

**REPUBLIC OF THE PHILIPPINES**  
*Court of Tax Appeals*  
**QUEZON CITY**

*Special Third Division*

**AMMEX  
CORPORATION,**

**I-SUPPORT CTA CASE NO. 9773**

*Petitioner,* Members:

*-versus-*

*UY, Chairperson,  
RINGPIS-LIBAN, and  
MODESTO-SAN PEDRO, JJ.*

**THE COMMISSIONER OF** Promulgated:  
**INTERNAL REVENUE,**

*Respondent.*

JUL 14 2022

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**DECISION**

***MODESTO-SAN PEDRO, J.:***

**The Case**

Before the Court is a Petition for Review,<sup>1</sup> filed by petitioner Ammex I-Support Corporation against respondent The Commissioner of Internal Revenue (“CIR”), for the refund of Six Hundred Twenty Six Thousand One Hundred Fifty One Pesos and Thirty One Centavos (₱626,151.31) representing unutilized input value added tax (“VAT”) for the 3<sup>rd</sup> quarter of calendar year (“CY”) 2015.

**The Parties**

Petitioner is a domestic corporation duly organized under and by virtue of the laws of the Philippines with principal address at 7<sup>th</sup> Floor, The Pearlbank Centre, 146 Valero Street, Salcedo Village, Makati City.<sup>2</sup>

<sup>1</sup> Division Records Vol. 1, pp. 10-161, with annexes.

<sup>2</sup> Joint Stipulation of Facts and Issues, Division Records Vol. 2, p. 510.

Meanwhile, respondent CIR is authorized under the law to act on the claims for refunds, tax credit certificates (TCC), and other matters involving the enforcement of the *National Internal Revenue Code of the Philippines ("Tax Code"), as amended*.<sup>3</sup> He may be served with summons, notices and other court processes at the Legal Division of Revenue Region No. 8, 2<sup>nd</sup> Floor, BIR Building, 313 Gil Puyat Avenue, Makati City.<sup>4</sup>

### The Facts

On 28 September 2017, petitioner filed with the Bureau of Internal Revenue ("BIR") Revenue District Office ("RDO") No. 50 its administrative claim of its unutilized input VAT for the 3<sup>rd</sup> quarter of CY 2015 in the aggregate amount of ₱626,151.31.<sup>5</sup>

Subsequently, on 12 October 2017, petitioner received a Letter of Authority (SN: eLA201500084376) authorizing Revenue Officer Gerald Guevara and Group Supervisor Josalyn Tan of RDO No. 50 to examine petitioner's books of accounts and other accounting records for the issuance of a tax credit certificate ("TCC") or VAT refund for the period 1 July 2015 to 30 September 2015 pursuant to *Secs. 6(a) and 10(c) of Tax Code, as amended*.<sup>6</sup>

Due to respondent's inaction, petitioner filed the present Petition for Review on 26 February 2018,<sup>7</sup> praying that judgment be rendered granting its request for refund of unutilized input VAT incurred for the 3<sup>rd</sup> quarter of CY 2015 in the amount of ₱626,151.31 and such other reliefs that are just and equitable.

Summons were served upon respondent CIR on 19 March 2018 and the Office of the Solicitor General on 20 March 2018.<sup>8</sup>

On 21 May 2018, within the extended period,<sup>9</sup> respondent filed his Answer<sup>10</sup> through registered mail, which the Court received on 25 May 2018. 

<sup>3</sup> Pre-Trial Order, Division Records Vol. 2, pp. 494-495.

<sup>4</sup> *Ibid.*

<sup>5</sup> Exhibit "P-6", BIR Records, p. 5; Answer No. 40, Judicial Affidavit of Lhyric Gomez, Exhibits "P-18" and "P-18-a", Division Records Vol. 2, pp. 762-777. Answer Nos. 32 and 33, Judicial Affidavit of Nerom N. Maceda, Exhibits "P-19" and "P-19-a", Division Records Vol. 1, pp. 368-380; Answer No. 9, Judicial Affidavit of Bayan Joseph A. Quinones, Exhibits "P-20" and "P-20-a", *id.*, pp. 437-445.

<sup>6</sup> Exhibit "P-6.6", BIR Records, p. 6.

<sup>7</sup> Division Records Vol. 1, pp. 10-161, with annexes.

<sup>8</sup> *Id.*, pp. 162-163 and p. 167.

<sup>9</sup> *Id.*, p. 175.

<sup>10</sup> *Id.*, pp. 176-180.

Respondent filed his Pre-Trial Brief through registered mail on 26 July 2018 which the Court received on 6 August 2018.<sup>11</sup> Meanwhile, petitioner filed its Pre-Trial Brief on 6 August 2018.<sup>12</sup>

Following the filing of both parties' Pre-Trial Briefs, the Pre-Trial Conference was held on 9 August 2018.<sup>13</sup>

Meanwhile, on 14 August 2018, respondent transmitted the BIR Records of the case, consisting of 429 pages contained in 1 folder, and filed the corresponding Compliance,<sup>14</sup> of which the Court took note in a Minute Resolution dated 3 September 2018.<sup>15</sup>

On 16 October 2018, the Court issued a Pre-Trial Order<sup>16</sup> which governed the proceedings of the case.

During trial, petitioner presented the following witnesses:

- (1) Ms. Lhyric Gomez, its Finance Manager, who testified and identified her Judicial Affidavit<sup>17</sup> during the hearing on 6 November 2018;<sup>18</sup>
- (2) Mr. Bayan Joseph A. Quinonez, its Corporate Secretary, who testified and identified his Judicial Affidavit<sup>19</sup> during the hearing on 15 January 2019;<sup>20</sup>
- (3) Mr. Nerom N. Maceda, its accountant, who testified and identified his Judicial Affidavit<sup>21</sup> during the hearing on 15 January 2019;<sup>22</sup> and
- (4) Mr. Lorenz Samuel Gomez, the Independent Certified Public Accountant, who testified and identified his Judicial Affidavit<sup>23</sup> during the hearing on 22 January 2020.<sup>24</sup>

Petitioner filed its Formal Offer of Evidence on 2 March 2020<sup>25</sup> without respondent's Comment, despite order.<sup>26</sup>

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<sup>11</sup> *Id.*, pp. 189-191.

<sup>12</sup> *Id.*, pp. 192-209

<sup>13</sup> *Id.*, pp. 425-429 and pp. 433-436.

<sup>14</sup> *Id.*, p. 446.

<sup>15</sup> *Id.*, pp. 447-448.

<sup>16</sup> Division Records Vol. 2, pp. 494-502.

<sup>17</sup> *Id.*, pp. 762-777.

<sup>18</sup> *Id.*, pp. 507-509.

<sup>19</sup> Exhibits "P-20" and "P-20-a", Division Records Vol. 1, pp. 437-445.

<sup>20</sup> Division Records Vol. 2, pp. 614-616.

<sup>21</sup> Exhibits "P-19" and "P-19-a", Division Records Vol. 1, pp. 368-380.

<sup>22</sup> Division Records Vol. 2, pp. 614-616.

<sup>23</sup> Exhibits "P-22" and "P-22-a", *id.*, pp. 666-684.

<sup>24</sup> *Id.*, pp. 696-679-A.

<sup>25</sup> *Id.*, pp. 709-731.

<sup>26</sup> *Id.*, p. 797.

In a Resolution<sup>27</sup> dated 15 January 2021, the Court admitted all of petitioner's formally offered evidence except for Exhibits "P-5", "P-6.11", "P-8", and "P-15" for failure to present the originals for comparison.

Thereafter, during the hearing on 18 March 2021,<sup>28</sup> respondent manifested that there is no final report in the present refund case; thus, he would no longer present any witness.

With the parties' failure to file their respective memoranda despite order,<sup>29</sup> the Court issued a Resolution<sup>30</sup> on 15 July 2021, submitting the case for decision.

Hence, this Decision.

### **The Issue**<sup>31</sup>

The sole issue submitted for this Court's resolution is:

Whether or not petitioner is entitled to claim for refund or the issuance of tax credit certificate in the amount of ₱626,151.31, representing the alleged unutilized input VAT, covering the 3<sup>rd</sup> Quarter of 2015.

### **Arguments of the Parties**

#### **Petitioner's Arguments**<sup>32</sup>

Petitioner avers that it satisfied all the requirements to be entitled to the unutilized input VAT payments directly attributable to zero-rated or effectively zero-rated sales as follows:

*First*, it had established that it is a VAT-registered person as evidenced by its BIR Certificate of Registration indicating that it is a VAT-registered.

*Second*, it filed its administrative claim for refund with BIR RDO No. 50 on 28 September 2017, which was within two years from the close of the 3<sup>rd</sup> quarter of CY 2015.

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<sup>27</sup> *Id.*, pp. 799-805.

<sup>28</sup> *Id.*, pp. 808-810.

<sup>29</sup> *Id.*, p. 817.

<sup>30</sup> *Id.*, p. 819.

<sup>31</sup> *See* Pre-Trial Order, *id.*, pp. 495.

<sup>32</sup> *See* Discussion, Petition for Review, Division Records Vol. 1, pp. 17-19.

*Third*, the claimed excess input VAT were not applied against any input tax during the period covered by the claim and in the succeeding period.

*Fourth*, it deducted from quarterly VAT return for the 3<sup>rd</sup> quarter of 2015 the excess input tax claimed for refund in the Amended VAT Return for the 4<sup>th</sup> quarter of CY 2015.

*Fifth*, the claimed excess input taxes are directly attributable to its zero-rated sales as the claim pertains to sales to purchasers which are non-resident foreign corporations as certified by the SEC. Petitioner also claims that the payments it received for services rendered for the year 2015 were made in US Dollars via inward remittances directly to made to its Philippine local bank account, duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (“BSP”).

*Sixth*, it sufficiently substantiated its claimed excess input taxes when it submitted VAT invoices of zero-rated sales to BIR RDO No. 50.

*Seventh*, it submitted complete requirements set forth in *Annex A (Checklist of Mandatory Requirements for Claim for VAT Refund/ TCC Claimed) of Revenue Memorandum Circular No. 54-2014*. Petitioner maintains that the completeness of its submission was duly acknowledged by BIR RDO No. 50.

### **Respondent’s Arguments**<sup>33</sup>

In refutation, respondent raised the following defenses in his Answer:

*First*, petitioner’s alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination of the respondent CIR.

*Second*, the taxes paid and collected are presumed to have been made in accordance with law and, hence, are not refundable.

*Third*, petitioner’s claim for refund or issuance of tax credit certificate, if any, in the amount of ₱626,151.31, representing alleged unutilized input VAT, covering the 3<sup>rd</sup> quarter of 2015, was not substantiated by proper documents, such as sales invoices, official receipts, and others, pursuant to *Revenue Regulations No. 7-95* in relation to *Section 113 and 237 of the Tax Code, as amended*.

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<sup>33</sup> See Special and Affirmative Defenses, Answer, *id.*, pp. 177-178.

*Fourth*, in an action for refund/credit, the burden of proof is on the petitioner to establish its right to claimed refund. Failure to adduce sufficient proof is fatal to the claim for tax refund/credit.

*Fifth*, it is incumbent upon petitioner to show that it has complied with the provisions under *Section 204(c)* in relation to *Section 229 of the Tax Code, as amended*. Otherwise, its failure to prove the same is fatal to its claim for refund.

*Sixth*, claims for refund are construed strictly against the petitioner since the same partakes the nature of exemption from taxable. As such, they are looked upon with disfavor.

### **The Ruling of the Court**

The instant Petition for Review must be denied.

#### **Requisites for claiming unutilized input VAT attributable to zero-rated sales.**

The provision that governs the present claim for refund of unutilized input VAT attributable to zero-rated sales is *Section 112 (A) and (C) of the Tax Code, as amended*, which reads:

##### **“SEC. 112. Refunds or Tax Credits of Input Tax. –**

(A) *Zero-rated or Effectively Zero-rated Sales.* – any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax:** Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the **acceptable foreign currency exchange** proceeds thereof had been **duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP):** Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

(B) ...  


(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.*  
– In proper cases, **the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application** filed in accordance with Subsection (A) hereof.

In case of **full or partial denial** of the claim for tax refund or tax credit, or the **failure on the part of the Commissioner to act on the application within the period prescribed above**, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.**

(Emphasis, Ours.)

Based on the foregoing provisions, jurisprudence has laid down the following requisites that must be complied with by the taxpayer-applicant to successfully obtain a tax refund/credit:

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

1. the refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;<sup>34</sup>
2. in case of full or partial denial of the refund claim, the judicial claim is filed with this Court, within thirty (30) days from receipt of the decision;<sup>35</sup>

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

3. the taxpayer is a VAT-registered person;<sup>36</sup>

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;<sup>37</sup>

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<sup>34</sup> Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 155732, 27 April 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, 25 November 2009; AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182364, 3 August 2010.

<sup>35</sup> Steag State Power, Inc. vs. Commissioner of Internal Revenue, G.R. No. 205282, 14 January 2019; Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue, G.R. No. 168950, 14 January 2015.

<sup>36</sup> Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 155732, 27 April 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, 25 November 2009; AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182364, 3 August 2010.

<sup>37</sup> *Ibid.*

5. for zero-rated sales under *Section 106(A)(2)(1) and (2), 106(B), and 108(B)(1) and (2)*, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the Bangko Sentral ng Pilipinas (BSP) rules and regulations;<sup>38</sup>

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;<sup>39</sup>
7. the input taxes are due or paid;<sup>40</sup>
8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;<sup>41</sup> and
9. the input taxes have not been applied against output taxes during and in the succeeding quarters.<sup>42</sup>

At this juncture, it must be emphasized that cases filed before the CTA are litigated *de novo*.<sup>43</sup> As such, parties are expected to litigate and prove every minute aspect of their case anew by presenting, formally offering, and submitting to the CTA all evidence required for the successful prosecution of its claim.<sup>44</sup> Consequently, petitioner must competently establish its claim for refund or tax credit following the foregoing requisites.

**Petitioner's administrative and judicial claims for refund were timely filed.**

Pursuant to *Sections 112 (A) and (C) the Tax Code, as amended*, the refund of unutilized input VAT attributable to zero-rated or effectively zero-rated sales must be administratively filed with the BIR within two (2) years counted from the close of the taxable quarter when the relevant sales were

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<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 155732, 27 April 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, 25 November 2009.

<sup>42</sup> Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 155732, 27 April 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, 25 November 2009; AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182364, 3 August 2010.

<sup>43</sup> Commissioner of Internal Revenue v. Univation Motor Philippines, Inc., G.R. No. 231581, 10 April 2019.

<sup>44</sup> *Id.*; Philippine Airlines, Inc. v. Commissioner of Internal Revenue, G.R. No. 206079-80 and 206309, 17 January 2018.

made. Meanwhile, the judicial claim for refund must be filed in Court within 30 days from either: (1) receipt of respondent's decision but such decision must be rendered within the 120-day period to resolve; or (2) after the expiration of the 120-day period, in which case there is deemed denial of the claim.

Applying the foregoing, the table below summarizes the relevant dates pertaining to the filing of the administrative and judicial claims for refund:

Period of claim	Close of the taxable quarter	Last day for filing of the administrative claim	Date of filing of the administrative claim	Last day of the CIR to act on the administrative claim (120 days)	Last day for filing of the judicial claim (30 days)	Date of filing of judicial claim
3 <sup>rd</sup> Quarter of CY 2015	30 September 2015	30 September 2017	28 September 2017 <sup>45</sup>	26 January 2018	25 February 2018 (a Sunday)	26 February 2018

The present case covers the 3<sup>rd</sup> quarter of CY 2015. Counting two (2) years from close of the 3<sup>rd</sup> quarter of CY 2015 on 30 September 2015, petitioner had until 30 September 2017 to file its administrative claim for refund. Thus, the administrative claim filed on 28 September 2017 was timely made.

Meanwhile, as to the timeliness of the judicial claim, counting 120 days from the filing of the administrative claim on 28 September 2017, respondent had until 26 January 2018 to resolve the claim. However, respondent failed to act on petitioner's administrative claim for refund. Counting 30 days from the lapse of the 120-day period, petitioner had until 25 February 2018 to file a judicial claim. Considering that 25 February 2018 was a Sunday, the filing of the instant Petition for Review on 26 February 2018, the next working day, was seasonably made.

Given the foregoing, petitioner complied with the *first and second requirements* that the administrative and judicial claims should be timely filed.

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<sup>45</sup> Exhibit "P-6", BIR Records, p. 5; Answer No. 40, Judicial Affidavit of Lhyric Gomez, Exhibits "P-18" and "P-18-a", Division Records Vol. 2, pp. 762-777. Answer No. 33, Judicial Affidavit of Nerom N. Maceda, Exhibits "P-19" and "P-19-a", Division Records Vol. 1, pp. 368-380; Answer No. 9, Judicial Affidavit of Bayan Joseph A. Quinones, Exhibits "P-20" and "P-20-a", *id.*, pp. 437-445.

**Petitioner is a VAT-registered taxpayer.**

It is undisputed that petitioner is duly registered with the BIR as a VAT taxpayer with TIN 2486-226-340-000 as evidenced by BIR Certificate of Registration No. OCN 9RC0000417146.<sup>46</sup> Hence, petitioner complied with the *third requisite* that the claimant must be a VAT-registered taxpayer.

**Petitioner failed to establish that it was engaged in zero-rated sales or effectively zero-rated sales during the 3<sup>rd</sup> quarter of CY2015.**

To prove its compliance with the *fourth* and *fifth requisites*, petitioner avers that it is principally engaged in the business of providing business process outsourcing using computer IT based systems to service the needs of global clients.<sup>47</sup> Justifying that its sales to these buyers are classified as zero-rated pursuant to *Section 108(B)(2) of the Tax Code, as amended*, petitioner asserts that these clients are non-resident foreign corporations, as certified by the SEC, whose payments for services rendered by petitioner are in US Dollar inward remittances duly accounted for in accordance with the rules and regulations of the BSP.<sup>48</sup>

Petitioner's claim is thus anchored on *Section 108(B)(2) of the Tax Code, as amended* which pertains to sale of services to non-resident foreign corporations:

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

(A) *Rate and Base of Tax.* – . . .

(B) *Transactions Subject to Zero (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**

<sup>46</sup> Exhibit "P-9", Division Records Vol. 2, p. 739.

<sup>47</sup> Par. 14, Petition for Review, Division Records Vol. 1, p. 13.

<sup>48</sup> Pars. 15-16 and 31, Petition for Review, *id.*, pp. 13-14 and 19.

**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);**

(3) . . .”  
(Emphasis, Ours.)

Based on the foregoing, the following elements must be satisfied for the sale of services to qualify for VAT zero-rating:

1. the service rendered must be other than “processing, manufacturing, or repacking of goods”;<sup>49</sup>
2. the service- recipient is a foreign corporation, and the said corporation is doing business *outside* the Philippines, or is a nonresident person not engaged in business who is *outside* the Philippines when the services were performed;<sup>50</sup>
3. the service must be performed in the Philippines by VAT-registered persons;<sup>51</sup> and
4. the payment for such service should be in acceptable foreign currency accounted for in accordance with BSP rules and regulations.<sup>52</sup>

Anent the *first element*, petitioner’s Articles of Incorporation<sup>53</sup> establishes that its primary purpose is “to engage in business process outsourcing using computer based IT enabled systems to service the needs of global clients.” Petitioner’s accountant, Mr. Nerom N. Maceda,<sup>54</sup> also testified that petitioner caters to the business process outsourcing needs of its foreign clients who are foreign corporations engaged in business outside the Philippines and whose business offices are outside of the Philippines when petitioner rendered their services.

However, petitioner failed to submit in evidence the service agreement between petitioner and its clients that would establish the nature of services to be performed. Hence, while petitioner is primarily engaged in services other

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<sup>49</sup> Sitel Philippines Corporation v. Commissioner of Internal Revenue, G.R. No. 201326, 8 February 2017; Accenture, Inc. v. Commissioner of Internal Revenue, G.R. No. 190102, 11 July 2012; Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 153205, 22 January 2007

<sup>50</sup> *Ibid.*

<sup>51</sup> Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 153205, 22 January 2007; Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), G.R. No. 152609, 29 June 2005.

<sup>52</sup> Sitel Philippines Corporation v. Commissioner of Internal Revenue, G.R. No. 201326, 8 February 2017; Accenture, Inc. v. Commissioner of Internal Revenue, G.R. No. 190102, 11 July 2012; Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 153205, 22 January 2007

<sup>53</sup> ICPA Exhibit “P-7”, Division Records Vol. 2, pp. 535-542.

<sup>54</sup> Answer Nos. 6,7, and 9, Exhibits “P-19” and “P-19-a”, Division Records Vol. 1, pp. 370-371.

than processing, manufacturing, or repacking of goods, no proof was presented that the services rendered to the clients indeed falls in the category of “other than processing, manufacturing, or repacking of goods.” Settled is the rule that bare allegations do not establish fact. It is still incumbent upon petitioner to submit in evidence proof that would substantiate its allegations

In relation to the *second element*, in order to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported at the very least by **both** Securities and Exchange Commission (“SEC”) Certification of Non-Registration of the Company and proof of incorporation or registration in a foreign country (e.g., Certificate of Incorporation, Memorandum of Association, and Articles of Association). The SEC Certifications only establish the first component (i.e., that the affiliate is foreign) while proof of incorporation or registration in a foreign country (e.g., articles of association/certificates of incorporation) proves the second component (i.e., that the affiliate is not doing business here in the Philippines).<sup>55</sup>

To substantiate its compliance with the foregoing requirement, petitioner submitted the following in evidence:

Name of Client	SEC Certificate of Non-Registration
1. Ammex Corporation	Exhibit “P-13” <sup>56</sup>
2. Bench Market Medical	Exhibit “P-13-1” <sup>57</sup>
3. Blue Jay Wireless	Exhibit “P-13-2” <sup>58</sup>
4. Copiers Northwest Inc.	Exhibit “P-13-3” <sup>59</sup>
5. Classic Accessories, Inc.	Exhibit “P-13-4” <sup>60</sup>
6. Costless Express Ltd. DBA Lykki	Exhibit “P-13-5” <sup>61</sup>
7. Cloudstaff HK Ltd.	Exhibit “P-13-6” <sup>62</sup>
8. CSG Services Corporation	Exhibit “P-13-7” <sup>63</sup>
9. Depth Offshore Ltd.	Exhibit “P-13-8” <sup>64</sup>
10. Elk River Systems, Inc. (DBA “Ticket Printing”)	Exhibit “P-13-9” <sup>65</sup>
11. Echez Solutions Sdn Bhd.	Exhibit “P-13-10” <sup>66</sup>
12. FiberFix LLC.	Exhibit “P-13-11” <sup>67</sup>
13. HWS Group (Shanghai) Co., Ltd.	Exhibit “P-13-12” <sup>68</sup>

<sup>55</sup> Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd., G.R. No. 234445, 15 July 2020.

<sup>56</sup> BIR Records, p. 26.

<sup>57</sup> *Id.*, p. 25.

<sup>58</sup> *Id.*, p. 24.

<sup>59</sup> *Id.*, p. 23.

<sup>60</sup> *Id.*, p. 22.

<sup>61</sup> *Id.*, p. 21.

<sup>62</sup> *Id.*, p. 20.

<sup>63</sup> *Id.*, p. 19.

<sup>64</sup> *Id.*, p. 18.

<sup>65</sup> *Id.*, p. 17.

<sup>66</sup> *Id.*, p. 16.

<sup>67</sup> *Id.*, p. 15.

<sup>68</sup> *Id.*, p. 14.

14. Intellisist Inc. DBA Spoken Communications	Exhibit "P-13-13" <sup>69</sup>
15. Pacific Market International LLC	Exhibit "P-13-14" <sup>70</sup>
16. StandDesk Inc.	Exhibit "P-13-15" <sup>71</sup>
17. Total Benefits Solutions, LLC.	Exhibit "P-13-16" <sup>72</sup>
18. Tilson HR, Inc.	Exhibit "P-13-17" <sup>73</sup>
19. UltraSource LLC.	Exhibit "P-13-18" <sup>74</sup>
20. Windhaven	Exhibit "P-13-19" <sup>75</sup>

During the clarificatory questions propounded to petitioner's accountant, Mr. Nerom N. Maceda, he testified as follows:

JUSTICE LIBAN No re-direct. Okay. You do not have any screen shot from various foreign government agencies of their websites stating that these companies are doing business in their country or registered in their respective countries?

MR. MACEDA Ma'am, on the time that we prepared it, our VAT claim, **we've not able to secure their certificate of registrations. So we've only opted to get the copies of certificate of non-registration from SEC.**

JUSTICE LIBAN And you do not intend to submit the certificate from the agencies in the other countries, country of origin of petitioner's client duly authenticated by the nearest consulate of the Philippine consulate or a screen shot from the websites of the various government agencies where these companies are registered.

MR. MACEDA Yes, ma'am. We can provide I guess.

JUSTICE LIBAN I'm not asking you to provide or anything, it's your own volition. I'm just asking you that if indeed did you get this or you did not.

MR. MACEDA Some of the clients, ma'am, are no longer affiliated with our company. So if I'm going to, **I cannot get all their certificate of registration** because some of them are not operating by now and some of them are not affiliated anymore in our company.

However, a perusal of the records shows that petitioner failed to submit in evidence any proof that its foreign clients are not doing business in the Philippines. Petitioner did not submit any Certificate of Incorporation, Memorandum of Association, Articles of Association, or any equivalent document that would establish that its clients are not doing business in the Philippines. Consequently, petitioner failed to prove compliance with the

<sup>69</sup> *Id.*, p. 13.  
<sup>70</sup> *Id.*, p. 12.  
<sup>71</sup> *Id.*, p. 11.  
<sup>72</sup> *Id.*, p. 10.  
<sup>73</sup> *Id.*, p. 9.  
<sup>74</sup> *Id.*, p. 8.  
<sup>75</sup> *Id.*, p. 7.

requirement that the service- recipient is a foreign corporation doing business *outside* the Philippines.

Petitioner also failed to establish the *third element* requiring that the service be performed in the Philippines by VAT-registered persons. Given that petitioner failed to present the service agreement with its purported clients, the Court cannot ascertain whether the services were performed in the Philippines.

Anent the *fourth element* requiring that payment for such service should be in acceptable foreign currency accounted for in accordance with BSP rules and regulations, petitioner presented its Schedule of Inward Remittance for the covered period;<sup>76</sup> copies of Bank Certification from Banco de Oro<sup>77</sup> and Standard Chartered Bank;<sup>78</sup> official receipts issued by petitioner for the covered period;<sup>79</sup> and copies of Reconciliation Analysis of Total Collections and Remittances.<sup>80</sup> However, in view of petitioner's non-compliance with the *first, second, and third elements*, the Court deems it futile to examine the details of each of the inward remittances and corresponding official receipts.

In essence, petitioner's sales to its alleged foreign clients fail to qualify for VAT zero-rating under *Section 108 (B)(2) of the Tax Code, as amended*.

Given the foregoing, petitioner failed to prove compliance with the *fourth and fifth requisites* requiring, respectively, that the taxpayer is engaged in zero-rated or effectively zero-rated sales and, for zero-rated sales under *Section 106(A)(2)(1) and (2), 106(B), and 108(B)(1) and (2)*, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the BSP rules and regulations.

Consequently, it becomes unnecessary for this Court to look into petitioner's compliance with the other remaining requirements for the claim for unutilized input VAT refund to prosper.

At this juncture, it is worthy to emphasize that tax refunds or tax credits, just like tax exemptions, are strictly construed against the taxpayers; hence, the taxpayer claimant has the burden to prove compliance with the conditions for the grant of the tax refund or credit.<sup>81</sup>

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<sup>76</sup> Exhibit "P-10", *id.*, pp. 45-46.

<sup>77</sup> Exhibit "P-11", *id.*, pp. 43-44.

<sup>78</sup> Exhibit "P-12" *id.*, pp. 28-42.

<sup>79</sup> ICPA Exhibits "P-23", "P-23-1" to "P-23-51".

<sup>80</sup> Exhibit "P-14", BIR Records, p. 27

<sup>81</sup> *Sitel Philippines Corp. v. Commissioner of Internal Revenue*, G.R. No. 201326, 8 February 2017 *citing* *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (now TeaM Energy Corporation)*, G.R. No. 180434, 20 January 2016.

**WHEREFORE**, in light of the foregoing considerations, the Petition for Review filed by petitioner Ammex I-Support Corporation is hereby **DENIED** for lack of merit.

**SO ORDERED.**

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

**WE CONCUR:**

  
**ERLINDA P. UY**  
Associate Justice

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

**A T T E S T A T I O N**

I attest 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's Division.

  
**ERLINDA P. UY**  
Associate Justice  
Chairperson

**C E R T I F I C A T I O N**

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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