Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**G.R. No. 234445**
	Present:
- *versus* -	PERLAS-BERNABE, *S.A.J.*, *Chairperson*, HERNANDO, INTING, DELOS SANTOS, and GAERLAN,* *JJ.*
DEUTSCHE KNOWLEDGE SERVICES PTE. LTD., *Respondent.*	Promulgated: 15 JUL 2020

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DECISION

INTING, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by the Commissioner of Internal Revenue (CIR) the Decision[2] dated March 30, 2017 and the Resolution[3] dated September 18, 2017 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Nos. 1244 and 1345. In the assailed issuances, the CTA *En Banc* affirmed the Decision[4] dated July 7, 2014 of the CTA Second Division (CTA Division) in CTA Case No. 8443 which partially granted Deutsche Knowledge Services Pte. Ltd. (DKS)'s application for refund or issuance of tax credit certificate (TCC).

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* Designated as additional member per Special Order No. 2780 dated May 11, 2020.

[1] *Rollo*, pp. 10-25.

[2] *Id.* at 34-71; penned by Associate Justice Erlinda P. Uy with Presiding Justice Roman G. Del Rosario, concurring and dissenting; and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban, and Catherine T. Manahan, concurring.

[3] *Id.* at 76-79.

[4] *Id.* at 127-149; penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justices Caesar A. Casanova, concurring; and Amelia R. Cotangco-Manalastas, on leave.

The Antecedents

DKS is the Philippine branch of a multinational company organized and existing under and by virtue of the laws of Singapore.[5] The branch is licensed to operate as a regional operating headquarters (ROHQ)[6] in the Philippines that provides the following services to DKS's foreign affiliates/related parties, its clients (foreign affiliates-clients): "general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; training and personnel management; logistic services; product development; technical support and maintenance; data processing and communication; and business development" (qualifying services).[7]

By virtue of several Intra-Group Services Agreements (service agreements), DKS rendered qualifying services to its foreign affiliates-clients,[8] from which it generated service revenues.

DKS is a value-added tax (VAT)-registered enterprise.[9] On October 21, 2011, DKS filed with the Bureau of Internal Revenue (BIR) Large Taxpayers Regular Audit Division an Application for Tax Refund/Credit (BIR Form No. 1914) and a letter claim for refund, supported by the relevant documents (hereinafter collectively referred to as "administrative claim"). DKS declared that its sales of services to 34[10]

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5 *Id.* at 127.

6 Book III, Section 2(3) of Executive Order No. (EO) 226, otherwise known as the Omnibus Investments Code of 1987, as amended by Republic Act No. (RA) 8756, defines a Regional Operating Headquarters (ROHQ) as "a foreign business entity which is allowed to derive income in the Philippines by performing qualifying services to its affiliates, subsidiaries or branches in the Philippines, in the Asia-Pacific Region and in other foreign markets." Book III, Chapter II, Article 58 requires all ROHQs to secure a license from the "Securities and Exchange Commission (SEC), upon the favorable recommendation of the Board of Investments [BOI]."

7 *Id.* at 127-128. Book III, Chapter II, Article 59(b)(1) enumerates the "qualifying services" ROHQs are allowed to render. The law explicitly provides that "ROHQs are prohibited from offering qualifying services to entities other than their affiliates, branches or subsidiaries, as declared in their registration with the Securities and Exchange Commission nor shall they be allowed to directly and indirectly solicit or market goods and services whether on behalf of their mother company, branches, affiliates, subsidiaries or any other company."

8 *Id.* at 128

9 *Id.* at 127.

10 *Id.* at 141-142. According to the Court of Tax Appeals Second Division (CTA Division), DKS alleged to have rendered services to the following foreign affiliates-clients: (1) Deutsche Bank Aktiengesellschaft, Inlandsbank, (2) Deutsche Bank Aktiengesellschaft, Filiale Amsterdam, (3) Deutsche Bank, Sociedad Española, (4) Deutsche Bank Aktiengesellschaft, Filiale Zurich, (5) Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office, (6) Deutsche Bank Aktiengesellschaft, Filiale Singapur, (7) Deutsche Bank Aktiengesellschaft, Filiale Karachi, (8) Deutsche Bank Aktiengesellschaft, Filiale Ho-Chi-Minh-Stadt, (9) Deutsche Bank Aktiengesellschaft, Filiale Seoul, (10) Deutsche Bank Aktiengesellschaft, Filiale New York, (11) Deutsche Bank Aktiengesellschaft, Filiale London, (12) Deutsche Bank Aktiengesellschaft, Filiale

foreign affiliates-clients are zero-rated sales for VAT purposes. Thus, it sought to refund an amount of ₱33,868,101.19, representing unutilized input VAT attributable to zero-rated sales incurred during the first quarter of 2010.[11]

Alleging that the CIR had not acted upon their administrative claim, DKS filed a petition for review before the CTA on March 19, 2012 (judicial claim).

In its Answer, the CIR, represented by the Office of the Solicitor General, refuted DKS's entitlement to a tax refund or credit as follows: *First*, DKS failed to submit the documents necessary to support its claim. *Second*, its claim is subject to administrative routine investigation and examination by the BIR. *Third*, it also failed to prove that it rendered services to persons engaged in business conducted outside the Philippines, the payments of which were made in Euro and other acceptable foreign currency in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). *Finally*, the filing of its judicial claim was premature.[12]

During the proceedings, DKS presented the following evidence to prove that its foreign affiliates-clients are non-resident foreign corporations doing business outside the Philippines (NRFCs): (1) SEC Certifications of Non-Registration of Company; (2) Authenticated Articles of Association and/or Certificates of Registration/Good Standing/Incorporation; (3) Service Agreements;[13] and foreign business registration printouts retrieved from the AMInet database.

Tokyo, (13) Deutsche Bank Aktiengesellschaft, Filiale Paris, (14) Deutsche Bank Aktiengesellschaft, Filiale Prag, (15) Deutsche Bank Luxembourg S.A., (16) Deutsche Securities, Inc., (17) Deutsche Bank (China) Co. Ltd., Beijing Branch, (18) Deutsche Bank (China) Co. Ltd., Guangzhou Branch, (19) Deutsche Bank (China) Co. Ltd., Shanghai Branch, (20) DWS Holding & Service GmbH, (21) RREEF Management GmbH, (22) DB Hedgeworks, LLC, (23) Deutsche Bank Real Estate (Japan) Y.K., (24) Deutsche Bank Securities, Inc., (25) Deutsche Asia Pacific Holdings Pte Ltd, (26) PT. Deutsche Securities Indonesia, (27) Deutsche Group Services Pty Limited, (28) Deutsche Bank PBC Spolka Akcyjna, (29) Deutsche Bank Trust Company Americas, (30) DB Services New Jersey, Inc. (31) Deutsche Bank National Trust Company, (32) DB Finance, Inc., (33) DB International (Asia) Limited, and (34) DBOI Global Services Private Limited.

[11] *Id.* at 128.

[12] *Id.* at 128-132.

[13] *Id.* at 142.

The CTA Division Ruling

In the Decision[14] dated July 7, 2014, the CTA Division partially granted DKS's claim. At the onset, the CTA Division resolved that both DKS's administrative and judicial claims were timely filed.[15] On the substantive aspect, it reduced DKS's claim to ₱14,882,227.02 computed as follows:

Input VAT claimed for refund		₱ 33,868,101.19
Less: Disallowances		
Unamortized Input VAT on Capital Goods exceeding P1 million	₱719,723.72	
Input VAT on Capital Goods exceeding ₱1 million without supporting documents	514,698.21	
Input VAT on purchases of services and goods other than capital goods	11,556,290.62	12,790,712.55
Valid Input VAT		₱21,077,388.64
Less: Output VAT		713,041.78
Valid Excess Input VAT		₱20,364,346.86
Multiply by: Portion pertaining to duly-established zero-rated sales[16]		73.0798%
Excess Input VAT attributable to the Valid Zero-Rated Sales/Receipts		₱ 14,882,227.02[17]

The CTA Division found as follows:

First, DKS initially claimed for refund total input VAT from current transactions amounting to ₱33,868,101.19,[18] purportedly from the purchases of capital goods, domestic purchases of services and goods other than capital goods, and services rendered by non-residents. However, it did not properly support its input VAT claims in accordance with prevailing VAT invoicing and substantiation requirements. This resulted in the disallowance of input VAT amounting to

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[14] *Id.* at 127-149

[15] *Id.* at 135-137.

[16] ₱627,255,650.48 is 73.0798% of total reported zero-rated sales amounting to ₱858,315,870.09. The percentage has been rounded off to four decimal places.

[17] *Rollo*, pp. 147-148.

[18] *Id.* at 145.

₱12,790,712.55,[19] reducing the amount of valid excess input VAT subject to refund to ₱20,364,346.86.[20]

Second, DKS reported zero-rated sales amounting to ₱858,315,870.09 in its VAT return.[21] However, "[t]o be considered as [an NRFC], each entity must be supported, at the very least, by both SEC certificate of non-registration of corporation/partnership and certificate/articles of foreign incorporation/association."[22] Based on the evidence presented, out of 34 entities it claimed to be foreign, DKS established the NRFC status of only 15 foreign affiliates-clients. Thus, only sales to these 15 entities (₱627,255,650.48), which comprised 73.0798%[23] of the total zero-rated sales declared (₱858,315,870.09), was proven to be derived from foreign affiliates-clients. Concomitantly, only input VAT to the extent of ₱14,882,227.02[24] may be granted as a refund or credit or 73.0798% of the above-mentioned validated excess input VAT amounting to ₱20,364,346.86.

From this Decision, the CIR filed a Motion for Reconsideration (MR). On the other hand, DKS filed an Omnibus Motion for Partial Reconsideration and to Re-open Trial to Present Supplemental Evidence (omnibus motion). The CTA Division denied[25] the CIR's MR, but allowed DKS to present additional evidence, despite the CIR's opposition.[26] Ultimately, the CTA Division still denied DKS's motion for partial reconsideration.

Aggrieved, the CIR and DKS filed petitions for review on *certiorari* before the CTA *En Banc* docketed as CTA EB Nos. 1244 and 1345, respectively.

The CTA En Banc Ruling

In its assailed Decision, the court *a quo* partially granted the CIR's petition but denied for lack of merit that of DKS. It mainly echoed the

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[19] *Id.* at 147.

[20] "Valid excess input VAT" is the difference between Valid input VAT amounting to ₱21,077,388.64 and Output VAT amounting to ₱713,041.78. *Id.* at 147-148.

[21] *Id.* at 145.

[22] *Id.* at 143.

[23] See *supra* note 16.

[24] *Rollo*, p. 148.

[25] See the Resolution dated October 13, 2014 of the CTA Division, *id.* at 92-101.

[26] The CTA Division denied the Commissioner of Internal Revenue (CIR)'s Motion for Partial Reconsideration in its Resolution dated October 13, 2014, *id.* at 38.

CTA Division's rulings on evidentiary matters, *viz.*:

> We agree with the Court in Division that 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 a certificate of non-registration of corporation/partnership issued by the [SEC] and certificate/articles of foreign incorporation/association. Parenthetically, it must be emphasized that notwithstanding the presentation of the said documents, there must not be any indication that the recipient of the services is doing business in the Philippines, consistent with the above-quoted ruling in the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*
>
> The said basic documents are necessary because the Philippine SEC's negative certification establishes that the recipient of the service has no registered business in the Philippines; while the said certificate/articles of incorporation/association will prove that the recipient is indeed foreign.[27]

However, after further evaluation, the CTA *En Banc* found that DKS established the NRFC status of only 11 foreign affiliates-clients, as opposed to the CTA Division's findings of 15 entities. The court *a quo* excluded four[28] entities because these entities' NRFC status could not have been established by mere printouts from DKS's own database, *viz.*:

> x x x [The] foreign business registration print-outs retrieved from the AMInet database (Exhibits "P-1" to "P-33"), which is a database set up by Deutsche Bank Global (the head office of Deutsche Knowledge in Germany) x x x are self-serving and can be easily manipulated to favor Deutsche Knowledge in view of its affinity with the entity that maintains or keeps the said database.[29]

Resultantly, this reduced DKS's claim to ₱14,527,282.57 because only 71.3368%[30] (not 73.0798% as found by the CTA Division) of its reported sales were valid zero-rated sales, *viz.*:

> Valid Excess Input VAT, as found by the CTA Division ₱ 20,364,346.86

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[27] *Id.* at 54-55. Emphasis omitted; italics in the original.

[28] *Id.* at 60. Deutsche Bank (China) Co. Ltd., Beijing Branch; Deutsche Bank (China) Co. Ltd., Shanghai Branch; Deutsche Bank Aktiengesellschaft, Filiale Ho-Chi-Minh-Stadt; and DB International (Asia) Limited.

[29] *Id.* at 56-57.

[30] ₱612,295,462.42 is 71.3568% of total reported zero-rated sales amounting to ₱858,315,870.09. The percentage has been rounded off to four decimal places.

Multiply by: Portion pertaining to duly-established zero-rated sales[31]	71.3368%
Excess Input VAT attributable to the Valid Zero-Rated Sales/Receipts	₱ 14,527,282.57[32]

Both parties moved for reconsideration, but the CTA EB denied them. Hence, the CIR filed the present petition.

Issue

The sole issue for the Court's resolution is whether DKS is entitled to a tax refund/credit amounting to ₱14,527,282.57.

The Court's Ruling

The petition is unmeritorious.

The CIR insists that DKS is not entitled to a tax refund/credit because: *First*, its judicial claim was filed prematurely.[33] And *second*, it failed to prove that its clients are foreign corporations doing business outside the Philippines. Being a procedural matter, the Court shall first resolve the former then proceed to the substantive matters.

Timeliness of DKS's Judicial Claim

Section 112(C) of the National Internal Revenue Code of 1997 (Tax Code) gives the CIR 120 days from the date of submission of complete documents (date of completion) supporting the application for credit or refund excess input VAT attributable to zero-rated sales to resolve the administrative claim. If it remains unresolved after this period, the law allows the taxpayer to appeal the unacted claim to the CTA within 30 days from the expiration of the 120-day period (120 and 30-day periods).[34]

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[31] *Id.*

[32] From the CTA Division's computation, the CTA *En Banc* only modified the "Portion pertaining to duly-established zero-rated sales" from 73.0798% to 71.3368%. This resulted in the decrease of "Excess Input VAT attributable to the Valid Zero-Rated Sales/Receipts" from ₱14,882,227.02 to ₱14,527,282.57.

[33] *Rollo*, p. 18.

[34] Section 112(C) of the National Internal Revenue Code of 1997 (Tax Code) provides, "x x x [i]n 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

Stated differently, the date of completion commences the CIR's 120-day period to resolve the claim. In turn, the expiration of the 120-day period triggers the running of the 30-day period to appeal an unacted claim.

The CIR argues that Revenue Memorandum Order No. (RMO) 53-98 provides a list of documents that the taxpayer must submit to substantiate his claim for tax refund or credit. It points out that, when DKS filed its administrative claim, it failed to submit the complete documents. Thus, the 120 and 30-day periods did not begin to run.

This contention directly contravenes law, applicable tax regulations, and jurisprudence.

First, the Court pronounced in *Commissioner of Internal Revenue v. Team Sual Corp.*,[35] that inasmuch as RMO 53-98 enumerates the documentary requirements during an audit investigation, its provisions do not apply to applications for tax refund or credit.[36]

Second, in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*,[37] the Court emphasized that the law accords the claimant sufficient latitude to determine the completeness of his submission for the purpose of ascertaining the date of completion from which the 120-day period shall be reckoned.[38] He "enjoys relative freedom to submit such evidence to prove his claim" because, in the first place, he bears the burden of proving his entitlement to a tax refund or credit.[39]

This benefit, a component of the claimant's fundamental right to due process,[40] allows him: (a) to declare that he had already submitted complete supporting documents upon filing his claim and that he no longer intends to make additional submissions thereafter; or (b) to further substantiate his application within 30 days after filing, as allowed by Revenue Memorandum Circular No. (RMC) 49-03.[41]

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." Also see *Procter and Gamble Asia Pte Ltd. v. Commissioner of Internal Revenue*, 785 Phil. 817 (2016).

35 739 Phil. 215 (2014).

36 *Id.* at 227.

37 774 Phil. 473 (2015).

38 *Id.* at 493.

39 *Id.* at 493-494.

40 *Id.* at 494.

41 Pursuant to Revenue Memorandum Circular No. (RMC) 49-03 [Subject: *Amending Answer to*

To counterbalance the claimant's liberty to do so, he may be required by the tax authorities in the course of their evaluation, to submit additional documents for the proper evaluation thereof. In which case, the CIR shall duly notify the claimant of his request from which the claimant has 30 days to comply.

Notably, both parties are given the occasion to determine the completeness of documents supporting a claim for tax refund or credit. However, the Court must differentiate between these two functions.

On the one hand, the claimant has the prerogative to determine whether he had completed his submissions upon filing or within 30 days thereafter. This procedural determination of completeness is aimed at ascertaining the date of completion from which the 120-day period shall commence.

In contrast, whether the claimant's submissions "are actually complete as required by law – is for the CIR and the courts to determine."[42] The CIR and courts' subsequent evaluation of the documents is a substantive determination of completeness, for the purpose of ascertaining the claimant's entitlement to the tax refund or credit sought.

Clearly, the CIR has no authority to unilaterally determine the completeness of these documents and dictate the running of the 120-day period to resolve the claim, as he attempts to do so in the present case. To sanction this would be giving the tax authorities "unbridled power to indefinitely delay the administrative claim" and in turn "prevent the filing of a judicial claim with the CTA."[43]

Third, as discussed above, RMC 49-03 explicitly empowers the tax authorities to request for additional documents that will aid them in verifying the claim. If its supporting documents were incomplete, the BIR was duty-bound to notify DKS of its deficiencies and require them to make further submissions, as necessary.[44]

Question Number 17 of RMC No. 42-03, August 15, 2003], "[f]or pending claims which have not been acted upon by the investigating/processing office due to incomplete documentation, the taxpayer-claimants are given thirty (30) days within which to submit the documentary requirements unless given further extension by the head of the processing unit, but such extension should not exceed thirty (30) days."

42 *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, *supra* note 37 at 494.

43 *Id.* at 488.

44 See *Commissioner of Internal Revenue v. Team Sual Corp.*, *supra* note 35 at 229.

The tax authorities had the full opportunity to opine on the issue of documentary completeness while DKS's claim was pending before them. However, there was no action on the claim on the administrative level. The first instance the BIR served a formal response to the claimant, alleging documentary deficiencies, was already in the CIR's Answer filed before the CTA on May 11, 2012. In other words, it took the BIR 203 days[45] to show concern on the matter, only to ask the court to deny the claim based on a mere procedural issue that they themselves could have addressed on the administrative level.

Its belated response to the present claim only brings to light that the BIR had been remiss in their duties to duly notify the claimant to submit additional documentary requirements and to timely resolve their claim. The CIR cannot now fault DKS for proceeding to court for the appropriate remedial action on the claim they ignored.

Parenthetically, the Court reiterates that the above analysis involving the determination of the completeness of documents supporting a claim for tax refund or credit applies only to claims filed prior to June 11, 2014.[46] At present, RMC 54-14[47] requires the taxpayer to attach the following to his claim upon filing thereof: (a) complete supporting documents, as enumerated in the issuance, and (b) a statement under oath attesting that the documents submitted are in fact complete. The guidelines now ensure that the date of completion coincides with the date of filing of the claim.

This new issuance cannot be made to apply to the present case, which involves a claim filed in 2011, due to the rule on non-retroactivity of rulings.[48]

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45 DKS filed their administrative claim on October 21, 2011, *rollo*, p. 36.

46 *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, *supra* note 37 at 496.

47 Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit, Revenue Memorandum Circular No. 054-14, [June 11, 2014].

48 *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, *supra* note 37 at 496-497, citing Section 246 of the Tax Code.

Requisites for the Entitlement to Tax Refund or Credit of Excess input VAT Attributable to Zero-rated Sales

Under Section 4.112-1(a) of Revenue Regulations No. (RR) 16-05, otherwise known as the Consolidated VAT Regulations of 2005, in relation to Section 112[49] of the Tax Code, a claimant's entitlement to a tax refund or credit of excess input VAT attributable to zero-rated sales hinges upon the following requisites: "(1) the taxpayer must be VAT-registered; (2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax."[50]

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

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[49] SECTION 112. *Refunds or Tax Credits of Input Tax.* —

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

x x x x

(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 Subsections (A) hereof. [73]

x x x x

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.

x x x x

[50] *Silicon Phils., Inc. v. Commissioner of Internal Revenue*, 654 Phil. 492, 504 (2011).

Conditions for Zero-rating of Sales of Services

Zero-rated sales are, for all intents and purposes, subject to VAT, only that the rate imposed upon them is 0%. Thus, while these sales will not mathematically yield output VAT, the input VAT arising therefrom[51] is nonetheless creditable or refundable, as the case may be.[52]

Sales of "other services,"[53] such as those qualifying services[54] rendered by DKS to its foreign affiliates-clients, shall be zero-rated pursuant to Section 108(B)(2)[55] of the Tax Code if the following conditions are met: *First*, the seller is VAT-registered. *Second*, the services are rendered "to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed." *Third*, the services are "paid for in acceptable foreign currency and accounted for in accordance with [BSP] rules and regulations."[56]

With regard to these conditions, it is no longer disputed that DKS is VAT-registered and that it received payments for its qualifying services in acceptable foreign currency and accounted for as required by applicable BSP rules. What remains in contention is whether or not DKS's foreign affiliates-clients are NRFCs doing business outside the Philippines.

Proof of NRFC Status

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51 Section 110(A)(3), Tax Code.

52 Section 110(B), Tax Code cf. Sections 4-108-5(a), 4.110-6, 4.110-7(b), RR 16-05.

53 Services other than those mentioned in Section 108(B)(1) of the Tax Code, *viz.*: "*Processing, manufacturing or repacking goods* for other persons doing business outside the Philippines which goods are subsequently exported x x x" (Italics supplied.)

54 See *supra* note 7.

55 SECTION. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* — x x x x

(B) Transactions Subject to Zero Percent (0%) Rate. — The following services performed in the Philippines by VAT- registered persons shall be subject to zero percent (0%) rate x x x (2) Services other than those mentioned in the preceding paragraph, rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

x x x x

56 Also see *Commissioner of Internal Revenue v. American Express International, Inc.*, 500 Phil. 586, 606 (2005); *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, 541 Phil. 119, 131 (2007).

For purposes of zero-rating under Section 108(B)(2) of the Tax Code, the claimant must establish the two components of a client's NRFC status, *viz.*: (1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of *both* of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines.[57]

Such proof must be especially required from ROHQs such as DKS. That the law[58] expressly authorizes ROHQs to render services to local and foreign affiliates alike only stresses the ROHQ's burden to distinguish among their clients' nationalities and actual places of business operations and establish that they are seeking refund or credit of input VAT only to the extent of their sales of services to foreign clients doing business outside the Philippines.

To recall, the CTA found that the SEC Certification of Non-Registration of Company and Authenticated Articles of Association and/or Certificates of Registration/Good Standing/Incorporation sufficiently established the NRFC status of 11 of DKS's affiliates clients.[59]

The Court upholds these findings.

The Court accords the CTA's factual findings with utmost respect, if not finality, because the Court recognizes that it has necessarily developed an expertise on tax matters.[60] Significantly, both the CTA Division and CTA *En Banc* gave credence to the aforementioned documents as sufficient proof of NRFC status. The Court shall not disturb its findings without any showing of grave abuse of discretion considering that the members of the tax court are in the best position to analyze the documents presented by the parties.[61]

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[57] See *Accenture, Inc. v. Commissioner of Internal Revenue*, 690 Phil. 679, 690-691 (2012); *Sitel Philippines Corp. v. Commissioner of Internal Revenue*, 805 Phil. 464, 482-483 (2017).

[58] See *supra* note 6.

[59] *Rollo*, p. 58.

[60] *Winebrenner & Iñigo Insurance Brokers, Inc., v. Commissioner or Internal Revenue*, 752 Phil. 375, 397 (2015). Citations omitted.

[61] *Rep. of the Phils. v. Team (Phils.) Energy Corp.*, 750 Phil. 700, 717 (2015), citing *Sea-Land Service, Inc. v. Court of Appeals*, 409 Phil. 508, 514 (2001). Also see *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, 826 Phil. 329, 346-347 (2018).

In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court *a quo*'s findings. To the Court's mind, the SEC Certifications of Non-Registration show that their affiliates are foreign corporations.[62] On the other hand, the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines.

Proof of the above-mentioned second component sets the present case apart from *Accenture, Inc. v. Commissioner of Internal Revenue*[63] and *Sitel Philippines Corp. v. Commissioner of Internal Revenue*.[64] In these cases, the claimants similarly presented SEC Certifications and client service agreements. However, the Court consistently ruled that documents of this nature only establish the *first* component (*i.e.*, that the affiliate is foreign). The absence of any other competent evidence (*e.g.*, articles of association/certificates of incorporation) proving the *second* component (*i.e.*, that the affiliate is not doing business here in the Philippines) shall be fatal to a claim for credit or refund of excess input VAT attributable to zero-rated sales.

WHEREFORE, the petition is **DENIED**. The Decision dated March 30, 2017 and the Resolution dated September 18, 2017 of the Court of Tax Appeals *En Banc* in CTA EB Nos. 1244 and 1345 are **AFFIRMED**.

SO ORDERED.

HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

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[62] See *Accenture, Inc. v. Commissioner of Internal Revenue, supra* note 57 at 697.
[63] 690 Phil. 679 (2012).
[64] 805 Phil. 464 (2017).

RAMON PAUL L. HERNANDO
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Chief Justice