[163] Furthermore, neither OR No. 000281[164] nor petitioner's Billing Statements[165] bear petitioner's Palawan Site address.

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155 Q-3 and A-3, supra at note 30, p. 109.
156 Q-7 and A-7, id., p. 110.
157 Id.
158 Rules of Court, Rule 130, Sec. 22; see *Country Bankers Insurance Corp. v. Lianga Bay & Community Multi-Purpose Cooperative, Inc.*, G.R. No. 136914, 25 January 2002.
159 *Country Bankers Insurance Corp. v. Lianga Bay & Community Multi-Purpose Cooperative, Inc.*, id.
160 *Republic of the Philippines v. Honorable Sandiganbayan, 5th Division, Don Ferry, and Cesar Zalamea*, G.R. Nos. 195837, 198221, 198974 & 203592, 03 October 2023.
161 Supra at note 139.
162 Exhibit "P-13", Division Docket, Volume II, pp. 975-982.
163 Supra at note 130.
164 Supra at note 139.
165 Exhibit "P-56-2", USB.

More importantly, the Palawan Site was registered as a *Facility* **only on 09 August 2017**[166], *i.e.*, beyond the period of claim. Prior to this date, the Palawan Site remained unregistered with the BIR. No other public documents (*e.g.*, business registration documents with the concerned local government unit) were proffered to substantiate that any services were actually rendered at the Palawan Site during the relevant period. From respondent's perspective, petitioner's customer support operations at the Palawan Site commenced only on 09 August 2017, upon its registration as a *Facility*.

Taken all together, petitioner failed to prove with preponderant evidence that the subject sales were all performed or rendered at petitioner's Palawan Site. Such failure (when petitioner has the burden of proof to do so) warrants the disallowance of the said sales for zero-rating.

In conclusion, the Court *En Banc* would like to reiterate 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.[167]

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 requisite under Section 112[168] of the NIRC of 1997, as amended, *i.e.*, that 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). A further discussion or resolution thereof could no longer change the outcome of the herein case.

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166 Supra at note 14.

167 *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.

168 Supra at pp 17-18.

WHEREFORE, in view of the foregoing, the instant Petition for Review filed by petitioner Foundever Philippines Corporation (Formerly: Sitel Philippines Corporation) on 13 October 2023 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

(I concur in the result.)
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

(With due respect please see my Separate Concurring Opinion.)
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

FOUNDEVER PHILIPPINES CORPORATION (Formerly: SITEL PHILIPPINES CORPORATION), Petitioner,	**CTA EB NO. 2799** (CTA Case No. 10136)
	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: APR 11 2025 2:20 pm

x- x

SEPARATE CONCURRING OPINION

ANGELES, *J.*:

I agree with the Decision ultimately **denying** the instant Petition for Review for lack of merit. I agree that petitioner failed to establish to the satisfaction of this Court its entitlement to the refund claimed.

However, with due respect to the *ponente*, I would like to discuss further my position on the issue of whether the CTA may consider as evidence documents not presented at the administrative level.

In the Decision, the *ponente* found merit in petitioner's argument that this Court is not confined to reviewing the same documents submitted by petitioner at the administrative level, as this Court is authorized to conduct *trial de novo*. Several jurisprudence were cited, concluding that petitioner's failure to submit documents in support of its administrative claim is not fatal to its judicial claim.

Further, the *ponente* writes that *Pilipinas Total Gas, Inc. v. CIR* (*Total Gas* case)[1] is inapplicable to the case at bar for several reasons.

On this matter, I wish to submit a different view on the applicability of the ruling of the Supreme Court in the *Total Gas* case. In the said case, the Supreme Court, in resolving the issue of whether the submission of incomplete documents at the administrative level rendered the judicial claim for refund premature, extensively discussed the **nature** of a judicial claim before the CTA, to wit:

> ...First, **a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claim. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit. Second, cases filed in the CTA are litigated *de novo*. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA.** Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.

A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but of the taxpayer's failure to substantiate the claim at the administrative level. **When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that *not only* is he entitled under substantive law to his claim for refund or tax credit, *but also* that he satisfied all the documentary and evidentiary requirements for an administrative claim.** It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit

[1] G.R. No. 207112, December 8, 2015.

> a document requested by the BIR at the administrative level by filing the said document before the CTA.
>
> In the present case, however, **Total Gas filed its judicial claim due to the inaction of the BIR. Considering that the administrative claim was never acted upon; there was no decision for the CTA to review on appeal *per se*. Consequently, the CTA may give credence to all evidence presented by Total Gas, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance. The Total Gas must prove every minute aspect of its case by presenting and formally offering its evidence to the CTA**, which must necessarily include whatever is required for the successful prosecution of an administrative claim. *(Emphasis supplied)*

Based on the foregoing jurisprudence, a clear distinction was made between: **(1)** the matters to be proved in an appeal from an unsuccessful administrative claim; and **(2)** the matters to be proved in an appeal from the inaction of the CIR on such claim.

When a judicial claim for refund or tax credit is in the nature of an appeal from an unsuccessful administrative claim, the taxpayer has to convince the Court that the CIR had no reason to deny its claim.[2] In *Atlas Consolidated Mining and Development Corporation v. CIR*,[3] the Supreme Court noted that under RA No. 1125 (the law creating the CTA), the CTA only had appellate jurisdiction; it had no power to take cognizance of original actions. With the advent of RA No. 9282 (the law expanding the jurisdiction of the CTA), however, the CTA began to exercise original jurisdiction over certain actions. Nonetheless, its jurisdiction over refund claims has remained purely appellate.[4]

Section 7(a)(1) of RA No. 9282 in particular confers upon the CTA exclusive appellate jurisdiction over decisions of the CIR in cases involving refunds of internal revenue taxes. It must be remembered that appellate jurisdiction refers to the authority of a court higher in rank to re-examine the final order or judgment of a lower court which tried the case now elevated for judicial review.[5]

Following this, the Supreme Court in the *Total Gas* case has required taxpayers appealing from an unsuccessful administrative refund claim, to prove before the CTA that, ***one***, it is entitled to its refund claim under substantive law; and ***two***, it satisfied all the documentary and evidentiary requirements for such refund claim. Surely, the first matter to be proved entails a determination by the

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[2] *Supra*, note 1.
[3] G.R. No. 145526, March 16, 2007.
[4] *Id.*
[5] *Garcia, et al. vs. De Jesus, et al.*, G.R. Nos. 88158 and 97108-09, March 4, 1992.

Court of petitioner's compliance with the requisites established by law for the refund or credit of input tax.

Relatedly, the second matter to be proved entails a review by the Court of the basis of the CIR's denial of the administrative claim **based on the documents presented at the administrative level.** The phrase "*but also that he satisfied all the documentary and evidentiary requirements* ***for an administrative claim***", could only mean that the sufficiency of petitioner's documents and evidence shall be measured in relation to the administrative claim.

On the other hand, when a judicial claim for refund or tax credit is in the nature of an appeal from the inaction of the CIR on the administrative claim, such as in the *Total Gas* case, the Court may give credence to all evidence presented by the taxpayer, including those that may not have been submitted to the CIR, as the case is essentially being decided in the first instance.[6]

It bears stressing that all the cases cited by the *ponente*, including *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*[7] and *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc.*,[8] to support the conclusion that evidence not presented at the BIR level can still be presented before this Court, **involve the CIR's failure to act on the taxpayer's administrative claim for refund. Nowhere in the said cases was it stated, expressly or impliedly, that such pronouncements apply to all appeals filed before the CTA, including appeals from unsuccessful administrative claims.** Hence, such pronouncements should only be applied to cases involving the inaction of the CIR on the taxpayer's administrative claim for refund, as such was the situation in the *PAL* case. A contrary interpretation would render useless the distinction carved out by the *Total Gas* case between appeals from an unsuccessful administrative claim and appeals from the inaction of the CIR.

For the above-mentioned reasons, I humbly opine that the rule in the *Total Gas* case on the matters to be proved in an appeal from unsuccessful administrative claim, stands.

To be clear, whether a judicial claim is an appeal from an unsuccessful administrative claim, or an appeal from the inaction of the CIR on the administrative claim, **the principle that cases filed with the CTA are litigated *de novo* (or litigated anew) shall apply.** This means that whether the evidence of petitioner in its appeal

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[6] *Supra*, note 38.
[7] G.R. Nos. 206079-80 & 206309, January 17, 2018.
[8] G.R. No. 231581, April 10, 2019.

to the CTA includes or excludes those documents not presented at the BIR level, as limited by the rules laid down in *Pilipinas Total Gas*, petitioner must prove every minute aspect of its case by presenting and formally offering such evidence to the CTA.[9]

The principle of litigation *de novo* is rooted from Section 8 of RA 1125, as amended, where the CTA is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases. No evidentiary value can be given to documents submitted (or not submitted) to the BIR as the rules on documentary evidence require that these documents must be formally offered before the CTA.[10]

In this case, the Petition filed before the Court *a quo* involved an appeal from an unsuccessful administrative claim, in view of the Letter dated June 7, 2019 communicating respondent's denial of petitioner's refund claim. Thus, applying the *Total Gas* case, petitioner should have shown to the Court that respondent had no reason to deny its claim.

Considering the points raised in the foregoing disquisition, I resonate with the decision of the Court *a quo*, which held that: **(1)** there is no indication anywhere in the records of the case that petitioner presented before the Court the very same documents it submitted to BIR in support of its administrative claim; and **(2)** We cannot assume that the documents submitted before the Court are the very same documents presented at the BIR level. As petitioner failed to prove that its administrative claim should have been granted in the first place, the Petition for Review filed on July 26, 2019 must likewise fail.

HENRY S. ANGELES
Associate Justice

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[9] *Supra*, note 38.
[10] *CIR vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.