

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF
INTERNAL REVENUE,

Petitioner,

CTA **EB NO. 2440**

(CTA Case No. 9469)

Present:

DEL ROSARIO, P.J.,

UY,

RINGPIS-LIBAN,

MANAHAN,

BACORRO-VILLENA,

MODESTO-SAN PEDRO,

REYES-FAJARDO, and

CUI-DAVID, JJ.

-versus-

MACQUARIES OFFSHORE
SERVICES PTY LTD. –
PHILIPPINE BRANCH,

Respondent.

Promulgated:

OCT 03 2022

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D E C I S I O N

MANAHAN, J.:

Before the Court *En Banc* is a *Petition for Review* filed by the Commissioner of Internal Revenue (CIR) assailing the Decision¹ dated June 30, 2020 and Resolution² dated January 15, 2021, both of the Court of Tax Appeals (CTA) 3rd Division, which partially granted Macquarie Offshore Services Pty Ltd-Philippine Branch's (Macquarie) claim for refund of excess and unutilized input value-added tax (VAT) attributable to zero-rated sales. The dispositive portions are quoted below:

Decision dated June 30, 2020:

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, Respondent [CIR] is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of

¹ EB Docket, pp. 19-134.

² EB Docket, pp. 136-141. *gm*

Petitioner in the amount of **Php50,489,528.20** representing its excess and unutilized input VAT attributable to its zero-rated sales/receipts for FY 2015 or from April 1, 2014 to March 31, 2015.

SO ORDERED.³

Resolution dated January 15, 2021:

WHEREFORE, premises considered, respondent's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.⁴

THE FACTS

The CTA 3rd Division narrated the factual antecedents, as follows:


Petitioner [now, respondent] Macquarie Offshore Services Pty Ltd. – Philippine Branch is a foreign corporation duly registered with and authorized by the Securities and Exchange Commission (SEC) to operate as a Regional Operating Headquarter (ROHQ) under SEC Company Registration No. FS200805155, with principal place of business at the 29th Floor, Tower I, The Enterprise Center, Ayala Avenue, Makati City. As an ROHQ, Petitioner is engaged in the business of providing qualifying services to its affiliated and related parties in the Asia-Pacific Region and in other foreign markets. It is registered with the Bureau of Internal Revenue (BIR) as a VAT entity under BIR Certificate of Registration No. OCN 9RC0000330527 with TIN 261-474-856-000.

Respondent [now, petitioner] Commissioner of Internal Revenue is vested with the power to decide tax cases, including claims for refunds and/or tax credits pursuant to Section 4 of the National Internal Revenue Code of 1997, as amended, and holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

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On June 30, 2016, Petitioner filed with the BIR an *Application for Tax Credits/Refunds* (BIR Form No. 1914), covering the period from April 1, 2014 to March 31, 2015 or the first to fourth quarters of FY 2015, with letter request evenly dated for the issuance of the tax credit certificates

³ EB Docket, p. 133.

⁴ EB Docket, p. 140. 

and/or tax refund of its unutilized and excess input VAT in the amount of Php82,974,529.01 for the said period.

On August 17, 2016, Petitioner received the letter dated August 5, 2013 (*sic*) signed by Atty. Shirley A. Calapatia, Revenue District Officer of BIR Revenue District Office No. 47, denying Petitioner's administrative claim for refund covering the period from April 1, 2014 to March 31, 2015.⁵

On September 15, 2016, Macquarie filed its Petition for Review before the CTA, claiming refund of alleged excess and unutilized input VAT for the period April 1, 2014 to March 31, 2015 amounting to Php82,974,529.01.

After trial, the CTA 3rd Division rendered the abovequoted Decision which partially granted Macquarie's claim for refund/issuance of tax credit certificate (TCC) in the reduced amount of Php50,489,528.20.

The CIR's Motion for Reconsideration was denied in the Resolution dated January 15, 2021.⁶

Aggrieved, the CIR posted the subject *Petition for Review*⁷ on February 10, 2021, assailing the partial grant of the refund/issuance of TCC. Macquarie's *Comment/Opposition (Re: Petition for Review dated 05 February 2021)*, filed on July 9, 2021, was admitted in the Resolution dated October 7, 2021. In the same Resolution, the instant case was also submitted for decision.

THE ISSUES


The CIR submits the following grounds for the petition:

- A. It is incumbent upon respondent to prove that its service invoices and official receipts are duly registered. Thus, failure to present its authority to print and permit to use loose leaf is fatal to respondent's claim for refund.

- B. Respondent failed to prove that the input tax has not been utilized by failure to present

⁵ EB Docket, Division Decision dated June 30, 2020, pp. 20-21.

⁶ EB Docket, pp. 136-141.

⁷ EB Docket, pp. 1-14. 

quarterly VAT returns and annual income tax returns subsequent to fiscal year 2015.

C. CTA-3rd Division erred when it ruled that there was valid administrative claim for refund in this case considering respondent failed to complete the required documents under RMC 54-2014 dated June 11, 2014.⁸

The CIR's arguments

The CIR states that respondent failed to present its authority to print (ATP) and permit to use loose leaf for official receipts and invoices. The CIR also states that respondent failed to prove that the claimed input tax has not been utilized since respondent failed to present quarterly VAT returns and annual income tax returns subsequent to fiscal year 2015. The CIR further argues that the CTA 3rd Division erred in ruling that a valid administrative claim was filed since respondent failed to complete the required documents for a claim for refund. Thus, the CIR prays that the claim for refund be denied.


Macquarie's arguments

Macquarie states that the CTA 3rd Division correctly ruled that the presentation of a taxpayer's ATP is only required if such ATP is not indicated in the invoices and receipts; and that the amount claimed for refund no longer formed part of the excess input VAT as of the end of February 2016. Macquarie also states that it submitted to the Bureau of Internal Revenue (BIR) the documents in support of its refund claim. After its submission, it did not receive any notice from the BIR requiring it to submit additional documents, instead, it received the denial of its refund claim.

RULING OF THE COURT

The instant Petition for Review was timely filed.

The CIR received the assailed Resolution dated January 15, 2021, on January 26, 2021.

⁸ EB Docket, Petition for Review, p. 4. 

Pursuant to the Revised Rules of the Court of Tax Appeals (RRCTA), Rule 8, Section 3(b),⁹ the CIR has fifteen days from such receipt, or until February 10, 2021, within which to file a Petition for Review.

Thus, the instant Petition for Review was timely posted on February 10, 2021, despite having been received by the Court on February 18, 2021.

There is no cogent reason to reverse or modify the findings of the CTA 3rd Division.

Refunds or credits of input tax are provided for in Section 112 of the 1997 National Internal Revenue Code (NIRC), as amended, *to wit*:

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 or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributable 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

⁹ Rule 8 Procedure in Civil Cases
Sec. 3. *Who may appeal; period to file petition.*

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(b) A party adversely 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. *om*

be allocated ratably between his zero-rated and non-zero-rated sales.

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(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.

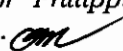
In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the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

Jurisprudence also laid down the following requisites:

Timeliness of the filing of the administrative and judicial claims:

1. The claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;¹⁰
2. That in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 120 days, the judicial claim has been filed within this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;¹¹

¹⁰ *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 155732, April 27, 2007; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.

¹¹ *Steag State Power, Inc. v. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019; and *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015. 

Taxpayer's registration with the BIR

3. The taxpayer is a VAT-registered person;¹²

Taxpayer's output VAT

4. The taxpayer is engaged in zero-rated or effectively zero-rated sales;¹³
5. For zero-rated sales under Sections 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;¹⁴

Taxpayer's input VAT being refunded

6. The input taxes are not transitional input taxes;¹⁵
7. The input taxes are due or paid;¹⁶
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;¹⁷ and
9. The input taxes have not been applied against output taxes during and in the succeeding quarters.¹⁸

¹² *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, supra.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra.

¹⁸ *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, supra. *OR*

As found by the CTA 3rd Division, Macquarie was able to comply with all the above-mentioned requisites and was able to prove its entitlement to the refund/issuance of tax credit certificate (TCC), albeit in the reduced amount of Php50,489,528.20.

The CIR argues that Macquarie's claim should have been denied since Macquarie failed: (1) to present its ATP and permit to use loose leaf for official receipts and invoices; (2) to prove that the claimed input tax has not been utilized; and, (3) to submit the complete required documents for a claim for refund.


We affirm the CTA 3rd Division's discussion that the presentation of the ATP is required only if such ATP is not indicated in the invoices or receipts. The Supreme Court, in *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*,¹⁹ clarified that without the indication of the ATP, the presentation of the ATP itself would be "*the only way to verify whether the invoices or receipts are duly registered,*" to wit:

But while there is no law requiring the ATP to be printed on the invoices or receipts, Section 238 of the NIRC expressly requires persons engaged in business to secure an ATP from the BIR prior to printing invoices or receipts. Failure to do so makes the person liable under Section 264 of the NIRC.

This brings us to the question whether a claimant for unutilized input VAT on zero-rated sales is required to present proof that it has secured an ATP from the BIR prior to the printing of its invoices or receipts.

We rule in the affirmative.

Under Section 112(A) of the NIRC, a claimant must be engaged in sales which are zero-rated or effectively zero-rated. To prove this, duly registered invoices or receipts evidencing zero-rated sales must be presented. However, since the ATP is not indicated in the invoices or receipts, the only way to verify whether the invoices or receipts are duly registered is by requiring the claimant to present its ATP from the BIR. Without this proof, the invoices or receipts would have no probative value for the purpose of refund. *(Underscoring ours)*

¹⁹ G.R. No. 172378, January 17, 2011. 

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In the instant case, the CTA 3rd Division found that Macquarie's official receipts and service invoices contain the details of its ATP, as follows:

In the present case, perusal of petitioner's official receipts and service invoices shows that its ATP states the following: "1 BOX 1000 SETS/BOX 2 PLY 001,001-002,000 BIR OCN 9AU0000582033 DATE ISSUED 9 JUNE 2013 VALID UNTIL 08 JUNE 2018 LOOSE-LEAF PERMIT NO. LL-3165-08 DATED 29 SEPTEMBER 2008 x x x." Evidently, the official receipts and service invoices contain the details of number of booklets allowed to be printed, the series numbers, and the name of the printer. These details demonstrate that petitioner has secured and obtained an ATP prior to the printing of its official receipts and service invoices. Such being the case, and as held in the *Silicon* case, petitioner's duly registered official receipts and service invoices have probative value for refund purposes. Having such information, respondent could have easily verified the truthfulness thereof and disprove the same, since he ought to know the tax records of all taxpayers.²⁰

As to whether the claimed input tax has been utilized by Macquarie, the CIR failed to point out any specific error on the findings of the CTA 3rd Division, quoted below:


Considering that Petitioner's valid input VAT of Php315,548.93 allocated to VATable sales/receipts is not enough to cover its output VAT liability for FY 2015 in the amount of Php2,043,453.11, the valid input VAT of Php74,436,973.94 allocated to the declared zero-rated sales/receipts shall be utilized to pay for the remaining output VAT of Php1,727,904.18, as shown below:

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From the foregoing, Petitioner had excess/unutilized input VAT for the FY 2015 in the amount of Php72,709,069.76, which can be attributed to its entire declared zero-rated sales/receipts in the amount of Php4,017,033,220.58.

However, as stated earlier, Petitioner was able to properly substantiate only the amount of Php 2,789,452,738.73 out of its total declared zero-rated sales/receipts of Php4,017,033,220.58. Thus, the excess/unutilized input VAT attributable to Petitioner's valid zero-rated sales/receipts of Php2,789,452,738.73 only amounts to Php50,489,628.20, as computed below:

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²⁰ EB Docket, Division Resolution dated January 15, 2021, p. 139. 

Although the total input VAT claim of Php 82,974,529.01 was carried over by Petitioner in its succeeding VAT returns, it was eventually deducted as “VAT Refund/TCC” in the Monthly Value-Added Tax Declaration for the month of February 2016. Thus, the subject claim no longer formed part of the excess input VAT of Php 106,182,257.97 as of the end of February 2016. Hence, Petitioner is, in effect, deemed to have fulfilled the *ninth* requisite for the refund/tax credit of input VAT.²¹

Findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties.²² The Supreme Court further explained:

Findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not simply be ignored. Absent any clear showing of abuse, arbitrariness, or capriciousness committed on the part of the lower court, its findings of facts are binding and conclusive upon the Court. The reason for this is because the trial court was in a much better position to determine which party was able to present evidence with greater weight.²³

The CIR also argues that Macquarie failed to complete its supporting documents, i.e. it failed to submit a board resolution assigning Ms. Ailyn Perocho as the authorized representative to sign the sworn certification, and failure to individually stamp “certified true copy/ies” on the submitted sales invoices and official receipts.


We find this argument bereft of merit.

As pointed out by Macquarie, nothing in Revenue Memorandum Circular (RMC) No. 54-2014²⁴ requires the submission of a Board Resolution and the stamping of the words “certified true copy” on sales invoices and official receipts.

²¹ EB Docket, Division Decision dated June 30, 2022, pp. 131-132.

²² *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (Formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2015.

²³ *Heirs of Teresita Villanueva, et al., v. Heirs of Petronila Syquia Mendoza, et al.*, G.R. No. 209132, June 5, 2017.

²⁴ Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, as amended. 

RMC No. 54-2014 states:

The application for VAT refund/tax credit must be accompanied by complete supporting documents as enumerated in Annex "A" hereof. In addition, the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents (Annex "B"). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (i.e., at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.

A perusal of the "Sworn Certification"²⁵ attached to Macquarie's application for refund shows that it contains the statements required by RMC No. 54-2014, *to wit*:


I, AILYN PEROCHO, in my capacity as ASSOCIATE DIRECTOR AND HEAD OF FINANCE of MACQUARIE OFFSHORE SERVICES PTY., LTD. – PHILIPPINE BRANCH (the "ROHQ"), with business address at 29/F Tower I, The Enterprise Center, Ayala Avenue, Makati City, do hereby certify that the documents attached to the Company's administrative application for VAT refund are complete for purposes of processing the ROHQ's claim for Value Added Tax (VAT) refund/credit for the first to fourth quarters of fiscal year 2015 ended March 31, 2015.

I certify that I am duly authorized by the Board of Directors of MACQUARIE OFFSHORE SERVICES PTY., LTD., the parent company of the ROHQ, to sign this Certification on behalf of the ROHQ.


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Based on the foregoing, the Court finds no compelling reason to modify or reverse the findings of the CTA 3rd Division.

WHEREFORE, the Petition for Review is **DENIED** for lack of merit. The Decision and Resolution of the CTA 3rd Division, dated June 30, 2020 and January 15, 2021, respectively, are **AFFIRMED**.

²⁵ Division Docket, Exhibit "P-13", p. 1365. 


SO ORDERED.


CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice



ERLINDA P. UY
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice

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

on