REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AVALOQ PHILIPPINES OPERATING HEADQUARTERS, *Petitioner*,	**CTA *EB* NO. 2897** (CTA Case No. 10397)
	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: JUN 03 2025 4:10 pm

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DECISION

CUI-DAVID, J.:

In this *Petition for Review (RE: Decision dated 7 December 2023 and Resolution dated 5 March 2024)*[1] (*Petition for Review)* filed on April 11, 2024, petitioner Avaloq Philippines Operating Headquarters seeks to reverse: (1) the Decision[2] dated December 7, 2023 (assailed *Decision*) rendered by the Court's *Special Third Division* (Court in Division) in CTA Case No. 10397, which denied its claim for refund of excess and/or unutilized input value-added tax (VAT) attributable to its zero-rated sales for the first (1st) and second (2nd) quarters of calendar year (CY) 2018 (*i.e.*, from January 1, 2018 to June 30, 2018); and (2) the Resolution[3] dated March 5, 2024 (assailed *Resolution*), which denied its *Motion for Reconsideration (Re: Decision promulgated on 07 December 2023).*

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[1] *En Banc (EB)* Docket, pp. 7–33.
[2] *Id.* at 42–59.
[3] *Id.* at 60–61.

THE PARTIES

Petitioner Avaloq Philippines Operating Headquarters is the Regional Operating Headquarters (ROHQ) of Avaloq Group AG, a company organized and existing under the laws of Switzerland. It is licensed by the Securities and Exchange Commission (SEC) as an ROHQ, to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; sales promotion; training and personnel management; logistics services; research and development services; product development; technical support and maintenance; data processing and communication; and business development. It is registered with the Bureau of Internal Revenue (BIR), Revenue District Office (RDO) No. 050, with Taxpayer Identification Number (TIN) 008-637-771-000.[4]

Respondent Commissioner of Internal Revenue (CIR) is vested under the National Internal Revenue Code (NIRC) with the authority, among others, to decide, approve, and grant applications for the refund of excess or unutilized input VAT. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

THE FACTS AND THE PROCEEDINGS

The facts, as found by the Court in Division in the assailed *Decision*, are as follows:

> As provided above, petitioner is an ROHQ. It is registered as a VAT taxpayer with the BIR under Certificate of Registration No. OCN 9RC0000461791 and was assigned Tax Identification Number ("TIN") 008-637-771-000.
>
> Petitioner filed its amended VAT returns for the 1st and 2nd quarters of CY 2018 on 30 September 2019.
>
> On 12 July 2020, petitioner filed its administrative claim for VAT refund before the BIR-VAT Credit Audit Division. In said VAT refund claim, petitioner alleged that it incurred excess and/or unutilized input VAT arising from its zero-rated sales during the 1st and 2nd quarters of CY 2018 in the total amount of Three Million Eight Hundred Eighty Thousand Seven Hundred Ninety Six and 01/100 Pesos

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4 See Division Docket, p. 595, *Pre-Trial Order, Admitted Facts.*
5 See *EB* Docket, p. 10, *Petition for Review, Parties.*

(Php3,880,796.01) and that it is seeking the refund of the same.

On 8 October 2020, petitioner received a Letter, dated 16 September 2020, which effectively denied its administrative VAT refund claim.

Following such denial of its administrative claim, petitioner filed the instant Petition for Review ("Petition") before this Court on 9 November. Respondent filed his Answer on 28 January 2021.

On 2 February 2021, a Notice of Pre-Trial Conference was issued setting the Pre-Trial Conference on 10 June 2021. Respondent, on 3 June 2021, filed his Pre-Trial Brief. On same date, respondent submitted the Judicial Affidavit of Revenue Officer ("RO") Eufema Mylene N. Mabingnay. On 4 June 2021, petitioner filed its Pre-Trial Brief.

The Pre-Trial Conference ensued on 10 June 2021.

On 8 July 2021, the parties filed a Joint Stipulation of Facts and Issues, and a Hearing was conducted for the commissioning of the Independent Certified Public Accountant ("ICPA"), Ms. Krista V. Bambao. She was then issued a Commission by this Court to act as the ICPA for the instant proceedings.

On 20 October 2021, Ms. Bambao submitted her ICPA Report summarizing her findings for the instant judicial claim for VAT refund. Petitioner then submitted her Judicial Affidavit in relation to said Report on 25 October 2021.

This Court issued a Pre-Trial Order on 2 December 2021.

On 7 December 2021, petitioner presented its witnesses, Mary Lalaine V. Munar, who was cross-examined based on her testimony contained in her Judicial Affidavit attached to the Petition, and Ms. Bambao, who was cross-examined based on her testimony in relation to the ICPA Report.

Petitioner filed its Formal Offer of Evidence on 21 December 2021, to which respondent interposed no objections. In a Resolution, dated 26 May 2022, this Court admitted all of petitioner's Exhibits.

During the Hearing conducted on 15 September 2022, respondent presented his lone witness, RO Mabingay, before filing his Formal Offer of Evidence on 20 September 2022. Petitioner interposed no objections to the same.

> On 10 November 2022, respondent filed his Memorandum. Meanwhile, petitioner filed its Memorandum on 25 November 2022. Thus, in a Resolution, dated 7 December 2022, the instant case was submitted for Decision.

On December 7, 2023, the Court in Division rendered the assailed *Decision,* the dispositive portion of which reads:

> **WHEREFORE**, the Petition for Review filed by petitioner **AVALOQ PHILIPPINES OPERATING HEADQUARTERS** is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

The Court in Division denied petitioner's VAT refund claim on the ground that it failed to establish that it was engaged in zero-rated sales of services under Section 108(B)(2) of the NIRC of 1997, as amended. Specifically, the Court in Division held that petitioner failed to prove the existence of a valid offsetting arrangement that could serve as an alternative for actual inward remittance of foreign currency in consideration for the services rendered to Non-Resident Foreign Corporations (NRFCs) not doing business in the Philippines.

The Court in Division added that even assuming the pieces of evidence adduced by petitioner were sufficient to prove a valid offsetting arrangement between petitioner and Avaloq Group AG's affiliates, petitioner must still establish the actual details of offsetting that occurred between petitioner's receivables from its sales of service to Avaloq Group AG's affiliates and the advances made by Avaloq Group AG. It ruled that the *Schedule of Offsetting of Receivables*, which petitioner offered in evidence, was self-serving and undeserving of evidentiary weight as it was written in another language.

Not satisfied, petitioner filed a *Motion for Reconsideration (Re: Decision promulgated on 07 December 2023)*,[6] which was denied in the equally assailed *Resolution* dated March 5, 2024, the dispositive portion of which reads:

> **FOR THESE REASONS**, petitioner's Motion for Reconsideration (Re: Decision promulgated on 07 December 2023) is hereby **DENIED** for lack of merit. The Decision, dated December 7, 2023, is hereby **AFFIRMED**.
>
> **SO ORDERED.**

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[6] Division Docket, pp. 932–947.

On March 26, 2024, petitioner filed an *Urgent Motion for Extension of Time to File Petition for Review (By Petitioner Avaloq Philippines Operating Headquarters),*[7] which the Court *En Banc* granted in a *Minute Resolution* [8] dated March 27, 2024. Accordingly, petitioner had until April 10, 2024, to file its *Petition for Review.*

On April 11, 2024, petitioner filed the instant *Petition for Review* through registered mail, to which respondent was directed to file his comment within ten (10) days from notice.[9]

In compliance, respondent filed his *Comment (Re: Petition for Review),*[10] which the Court *En Banc* noted in a *Minute Resolution*[11] dated June 5, 2024, and submitted the case for decision.

Hence, this Decision.

ASSIGNMENT OF ERROR

In the present *Petition for Review*, petitioner raises the following errors allegedly committed by the Court in Division:

I. WITH ALL DUE RESPECT, THE HONORABLE COURT A QUO ERRED WHEN IT DENIED PETITIONER'S PETITION FOR REVIEW AND MOTION FOR RECONSIDERATION.

II. WITH ALL DUE RESPECT, THE HONORABLE COURT A QUO ERRED TO RULE THAT PETITIONER FAILED TO PROVE THAT IT IS ENGAGED IN ZERO-RATED OR EFFECTIVELY ZERO-RATED SALES.

Petitioner's Arguments

Petitioner avers that, contrary to the ruling of the Court in Division, it has sufficiently proven the existence of an offsetting arrangement with the NRFCs as "equivalent of the acceptable foreign currency payment," for purposes of VAT zero-rating.

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7 *EB* Docket, pp. 1–4.
8 *Id.* at 6.
9 *Id.* at 69, *Minute Resolution* dated May 13, 2024.
10 *Id.* at 70–76.
11 *Id.* at. 78.

Petitioner explains that while the General Framework Services Agreement (GFSA) and Short-Term Credit Facility Agreement (STCFA) are two distinct and separate agreements, they complement each other, particularly in their provisions on the application, maintenance, and use of the group current account by Avaloq Group AG and its affiliates (which include petitioner), for the settlement and payment of services rendered among the Avaloq affiliates.

Petitioner argues that this intercompany offsetting arrangement was clearly shown and sufficiently explained by its witness, Ms. Mary Lalaine V. Munar (Ms. Munar), who testified through her Judicial Affidavit[12] dated November 9, 2020. Ms. Munar testified that whenever petitioner obtains a "loan" from its head office, Avaloq Group AG, which essentially constitutes its monthly funding, the amount is credited to the Avaloq Group AG group current account. In turn, the receivables from services rendered to affiliates are debited or offset against the same account.

Petitioner impresses that the intent of the contracting parties in both the GFSA and STCFA is to adopt the intercompany offsetting arrangement as "equivalent of the acceptable foreign currency payment and accounted for in accordance with BSP Rules and Regulations for VAT zero-rating purposes." Allegedly, Avaloq Group AG acts as the "central bank" of the Avaloq Group, which maintains the group current account. From this account, various affiliates charge their respective advances, while offsetting their individual receivables against the group account for services rendered under the GFSA.

Petitioner likewise maintains that the Court in Division erred in denying its claim for refund due to the alleged insufficiency of details surrounding the offsetting, despite recognizing the existence of a valid offsetting arrangement.

Petitioner cites the Court in Division's ruling in the assailed Resolution that "*even if We were to take petitioner as having sufficiently proven that a valid offsetting arrangement exists between petitioner and Avaloq Group AG's affiliates, we would still have to deny the Petition for Review. Petitioner still failed to establish the actual details of offsetting pertinent to this case, as the only evidence it offered for such purpose, its Schedule of Offsetting of Receivables, is in a language not*

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[12] Division Docket, pp. 123–136, Exhibit P-238.

understood by this Court." It argues that although the offsetting schedule contains a few foreign words, when taken as a whole, *"the document is comprehensive enough to be understood by a reasonable average person,"* and is *"sufficient to prove the actual offsetting details of the arrangement."* Petitioner also notes that it submitted bank statements and debit advice supporting the entries in the offsetting schedule.

Finally, petitioner asserts that the excess and/or unutilized VAT should be refunded in accordance with the principle of *solutio indebiti.*

Respondent's Arguments

In his *Comment* to the instant *Petition for Review,* respondent submits that since the core issue is petitioner's entitlement to a refund, which partakes of the nature of a tax exemption and is strictly construed against the claimant, petitioner must prove its entitlement to the refund sought.

Citing the ruling of the Court in Division, respondent underscores that petitioner bears the burden of proving the factual basis of its claim for refund. After all, tax refunds, like tax exemptions, must be construed strictly against the taxpayer.

THE COURT *EN BANC*'S RULING

Before delving into the merits of the case, the Court *En Banc* must first determine whether the present *Petition for Review* was timely filed.

The present Petition for Review was timely filed; hence, the Court En Banc has jurisdiction over the same.

Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) states:

> **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. (*Emphasis supplied*)

Records show that petitioner received the assailed *Resolution* on March 11, 2024.[13] Thus, petitioner had 15 days from March 11, 2024, or until March 26, 2024, to file its *Petition for Review* before the Court *En Banc*.

On March 26, 2024, petitioner filed an *Urgent Motion for Extension of Time to File Petition for Review (By Petitioner Avaloq Philippines Operating Headquarters)*, requesting an extension of 15 days from March 26, 2024, or until April 10, 2024, to file a *Petition for Review*, which the Court *En Banc* granted in a *Minute Resolution* dated March 27, 2024.

Considering that April 10, 2024 fell on a holiday,[14] the filing of petitioner's *Petition for Review via* registered mail on the next working day, April 11, 2024, was on time. Accordingly, the Court *En Banc* has jurisdiction to take cognizance of the same.

Now, on the merits.

After a judicious review of petitioner's arguments and the records of the case, the Court *En Banc* finds no reason to modify, much less reverse, the assailed *Decision* and *Resolution* of the Court in Division.

The arguments raised by petitioner have already been thoroughly discussed and passed upon by the Court in Division. Nevertheless, for emphasis and clarity, petitioner's arguments shall be revisited to underscore the basis of the Court in Division's ruling.

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[13] *Id.* at 957, *Notice of Resolution*.

[14] Per **Proclamation No. 514** *Declaring Wednesday, 10 April 2024, A Regular Holiday Throughout the Country in Observance of Eid'l Fitr (Feast of Ramadhan)*.

The Court in Division did not err in holding that petitioner failed to prove that it was engaged in zero-rated or effectively zero-rated sales.

In the assailed *Decision*, the Court in Division ruled that petitioner failed to establish the existence of a valid offsetting arrangement that could serve as an alternative to the actual inward remittance of foreign currency in consideration for the services it rendered to NRFCs not doing business in the Philippines. Thus, petitioner failed to prove that it was engaged in zero-rated or effectively zero-rated sales of services under Section 108(B)(2) of the NIRC of 1997, as amended.

However, petitioner maintains that it has sufficiently proved the existence of an offsetting arrangement with the NFRCs. According to petitioner, the intercompany offsetting arrangement between Avaloq Group AG and its affiliates was clearly explained by its witness, Ms. Munar, who testified through her Judicial Affidavit,[15] to wit:

> 28 Q: Ms. Munar, do you know how Petitioner bills its foreign affiliates for the services rendered?
>
> A: Yes. The "General Framework Services Agreement" that shows the guidelines for the provision of services between the affiliates of Avaloq Group AG, and the "Short Term Credit Facility Agreement" would explain how Avaloq PH bills its foreign affiliates.
>
> The invoices billed by Petitioner are collected/offset against the loan payable to Avaloq Group AG. Based on the General Framework Services Agreement, the offsetting process of the receivables and payables of the Petitioner are as follows:
>
> a. Avaloq PH maintains a current account, in which the funding of Avaloq Group AG is being remitted pursuant to a Short-Term Credit Facility Agreement;
>
> b. For the collection of intercompany receipts billed by the Avaloq PH to its affiliates, these are collected/offset through this account.

[15] Division Docket, pp. 123–136, Exhibit P-238.

> To illustrate, whenever we obtain a "loan" from our head office — Avaloq Group AG, which is basically the funding we receive monthly, the funding/cash remitted is credited to Avaloq Group AG current account. The amount receivable from the invoices billed for the services rendered to the affiliates of Avaloq PH will be debited or offset to this same account.
>
> ... ...
>
> 31 Q: Ms. Munar, how did Petitioner collected/offset the intercompany services billed against the loan payable to Avaloq Group AG pursuant to the Short-Term Credit Facility?
>
> A: Under the Short-Term Credit Facility, Petitioner is entitled to request for loan in the form of advance and/or overdraft from Avaloq Group AG. The loan amount, which varies depending on the financial necessity of the Petitioner to support its operations, are remitted by Avaloq Group AG in foreign currency denominated. The remitted amount forms part of the loan payable of Petitioner which are then offset against the intercompany invoices billed to the foreign affiliates of Avaloq PH.
>
> 32 Q: What proof, if any, do you have to support your statement that the funds remitted were in foreign currency?
>
> A: The Bank Statements issued by the Bank of Philippine Islands [pre-marked as Exhibit P-23] showing the credit of foreign currency to our current account.
>
> 33 Q: Ms. Munar, in your Answer to Question No. 28, what proof do you have to show that the intercompany services billed by Petitioner to its foreign affiliates are collected/offset against the loan payable to Avaloq Group AG?
>
> A: The transactions that can be identified in the Schedule of Offsetting of Receivables [pre-marked as Exhibit P-24].

Petitioner contends that, following the Court in Division's ruling, it would only be allowed to offset its receivables against Avaloq Group AG, its head office. This, as petitioner claims, would prohibit the offsetting of its receivables for services rendered to its foreign affiliates, thereby rendering ineffectual the GFSA and STCFA, both of which, according to petitioner,

embody the clear intention of the contracting parties to adopt intercompany offsetting as a method of payment.

The Court *En Banc* is not swayed.

As can be deduced from the testimony of petitioner's witness, Ms. Munar, petitioner receives foreign currency funding from its head office, which is recorded in its books as a loan payable to Avaloq Group AG. From this "loan payable," petitioner offsets all receivables earned from services rendered to the affiliates of Avaloq Group AG. To bolster its claim, petitioner presented, among others, the STCFA executed between Avaloq Group AG and its various affiliates.

While the STCFA confirms that petitioner had loan transactions in foreign currency with Avaloq Group AG, the STCFA fails to show that such advances can be offset against receivables from petitioner's sale of services to other affiliates.

The Court explains.

First, the STCFA is an undertaking between Avaloq Group AG, as the primary party and lender, and each affiliate, as the borrower. It does not include a loan agreement between one affiliate and another.

Second, the STCFA does not provide for an offsetting arrangement between Avaloq Group AG's advances to petitioner and the latter's receivables from Avaloq Group AG's affiliates. Truth be told, it would be erroneous to construe paragraph "12. Set Off Balances" of the STCFA as authorizing offsetting arrangements between affiliates, as the provision contemplates **set-offs of credits between the lender-parent company and its borrower-affiliates**.

Third, Avaloq Group AG is a distinct legal entity from its affiliates. Thus, the right of offset between petitioner and other affiliates cannot be presumed. If an offsetting arrangement exists among Avaloq Group AG affiliates, it should have been covered by a separate agreement executed between and among them. Unfortunately, petitioner failed to submit evidence of this separate agreement.

Given the foregoing, the Court *En Banc* agrees with the Court in Division when it ruled, thus:

> *Petitioner failed to prove that it was paid in foreign currency for the services it rendered to its NRFC clients.*

Petitioner alleges that its zero-rated sales of services were paid for in acceptable foreign currency exchange through intercompany offsetting agreements. It further alleges that the fees for petitioner's services were settled through a centralized clearing/netting system or group current account under Avaloq Group AG.

An offsetting arrangement is recognized as an alternative to actual inward remittance of foreign currency proceeds in export sales. Under ***Q8 and A8 of Revenue Memorandum Circular No. 42-2003***, offsetting arrangements are acknowledged by the BIR as an alternative to proofs of foreign currency inward remittances, *viz.*:

> "Q-8: With the full liberalization of the BSP rules on foreign exchange and trade transactions (CB Circular No. 1389 dated April 13, 1993 enunciated in RMC No. 57-97), the BIR requirement for full documentation of proofs of inward remittances of export proceeds should no longer be enforced. Accordingly, what should be the acceptable documentary requirements in the processing of claims for TCC/refund, specifically on offsetting arrangements?
>
> A-8: In the case of offsetting arrangements, the following documents should be required:
>
> a. Import documents which created liability accounts in favor of the foreign parent or affiliated company;
>
> b. Other contracts with the foreign or affiliated company that brought about the liabilities which were offset against receivables from export sales;
>
> c. Evidence of proceeds of loans, in case the claimant has received loans or advances from the foreign company;
>
> d. Documents or correspondence regarding offsetting arrangements;
>
> e. Confirmation of the offsetting arrangements by the heads of the business organizations involved;
>
> f. Documents to prove actual export of goods; [and,]
>
> g. Documents to prove that the sales are zero-rated sales."

Moreover, under ***BIR Ruling No. [DA-(VAT-009) 075-08]***, which cites ***BSP Circular No. 1353, Series of 1992***, the BIR ruled that an intercompany offsetting arrangement is considered acceptable foreign currency payment in accordance with BSP rules and regulations, for VAT zero-rating purposes, *viz.*:

> "2. Under the BSP Circular No. 1353, Series of 1992, payment for exports may be made through the following:
>
> • Letter of Credit
> • Documents Against Payment
> • Documents Against Acceptance
> • Open Account
> • Cash Against Document
> • Prepayment/Export Advance
> • Intercompany Open Account Offset Arrangement
> • Exports on Consignment"
> *(Underscoring ours)*

The manner by which the offsetting arrangement is effected in the present case was detailed through the testimony of Ms. Munar during the Hearing, dated 7 December 2021, *viz.*:

> "ATTY. MANALO
>
> Ms. Witness, in your answer to Question No. 31, you mentioned among others that under the short term credit facility, petitioner is entitled to request for loan in the form of advance and or overdraft from Avaloq Group AG. The loan amount which varies depending on the financial necessity of the petitioner to support its operation are remitted by Avaloq Group AG in the foreign currency denominated.
>
> Q Can you please elaborate on how petitioner requested the advance and or overdraft from Avaloq Group AG which in turn have been the subject of the offsetting arrangement against petitioner receivables?
>
> A Yes. So we sent our draw down request via e-mail based on the needs of the company to our head office, Avaloq Group AG. And the amounts that we received forms part of our loans payable where we offset our receivables from our other affiliates."

Simply put, petitioner alleges that it initially obtains foreign currency funding from its head office, Avaloq Group AG, depending on their financial needs. Upon receiving such foreign currency funding, the same is then recorded and treated by petitioner as a loan payable to Avaloq Group AG. On this loan payable, petitioner offsets all subsequent receivables it earns and becomes entitled to from its sale of services to the affiliates of Avaloq Group AG.

An examination of the Short Term Credit Facility Agreement entered between Avaloq Group AG and its various affiliates, which include herein petitioner, indeed confirms

petitioner's allegations that it is being loaned amounts in US Dollars by its head office, Avaloq Group AG, to pay-off its financial needs. This finding is further bolstered by the fact that e-mail requests for funding sent by petitioner to Avaloq Group AG up until 26 June 2018, which were attached as Exhibits "P-28" to "P-34", can be traced, albeit not entirely, to the apostilled english-translated Debit Advice issued by Credit Suisse (Schweiz) AG in favor of petitioner's Bank of the Philippine Islands ("BPI") account and to petitioner's BPI Foreign Currency Denominated Unit Bank Statements.

However, while the fact that Avaloq Group AG loans petitioner foreign currency depending on the latter's needs is duly proven, it remains that petitioner has failed to adduce evidence that such amount advanced by Avaloq Group AG can be the subject of set-off with respect to the receivables earned by petitioner from its sales of services to Avaloq Group AG's other affiliates. Avaloq Group AG is an entity different from its affiliates. Hence, it cannot be presumed that such affiliates can use the amounts advanced by Avaloq Group AG to petitioner to pay-off petitioner's receivables which arose from the latter's sales of service to such affiliates.

Documentary proof on this matter should have been adduced by petitioner. The Short Term Credit Facility Agreement entered between Avaloq Group AG and its various affiliates, which include herein petitioner, did not provide an offsetting arrangement between Avaloq Group AG's advances to petitioner and the latter's receivables from Avaloq Group AG's affiliates. Petitioner was mistaken when it construed par. 12. Set Off Balances of such agreement as authorizing such offsetting arrangement. When said provision provided that "[b]oth parties authorize each other to set-off any credit balance in any currency to which it is entitled on any account in satisfaction of any sum due and payable under this Agreement but unpaid," it did not pertain to a set-off of balances between an affiliate, such as petitioner, and another affiliate: it refers only to a set-off of credits between Avaloq Group AG and an affiliate. It must be emphasized that the Short Term Credit Facility Agreement is not an agreement among Avaloq Group AG and its affiliates but solely an undertaking between Avaloq Group AG, as the primary party and lender, and each affiliate, as a borrower. It did not include loan agreements between one affiliate and another affiliate. Hence, offsetting among the accounts of affiliates, which include petitioner, cannot be derived from such agreement.

If there is indeed an offsetting arrangement between and among Avaloq Group AG's affiliates, the same must be covered by a separate agreement between and among such affiliates. This interpretation is duly supported by par. 7.3 Invoice and Payment Terms of the General Framework Services Agreement, which provides: "[t]he contracting entity

and each service provider may agree on alternative methods for the payment of the Service Fees due to the Service Provider, including by way of centralized clearing/netting system or group current accounts." Thus, a separate agreement between or among Avaloq Group AG's affiliates is necessary before an offsetting arrangement can take effect between and/or among Avaloq Group AG's affiliates.

Unfortunately, petitioner failed to adduce evidence of this separate agreement. Petitioner thus failed to prove before this Court that there exists a valid offsetting arrangement in the present case that may serve as an alternative to actual inward remittance of foreign currency in consideration for the services it rendered to NRFCs not doing business in the Philippines. Consequently, petitioner failed to prove that is engaged in zero-rated sales of services under ***Section 108 (B) (2) of the NIRC***.

The Court in Division did not err in holding that petitioner failed to establish the actual details of the offsetting transactions between its receivables from Avaloq Group AG's affiliates and the advances made by Avaloq Group AG.

In the assailed *Decision*, the Court in Division ruled that even assuming petitioner had established the existence of a valid offsetting arrangement, its *Petition for Review* must still be denied due to its failure to establish the actual details of offsetting pertinent to this case. The only evidence presented for such purpose, the *Schedule of Offsetting of Receivables,* was in a language not understood by the Court.

Admittedly, according to the petitioner, the offsetting schedule contains 14 foreign words. Nevertheless, petitioner maintains that the schedule, taken as a whole, is comprehensive enough to be understood by a reasonable average person. It also asserts that the amounts reflected in the offsetting schedule are traceable to its bank statements, billing invoices, and debit advice previously submitted to the Court in Division. Hence, petitioner concludes that the offsetting schedule and its supporting documents have probative value.

Petitioner's assertion fails to persuade.

While the offsetting schedule may contain only 14 foreign terms (the remainder consisting mostly of numbers), the Court in Division correctly observed that the document is predominantly written in a language foreign to the Court. Indeed, the Court in Division expressly stated that it could not comprehend what the schedule purports to show.

Unfortunately, despite the Court in Division having expressly drawn petitioner's attention to this deficiency in the assailed *Decision*, petitioner failed to remedy the same or to submit a translation or adequate explanation that would clarify the contents of the offsetting schedule. This omission remained unaddressed even in petitioner's subsequent submissions, including the present *Petition for Review*, thereby preventing the Court *En Banc* from assigning any probative value to the said document.

Accordingly, the Court *En Banc* concurs with the Court in Division's ruling in the assailed *Resolution*, to wit:

> In the Assailed Decision, We ruled that even if We were to take petitioner as having sufficiently proven that a valid offsetting arrangement exists between petitioner and Avaloq Group AG's affiliates, We would still have to deny the Petition for Review. Petitioner still failed to establish the actual details of offsetting pertinent to this case, as the only evidence it offered for such purpose, its Schedule of Offsetting of Receivables, is in a language not understood by this Court.
>
> The present Motion does not address this problem. It focuses only on our finding that petitioner failed to prove the existence of a valid offsetting arrangement. As it fails to refute Our above point, it fails to convince Us that the Assailed Decision was rendered in error.
>
> Petitioner does quote a portion from the judicial affidavit of Independent Certified Public Accountant ("ICPA") which deals with the Schedule at issue, but the findings of the ICPA are not binding on this Court. We would have to be able to review the Schedule to ensure the correctness of said findings. However, as the Schedule is in a foreign language, We are unable to do either. We thus cannot assign any probative value to the offered Schedule.[16]

[16] *EB* Docket, pp. 60–61, Assailed Resolution dated March 5, 2024.

In closing, the Court *En Banc* reiterates, in accordance with settled jurisprudence,[17] that actions for tax refund, such as the present case, partake of the nature of a claim for tax exemption. As such, it is well-established that the law must be construed in *strictissimi juris* against the taxpayer, and that the evidence presented to support such a claim must likewise be *strictissimi* scrutinized and duly proven.

WHEREFORE, premises considered, the instant *Petition for Review (RE: Decision dated 7 December 2023 and Resolution dated 5 March 2024)* filed by Avaloq Philippines Operating Headquarters is **DENIED** for lack of merit.

Accordingly, the assailed Decision dated December 7, 2023, and Resolution dated March 5, 2024, both issued by the Special Third Division in CTA Case No. 10397, are **AFFIRMED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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[17] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the 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