Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

****

MAERSK GLOBAL SERVICES CENTRES (PHILIPPINES) LTD.,
Petitioner,

CTA CASE No. 8549

Members:

CASTAÑEDA, JR., *Chairperson*,
CASANOVA, and
COTANGCO-MANALASTAS, JJ.

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

NOV 14 2014

x---x
11:15 a.m.

DECISION

CASTAÑEDA, JR., J.:

This Petition for Review filed by Maersk Global Service Centres (Philippines), Ltd. seeks the refund or the issuance of tax credit certificate in the amount of ₱7,862,002.84, allegedly representing its input tax on zero-rated sales for June 2009 and the third (3rd) and fourth (4th) quarters of 2009.

The Facts

Petitioner Maersk Global Service Centres (Philippines), Ltd. is a foreign corporation, duly organized and existing under the laws of Hong Kong and licensed to do business in the Philippines as a regional operating headquarters (ROHQ), with principal office at the 29th Floor, Wynsum Corporate Plaza, F. Ortigas Jr. Road, Ortigas Center, Pasig City.[1] It is registered with the Bureau of Internal Revenue

[1] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 296.

(BIR) as a value-added tax (VAT) taxpayer with BIR Certificate of Registration No. OCN3RC0000466671.[2]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue empowered to perform the duties of said office, including among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner entered into a Service Agreement[3] on October 15, 2007 with A.P. Moller-Maersk A/S, a non-resident foreign corporation, wherein the former shall provide the latter corporate and administrative services. AP Moller–Maersk A/S is the sole client of petitioner.[4]

Petitioner filed with the Bureau of Internal Revenue its Quarterly VAT Returns[5] for taxable year 2009 on the following dates:

PERIOD	DATE OF FILING
1st Quarter	April 23, 2009
2nd Quarter	July 18, 2009
3rd Quarter	October 22, 2009
4th Quarter	January 21, 2010

On September 1, 2010, petitioner filed with respondent through the Department of Finance One-Stop Shop Inter-agency Tax Credit and Duty Drawback Center (DOF-OSS) its applications for VAT refund of the unutilized and excess creditable input taxes attributable to its zero-rated sales for the four quarters of 2009 in the total amount of ₱13,120,701.70.[6]

On February 9, 2011, petitioner received a Letter of Authority[7] dated February 1, 2011.

The DOF-OSS issued a First Notice to petitioner on February 28, 2011, requesting from petitioner additional documents, copy of which was received by petitioner on March 7, 2011.[8] On March 18, 2011, petitioner complied with the First Notice and submitted the required additional documents.[9]

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[2] Exhibit" F".
[3] Exhibit "A".
[4] Par. 1, Stipulation of Facts, JSFI, docket, p. 296.
[5] Exhibits "G", "H", "I", and "J".
[6] Exhibits "M, "N", "O", and "P".
[7] Exhibit "W".
[8] Par. 3, Stipulation of Facts, JSFI, docket, p. 297.
[9] Par. 4, Stipulation of Facts, JSFI, docket, p. 297.

On August 30, 2012, petitioner received a letter[10] dated March 22, 2012, denying its administrative claim for refund on three grounds:

1. The Authority To Print the official receipts (OR) was approved only on May 28, 2009;

2. Petitioner set up a Bad Debts Provision with an amount equivalent to the input tax generated from the VATable purchases or amount of claim for a particular month/period; and

3. The Bad Debts Provision is included among the net costs, specifically, under Other Administration Cost/Other Administration Expenses that petitioner is charging to or reimbursing from the parent company, A.P. Moller–Maersk A/S.

As a result, petitioner filed the instant Petition for Review[11] on September 28, 2012.

Within the extended time granted by the Court,[12] respondent filed her Answer[13] on November 19, 2012, interposing the following Special and Affirmative Defenses:

4. She reiterates and re-pleads the foregoing paragraphs of this Answer as part of her Special and Affirmative Defenses;

5. Petitioner's claim for issuance of tax credit certificate is subject to administrative investigation/examination by Respondent's Bureau;

6. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;

7. The Denial of the Claims for Refunds of the Petitioner is presumed to have been denied in accordance with law and regulations pertinent to the issue at hand; *gr*

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[10] Exhibit "AA".
[11] Docket, pp. 6-18.
[12] Order, docket, p. 50.
[13] Docket, pp. 51-53.

8. It is incumbent upon the taxpayer to prove its compliance with the pertinent provisions of the NIRC, particularly Sections 112, 113, and 114 to validly claim for tax a credit/refund. (sic)

9. Taxpayer must establish by sufficient and competent evidence that it is entitled to a tax refund/credit;

10. Claims for refund are strictly construed against the taxpayer as the same partakes the nature of a tax exemption;

11. The Petitioner should prove its legal basis for claiming the amount to be refunded.

A Notice of Pre-Trial Conference[14] was issued by the Court on November 20, 2012, informing the parties that a pre-trial conference is set on January 17, 2013.

Petitioner filed its Pre-Trial Brief[15] on January 14, 2013; while respondent filed hers on February 13, 2013[16]. Thereafter, the parties filed their Joint Stipulation of Facts and Issues[17] on February 25, 2013, and this was approved by the Court in the Resolution[18] dated March 1, 2013.

Upon motion of petitioner, Mary Ann C. Capuchino was commissioned as the Independent Certified Public Accountant (ICPA) on March 4, 2013.[19]

During trial, both parties presented and formally offered their respective pieces of testimonial and documentary evidence. After the presentation of petitioner's rebuttal evidence, both parties were required to submit their memoranda.[20]

The case was submitted for decision on January 30, 2014, considering petitioner's Memorandum[21] filed on January 20, 2014 and respondent's Memorandum[22] filed on January 23, 2014.

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[14] Docket, p. 54.
[15] Docket, pp. 166-173.
[16] Docket, pp. 190-193.
[17] Docket, pp. 296-301.
[18] Docket, p. 336.
[19] Docket, p. 340.
[20] Docket, pp. 767-769 and 770.
[21] Docket, pp. 781-809.
[22] Docket, pp. 810-818.

The Issues

The parties submitted the following issues[23] for this Court's disposition:

1. Whether or not the denial of the claim for tax credits on excess input tax of the Petitioner was denied in accordance with existing laws and regulations.

2. Whether or not the setting up of the provision for bad debts or allowance for impairment losses for unrecoverable input taxes for financial accounting purposes negates Petitioner's right to refund the unutilized and excess input VAT attributable to zero-rated sales under Section 112 of the National Internal Revenue Code of 1997.

3. Whether or not the passing of the input tax as a component of export service fees negates Petitioner's right to refund the unutilized and excess input VAT attributable to zero-rated sales under Section 112 of the National Internal Revenue Code of 1997.

4. Whether or not Petitioner is entitled to a refund in the total amount of PhP7,862,002.84 representing unutilized and excess input VAT attributable to zero-rated sales for June 2009 and the 3rd and 4th quarters of 2009.

The Court's Ruling

Petitioner anchors its claim on Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides:

> 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

[23] Stipulation of Issues, JSFI, docket, p. 297.

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 sales 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 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 nonzero-rated sales.

From the foregoing, in order to be entitled to a refund or tax credit of input tax due or paid attributable to zero-rated or effectively zero-rated sales, the following requisites must be satisfied:

1. the taxpayer is VAT-registered;
2. the taxpayer is engaged in zero-rated or effectively zero-rated sales;
3. the input taxes are due or paid;
4. the input taxes are not transitional input taxes;
5. the input taxes have not been applied against output taxes during and in the succeeding quarters;
6. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
7. 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 the rules and regulations of the *Bangko Sentral ng Pilipinas;*
8. 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; and
9. the claim is filed within two years after the close of the taxable quarter when such sales were made.[24]

The Court deems it appropriate to determine first the timeliness of petitioner's claim for refund since it will determine the necessity of addressing petitioner's compliance with the other requisites.

As explicitly stated under Section 112(A) of the NIRC of 1997, the application for tax credit certificate or refund of unutilized and excess input VAT must be filed within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. *gr*

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[24] *Luzon Hydro Corporation v. Commissioner of Internal Revenue,* G.R. No. 188260, November 13, 2013.

Counting from the close of the subject taxable quarters, petitioner had until the following dates to file its administrative claim:

MONTH/QUARTER	END OF QUARTER	END OF TWO YEARS
June 2009	June 30, 2009	June 30, 2011
3rd Qtr – 2009	September 30, 2009	September 30, 2011
4th Qtr – 2009	December 31, 2009	December 31, 2011

Petitioner filed its administrative claim[25] for the four quarters of taxable year 2009 amounting to ₱13,120,701.70 with the DOF-OSS on September 1, 2010, which is well within the two-year prescriptive period.

As to the timeliness of petitioner's judicial appeal, Section 112(C) of the NIRC of 1997, as amended, states that:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* -
>
> xxx xxx xxx
>
> (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.

The foregoing provision provides that petitioner has 30 days from the receipt of the BIR Commissioner's decision denying the claim to appeal before this Court. On August 30, 2012, petitioner received a letter from the DOF-OSS to that effect.[26] Reckoned from that date, petitioner had until September 29, 2012 within which to file its judicial claim. The instant Petition for Review was filed on September 28, 2012, hence, within the period prescribed by law. *jc*

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[25] Exhibits "M" to "U", docket, pp. 582-590.
[26] Exhibit "AA", docket, pp. 601-603.

The Court will now determine whether petitioner has complied with the other requisites for it to be entitled to a refund or tax credit.

Petitioner is a VAT-registered taxpayer as evidenced by its Certificate of Registration No. OCN3RC0000466671,[27] thus, satisfying the first requisite.

In denying petitioner's claim for refund, the DOF-OSS cited the following grounds:[28]

1. The Authority to Print the official receipts was approved on May 28, 2009 only;

2. The company set up a Bad Debts Provision with an amount equivalent to the input tax generated from petitioner's VATable purchases or amount of claim for a particular month/period; and

3. The Bad Debts Provision is included among the net costs, specifically, under Other Administration Cost/Other Administration Expenses that petitioner is charging to or reimbursing from its parent company, A.P. Moller–Maersk A/S.

Petitioner concedes the above-stated first ground, thus, reducing its claim from the total amount of ₱13,120,701.70 for the four quarters of 2009 to only ₱7,862,002.84 for the period covering June to December 2009.

Anent the second and third grounds for denying its claim, petitioner explains that setting up a provision for losses for unrecoverable input tax for financial accounting purposes is in adherence to the Philippine Financial Reporting Standards (PFRS), stating that assets should be valued at net realizable value.[29]

On the other hand, respondent, through the DOF-OSS, stated in her letter denying petitioner's claim that:[30]

> **There is really no problem on the (sic) your practice of setting up a Bad Debts Provision (even at 100%) to anticipate possible losses due to disallowances on claim for tax credit**; the problem arises when you include this Bad Debts Provision among the 'costs' being charged to or reimbursed from your parent company. It is

[27] Exhibit "F", docket, p. 549.
[28] Exhibit "AA", docket, pp. 601-603.
[29] Petitioner's Memorandum, docket, p. 790.
[30] Exhibit "AA", docket, p. 602.

as if the asset account, the input tax account, is being treated as 'cost' or expense. *(Emphasis supplied)*

Thus, on the issue of whether or not the setting up of the provision for bad debts or allowance for impairment losses for unrecoverable input taxes for financial accounting purposes negates petitioner's right to refund of unutilized and excess input VAT attributable to zero-rated sales under Section 112 of the NIRC of 1997, as amended, the Court resolves in favor of petitioner.

As correctly pointed out by petitioner, there is no law or ruling that prohibits a taxpayer from claiming a refund of excess input tax if it has a contra-asset account for its recorded input tax claim for financial reporting purposes. With regard to the accounting requirements for VAT-registered persons, Section 113(C) of the NIRC of 1997 states:

> SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons. –*
>
> xxx xxx xxx
>
> (C) *Accounting Requirements.* – Notwithstanding the provisions of Section 233, all persons subject to value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance.

Corollary thereto, Revenue Memorandum Circular (RMC) No. 42-2003 requires that before the input tax can be claimed as tax credit, the same should be recorded under the asset account "Input Tax", thus:

> Q-9: The taxpayer did not maintain separate input tax account in its books of accounts (VAT on purchases is capitalized or charged to cost in full). During the succeeding period, the taxpayer made a journal entry setting up the input tax account and crediting expense/capitalized asset account. Can this input tax credit be claimed for TCC in the year when the said account was adjusted?
>
> A-9: No. When input taxes have been capitalized or charged to expense, the same cannot be claimed as tax credit during any taxable year, notwithstanding any adjustment made during the

ga

> succeeding taxable year. The input tax claim should always be recorded under the asset account 'Input Tax' in the books of the claimant, with full observance of the accounting principle of timeliness, before the same can be claimed as tax credit.

The pieces of evidence submitted to the Court show that petitioner's claimed input taxes for the year 2009 were recorded under "Other Receivables" in its audited financial statements and presented net of allowance for impairment losses. As stated in Note 4 of petitioner's audited financial statements, the allowance is provided at a level considered by management as adequate to provide for the unrecoverable input VAT claim.[31]

However, respondent's examiner found that petitioner's "Prepaid Expenses and Other Current Assets" account includes "Input Value-Added Tax (VAT)" in the amount of ₱282,734.00 only, while petitioner's initial claim for refund amounts to ₱13,120,701.70.[32]

In her judicial affidavit, petitioner's Finance Manager, Ms. Analou Y. Meneses, explained Notes 4 and 5 of petitioner's audited financial statements, to wit:[33]

> Q9. I am showing to you the audited Financial Statements of Petitioner for December 31, 2009 and 2008 which is attached to the Judicial Affidavit of Mr. Larubes and marked as Exhibit 3 of the Respondent (Annex A hereof). xxx
>
> xxx can you identify Exhibit 3?
>
> A9. This is the audited financial statements of Petitioner.
>
> Q10. What does the caption "Others-net of allowance for impairment losses" in the table in Note 4 consist of?
>
> A10. Other receivables consist of receivables from employees, advances to suppliers and input taxes, which are presented net of allowance for impairment losses in the financial statements.

[31] Exhibit "3", Note 4 of the Notes to the Financial Statements, docket, p. 372; BIR Records, p. 41.
[32] Exhibit "17", (7)Q to (9)Q, docket, p. 196; Exhibit "3", Note 5 of the Notes to the Financial Statements, docket, p. 372; BIR Records, p. 41.
[33] Exhibit "DD", docket, pp. 700-703.

Q11. If the presentation of "Others" was not "net of allowance for impairment losses", how would the Receivables–Others appear in Note 4?

A11. If Other Receivables is presented at gross then it will be presented like this:

	2009	2008
Input tax	54,376,501	43,070,354
Others Receivable (Advances to Employees/Suppliers)	6,806,578	2,404,792
Total	61,183,079	45,475,146
Less:	54,376,501	43,070,354
Net	6,806,578	2,404,792

xxx xxx xxx

Q16. What is the nature of the "Input Value Added Tax (VAT)" presented as one of the items consisting the "Prepaid Expenses and Other Current Assets" in Note 5?

A16. This represents the deferred input VAT for purchases of services that has no VAT official receipt (OR) yet but were recorded based on Statement of Account.

xxx xxx xxx

Q21. Under what item in the audited Financial Statements is the amount of input VAT claim reflected? Please explain your answer.

A21. The entire amount of Php13,120,701.70 is reflected in Other Receivables. Of this amount P11,306,147 represents input tax recorded in 2009 and Php1,814,554 represents amortized input vat of capital goods purchased in prior years which is also included in the beginning balance of Other Receivables.

The foregoing explanation is tenable.

Examination of petitioner's financial statements and books of accounts shows that petitioner records its input taxes under an asset account "Input Tax", which is subsequently closed to the "VAT Settlement" account and "Other Receivables" account or to "Prepaid Expenses and Other Current Assets" account for Deferred

Input VAT.[34] It likewise takes up a "Bad Debts Provision" and recognizes an "Allowance for Impairment of Receivables on input VAT claims" for the following reason:[35]

> Q74. Why does Petitioner take up a "bad debts provision" and "allowance for impairment of receivables on input VAT claims"?
>
> A74. We record bad debt provision because of our experience in past claims where resolutions drag for years and were not acted upon. The delay in VAT claims impact our cashflow, so we need to record an expense and bill and collect from our client.

Further, allowances for uncollectible accounts **that have not been written off**, such as petitioner's allowance for unrecoverable input tax, are not deductible for income tax purposes, thus, have no tax consequence pursuant to Section 34(E)(1) of the NIRC of 1997, as amended. In the event that the claim for refund is granted, the entry for the allowance is simply reversed for financial reporting purposes but remains to have no income tax consequence.

In fact, petitioner's Annual Income Tax Return for taxable year 2009 shows a reconciling item "Allowance for Impairment Loss" under "Non-deductible Expenses/Taxable Other Income" in the amount of ₱11,306,147.00, representing the bad debts provision for petitioner's input taxes on its purchases for the current year.[36] The same has been added back to petitioner's financial income because it is not deductible for income tax purposes. However, it is noted that petitioner's total claim amounts to ₱13,120,701.70, and the difference of ₱1,814,554.70 pertains to the amortized input tax on purchased capital goods in prior years "which is also included in the beginning balance of Other Receivables."[37]

This means that petitioner's allowance for impairment of unrecoverable input tax should have no bearing on petitioner's claim for refund of excess and unutilized input taxes.

Anent the issue of whether or not the passing on of the input tax as a component of export service fees negates petitioner's right to refund of unutilized excess input VAT attributable to zero-rated sales under Section 112(A) of the NIRC of 1997, as amended, petitioner asserts that the computation of service fees payable by the customer is solely a contractual agreement which should not preclude the

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[34] Exhibit "DD", docket, pp. 700-704
[35] Exhibit "BB", docket, p. 506
[36] Section E, Item 115, BIR Records, p. 75; Exhibit "3", Note 4 of the Notes to Financial Statements, docket, p. 221.
[37] Exhibit "DD", docket, p. 703.

VAT refund claim, an incentive or entitlement granted by law to exporters such as petitioner.[38]

Examination of the contract between petitioner and its client reveals that the parties agreed to include petitioner's net cost incurred in the service charges billed to its client.[39] Technically, since petitioner records its input taxes under an asset account, it cannot charge the same to its client since under their agreement, only net costs are included in the service charges. However, the provision for bad debts, which is debited when an allowance for impairment loss is set up, forms part of petitioner's costs, specifically its Other Administration Cost/Other Administration Expenses. Mr. Arthur T. Araña, petitioner's Site Finance and Office Management Lead, explained:[40]

> Q73. How does "Bad Debts Provision" differ from "allowance for impairment of receivables on input VAT claims" mentioned under the discussion 2 of the DOF Denial Letter?
>
> A73. The Bad Debt provision referred to by the DOF is an expense account while the impairment of receivables is a contra-asset account.
>
> xxx xxx xxx
>
> Q76. What happens to the "bad debts provision" and "allowance for impairment of receivables on input VAT claims" if the VAT refund claim is granted?
>
> A76. If the refund is granted, we reverse the provision for bad debt. For income tax purposes, there's no impact. Then the temporary difference between the financial income and the taxable income is eliminated.
>
> Q77. Do you agree with the DOF's finding that the "bad debts provision" is charged to or reimbursed by A.P. Moller–Maersk A/S?
>
> A77. Yes, we agree with the DOF's findings xxx.
>
> xxx xxx xxx

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[38] Petitioner's Memorandum, docket, pp. 797-798.
[39] Exhibit "A", Schedule B-Remuneration, docket, p. 524.
[40] Exhibit "BB", docket, pp. 506-507.

Q79. What happens to the bad debts provision charged to A.P. Moller–Maersk A/S when the VAT Refund is obtained by Petitioner?

A79. The bad debts provision is reversed and the billings to A.P. Moller–Maersk A/S are reduced.

Hence, petitioner correctly stated that such contractual agreement should not disqualify petitioner from claiming its excess and unutilized input taxes attributable to zero-rated sales pursuant to Section 112(A) of the NIRC of 1997, as amended.

Proceeding to the propriety of petitioner's claim, petitioner asserts that the services it rendered to its sole non-resident client, as enumerated in Schedule A–Services of its Service Agreement[41] with A.P. Moller–Maersk A/S, qualify for VAT zero-rating in accordance with Section 108(B)(2) of the NIRC of 1997, as amended by Republic Act No. 9337, quoted hereunder:

> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (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:
>
> xxx xxx xxx
>
> (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);"

In its VAT Returns for the period June to December 2009, petitioner's reported zero-rated sales amounted to ₱402,497,043.24, broken down as follows:

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[41] Exhibit "A", docket, pp. 512-524.

EXHIBIT	PERIOD	ZERO-RATED SALES
BBB-05 to BBB -06	2nd Quarter 2009	₱ 198,368,128.99
BBB-01 to BBB -02	Less: April 2009	₱ 49,003,376.60
BBB-03 to BBB -04	May 2009	99,162,470.39
Sub-total		*₱ 148,165,846.99*
	June 2009	₱ 50,202,282.00
BBB-11 to BBB -12	3rd Quarter 2009	161,222,031.00
BBB-17 to BBB -18	4th Quarter 2009	191,072,730.24
TOTAL		**₱402,497,043.24**

In the case of *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*,[42] the Supreme Court held that in order for the supply of services to be VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended, the following requisites must be satisfied:

1. the services must be other than processing, manufacturing or repacking of goods;
2. the payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and
3. the recipient of such services must be doing business outside the Philippines.

Corollary to the second requisite, Sections 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(2), (B)(1) and (2)(c) of Revenue Regulations (RR) No. 16-05, provide that a VAT taxpayer, like herein petitioner, shall for every lease of goods or properties and for every sale, barter or exchange of services, issue a VAT official receipt which must contain the following information:

> SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
>
> (A) *Invoicing Requirements.* – A VAT-registered person shall issue:
>
> xxx xxx xxx
>
> (2) A **VAT official receipt** for every lease of goods or properties, and **for every sale, barter or exchange of services.**

[42] G.R. No. 153205, January 22, 2007.

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* – The following information shall be indicated in the VAT invoice or VAT official receipt:

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

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

xxx xxx xxx

(c) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;

xxx xxx xxx

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and *(Emphasis supplied)*

SECTION 4.113-1. *Invoicing Requirements.* –

(A) ***A VAT-registered person shall issue:*** –

xxx xxx xxx

(2) A **VAT official receipt** for every lease of goods or properties, and **for every sale, barter or exchange of services**.

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

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

> **(B)** ***Information contained in VAT invoice or VAT official receipt.*** – The following information shall be indicated in VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his TIN;
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; Provided, That:
>
> xxx xxx xxx
>
> (c) If the sale is subject to zero percent (0%) VAT, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt; *(Emphasis supplied)*

Pursuant to the foregoing provisions, the foreign currency remittances referred to under Section 108(B)(2) of the NIRC of 1997, as amended, must likewise be supported by VAT zero-rated official receipts.

Petitioner complied with the first requisite as the services it renders to A.P. Moller–Maersk A/S such as back office tasks, documentation and other processes relating to export and import documentation, agency operations, logistics export handling, finance and accounting, IS processes and value-added services as listed in Schedule A of its Service Agreement[43] with A.P. Moller–Maersk A/S are not in the same category as "processing, manufacturing or repacking of goods."

Likewise, petitioner satisfactorily met the second requisite. For services rendered to A.P. Moller–Maersk A/S for the period June 1 to December 31, 2009, petitioner received foreign currency payments in the amount of US$8,434,307.00 with the peso equivalent of ₱402,497,043.24,[44] which were accounted for in accordance with the BSP rules and regulations as evidenced by the certification of inward remittances issued by the Hong Kong and Shanghai Banking Corporation (HSBC) and the statements of transaction details from HSBCnet,[45] and were duly covered by billing statements and by duly registered VAT zero-rated official receipts.[46] *gc*

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[43] Exhibit "A", docket, pp. 516 and 521-522.
[44] Exhibit "CCC-1".
[45] Exhibits "KKK-1" and "KKK.1" to "KKK.1-47".
[46] Exhibits "DDD" and "EEE", inclusive of sub-markings; Exhibit "NNN".

As to the third requisite, petitioner submitted the following documents to prove that its client A.P. Moller–Maersk A/S is doing business outside the Philippines:

1. Certificate of Non-Registration of A.P. Moller–Maersk A/S issued by the Security and Exchange Commission (SEC);[47]
2. Certificate of Residency of A.P. Moller–Maersk A/S issued by the Central Customs and Tax Administration of Denmark;[48]
3. Articles of Association for A.P. Moller–Maersk A/S;[49] and
4. Compiled Summary for A.P. Moller–Maersk A/S.[50]

From the foregoing, it appears that A.P. Moller–Maersk A/S is doing business outside the Philippines. However, the fact that it is **actually** doing business in the Philippines is disclosed by Mr. Arthur Araña in the following statements:[51]

Q35. You mentioned that A.P. Moller–Maersk A/S is engaged in international shipping that transports container cargoes to and from the Philippines. Would you know if petitioner rendered services to A.P. Moller–Maersk A/S pertaining to shipments of cargoes to or from the Philippines?

A35. Yes, the petitioner rendered services to A.P. Moller–Maersk A/S pertaining to shipments of cargoes to or from the Philippines.

Q36. Do you know how much of the total sales of services rendered by petitioner in 2009 relate to the shipments of A.P. Moller–Maersk A/S to or from the Philippines?

A36. Yes. The petitioner's sales relating to the shipments of A.P. Moller–Maersk A/S to or from the Philippines would be approximately 1.5% of the total sales.

Q37. How were you able to determine that petitioner's sales relating to the shipments of A.P. Moller–Maersk A/S to or from the Philippines would be approximately 1.5% of the total sales?

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[47] Exhibit "E", docket, p. 548.
[48] Exhibits "D" and "D-1", docket, pp. 545-547.
[49] Exhibit "B", docket, pp. 525-535.
[50] Exhibit "C", docket, pp. 536-544.
[51] Exhibit "BB", docket, pp. 499-500.

A37. The computation (%) is based on 2009 average headcount of employees supporting the shipments to/from the Philippines over the average headcount of all employees in 2009.

Q38. How were you able to determine the 2009 average headcount of employees supporting the shipments to/from the Philippines over the average headcount of all employees in 2009?

A38. We monitor on a monthly basis the number of employees providing services to each and every country.

Petitioner submitted an Average Headcount Distribution Per Country for the year 2009[52] to support the approximate portion of A.P. Moller–Maersk A/S' business in the Philippines.

Further, the Court-commissioned Independent CPA, Ms. Mary Ann C. Capuchino, noted the following in her report dated April 17, 2013:[53]

> The Company disclosed to us that A.P. Moller–Maersk A/S is engaged in international shipping business and other businesses. **A portion of the international shipping business relates to the Philippine business.**
>
> xxx xxx xxx
>
> Based on the above, considering that the export sale of services relating to A.P. Moller–Maersk A/S Philippine portion of its international shipping business is not conducted outside the Philippines, these may no longer be entitled to input VAT refund to the extent of the Philippine portion of such export sale.
>
> Therefore, 98.50% or ₱396,459,587.59 (98.50% x ₱402,497,043.24) of the total zero-rated sales of the Company for the month of June, 3rd and 4th quarters of CY 2009 relates to services rendered to non-residents are entitled to an input VAT refund, while 1.50% or ₱6,037,455.65 (1.50% x ₱402,497,043.24) of the total zero-rated sales pertains to the Philippine shipping business of A.P. Moller–Maersk A/S may no longer be entitled to input VAT refund. *(Emphasis supplied)*

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[52] Exhibit "L", docket, pp. 578-581.
[53] Exhibit "CC-2", pp. 16-17, docket, pp. 636 and 637.

Clearly, petitioner was unable to comply with the third requisite because its non-resident foreign client, A.P. Moller–Maersk A/S, is actually doing business in the Philippines.

Consequently, petitioner's sales of services to A.P. Moller–Maersk A/S cannot qualify for VAT zero-rating and the claimed input taxes attributable thereto in the amount of ₱7,862,002.84 cannot be refunded. Accordingly, it is unnecessary to discuss petitioner's compliance with the remaining requisites previously mentioned.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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