REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

****

KELPHIL, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7749

Members:

ACOSTA, *Chairperson*
BAUTISTA, *and*
CASANOVA, *JJ.*

Promulgated:
JUL 12 2010 ; 11:52am

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DECISION

BAUTISTA, *J.*:

This case involves a claim for refund of the amount of P4,984,324.13, allegedly representing excess or unutilized input value-added tax (VAT) on domestic purchases of goods and services that is attributable to zero-rated sales of services for taxable years 2006 and 2007.

Kelphil, Inc. (Petitioner) is a domestic corporation duly organized and existing under Philippine laws, with principal office and place of business at 28th Floor, Antel Global Corporate Center, 3 Doña Julia Vargas Avenue, Ortigas

Center, Pasig City. Petitioner is also a VAT registered taxpayer as evidenced by its Certificate of Registration No. OCN 3RC0000174570.[1]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), the public official charged with the administration and enforcement of the national internal revenue laws, including the granting of refund or tax credit of taxes erroneously or illegally collected, and other refundable or creditable taxes under the provisions of the National Internal Revenue Code (NIRC). He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Based on petitioner's Articles of Incorporation, its principal purpose is to "produce drafts, designs and drawings, by Philippine Nationals, of civil structures, offshore structures, bridges, buildings, piping, plants and other works or installation of whatever kind, for companies in Japan and other countries."[2]

Petitioner filed with the BIR Revenue District Office (RDO) No. 43-Pasig City its Original and Amended Quarterly VAT Returns for taxable years 2006 and 2007 on the following dates:

2006	Original Quarterly VAT Return	Amended Quarterly VAT Return
First	April 20, 2006	March 19, 2008
Second	July 19, 2006	March 19, 2008
Third	October 18, 2006	March 19, 2008
Fourth	January 18, 2007	March 19, 2008

2007	Original Quarterly VAT Return	Amended Quarterly VAT Return
First	April 20, 2007	March 18, 2008
Second	July 23, 2007	March 18, 2008
Third	October 22, 2007	March 18, 2008
Fourth	January 25, 2008	March 18, 2008

[1] Annex "A", Petition for Review, docket, p. 8; Pars. 1 and 2, Summary of Facts Admitted, Stipulation of Facts, docket, pp. 59-60
[2] Par. 8, Summary of Facts Admitted, Stipulation of Facts, docket, p. 60

The said Amended Quarterly VAT Returns reflected the following material information:[3]

2006	Taxable Sales	Output Tax	Zero-rated Sales	Domestic Purchases	Input Tax
First	-	-	17,583,810.22	6,319,639.48	700,284.19
Second	61,107.14	7,332.86	24,017,598.89	6,398,260.89	767,792.38
Third	-	-	17,938,336.65	6,033,666.58	720,889.64
Fourth	960,000.00	115,200.00	24,218,742.67	5,261,715.65	631,405.80
TOTAL	**1,021,107.14**	**122,532.86**	**83,756,488.43**	**24,013,282.60**	**2,820,372.01**

2007	Taxable Sales	Output Tax	Zero-rated Sales	Domestic Purchases	Input Tax
First	1,023,840.84	122,354.41	21,343,493.83	5,756,828.60	690,819.79
Second	780,030.00	93,603.60	17,291,564.77	5,928,395.70	711,407.70
Third	735,763.57	88,291.63	24,902,888.12	4,421,237.95	530,548.62
Fourth	672,403.72	80,688.45	12,439,209.76	5,921,059.21	710,527.08
TOTAL	**3,212,038.13**	**384,938.09**	**76,977,156.48**	**22,027,521.46**	**2,643,303.190**

On March 25, 2008, petitioner filed with respondent, through BIR RDO No. 43-Pasig City, separate claims for refund, covering the excess input taxes for the four quarters of 2006 and the four quarters of 2007.[4]

Due to respondent's inaction and in order to suspend the running of the two-year prescriptive period on the said administrative claim for refund, petitioner filed this instant Petition for Review on April 2, 2008.

In his Answer[5] filed on June 10, 2008, respondent raised the following Special and Affirmative Defenses:

> "4. Claims for refund are strictly construed against the taxpayer as the same partakes the nature of a tax exemption;
>
> 5. The taxpayer has the burden to show that the taxes were erroneously or illegally paid. Failure on the part of the Petitioner to prove the same is fatal to its cause of action. In the instant case, the Petitioner failed to present proof that the input VAT it is claiming as refund remained

[3] Par. 9, Summary of Facts Admitted, Stipulation of Facts, docket, pp. 60-61
[4] Annexes "R" and "S", Petition for Review, docket, pp. 25-28; Par 7, Summary of Facts Admitted, Stipulation of Facts, docket, p. 60
[5] Docket, pp. 37-38

unutilized [illegible] prove that the compensation [illegible] received for the services rendered were actually paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Banko Sentral ng Pilipinas;

6. The Petitioner should prove its legal basis for claiming the amount being refunded."

During trial, petitioner presented documentary and testimonial evidence. On the other hand, this Court declared respondent's right to present evidence waived for failure of respondent's counsel to appear on several hearing dates for the presentation of respondent's evidence.[6]

On July 21, 2009, this Court declared the case submitted for decision, taking into consideration petitioner's Memorandum filed on July 15, 2009, *sans* respondent's Memorandum.

As jointly stipulated by the parties, the issues[7] to be resolved by this Court are as follows:

"1. Whether the amounts that Petitioner reported as zero-rated sales/receipts in its quarterly VAT returns for the years 2006 and 2007 were its compensation for services it rendered to its non-resident foreign clients

2. Whether said receipts or compensation were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Central ng Pilipinas.

3. Whether Petitioner's domestic purchases of goods and services, for which it paid input tax, are attributable to its zero-rated receipts for the period in question.

4. Whether said domestic purchases of goods and services are duly supported by acceptable documentary evidence.

[6] Docket, pp. 107 and 109
[7] Statement of the Issues, Stipulation of Facts, docket, p. 62

5. Whether the unutilized input taxes for the period in question was utilized or applied against output taxes during the same period or in the succeeding periods.

6. Whether Petitioner is entitled to the refund of the excess input taxes in the amount of P2,725,959.03 for the years 2006 and in the amount of P2,258,365.10 for the year 2007."

The above-enumerated issues may be summarized as follows:

"Whether or not petitioner is entitled to a refund of the amount of P4,984,324.13, representing alleged unutilized input VAT paid on domestic purchases of taxable goods and services for taxable years 2006 and 2007, attributable to zero-rated sales for the same period."

Pertinent to the proper resolution of the present case is Section 112(A) of the NIRC of 1997, as amended, which provides as follows:

"SEC. 112. *Refunds or Tax Credits of Input Tax.* -

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

Based on the afore-quoted provision, in order to be entitled to a refund/tax credit of unutilized input VAT, the following requisites must be satisfied:

1. that there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes are attributable to zero-rated or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and
5. that the claim for refund was filed within the two-year prescriptive period.

In its Quarterly VAT Returns for taxable years 2006 and 2007, petitioner reported the following zero-rated sales/receipts:

Year 2006	Annex[8]	Zero-Rated Sales/Receipts
1st Quarter	J	P 17,583,810.22
2nd Quarter	K	24,017,598.89
3rd Quarter	L	17,938,336.65
4th Quarter	M	24,216,742.67
Subtotal		**P 83,756,488.43**
Year 2007		
1st Quarter	N	P 21,343,493.83
2nd Quarter	O	17,291,564.77
3rd Quarter	P	24,902,888.12
4th Quarter	Q	12,439,209.76
Subtotal		**P 75,977,156.48**
Total		**P 159,733,644.91**

The Court-commissioned Independent Certified Public Accountant (CPA), Mr. Albert G. Alba, noted that petitioner's zero-rated sales/receipts and corresponding bank remittances for taxable years 2006 and 2007 consisted of fees for architectural and structural design services rendered to non-resident foreign clients in the aggregate amount of P149,238,918.87 and to JPMED Asian

[8] Attached as Annexes to the Petition for Review

Pacific, Inc. (JPMED), an Ecozone IT Enterprise, in the amount of P2,620,000.00.

The zero-rated sales/receipts and bank remittances are summarized as follows:

	2006 - Exhibit G		2007 - Exhibit H		Total	
Period	In US $	In Peso	In US $	In Peso	In US $	In Peso
Non-resident foreign clients						
1st Quarter	$ 358,497.77	P 17,583,810.22	$ 437,979.73	P 21,343,493.83	$ 796,477.50	P 38,927,304.05
2nd Quarter	406,533.44	21,397,598.89	365,880.64	17,291,564.77	772,414.08	38,689,163.66
3rd Quarter	347,070.84	17,938,336.65	464,118.30	21,392,762.99	811,189.14	39,331,099.64
4th Quarter	398,393.23	19,857,269.58	279,238.29	12,434,081.94	677,631.52	32,291,351.52
Subtotal	**$ 1,510,495.28**	**P 76,777,015.34**	**$ 1,547,216.96**	**P 72,461,903.53**	**$ 3,057,712.24**	**P 149,238,918.87**
JPMED - Ecozone IT Enterprise						
2nd Quarter	-	P 2,620,000.00	-	-	-	P 2,620,000.00
Subtotal	**-**	**P 2,620,000.00**	**-**	**-**	**-**	**P 2,620,000.00**
Total	**$ 1,510,495.28**	**P 79,397,015.34**	**$ 1,547,216.96**	**P 72,461,903.53**	**$ 3,057,712.24**	**P 151,858,918.87**

A comparison of the amount of zero-rated sales/receipts declared in the Quarterly VAT Returns against the amount reflected in the Schedule of Zero-Rated Receipts and Bank Remittances prepared by the Independent CPA disclosed a discrepancy of P7,874,726.04, detailed as follows:

2006		2006 Zero-Rated Receipts			Difference
Period	Annex[9]	Per VAT Returns	Exhibit	Per Schedule	
1st Quarter	J	P 17,583,810.22	G-1-b	P 17,583,810.22	P -
2nd Quarter	K	24,017,598.89	G-2-b	24,017,598.89	-
3rd Quarter	L	17,938,336.65	G-3-b	17,938,336.65	-
4th Quarter	M	24,216,742.67	G-4-b	19,857,269.58	4,359,473.09
Subtotal		**P 83,756,488.43**		**P 79,397,015.34**	**P 4,359,473.09**
2007		**2007 Zero-rated Receipts**			
Period	**Annex[10]**	**Per VAT Returns**	**Exhibit**	**Per Schedule**	
1st Quarter	N	P 21,343,493.83	H-1-b	P 21,343,493.83	P -
2nd Quarter	O	17,291,564.77	H-2-b	17,291,564.77	-
3rd Quarter	P	24,902,888.12	H-3-b	21,392,762.99	3,510,125.13
4th Quarter	Q	12,439,209.76	H-4-b	12,434,081.94	5,127.82
Subtotal		**P 75,977,156.48**		**P 72,461,903.53**	**P 3,515,252.95**
Total		**P 159,733,644.91**		**P 151,858,918.87**	**P 7,874,726.04**

Since the difference of P7,874,726.04 does not have any supporting documents, the same shall be denied VAT zero-rating.

[9] Annexes of the Petition for Review
[10] Annexes of the Petition for Review

As to the VAT zero-rating of the amount of P149,238,918.87, representing fees received by petitioner for architectural and structural design services rendered to non-resident foreign clients, petitioner relies on Section 108(B)(2) of the NIRC of 1997, as amended, which states:

> "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, 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);"

Petitioner presented numerous documents such as Agreements with Kawatetsu Engineering Ltd.[11] (JFE Sekkei Ltd.), Authentication of Certificate of Registry Amendment[12], Schedule of Zero-rated Receipts and Bank Remittances[13], VAT official receipts[14], entries in US dollar passbooks[15], and Certificate of Export Remittances[16] to prove that for the subject period, it actually generated revenues in the aggregate amount of P149,238,918.87 for rendering certain engineering and design services to non-resident foreign clients (JFE Sekkei Ltd., 10 Art-NI Corp., Acrossgate Global Software, Inc., and Kokuyo Engineering and Technology Ltd.). After a thorough review and evaluation of the documentary evidence

[11] Exhibits "B" to "D"
[12] Exhibit "E"
[13] Exhibits "G" and "H"
[14] Exhibits "G-1" to "G-16" and "H-1" to "H-14"
[15] Exhibits "G-1-a" to "G-16-a" and "H-1-a" to "H-14-a"
[16] Exhibits "G-1-b" to "G-4-b" and "H-1-b" to "H-4-b"

presented, this Court finds however that no evidence was presented to prove the fact that the non-resident foreign clients to whom petitioner rendered service are clients doing business outside the Philippines.

In the case of **Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.**[17], the Supreme Court held that another essential condition to qualify for VAT zero-rating under Section 108(B)(2) [then Section 102(b)(2)] is that the recipient of such services is doing business outside the Philippines. This Court quotes the significant portions of the said Decision, to wit:

> "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 that 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 the listed 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.
>
> This can only be the logical interpretation of Section 102(b)(2). If the provider and recipient of the 'other services' are both doing business in the Philippines, the payment of the foreign currency is irrelevant. Otherwise, those subject to the regular VAT under Section 102(a) can avoid the VAT by simply stipulating payment in foreign currency inwardly remitted by the recipient of services. To interpret Section 102(b)(2) to apply to a payer-recipient of services doing business in the Philippines is to make the payment of the regular VAT under Section 102(a) dependent on the generosity of the taxpayer.

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

> The provider of services can choose to pay the regular VAT or avoid it by stipulating payment in foreign currency inwardly remitted by the payer-recipient. Such interpretation removes Section 102(a) as a tax measure in the Tax Code, an interpretation this Court cannot sanction. A tax is a mandatory exaction, not a voluntary contribution."

In the present case, the documents submitted by petitioner merely establish the existence of sale and the receipt of foreign currency remittances. Petitioner failed to prove that the engineering and design services it rendered for taxable years 2006 and 2007 were made to non-resident foreign clients doing business outside the Philippines; thus, petitioner's alleged sales therefrom in the amount of P149,238,918.87 cannot qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

On the other hand, with respect to petitioner's declared zero-rated receipts in the amount of P2,620,000.00 pertaining to services it rendered to JPMED Asian Pacific, Inc., an Ecozone IT Enterprise[18], Section 108(B)(3) of the NIRC of 1997, states:

> "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
>
> (3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects the supply of such services to zero percent (0%) rate**;" (*Emphasis supplied*)

[18] Exhibit "G-19"

Relative thereto, Section 24 of Republic Act (R.A.) No. 7916, as amended, otherwise known as "The Special Economic Zone Act of 1995", states that:

> "Section 24. *Exemption from National and Local Taxes.* — Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:
>
> (a) Three percent (3%) to the National Government;
>
> (b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located."

Clearly, R.A. No. 7916 is a special law which grants exemptions from national (including VAT) and local taxes to duly registered business establishments operating within its proper jurisdiction except payment of the preferential tax rate of five percent (5%) on gross income earned. Considering the foregoing, the sales of services by VAT-registered entities in Customs Territory, like herein petitioner, to Philippine Economic Zone Authority (PEZA) entities are effectively subject to zero percent (0%) VAT under Section 108(B)(3) of the NIRC of 1997, as amended.

Moreover, the High Tribunal in the case of **Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.**[19], explained the foregoing in this wise:

> "Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the **ECOZONE is a foreign territory**. As a result, sales made by a supplier in the Customs Territory to a purchaser in the

[19] G.R. No. 150154, August 9, 2005

1040

> ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.
>
> Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?
>
> The Philippine VAT system adheres to the **Cross Border Doctrine**, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, **actual export of** goods and **services from the Philippines to a foreign country must be free of VAT**; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT." (*Emphasis supplied*)

Similarly, in the case of **Commissioner of Internal Revenue vs. Sekisui Jushi Philippines, Inc.**[20], the Supreme Court held that:

> "Notably, while an ecozone is geographically within the Philippines, it is deemed a separate customs territory and is regarded in law as foreign soil. Sales by suppliers from outside the borders of the ecozone to this separate customs territory are deemed as exports and treated as export sales. These sales are zero-rated or subject to a tax rate of zero percent."

The VAT zero-rating of sales of services made by a VAT-registered taxpayer to a PEZA entity was further clarified in Revenue Memorandum Circular (RMC) No. 74-99, the applicable provisions of which read as follows:

> "SECTION 3. *Tax Treatment Of Sales Made By A VAT Registered Supplier From The Customs Territory, To A PEZA Registered Enterprise.* –
>
> XXX XXX XXX
>
> 3. In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone,

[20] G.R. No. 149671, July 21, 2006

> regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to Art. 77(2) of the Omnibus Investments Code, while **all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the 'Cross Border Doctrine' of the VAT system.**" (*Emphasis supplied*)

Thus, petitioner's sales of services to JPMED, a PEZA-registered entity, qualify for VAT zero-rating under Section 108(B)(3) of the NIRC of 1997, as amended. However, out of the P2,620,000.00 reported zero-rated receipts from services rendered by petitioner to JPMED for the subject period of claim, only the amount of P1,714,422.41 is properly supported by VAT zero-rated official receipts, to wit:

Exhibit	Client	O.R. No.	Total
G-17 and 17a	JPMED	0265	P 1,594,422.41
G-18 and 18a	JPMED	0267	120,000.00
			P 1,714,422.41

Consequently, only the portion of the input VAT claim attributable to the substantiated zero-rated receipts of P1,714,422.41 will be considered for refund. The rate to be applied is based on the total amount of reported zero-rated receipts and is computed as follows:

Substantiated zero-rated receipts	P 1,714,422.41
Divided by total declared zero-rated receipts	÷ 159,733,644.91
Rate of substantiated zero-rated receipts	**1.07%**

The Court proceeds to determine the amount of unutilized input VAT attributable thereto.

Petitioner's total input VAT based on its Amended Quarterly VAT Returns[21] for taxable years 2006 and 2007, amounted to P5,463,675.30, detailed as follows:

	Input Tax		
Period	2006	2007	Total
1st Quarter	P 700,284.19	P 690,819.79	P 1,391,103.98
2nd Quarter	767,792.38	711,407.70	1,479,200.08
3rd Quarter	720,889.64	530,548.62	1,251,438.26
4th Quarter	631,405.90	710,527.08	1,341,932.98
Total Input Tax	**P 2,822,378.11**	**P 2,645,310.19**	**P 5,463,675.30**

In order to prove that it actually incurred the afore-stated input VAT of P5,463,675.30, petitioner presented its Schedule of Input Taxes on Domestic Purchases[22] covering the first quarter of 2006 to the fourth quarter of 2007 and the related suppliers' invoices/official receipts[23], which were examined by the Independent CPA.

After a thorough review of the Report submitted by the Independent CPA and petitioner's other supporting documents, the following input taxes in the total amount of P390,245.35 would be disallowed from petitioner's claim for failure to meet the substantiation requirements under Section 113(A) of the NIRC of 1997, as amended, and Section 4.110-7 of Revenue Regulations No. 14-05:

Findings		Reference	Disallowed Input VAT		
			2006	2007	Total
1	*Purchase of services supported by VAT official receipts not in Petitioner's name*	Exhibit F, page 4, item no. 9(a)	267.60	-	267.60

[21] Annexes "J", "K", "L", "M", "N", "O", "P", and "Q", Petition for Review; Par. 9, Summary of Facts Admitted, Stipulation of Facts, docket, pp. 60-61
[22] Exhibits "K" to "R"
[23] Exhibits "K-1" to "K-148", "L-1" to "L-95", "M-1" to "M-116", "N-1" to "N-143", "O-1" to "O-118", "P-1" to "P-93", "Q-1" to "Q-103", and "R-1" to "R-95"

2	*Purchase of services supported by Non VAT official receipts*	Exhibit F, pages 4 & 5, item Nos. 9(a) & (b)	138,087.60	498.12	138,585.72
3	*Purchase of services without supporting documents*	Exhibit F, pages 4 & 5, item Nos. 9(a) & (b)	36,886.92	22,485.99	59,372.91
4	*Purchase of goods supported by Non VAT invoices*	Exhibit F, pages 4 & 5, item Nos 9(a) & (b)	73,682.83	4,050.65	77,733.48
5	*Purchase of goods without supporting documents*	Exhibit F, page 4, item no. 9(a)	485.89	-	485.89
6	*Unreconciled difference*	Exhibit F, page 4, item no. 9(a)	0.17	-	0.17
7	*Purchase of services supported by undated official receipts*	Exhibit F, page 6, item No. 10(b)	-	98.25	98.25
8	*Purchase of services supported by VAT official receipts with erroneous computation of input VAT*	Exhibit F, pages 7 & 8, item Nos. 14(a) & (b)	42,138.13	12,689.64	54,827.77
9	*Out of period receipts*				
	a. Dated 4th quarter of 2005	Exhibit F, page 6, item No. 10(a)	606.36	-	606.36
	b. Dated 1st quarter of 2008	Exhibit F, page 6, item No. 10(b)	-	25,274.50	25,274.50
10	*Purchase of service not properly supported by official receipt*				
	Smart Communications, Inc.	Exhibit K-57	532.00	-	532.00
11	*Purchase of services supported by official receipt not in Petitioner's name*				
	Dunkin Donuts, Inc.	Exhibit O-81	-	12.86	12.86
12	*Purchases of goods supported by invoices with TIN V instead of TIN VAT*				
	Rolens Enterprises	Exhibit K-133	471.50	-	471.50
	Rolens Enterprises	Exhibit K-141	471.50	-	471.50
	Rolens Enterprises	Exhibit K-142	471.50		471.50

	Rolens Enterprises	Exhibit K-143	471.50	-	471.50
	Rolens Enterprises	Exhibit K-144	471.50	-	471.50
	Rolens Enterprises	Exhibit K-145	316.10	-	316.10
	Rolens Enterprises	Exhibit K-147	155.40	-	155.40
	Rolens Enterprises	Exhibit K-148	471.50	-	471.50
	Rolens Enterprises	Exhibit L-72	77.70	-	77.70
	Rolens Enterprises	Exhibit L-73	77.70	-	77.70
	Rolens Enterprises	Exhibit L-74	316.10	-	316.10
	Rolens Enterprises	Exhibit L-75	77.70	-	77.70
	Rolens Enterprises	Exhibit L-81	235.71	-	235.71
	Rolens Enterprises	Exhibit L-84	471.43	-	471.43
	Rolens Enterprises	Exhibit L-85	235.71	-	235.71
	Rolens Enterprises	Exhibit L-86	471.43	-	471.43
	Rolens Enterprises	Exhibit L-89	235.71	-	235.71
	Rolens Enterprises	Exhibit L-90	235.71	-	235.71
	Rolens Enterprises	Exhibit L-91	235.71	-	235.71
	Rolens Enterprises	Exhibit L-92	235.71	-	235.71
	Rolens Enterprises	Exhibit L-93	235.71	-	235.71
	Rolens Enterprises	Exhibit L-94	313.39	-	313.39
	Rolens Enterprises	Exhibit L-95	471.43	-	471.43
	Rolens Enterprises	Exhibit M-95	316.07	-	316.07
	Rolens Enterprises	Exhibit M-99	316.07	-	316.07
	Rolens Enterprises	Exhibit M-102	471.43	-	471.43
	Rolens Enterprises	Exhibit M-104	235.71	-	235.71
	Rolens Enterprises	Exhibit M-105	235.71	-	235.71
	Rolens Enterprises	Exhibit M-106	471.43	-	471.43
	Rolens Enterprises	Exhibit M-108	787.50	-	787.50
	Rolens Enterprises	Exhibit M-114	1,885.71	-	1,885.71
	Rolens Enterprises	Exhibit N-115	77.68	-	77.68
	Rolens Enterprises	Exhibit N-116	155.36	-	155.36
	Rolens Enterprises	Exhibit N-117	77.68	-	77.68
	Rolens Enterprises	Exhibit N-118	471.43	-	471.43
	Rolens Enterprises	Exhibit N-125	233.04	-	233.04
	Rolens Enterprises	Exhibit N-127	93.75	-	93.75
	Rolens Enterprises	Exhibit N-128	31.07	-	31.07
	Rolens Enterprises	Exhibit N-129	46.61	-	46.61
	Rolens Enterprises	Exhibit N-130	140.36	-	140.36
	Rolens Enterprises	Exhibit N-133	316.07	-	316.07
	Rolens Enterprises	Exhibit N-134	155.36	-	155.36
	Rolens Enterprises	Exhibit N-135	316.07	-	316.07
	Rolens Enterprises	Exhibit N-136	155.36	-	155.36
	Rolens Enterprises	Exhibit N-137	62.14	-	62.14
	Rolens Enterprises	Exhibit N-138	46.61	-	46.61
	Rolens Enterprises	Exhibit N-139	316.07	-	316.07
	Rolens Enterprises	Exhibit N-140	77.68	-	77.68
	Rolens Enterprises	Exhibit N-141	77.68	-	77.68
	Rolens Enterprises	Exhibit N-143	942.86	-	942.86
	Rolens Enterprises	Exhibit O-98	-	155.36	155.36
	Rolens Enterprises	Exhibit O-99	-	393.75	393.75
	Rolens Enterprises	Exhibit O-104	-	316.07	316.07
	Rolens Enterprises	Exhibit O-105	-	310.71	310.71
	Rolens Enterprises	Exhibit O-106	-	316.07	316.07
	Rolens Enterprises	Exhibit O-108		1,264.29	1,264.29

	Rolens Enterprises	Exhibiti O-109	-	310.71	310.71
13	*Purchases of goods without supporting invoices*				
	JPMED Asian Pacific, Inc.	Exhibit N-109	1,355.74	-	1,355.74
	JPMED Asian Pacific, Inc.	Exhibit N-110	11,607.97	-	11,607.97
	JPMED Asian Pacific, inc.	Exhibit N-114	677.31	-	677.31
		Total	**322,068.38**	**68,176.97**	**390,245.35**

Based on the foregoing disallowances, petitioner's valid creditable input VAT for 2006 and 2007 amounts only to P5,073,429.95, computed as follows:

		Total
Declared Input VAT	P	5,463,675.30
Less: Disallowances		390,245.35
Creditable Input VAT	**P**	**5,073,429.95**

Since petitioner reported an output VAT liability in its Quarterly VAT Returns for 2006 and 2007 in the amount of P507,977.44, the same shall be offset against the creditable input VAT of P5,073,429.95. The portion of the output VAT allegedly paid by petitioner in the amount of P28,119.78[24] shall not be given credence for petitioner's failure to show proof of actual payment. Consequently, only the remaining input VAT of P4,565,452.51 can be attributed to the entire zero-rated receipts declared by petitioner in the amount of P159,733,644.91 and only the input VAT of P49,001.04 is attributable to the substantiated zero-rated receipts of P1,714,422.41, as computed below:

	Output VAT		
	2006	**2007**	**Total**
1st Quarter	P -	P 122,860.90	P 122,860.90
2nd Quarter	7,332.86	93,603.60	100,936.46
3rd Quarter	-	88,291.63	88,291.63
4th Quarter	115,200.00	80,688.45	195,888.45
Total	**P 122,532.86**	**P 385,444.58**	**P 507,977.44**

[24] Annex "K", line 25 (P2,199.86) and Annex "M", line 25 (P25,919.92), Petition for Review, docket, pp. 18 and 20

Creditable Input VAT	P	5,073,429.95
Less: Output VAT		507,977.44
Excess Input VAT	P	4,565,452.51
Multiply by rate of substantiated zero-rated receipts		1.07%
Excess Input VAT attributable to substantiated zero-rated receipts	**P**	**48,850.34**

As evidenced by its Quarterly VAT Returns for taxable years 2006 and 2007, the input VAT of P48,850.34 was not carried over to the succeeding quarters[25].

Lastly, anent the issue of whether or not the claim for refund/tax credit certificate was filed within the two-year prescriptive period, the answer is in the affirmative.

The reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund starts from the date of filing of the corresponding Quarterly VAT Return[26]. The present claim pertains to input VAT incurred for the first to fourth quarters of 2006 and of 2007. Reckoned from April 20, 2006, July 19, 2006, October 18, 2006, January 18, 2007, April 20, 2007, July 23, 2007, October 22, 2007, and January 25, 2008[27], petitioner had until April 20, 2008, July 19, 2008, October 18, 2008, January 18, 2009, April 20, 2009, July 23, 2009, October 22, 2009, and January 25, 2010 within which to file its claim both in the administrative and judicial levels. Apparently, the administrative claim filed on March 25, 2008[28] and the Petition for Review filed with this Court on April 2, 2008 are well within the two-year prescriptive period.

[25] Annexes "K" to "Q", Line 23D, "VAT Refund/TCC claimed", Petition for Review, docket, pp. 18-24
[26] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 141104 and 148763, June 8, 2007
[27] Pars. 3 and 5, Summary of Facts Admitted, Stipulation of Facts, docket, p. 60
[28] Par. 7, Summary of Facts Admitted, Stipulation of Facts, docket, p. 60

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the reduced amount of P48,850.34, representing excess or unutilized input VAT on domestic purchases of goods and services, attributable to zero-rated sales of services for taxable years 2006 and 2007.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(With Concurring and Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division

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