REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

SONY MOBILE COMMUNICATIONS INTERNATIONAL AB (Formerly known as SONY ERICSSON MOBILE COMMUNICATIONS INTERNATIONAL AB), *Petitioner,*	**CTA CASE NO. 8713** Members: ***Bautista,** Chairperson* ***Fabon-Victorino,** and* ***Ringpis-Liban, JJ.***
- *versus* -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 13 2016 10:00 a.m.

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DECISION

BAUTISTA, J:

The Case

Before the Court is a Petition for Review[1] filed by petitioner Sony Mobile Communications International AB ("Sony Mobile") on October 1, 2013, pursuant to *Section 7(a)(2)*[2] *of Republic Act* ("RA") *No. 1125*[3], as

[1] *Records, CTA Case No. 8713, Vol. 1, Petition for Review,* pp. 6-158, with annexes.
[2] Sec. 7. *Jurisdiction.* - The Court of Tax Appeals shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal revenue Code shall be deemed a denial; xxx.
[3] *An Act Creating the Court of Tax Appeals, as amended.*

amended by *RA No. 9282*[4] and *RA No. 9503*[5], in relation to *Rule 4*[6] *of the Revised Rules of the Court of Tax Appeals* ("RRCTA")[7], which seeks for the Court to render judgment ordering respondent Commissioner of Internal Revenue ("CIR") to refund or to issue a tax credit certificate ("TCC") in favor of petitioner in the amount of Six Million One Hundred Sixty Seven Thousand Nineteen and 74/100 Pesos (Php6,167,019.74) representing unutilized input Value-Added Tax ("VAT") related to its zero-rated sales/receipts for the 1st, 2nd, 3rd, and 4th quarters of calendar year 2011.

The Parties[8]

Petitioner Sony Mobile is represented by its counsel Du-Baladad & Associates, with office address at the 20th Floor, Chatham House, Rufino corner Valero Sts., Salcedo Village, Makati City.

Respondent CIR is the duly appointed head of the Bureau of Internal Revenue ("BIR") and empowered to perform the duties of her office, including among others, the duty to act on and approve claims for refund or tax credit as provided by law; with office address at the BIR National Building, Diliman, Quezon City.

The Facts

Petitioner is formerly known as "Sony Ericsson Mobile Communications International AB," which was issued a Securities and Exchange Commission ("SEC") License to Transact Business in the Philippines on June 24, 2002, with Company Registration No. A200208683.[9] It is a foreign company organized and existing under the laws of Sweden, and was licensed by the SEC to establish its branch

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[4] *An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.*
[5] *An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.*
[6] *Rule 4. Jurisdiction of the Court, Sec. 3. Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise: (a) Exclusive original over or appellate jurisdiction to review by appeal the following: (1) xxx; (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other applicable law provides a specific period for action: xxx.
[7] *A.M. No. 05-11-07-CTA*, November 22, 2005.
[8] *Records, Vol. 1, Joint Stipulation of Facts and Issues ("JSFI")*, pp. 544-545.
[9] *Id., Vol. 2, Exhibit* "P-1," p. 703.

office in the Philippines to pursue sales of products primarily within the public telecommunications area, as well as activities compatible therewith.[10]

On June 7, 2006, petitioner and Sony Ericsson Mobile Communications AB ("SEMCAB") entered into a Sales Promotion and Marketing Services Agreement[11] effective January 1, 2006, wherein petitioner bound itself, along and through its branch office, to market, promote, and develop the full sales potential of the products of SEMCAB in the Philippines.

On March 15, 2013, petitioner filed a Petition for Amendment of License,[12] to reflect the change in its corporate name from "Sony Ericsson Mobile Communications International AB" to "Sony Mobile Communications International AB" with the branch name changed to "Sony Mobile Communications International AB - Philippine Branch."

On March 22, 2013, the SEC issued a Certificate of Filing of Amended Articles of Association of a Foreign Corporation[13] and a Certification[14] that the license of "Sony Ericsson Mobile Communications International AB" was duly amended to reflect the change in its corporate name to "Sony Mobile Communications International AB" and its Philippine branch office's name to "Sony Mobile Communications International AB – Philippine Branch."

Petitioner is a VAT-registered entity with TIN/VAT No. 219-660-821-000 and Certificate of Registration OCN 3RC0000598903[15], issued on June 19, 2013 and registered since August 28, 2002. It was issued a new Certificate of Registration with OCN 3RC0000600810[16] on June 27, 2013, to reflect the change in its corporate name.

Petitioner filed its Quarterly VAT Returns or BIR Form No. 2550Q for calendar year ("CY") 2011, as follows:

[10] *Records, Vol. 2, Exhibit* "P-1," p. 703.
[11] *Id., Exhibit* "P-9," pp. 749-758, with annexes.
[12] *Id., Exhibit* "P-4," pp. 738-746, with annexes.
[13] *Id., Exhibit* "P-5," p. 724.
[14] *Id., Exhibit* "P-6," p. 734.
[15] *Id., Exhibit* "P-7," p. 747.
[16] *Records, Vol. 2, Exhibit* "P-8," p. 748.

Quarter	Date Filed	Exhibit	Date filed Amended Return	Exhibit
1st Quarter	4/25/2011	"P-20"[17]	N/A	N/A
2nd Quarter	7/20/2011	"P-21"[18]	10/16/2011 12/07/2011 7/03/2012	"P-22"[19] "P-23"[20] "P-24"[21]
3rd Quarter	10/25/2011	"P-25"[22]	7/03/2012	"P-26"[23]
4th Quarter	1/25/2012	"P-27"[24]	7/03/2012 1/28/2013	"P-28"[25] "P-29"[26]

Petitioner also filed its Quarterly VAT Returns or BIR Form No. 2550Q for CY 2012 and 2013 on the following dates:

Quarter	Date Filed	Exhibit	Date filed Amended Return	Exhibit
2012				
1st Quarter	4/25/2012	"P-30"[27]	5/07/2012 7/03/2012 1/28/2013	"P-31"[28] "P-32"[29] "P-33"[30]
2nd Quarter	7/20/2012	"P-34"[31]	1/28/2013	"P-35"[32]
3rd Quarter	10/23/2012	"P-36"[33]	1/28/2013	"P-37"[34]
4th Quarter	1/25/2013	"P-38"[35]	N/A	N/A
2013				
1st Quarter	4/24/2013	"P-39"[36]	N/A	N/A
2nd Quarter	7/23/2013	"P-40"[37]	N/A	N/A

[17] *Records, Vol. 2,* p. 826.
[18] *Id.,* p. 827.
[19] *Id.,* p. 828.
[20] *Id.,* p. 829.
[21] *Id.,* p. 830.
[22] *Id.,* p. 831.
[23] *Records, Vol. 2,* p. 832.
[24] *Id.,* p. 833.
[25] *Id.,* p. 834.
[26] *Id.,* p. 835.
[27] *Id.,* p. 836.
[28] *Id.,* p. 837.
[29] *Records, Vol. 2,* pp. 838-848, with annexed Sales, Purchase, and Imports Transaction Reconciliation of Listing for Enforcement.
[30] *Id.,* p. 849.
[31] *Id.,* pp. 850-856, with annexed Sales, Purchase, and Imports Transaction Reconciliation of Listing for Enforcement.
[32] *Id.,* pp. 857-858, with annexed SLSP Acknowledgement Report.
[33] *Id.,* pp. 859-865, with annexed Sales and Purchase Reconciliation of Listing for Enforcement, and SLSP Acknowledgement Report.
[34] *Id.,* p. 866.
[35] *Records, Vol. 2,* pp. 867-871, with annexed Sales Reconciliation of Listing for Enforcement, and SLSP Acknowledgement Report.
[36] *Id.,* pp. 872-876, with annexed Sales and Purchase Reconciliation of Listing for Enforcement.
[37] *Id.,* pp. 877-881, with annexed diskette containing 3 files and Purchase Reconciliation of Listing for Enforcement.

3rd Quarter	10/01/2013	"P-41"[38]	11/22/2013	"P-42"[39]

On March 27, 2013, respondent received petitioner's request[40], through its counsel BDB Law[41], for VAT refund for the 1st to 4th quarters of 2011, with attached Application for Tax Credits/Refunds or BIR Form No. 1914 filed on even date,[42] claiming a tax refund of Six Million One Hundred Sixty-Seven Thousand Nineteen and 74/100 Pesos (Php6,167,019.74), allegedly incurred on purchases attributable to zero-rated sales/receipts, which were not fully utilized in the same quarter and were not likewise used against its output taxes in the subsequent periods. The total claim is broken down[43] as follows:

2011	Input tax
1st quarter	Php 2,115,516.39
2nd quarter	1,302,595.02
3rd quarter	1,245,766.66
4th quarter	1,503,141.67
Total	**Php 6,167,019.74**

On April 23, 2013, respondent wrote[44] to petitioner's counsel informing it that a Letter of Authority SN:201100027885 (LOA-43A-2013-00000147) ("LOA") dated April 8, 2013 for mandatory audit-claim for VAT refund was issued and served to petitioner's former address[45]. In the same letter, respondent invited petitioner's counsel to secure the original copy of the LOA from the office of BIR Revenue Region ("RR") No. 7, Revenue District Office ("RDO") No. 43A East Pasig. Attached to the letter are the First Request for Presentation of Records[46] dated April 17, 2013, a photocopy of the LOA[47] and proof that all these were send *via* registered mail on April 24, 2013.[48]

On May 9, 2013, petitioner's counsel submitted additional documents to RDO No. 43A.[49]

[38] *Id.*, pp. 886-889, with annexed Purchase Transaction Reconciliation of Listing for Enforcement.
[39] *Id.*, p. 890.
[40] *Records, Vol. 2, Exhibits* "P-14," "P-14-a," and "P-14-b," pp. 808-817.
[41] With its address in the letterhead as 20th Floor, Chatham House, Rufino cornor Valero Sts., Salcedo Village, Makati.
[42] *Records, Vol. 2, Exhibit* "P-15," p. 818.
[43] *Id., Exhibit* "P-14," p. 811.
[44] *Id., Exhibit* "P-16," p. 819.
[45] 7th Floor Octagon Bldg., San Miguel Avenue Ortigas Center, Pasig
[46] *Records, Vol. 2, Exhibit* "P-17," p. 820.
[47] *Id., Exhibit* "P-18," p. 821.
[48] *Id.*, p. 822.
[49] *Id., Exhibits* "P-19," "P-19-a," and "P-19-b," pp. 823-825.

On October 1, 2013 and claiming no action from respondent on its application for VAT refund, petitioner filed the instant Petition for Review.[50]

On October 17, 2013, the Court issued Summons[51] to respondent, ordering her to file her Answer to the Petition for Review within fifteen (15) days from receipt thereof.

On October 31, 2013, respondent filed a Motion for Extension of Time to File Answer[52] praying for an extension of thirty (30) days or until December 2, 2013, within which to file her Answer, which was granted by the Court in its Order[53] dated November 5, 2013.

On December 2, 2013, respondent filed an Urgent Motion for Extension of Time to File Answer[54] praying for an additional period of five (5) days within which to file her Answer; which was later on denied by the Court in a January 2, 2014 Resolution[55].

On December 5, 2013, respondent filed her Answer[56], raising the following Special and Affirmative Defenses:[57]

> 4. Respondent hereby reiterates, restates and re-pleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses.
>
> 5. Petitioner is not entitled to refund or tax credit in the amount of Php6,167,019.74 representing alleged unutilized input VAT related to zero-rated sales/receipts for the 1st, 2nd, 3rd and 4th quarter[s] of [CY] 2011.
>
> 6. Taxes collected are presumed to be in accordance with laws and regulations.
>
> 7. All claims for refund are governed by one same rule: that respondent still has to investigate and ascertain the

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[50] *Records, Vol. 1, Petition for Review,* pp. 6-158, with annexes.
[51] *Id.,* p. 159.
[52] *Id.,* pp. 160-164.
[53] *Id.,* p. 165.
[54] *Id.,* pp. 167-173, with annexes.
[55] *Id.,* pp. 191-192.
[56] *Records, Vol. 1, Answer,* pp. 174-187.
[57] Emphases retained.

veracity of the claim. As the Supreme Court stated in one case, "[a] corporate taxpayer's option to avail of tax credit does not, however, mean that it is *ipso facto* granted." Hence, petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the [BIR].

8. The instant petition is not warranted for lack of jurisdiction as petitioner prematurely elevated this case to the Honorable Court.

9. Section 1(j) of Rule 16 of the 1999 Rules of Civil Procedure provides a well-settled rule, to wit:

> "MOTION TO DISMISS"
>
> Section 1. Grounds. - Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
>
> xxx xxx xxx
>
> (j) That a condition precedent for filing the claim has not been complied with."

10. In connection thereto, Section 112(C) of the [1997 National Internal Revenue Code ("NIRC")], as amended, provides as follows:

> **"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 Subsections (A) and (B) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, **the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim** or after the expiration of the one hundred twenty day-period, **appeal the**

decision or the unacted claim with the Court of Tax Appeals. *(Emphasis supplied)*

11. The amount being claimed by petitioner for the 1st, 2nd, 3rd and 4th quarter[s] of [CY] 2011 is not properly documented.

12. Petitioner failed to submit complete documents to support its application for refund. In a case for refund, the taxpayer must prove compliance with the prescribed checklist of requirements to be submitted involving claims for VAT refund pursuant to Revenue Memorandum Order [("RMO")] No. 53-98, otherwise there would be no sufficient compliance with the filing of an administrative claim for refund, the administrative claim thereof being merely pro-forma.

13. **[RMO] No. 53-98** was issued to identify documents required from a taxpayer during audit of the application for refund. For [VAT], the specific documents that need to be submitted are as follows:

xxx xxx xxx

14. Petitioner failed to submit the complete documents to substantiate its administrative claim hence the instant case was prematurely filed, as stated in the Revenue Officer's memorandum dated 26 November 2013, to wit:

> "Submitted documents are not yet complete. Softcopy of VAT input tax credits is different from hard copy. Please be informed that in refund, taxpayer should assist the [RO] in documentation and verification of records, but to no avail."

15. Section 112(C) of the [1997 NIRC] clearly provides that upon respondent's denial of the claim or inaction which is tantamount to a denial of the said action, only then can the taxpayer resort to judicial remedies. Having failed to submit the required documents to substantiate their administrative claim, it is premature to claim that there was denial by inaction on the part of respondent. Consequently, the Honorable Court is divested of jurisdiction over the instant petition.

16. It must be remembered, that in *Laguna CATV Network, Inc. vs. Hon. Alex E. Maraan, Regional Director, Region IV, DOLE,* the Supreme Court stated that "a party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate

conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court."

17. It is interesting to note that petitioner alleged that its claim was filed within two years after the close of the taxable quarter when such sales were made. Apparently, the *2-year requisite* is the only prescriptive period that they acknowledge as a requirement in a refund claim. They seem to disregard the existing additional requirement provided by the above-quoted Section 112(C) of the [1997 NIRC].

18. In a case decided by the Highest Tribunal, this additional requirement was discussed as follows:

> "xxx notwithstanding the timely filing of the administrative claim, we are constrained to deny respondent's claim for tax refund/credit for having been filed in violation of Section 112(D) of the NIRC, which provides that:
>
> xxx xxx xxx
>
> Section 112(D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to the CTA within 30 days.
>
> In this case, the administrative and judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature. *(Emphasis on the original; underscoring supplied)*

19. Alternatively, should the Honorable Court hold that it has jurisdiction, respondent submits that the denial by inaction of the administrative claim for refund was proper in all respects.

20. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund. Respondent avers that petitioner failed to establish such right.

21. As discussed above, there is no record of petitioner ever submitting complete documents to substantiate its administrative claim for refund. Contrary to what is provided by law and jurisprudence, particularly the above-mentioned Section 112(C) of the [1997 NIRC] and [RMO] No. 53-98.

22. The law requires the **submission of complete documents in support of the application filed** with the [BIR] before the 120-day audit period shall apply, and **before the taxpayer could avail of judicial remedies a provided for in the law**. Hence, petitioner's failure to comply with the duly mandated legal requirements in such claims for refund/tax credit warranted the denial by inaction of the administrative claim.

23. Petitioner's failure to comply with the duly mandated legal requirements in such claims for refund/tax credit warranted the denial by inaction of the administrative claim.

24. In cases such as this, before the judicial inquiry into the issue of whether petitioners, in general, are entitled to a refund/tax credit under substantive law may be considered, petitioners have an initial burden to discharge. They must prove that they complied with all the administrative requirements continuing up to judicial review. In other words, before **trial de novo** proceeds and disposes of the issue of refund entitlement under **substantive** law, it must first be proved that there was **procedural** compliance in pursuing the administrative claim leading to the **appellate** proceedings. xxx

25. So if the denial (by inaction) of the administrative claim is because of non-compliance with legal procedural requirements, then true to its appellate nature, the Honorable Court must sustain the decision of the BIR since it suffers no infirmity. Here, because of petitioner's failure to present the required documents to respondent, respondent correctly denied by inaction the administrative claim. To reiterate, part of petitioner's burden is to prove before the Honorable Court that respondent did not have any reason to deny its claim. It failed to discharge that burden. For all these failures, it is imperative that petitioner's judicial claim for refund must fall.

26. Furthermore, Section 108(B)(2) of the [1997 NIRC] states that:

xxx xxx xxx

27. In addition thereto, in the case of Commissioner of Internal Revenue vs. Burmeister & Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 153205, January 22, 2007, the Supreme Court stated:

> The Tax Code not only requires that the services be other than "processing, manufacturing or repacking of goods" and that payment for such services be in acceptable foreign currency accounted for in accordance with BSP rules. Another essential condition for qualification to zero-rating under Section 102(b)(2) is the **recipient of such services is doing business outside the Philippines**. While this requirement is not expressly stated in the second paragraph of Section 102(b) this is clearly provided in the first paragraph of Section 102(b) where these services must be "for other persons doing business outside the Philippines." The phrase "for other persons doing business outside the Philippines "not only refers to the services enumerated in the first paragraph of Section 102(b), but also pertains to the general term "services["] appearing in the second paragraph of Section 102(b). In short, services other than processing, manufacturing, or repacking of goods must likewise be performed for persons doing business outside the Philippines.

28. From the foregoing, the taxpayer must comply with the following requirements: a) services must be other than "processing, manufacturing or repacking of goods" b) the recipient is doing business outside the Philippines, c) the payment of the service fees was in acceptable foreign currency and d) accounting of such remittance was in accordance with BSP rules.

29. The right of taxation cannot easily be surrendered as taxes are essential to a government's existence. Since tax refunds are in the nature of tax exemptions, these are to be construed ***strictissimi juris*** against the person or entity claiming the exemption.

30. it is a well-settled principle that in an action for refund, the burden of proof is on the taxpayer who claims the exception and he must justify his claim by the clearest grant

under the Constitutional or statutory law and cannot be permitted by vague implications. The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund.

31. Evidently, petitioner failed to prove that its right to tax refund indubitable exists. Since taxes collected are presumed to be in accordance with laws and regulations, failure to defeat such presumption is fatal to petitioner's claim.

On February 14, 2014, petitioner filed a Motion to Avail the Provisions of Rule 13 of the Revised Rules of the Court of Tax Appeals[58] ("Motion for Trial by Commissioner") praying that it be granted to avail the services of Atty. Clifford Chua ("Atty. Chua") as the Independent Court-commissioned Public Accountant ("ICPA").

During the February 20, 2014 hearing,[59] the Court noted that respondent's Answer was filed out of time considering that her Urgent Motion for Extension of Time to File Answer was denied by the Court, however, counsel for respondent moved for the admission of the same, which was granted by the Court. The Court also ordered the parties to submit their Joint Stipulation of Facts and Issues ("JSFI") within five (5) days. Meanwhile, the Court granted petitioner's Motion for Trial by Commissioner and commissioned Atty. Chua as the ICPA, who was ordered to submit his report within thirty (30) days.[60] A confirming Resolution[61] was promulgated on March 14, 2014.

On February 25, 2014, the parties, through their respective counsels, filed their JSFI.[62]

On March 21, 2014, Atty. Chua submitted his ICPA report.[63]

On March 24, 2014, a Pre-trial Order[64] was issued by the Court terminating pre-trial and setting the date/s for the presentation of evidence by the parties, which was later amended[65] by the Court on

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[58] *Records, Vol. 1,* pp. 214-220, with annex.
[59] *Id., Minutes of Hearing dated February 20, 2014,* p. 539.
[60] *Id.*
[61] *Id.,* pp. 555-556.
[62] *Id, JSFI,* pp. 544-549.
[63] *Id., Exhibit* "P-46," *Commissioner's Report,* pp. 566-615.
[64] *Records, Vol. 1, Pre-Trial Order ("PTO"),* pp. 618-623.
[65] *Id., Vol. 2, Amended PTO,* pp. 661-666.

June 16, 2014 in order to reflect the change in the order of presentation of petitioner's witnesses.[66]

During trial, petitioner presented the following witnesses: *(1)* Ms. Jocelyn B. Remo ("Ms. Remo"),[67] resident agent of petitioner, who testified that the services performed by the petitioner is treated as zero-rated sales because SEMCAB is engaged in business conducted outside the Philippines;[68] *(2)* Ms. Jocelyn P. Calma ("Ms. Calma")[69] manager-in-charge in the preparation and filing of petitioner's VAT returns; and *(3)* the Court-commissioned ICPA, Atty. Chua.[70]

During the hearing on September 29, 2014,[71] counsel for petitioner manifested that it was resting its case, thus, it was granted fifteen (15) days to file its Formal Offer of Evidence ("FOE"). This was later confirmed in the Resolution[72] dated October 2, 2014.

On October 29, 2014, petitioner filed its FOE[73], which was resolved by the Court in its Resolution[74] dated January 23, 2015.

On February 12, 2015, petitioner filed a Motion for Reconsideration[75], stating that *Exhibit* "P-42" was described as an original return instead of an amended return, however, it was properly identified through its witness Ms. Calma. The Court, in its Resolution[76] dated March 26, 2015, granted petitioner's Motion and admitted *Exhibit* "P-42" as part of the evidence for petitioner.

During the hearing on June 9, 2015,[77] counsel for respondent manifested that they have no witnesses to present, thus, both parties were granted thirty (30) days within which they shall simultaneously file their respective memoranda. This was confirmed by the Court in its Resolution[78] dated June 17, 2015.

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[66] Atty. Chua and Mr. Patrick Larraga ("Mr. Larraga") were scheduled to appear on May 26, 2014 and June 23, 2014, respectively.
[67] *Records, Vol. 1, Minutes of Hearing dated March 24, 2014,* p. 616.
[68] *Id., Judicial Affidavit of Jocelyn B. Remo,* pp. 221-377, with annexes.
[69] *Records, Vol. 2, Minutes of Hearing dated May 5, 2014,* p. 633.
[70] *Id., Minutes of Hearing dated May 26, 2014,* p. 656.
[71] *Id., Minutes of Hearing dated September 29, 2014,* p. 674.
[72] *Id.,* p. 678.
[73] *Id., Petitioner's FOE,* pp. 686-702.
[74] *Id.,* pp. 938-940.
[75] *Records, Vol. 2,* pp. 943-946.
[76] *Id.,* pp. 951-952.
[77] *Id., Minutes of Hearing dated June 9, 2015,* p. 955.
[78] *Id.,* pp. 957-958.

On July 7, 2015, petitioner filed a Motion for Extension of Time to File Memorandum.[79] On the other hand, respondent filed her Motion for Extension of Time to File Respondent's Memorandum[80] on July 9, 2015, both Motions prayed for an additional period of thirty (30) days within which to file their respective Memoranda, and both were granted by the Court in its Resolution[81] dated July 10, 2015.

Both parties filed their respective Memoranda on August 10, 2015.[82] Thereafter, the Court resolved to submit the case for decision through its Resolution[83] dated August 13, 2015, hence, this decision.

The Issues[84]

WHETHER PETITIONER IS ENTITLED TO A REFUND FOR THE UNUTILIZED INPUT TAXES ATTRIBUTABLE TO PETITIONER'S ZERO-RATED SALES RECEIPTS FOR THE 1ST, 2ND, 3RD AND 4TH QUARTERS OF CY 2011 IN THE AMOUNT OF SIX MILLION ONE HUNDRED SIXTY-SEVEN THOUSAND NINETEEN AND 74/100 PESOS (PHP6,167,019.74), SPECIFICALLY:

1. WHETHER PETITIONER IS ENGAGED IN ZERO-RATED SALES;

2. WHETHER THE INPUT TAXES CLAIMED ARE DUE OR PAID;

3. WHETHER THE INPUT TAXES BEING CLAIMED HAVE NOT BEEN APPLIED AGAINST OUTPUT TAXES DURING AND IN THE SUCCEEDING QUARTERS;

4. WHETHER THE INPUT TAXES CLAIMED ARE ATTRIBUTABLE TO ZERO-RATED OR EFFECTIVELY ZERO-RATED SALES;

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[79] *Records, Vol. 2,* pp. 959-962.
[80] *Id.,* pp. 964-965.
[81] *Id.,* pp. 967, 969.
[82] *Id., Petitioner's Memorandum,* pp. 970-987; *Respondent's Memorandum,* pp. 988-995.
[83] *Id.,* p. 997.
[84] *Id., Amended PTO,* p. 662.

5. WHETHER THE CLAIM IS FILED WITHIN TWO (2) YEARS AFTER THE CLOSE OF THE TAXABLE QUARTER WHEN SUCH SALES WERE MADE;

6. WHETHER THE COURT HAS JURISDICTION OVER THE JUDICIAL CLAIM FOR REFUND; AND

7. WHETHER PETITIONER SUBMITTED COMPLETE DOCUMENTS IN SUPPORT OF ITS APPLICATION FOR REFUND FILED WITH THE BIR.

Petitioner's Arguments

Petitioner alleges that it has fully complied with all the requirements under *Section 112(A) of the 1997 NIRC;* that it filed its judicial claim within the two (2)-year period prescribed by law, which commenced to run after the close of the taxable quarter when the sales were made; that it is a VAT-registered entity; that it is engaged in zero-rated or effectively zero-rated sales; that the input taxes being claimed were duly paid and have not been applied against output taxes during the succeeding quarters; and that its claim is substantiated by documentary evidence.

Respondent's Counter-Arguments

On the other hand, respondent counter-argues that petitioner's judicial claim refund is not valid due to its failure to prove the submission of complete documents in support of its administrative claim for refund; that it was prematurely filed since the one hundred twenty (120)-day period has yet to commence since petitioner did not submit additional documents; that petitioner failed to observe the strict substantiation requirements for VAT-registered entities; and that tax credit or refund, like tax exemption, is strictly construed against the taxpayer.

The Ruling of the Court

The issues can be summarized as follows:

1. Whether the Court has jurisdiction in the instant case; and

2. Whether petitioner is entitled to the tax refund/TCC.

The Court has jurisdiction over the instant case.

The Court must first determine whether it has jurisdiction over the case at bar.

Anent the timeliness of filing the administrative claim for refund, *Section 112(A) of the 1997 NIRC*, as amended, provides as follows:[85]

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.*- any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.
>
> xxx xxx xxx

[85] Underscoring ours.

As to the timeliness of the judicial claim for refund, *Section 112(C) of the 1997 NIRC*, as amended, in relation to *RR No. 16-2005*[86] provides as follows:[87]

> 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 Subsections (A) and (B) 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.
>
> xxx xxx xxx

Corollary, *Section 4.112-1(d) of RR No. 16-2005* states the following:[88]

> *Sec. 4.112-1. Claims for Refund/Tax Credit Certificate of Input Tax.*
>
> xxx xxx xxx
>
> *(d) Period within which refund or tax credit certificate/refund of input taxes shall be made*
>
> In proper cases, the Commissioner of Internal Revenue shall grant a tax credit certificate/refund 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 subparagraph (a) above.

[86] Consolidated Value-Added Tax Regulations of 2005, effective November 1, 2005.
[87] Underscoring ours.
[88] Underscoring ours.

> In case of full or partial denial of the claim for tax credit certificate/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals (CTA) within thirty (30) days from the receipt of said denial, otherwise the decision shall become final. However, if no action on the claim for tax credit certificate/refund has been taken by the Commissioner of Internal Revenue after the one hundred twenty (120) day period from the date of submission of the application with complete documents, the taxpayer may appeal to the CTA within 30 days from the lapse of the 120-day period.

Based on *Section 112(A) of the 1997 NIRC*, as amended, petitioner had two (2) years from the close of the taxable quarter when the sales were made to file its administrative claim. Further, *Section 112(C) of the 1997 NIRC*, as amended, in relation to *RR No. 16-2005*, grants petitioner one hundred twenty (120) days, from the date of submission of the complete documents in support of the administrative claim for refund, to file its judicial claim with the CTA.

Records disclose the following pertinent dates relative to the filing of the administrative and judicial claims:

<table>
<tr><th>Quarter</th><th>Admin Due Date
(2 yrs. from close of Qtr)</th><th>Admin Claim Filed</th><th>Date of submission of additional documents</th><th>End of 120 days</th><th>+ 30 days from lapse of 120 days</th><th>Judicial Claim Filed</th></tr>
<tr><td>Close of 1st Qtr:
March 31, 2011</td><td>March 31, 2013</td><td rowspan="4">March 27, 2013[89]</td><td rowspan="4">May 9, 2013[90]</td><td rowspan="4">September 6, 2013</td><td rowspan="4">October 7, 2013[91]</td><td rowspan="4">October 1, 2013</td></tr>
<tr><td>Close of 2nd Qtr:
June 30, 2011</td><td>June 30, 2013</td></tr>
<tr><td>Close of 3rd Qtr:
Sept. 30, 2011</td><td>Sept. 30, 2013</td></tr>
<tr><td>Close of 4th Qtr.:
Dec. 31, 2011</td><td>Dec. 31, 2013</td></tr>
</table>

In the instant case, petitioner had until March 31, June 30, September 30, and December 31, 2013, within which to file its administrative claims for the 1st, 2nd, 3rd and 4th quarters, respectively, of 2011. Petitioner filed its administrative claim for refund for all the taxable quarters of 2011 on March 27, 2013, thus complying with the two (2)-year prescriptive period.

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[89] *Records, Vol. 2, Exhibits* "P-14," "P-14-a," and "P-14-b," pp. 808-817.

[90] *Id., Exhibits* "P-19," "P-19-a," and "P-19-b," pp. 823-825.

[91] Counted from September 7, 2013, which was the day when the one twenty (120)-day period lapsed.

Anent the timeliness of the judicial claim for refund, petitioner submitted additional documents in support of its administrative claim on May 9, 2013.[92]

Contrary to respondent's assertion that petitioner failed to submit additional documents in support of its claim, evidence shows that pursuant to the First Request for Presentation of Records[93] dated April 17, 2013, petitioner submitted the requested documents to a certain Renato M. Atos ("Mr. Atos"), Revenue Officer, who received the same with a notation "5.9.13."

The BIR Records likewise show that the same Mr. Atos sent a Memorandum to the Revenue District Officer dated November 26, 2013 stating that the investigation/verification of records cannot proceed since the taxpayer cannot be located at the registered address: 7th Octagon Bldg. San Miguel Ave., Ortigas Center, Pasig City; that the submitted documents are not yet complete; that the softcopy of VAT input tax credits is different from the hard copy; and that the taxpayer should assist Revenue Officers in documentation and verification of records, but to no avail.[94] This Memorandum was received by the BIR Litigation Division on November 29, 2013.[95]

The records show that the same Mr. Atos who claimed that he cannot communicate with the taxpayer, received the additional documents from petitioner's counsel on May 9, 2013; and that respondent never sent a second request for documents to petitioner. Thus, petitioner has complied with respondent's requirement for additional documents.

In the recent case of *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*[96], the Supreme Court ruled that:[97]

> Upon the filing of an administrative claim, respondent is given a period of 120 days within which to (1) grant a refund or issue the tax credit certificate for creditable input taxes; or (2) make a full or partial denial of the claim for a tax refund or tax

[92] *Records, Vol. 2, Exhibits* "P-19," "P-19-a," and "P-19-b," pp. 823-825.
[93] *Id., Exhibit* "P-17," p. 820.
[94] *BIR Records*, p. 175.
[95] *Id.*
[96] G.R. No. 182737, March 2, 2016.
[97] Underscoring ours.

> credit. Failure on the part of respondent to act on the application within the 120-day period shall be deemed a denial.
>
> Note that the <u>120-day period begins to run from the date of submission of complete documents supporting the administrative claim</u>. If there is no evidence showing that the taxpayer was required to submit - or actually submitted - additional documents after the filing of the administrative claim, it is presumed that the complete documents accompanied the claim when it was filed.

Applying this to the instant case, the one hundred twenty (120)-day period began to run from May 9, 2013, the date when petitioner submitted the additional documents in support of its claim. Thus, respondent had until September 6, 2013 within which to decide the administrative claim.

In *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*[98], the Supreme Court reminded taxpayers that when the one hundred twenty (120)-day period lapses and there is inaction on the part of the CIR, they must no longer wait for it to come up with a decision thereafter. The CIR's inaction is the decision itself. It is already a denial of the refund claim. Thus, the taxpayer must file an appeal within thirty (30) days from the lapse of the one hundred twenty (120)-day waiting period, this period is mandatory and jurisdictional.

As enunciated by the Supreme Court in *Commissioner of Internal Revenue v. San Roque Power Corporation, et al.*,[99] strict compliance with the mandatory 120+30-day period is necessary for a claim for tax refund or credit.

From September 7, 2013[100], petitioner had until October 7, 2013 within which to file its judicial claim for refund. Records show that the instant Petition for Review was filed on October 1, 2013, well within the period provided by law.

Both the administrative and judicial claims for refund were filed on time, thus giving jurisdiction to the Court.

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[98] G.R. No. 168950, January 14, 2015.

[99] G.R. Nos. 187485, 196113, and 197156, October 8, 2013, 690 SCRA 336.

[100] The day when the one hundred twenty (120)-day period lapsed; September 6, 2013 is the last day, hence, the lapse of the period starts on the next day, September 7, 2013.

Petitioner is entitled to the tax refund, having complied with the requisites provided by the law.

Basic is the rule in taxation that tax refunds, being in the nature of tax exemptions, are construed *strictissimi juris* against the taxpayer and liberally in favor of the government. Accordingly, it is the claimant's burden to prove the factual basis of a claim for refund or tax credit.[101]

Thus, based on the afore-cited *Section 112(A) of the 1997 NIRC*, as amended, petitioner must prove compliance with the following requisites to be entitled to its claim for refund or TCC of its unutilized input VAT, to wit:

1. There must be zero-rated or effectively zero-rated sales;

2. The input taxes were incurred or paid;

3. Such input taxes are attributable to zero-rated or effectively zero-rated sales;

4. The input taxes were not applied against any output tax liability; and

5. The claim for refund was filed within the two (2)-year prescriptive period.

Anent the fifth (5th) requisite, the Court already discussed that the instant Petition for Review was filed on time, hence, it now proceeds to determine compliance with the remaining requisites.

As to the first (1st) and third (3rd) conditions, petitioner avers that its sales of services to SEMCAB for CY 2011 qualify as zero-rated sales. Zero-rated sales are defined under *Section 108(B)(2) of the 1997 NIRC*, as amended, which reads as follows:[102]

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[101] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[102] Underscoring ours.

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:

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);

(2) <u>Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines</u> or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for <u>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);</u>

xxx xxx xxx

SECTION 110. *Tax Credits.* -

xxx xxx xxx

(B) Excess Output or Input Tax. - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

xxx xxx xxx

The following are required in order for the supply of services to be considered VAT zero-rated[103], as satisfied by petitioner in the manner likewise provided hereunder:

> 1. *The services by a VAT-registered person must be other than processing, manufacturing or repacking of goods;*

Petitioner is a VAT-registered entity with Certificate of Registration OCN 3RC0000598903[104]. Under the Sales Promotion and Marketing Services Agreement, its primary duty is to market, promote, and develop the full sales potential of the products of SEMCAB in the Philippines.[105] These services are not in the same category as "processing, manufacturing or repacking of goods."

> 2. *The payment for such services must be in acceptable foreign currency accounted accordance with the BSP rules regulations; and*

Petitioner avers that it received payments in foreign currency, particularly, in United States Dollars ("USD"), which were accounted for in accordance with the BSP rules and regulations. To support its claim, petitioner submitted official receipts it issued to its sole client, SEMCAB [106]; Certification of inward remittances from January 2011 to December 2011;[107] and bank statements,[108] pursuant to *Section 113(A)(2), (B)(1), (2)(c), and (3)*[109] *of the 1997 NIRC,* as amended, and

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[103] *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* G.R. No. 153205, January 22, 2007, 515 SCRA 124.

[104] *Records, Vol. 2, Exhibit* "P-7," p. 747.

[105] *Id., Exhibit* "P-9," item 3.1, p. 750.

[106] *Records Attached to the ICPA Report, Exhibits* "P-51" to "P-54-a," "P-56" to "P-58-a," "P-59" to "P-61-a," "P-62" to "P-64-a."

[107] *Id., Exhibit* "P-65."

[108] *Id., Exhibits* "P-66" to "P-77."

[109] *Section 113. Invoicing and Accounting Requirements for VAT Registered Persons.* - (A) *Invoicing Requirements.* - A VAT -registered person shall issue: xxx (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services. (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 (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 (3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and xxx.

Section 4.113-1[110] *of RR No. 16-05*[111], which provide that the foreign currency remittances must be supported by VAT zero-rated official receipts.

3. *The recipient of such services is doing business outside the Philippines.*

Petitioner alleges that SEMCAB, as recipient of its services, is a non-resident corporation doing business outside the Philippines. The Court has previously held that to be considered as non-resident foreign corporation doing business outside the Philippines, each entity recipient must be supported, at the very least, by both SEC Certificate of Non-registration of Corporation/Partnership and Certificate/ Articles of Foreign Incorporation/ Association/ Registration.[112]

To support this claim, petitioner presented the SEC Certificate of Non-Registration of SEMCAB[113]; the Authenticated copy of Certificate of Registration of SEMCAB, issued by the Swedish Companies Registration Office;[114] and the Sales Promotion and Marketing Services Agreement.[115]

Thus, the sole client of petitioner, SEMCAB is a non-resident foreign corporation doing business outside the Philippines.

Petitioner's sales of services to SEMCAB for CY 2011 in the amount of USD1,887,693.60 with peso equivalent of Php82,147,983.83, are presented below:

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[110] *SECTION 4.113-1. Invoicing Requirements. – A VAT-registered person shall issue: –* 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 (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; xxx.
[111] Consolidated VAT Regulations of 2005, effective November 1, 2005.
[112] CTA Case No. 8419 dated June 10, 2015, citing CTA Case No. 7808, dated December 16, 2014.
[113] *Records, Vol. 2, Exhibit* "P-10," p. 759.
[114] *Id., Exhibit* "P-12," pp. 761-766.
[115] *Id., Exhibit* "P-9," pp. 749-758.

Date	OR No.	Exh.[116]	Customer	Amount		Proof of Inward Remittance[117]
				USD	PHP	
1/14/2011	167	"P-51"	Sonny Ericsson Mobile Comm. AB	60,571.69	2,684,175.13	*Exhibit* "P-66"
1/17/2011	168	"P-52"	Sonny Ericsson Mobile Comm. AB	229,513.69	10,140,455.68	*Exhibit* "P-66"
1/14/2011	169	"P-53"	Sonny Ericsson Mobile Comm. AB	125,629.70	5,574,566.61	*Exhibit* "P-67"
3/15/2011	170	"P-54"	Sonny Ericsson Mobile Comm. AB	188,187.47	8,205,204.89	*Exhibit* "P-68"
			Sub-Total	603,902.55	26,604,402.31	
4/8/2011	171	"P-56"	Sonny Ericsson Mobile Comm. AB	150,240.90	6,547,498.25	*Exhibit* "P-69"
5/6/2011	172	"P-57"	Sonny Ericsson Mobile Comm. AB	107,115.91	4,636,886.30	*Exhibit* "P-70"
6/6/2011	173	"P-58"	Sonny Ericsson Mobile Comm. AB	177,297.97	7,648,989.40	*Exhibit* "P-71"
			Sub-Total	434,654.78	18,833,373.95	
7/7/2011	174	"P-59"	Sonny Ericsson Mobile Comm. AB	151,155.23	6,591,275.27	*Exhibit* "P-72"
8/2/2011	175	"P-60"	Sonny Ericsson Mobile Comm. AB	143,875.43	6,173,982.52	*Exhibit* "P-73"
9/9/2011	176	"P-61"	Sonny Ericsson Mobile Comm. AB	95,872.74	4,084,849.95	*Exhibit* "P-74"
			Sub-Total	390,903.40	16,850,107.74	
10/7/2011	177	"P-61"	Sonny Ericsson Mobile Comm. AB	155,599.12	6,757,358.38	*Exhibit* "P-75"
11/4/2011	178	"P-61"	Sonny Ericsson Mobile Comm. AB	139,274.13	6,015,221.50	*Exhibit* "P-76"
12/6/2011	179	"P-61"	Sonny Ericsson Mobile Comm. AB	163,359.61	7,087,519.95	*Exhibit* "P-77"
			Sub-Total	458,232.86	19,860,099.83	
			Grand Total	**1,887,693.59[118]**	**82,147,983.83**	

However, out of the Php82,147,983.83 sale of services, the amount of Php1,600,000.00[119] was found by the Court to be VATable, thus, it is appropriate to allocate the total sales to VATable and zero-rated, as follows:

	Sales	Percentage Allocation
Total Sales	82,147,983.83	100%
Vatable Sales	1,600,000.00	1.9477%
Zero-Rated Sales	80,547,983.83	98.0523%

The Court shall now discuss the second (2nd) and the fourth (4th) requisites.

Petitioner asserts that its input VAT reflected in its Quarterly VAT Return for the taxable year 2011 in the amount of Php6,277,682.45, as shown below, are duly substantiated by appropriate documentary evidence and are attributable to its zero-rated sales:

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116 *Records Attached to the ICPA Report*
117 *Id.*
118 .01 rounding off difference
119 *Records, Vol. 2, Exhibit* "P-24,"p. 830.

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Input VAT	*Exh.* "P-20"[120]	*Exh.* "P-24"[121]	*Exh.* "P-26"[122]	*Exh.* "P-29"[123]	
Domestic Purchases of Goods	Php 4,162.50	Php 7,682.47	Php -	Php 2,364.03	Php 14,209.00
Importation of Goods	132,163.55	17,572.00	156,947.00	246,631.00	553,313.55
Domestic Purchases of Services	1,979,190.34	1,388,003.25	1,088,819.67	1,254,146.64	5,710,159.90
Total	**Php 2,115,516.39**	**Php 1,413,257.72**	**Php 1,245,766.67**	**Php1,503,141.67**	**Php6,277,682.45**

In support of its claim, petitioner presented various invoices and official receipts issued by its suppliers, BIR Form 1600, and other documents,[124] which were all examined by the ICPA, Atty. Chua. The latter had the following findings,[125] which this Court finds in order:

1st Quarter		**Exh. Ref.**
A. Purchases and importation with appropriate supporting documents (No exceptions noted)	1,638,803.02	"P-79" to "P-192" and "P-813" to "P-819-a"
B. Exceptions Noted		
1. Summary of input VAT from local purchases without proper supporting documents	1,005,909.62	"P-193" to "P-305"
2. Summary of input VAT from importations without proper supporting documents	4,668.00	"P-836" to "P-836-a"
3. Summary of input VAT from local purchases where the TIN of the customer is not indicated in the supporting documents or the TIN indicated is incorrect.	23,944.68	"P-306" to "P-351"
4. Summary of Input VAT where there are noted alterations in the supporting documents	40,565.40	"P-352" to "P-358"
5. Summary of input VAT where the amount indicated in the schedule of purchases is different from the amount in the supporting documents.	86,400.00	"P-359" to "P-360"
6. Summary of input VAT outside the period of claim	133,769.54	"P-361" to "P-384"
2nd Quarter		
A. Purchases and importation with appropriate supporting documents (No exceptions noted)	1,287,802.69	"P-385" to "P-459"
B. Exceptions Noted		
1. Summary of input VAT from local purchases without proper supporting documents	74,344.47	"P-460" to "P-481"
2. Summary of input VAT from importations without proper supporting documents	20,827.03	"P-837" to "P-838-a"
3. Summary of input VAT from local purchases where the TIN of the customer is not indicated in the supporting documents or the TIN indicated is incorrect.	4,548.59	"P-482" to "P-493"
4. Summary of Input VAT where the name of the company is not indicated	18,833.23	"P-494" to "P-526"
5. Summary of input VAT where the amount indicated in the schedule of purchases is different from the amount in the supporting documents	20,922.23	"P-527" to "P-536"
6. Summary of input VAT outside the period of claim	3,237.78	"P-537" to "P-539"
7. Summary of input VAT where the amount in words is not indicated	2,050.93	"P-540" to "P-541"
8. Summary of input VAT where the address of the company is not indicated	2,040.00	"P-542" to "P-543"
3rd Quarter		
A. Purchases and importation with appropriate supporting documents (No exceptions noted)	856,144.71	"P-544" to "P-579" and "P-820" to "P-828-a"
B. Exceptions Noted		
1. Summary of input VAT from local purchases without proper supporting documents	123,598.04	"P-580" to "P-603"
2. Summary of input VAT from importations without proper supporting documents	78,663.00	"P-839" to "P-843-a"
3. Summary of input VAT from local purchases where input VAT in the supporting documents are not separately shown.	11,169.90	"P-604" to "P-627"
4. Summary of input VAT from local purchases where the TIN of the customer is not indicated in the supporting documents or the TIN indicated is incorrect.	171,755.63	"P-628" to "P-661"
5. Summary of input VAT where the amount indicated in the schedule of		

120 *Records, Vol. 2,* p. 826.
121 *Id.,* p. 830.
122 *Id.,* p. 832.
123 *Id.,* p. 835.
124 *Records Attached to the ICPA Report, Exhibits* "P-79" to "P-854-a."
125 *Records, Vol. 1, Exhibit* "P-46," *ICPA Report pages 9 to 11,* pp. 575-577.

	purchases is different from the amount in the supporting documents	9,246.30	"P-662" to "P-671"
	6. Summary of input VAT outside the period of claim	3,642.86	"P-672"
4th Quarter			
A.	Purchases and importation with appropriate supporting documents (No exceptions noted)	1,143,264.73	"P-673" to "P-741" and "P-829" to "P835-a"
B.	Exceptions Noted		
	1. Summary of input VAT from local purchases without proper supporting documents	4,554.29	"P-742" to "P-747"
	2. Summary of input VAT from importations without proper supporting documents	128,310.35	"P-844" to "P-854-a"
	3. Summary of input VAT from local purchases where input VAT in the supporting documents are not separately shown.	69,801.83	"P-748" to "P-779"
	4. Summary of input VAT from local purchases where the TIN of the customer is not indicated in the supporting documents or the TIN indicated is incorrect.	29,013.81	"P-780" to "P-794"
	5. Summary of input VAT where the amount indicated in the schedule of purchases is different from the amount in the supporting documents	27,875.44	"P-795" to "P-810"
	6. Summary of input VAT outside the period of claim	44,780.89	"P-811" to "P-812"

The findings of the ICPA can be summarized as follows:

Period Covered	Allowable	Exceptions
1st Quarter	Php 1,638,803.02	Php 1,295,257.24
2nd Quarter	1,287,802.69	146,804.26
3rd Quarter	856,144.71	398,075.73
4th Quarter	1,143,264.73	304,336.61
TOTAL	**Php 4,926,015.15**	**Php 2,144,473.84**

Upon further verification and examination by the Court of the evidence presented, input VAT of Php346,019.12 shall be disallowed for petitioner's failure to meet the substantiation requirements, under *Sections 110(A) and 113(A)(B) of the 1997 NIRC,* as amended, in relation to *Sections 4.110-2, 4.110-3, 4.110-8 and 4.113-1 of RR No. 16-05,* detailed below:

Supplier's Name	Input	Exh.	Reasons
CARFIELD TOURIST TRANSPOR	Php 600.00	"P-86"	VAT not Indicated
D AND S PRINT	4,467.86	"P-87"	VAT not Indicated
DHL EXPRESS PHILIPPINES C	376.96	"P-89"	VAT not Indicated
GLOBALINK EMPLOYMENT SERV	381.03	"P-99"	VAT not Separately indicated
UNIMAX ADVERTISING	3,492.86	"P-118"	Supported by Non-VAT OR
GLOBAL VENTURE PROMOTION	148,608.96	"P-407"	VAT not Indicated
GLOBAL VENTURE PROMOTION	148,563.59	"P-408"	VAT not Indicated
MICROBASE INCORPORATED	685.71	"P-421"	Supported by Official Receipt instead on Invoice
UYB PRINTING CORPORATION	530.36	"P-429"	Supported by Official Receipt instead on Invoice
UYB PRINTING CORPORATION	1,414.29	"P-430"	Supported by Official Receipt instead on Invoice
UYB PRINTING CORPORATION	1,928.57	"P-431"	Supported by Official Receipt instead on Invoice
DHL GLOBAL FORWARDING PHI	1,092.00	"P-560"	Supported by OR with pre-printed VAT Exempt
DHL GLOBAL FORWARDING PHI	1,092.00	"P-674"	Supported by OR with pre-printed VAT Exempt
CABLE ACCESS TECHNOLOGIES	10,928.57	"P-692"	Supported with OR with pre-printed "Not Eligible for Input Tax"
VILLARUZ VILLARUZ AND CO	2,820.00	"P-708"	Supported by Acknowledgement Receipt
STRATEGIC ORGANIZATIONAL	13,636.36	"P-736"	OR without Authorized Signature
STRATEGIC ORGANIZATIONAL	1,800.00	"P-737"	OR without Authorized Signature
STRATEGIC ORGANIZATIONAL	1,800.00	"P-738"	OR without Authorized Signature
STRATEGIC ORGANIZATIONAL	1,800.00	"P-739"	OR without Authorized Signature
TOTAL	**Php346,019.12**		

To prove that the claimed amount was not applied against output taxes, petitioner submitted its Quarterly VAT Returns for the year 2012[126] and for the 1st, 2nd and 3rd quarters of 2013.[127] A perusal of the submitted Quarterly VAT Returns reveal that while the claimed input VAT was carried over by petitioner to the succeeding Quarterly VAT Returns in 2012 and 2nd Quarter of 2013, the same remained unutilized until it was deducted as "*VAT Refund/TCC Claimed*"[128] from petitioner's total available input tax in the second quarter of 2013.

Consequently, the subject claim no longer formed part of the excess input VAT of Php4,824,426.87[129] as of the second quarter of 2013 which was carried over/applied to the succeeding third quarter of 2013.[130]

In sum, petitioner was able to substantiate the total amount of Php3,676,524.78 out of the total claimed input VAT of Php6,167,019.74. However, output VAT amounting to Php192,000.00[131] incurred during the second quarter of the CY 2011 shall be deducted from petitioner's substantiated input VAT, and the allocation of 98.0523% shall apply. Hence, the substantiated unutilized input VAT is computed, as follows:

Input VAT *per* Claim		Php 6,167,019.74
Less:		
Exception *per* ICPA Report	Php 2,144,473.84	
Additional Exception *per* Court Findings	346,019.12	2,490,492.96
		Php 3,676,526.78
Less: Output VAT (2nd Quarter)		192,000.00
		Php 3,484,526.78
Zero-Rated Percentage Allocation		98.0523%
Substantiated Unutilized Input VAT		**Php 3,416,658.65**

Thus, petitioner was able to prove its entitlement to a tax refund or TCC of its unutilized input VAT attributable to its zero-rated sales for CY 2011, albeit in the reduced amount of Php3,416,658.65.

[126] *Records, Vol. 2, Exhibit* "P-30," p. 836; *Exhibit* "P-34," p. 850; *Exhibit* "P-36," p. 859; and *Exhibit* "P-38," p. 867.
[127] *Id., Exhibit* "P-39," p. 872; *Exhibit* "P-40," p. 878; and *Exhibit* "P-41," p. 886.
[128] *Id., Exhibit* "P-40," *line 23D*, p. 878.
[129] *Id., Exhibit* "P-40," *line 29*, p. 878.
[130] *Id., Exhibit* "P-41," *line 20A*, p. 886.
[131] *Id., Exhibit* "P-24," *line 19B*, p. 830.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Respondent is hereby **ORDERED to REFUND AND/OR to ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **THREE MILLION FOUR HUNDRED SIXTEEN THOUSAND SIX HUNDRED FIFTY-EIGHT and 65/100 PESOS (Php3,416,658.65).**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII 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