REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

DÖHLE SHIPMANAGEMENT PHILS. CORP.,
Petitioner,

CTA CASE NO. 8721

- versus-

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

COMMISSIONER OF INTERNAL REVENUE and the ONE-STOP INTER-AGENCY TAX CREDIT AND DUTY DRAWBACK CENTER OF THE DEPARTMENT OF FINANCE,
Respondents.

Promulgated:
AUG 02 2016
1:05 p.m.

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D E C I S I O N

COTANGCO-MANALASTAS, *J.:*

Before the Court is the Petition for Review filed by Döhle Shipmanagement Phils. Corp. to seek the refund or issuance of tax credit certificate in the amount of Twenty-Five Million Nine Hundred Twenty-Two Thousand Five Hundred Seventy-Four Pesos and 79/100 (₱25,922,574.79), allegedly representing its unapplied input value-added tax payments attributable to its zero-rated sales for taxable year 2011.

FACTS

Petitioner Döhle Shipmanagement Phils. Corp. is a corporation duly organized and existing under the laws of the Philippines. It is a duly registered VAT taxpayer, with

Taxpayer Identification Number (TIN) 004-500-132-000.[1] As stated in its Articles of Incorporation[2], its primary purpose is:

> "To carry on the business of a shipmanager and to act as agents, brokers, ship chandler or representatives of any foreign shipping corporation and individual for the purpose of managing, operating, supervising, administering and developing the operation of vessels belonging to or which are or may be leased or operated by said foreign shipping corporation and individual and, for such purpose, to act as principal in and hire the services of a local manning agent for the overseas employment for seamen and to equip any and all kinds of ships, barges and vessels of every class and description owned by any foreign shipping corporation."[3]

Respondent Commissioner is the head of the Bureau of Internal Revenue (BIR), vested with the power and authority, among others, to grant a refund of or to issue a tax credit certificate for unutilized input VAT attributable to zero-rated sales. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance ("OSS-DOF") is duly empowered to accept and process applications for tax credits and/or duty drawbacks. Its office is located at the 3F Executive Tower, BSP Complex, Roxas Boulevard corner Pablo Ocampo Sr. Street, Manila.[4]

On January 1, 2009, a Service Agreement was entered into by and between petitioner and Doehle (IOM) Ltd. ("DIOM"). The said agreement provides that petitioner would act as Philippine representative for DIOM and all its subsidiaries to carry out tasks which DIOM will be requesting from time to time.[5]

Subsequently, an Addendum No. 1 to the Service Agreement dated January 1, 2009 was entered into by and between petitioner and DIOM, which provides for the

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[1] Par. 1, Jointly Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 381.
[2] Exhibit "P-8".
[3] Exhibit "P-8-A".
[4] Par. 3, Jointly Stipulated Facts, JSFI, docket, p. 382.
[5] Exhibit "P-4".

additional services to be rendered by petitioner in favor of DIOM.[6]

Petitioner also had transactions with Peter Döhle Schiffarhts KG (GMBH & Co.) ("PDSK")[7] and Neptune Shipmanagement Services Pte. ("NSSP").[8]

Petitioner filed its Quarterly VAT Returns on the following dates:

PERIOD COVERED	VAT RETURN	DATE FILED
First Quarter	Original	April 25, 2011[9]
	Amended	May 20, 2011[10]
Second Quarter	Original	July 25, 2011[11]
Third Quarter	Original	October 12, 2011[12]
Fourth Quarter	Original	January 25, 2012[13]
	Amended	April 17, 2012[14]
	Amended	April 19, 2012[15]

On March 22, 2013, petitioner filed before respondent OSS-DOF an administrative claim for refund or issuance of tax credit certificate covering the first[16], second[17], third[18], and fourth[19] quarters of 2011.

On October 25, 2013, petitioner filed the instant Petition for Review before this Court.[20]

Respondent OSS-DOF filed its Answer[21] on December 13, 2013, interposing the following special and affirmative defenses:

[6] Exhibit "P-5".
[7] Exhibit "P-22".
[8] Exhibit "P-23".
[9] Exhibit "P-32-B-1".
[10] Exhibit "P-32-B-2".
[11] Exhibit "P-32-B-3".
[12] Exhibit "P-32-B-4".
[13] Exhibit "P-32-B-5"
[14] Exhibit "P-32-B-6".
[15] Exhibit "P-32-B-7".
[16] Exhibit "P-9".
[17] Exhibit "P-10".
[18] Exhibit "P-11".
[19] Exhibit "P-12".
[20] Docket, pp. 6-15.
[21] Docket, pp. 82-89.

"Petitioner's claim for tax refund or tax credit must be denied because the amount claimed includes input VAT on goods and services in connection with its building construction, hence, not duly substantiated as attributable to zero-rated sales or effectively zero-rated transactions in 2011.

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4. Petitioner claims tax refund or tax credit for its alleged unutilized input VAT in the aggregate amount of P25,922,574.79. This amount must be denied because by petitioner's admission in Paragraph 16 of the Petition, *'includes input VAT on goods and services purchased in connection with Petitioner's building construction, which building was to be utilized, and was utilized, after the construction was completed, for the provision of the zero-rated services xxx.'*

5. Based on petitioner's admission in the immediately preceding paragraph, therefore, the building was utilized for the provision of zero-rated services ***after*** the construction was completed. As such, to attribute the input taxes claimed to petitioner's zero-rated sales ***before*** construction of the building was completed is inchoate, premature and speculative.

6. True, under Section 4.110-3 of Revenue Regulations (R.R.) No. 16-2005, as amended by R.R. No. 04-2007 that construction in progress may be considered for purposes of claiming input tax as a purchase of service, the value of which shall be determined on the progress billings. However, there is no certainty as to how the input tax will be attributed, whether to zero-rated, taxable or exempt sales. The attributability of input taxes to zero-rated, taxable or exempt sales cannot be determined in advance on a building that is still under construction.

7. Here, the building after construction may be used or disposed of in a manner not exclusively attributable to zero-rated transactions if it will be leased as a commercial space. This is what happened to petitioner's building as reported in an online article that appeared in the Philippine Star on October 27, 2011 (**Annex 'A'**) report that *'Dohle Haus offers available office spaces for lease to other business and commercial establishments'*, (Hereto attached as Annex '1'). Clearly, this Dohle Haus is the same building for which petitioner incurred the input taxes being claimed for tax credit.

8. The better treatment should have been, upon completion of the building, the construction in progress should have been reclassified and capitalized. The building, now a capital asset, shall then be amortized and the amount from the amortization may be claimed as input tax attributed to the appropriate transactions in accordance with the provisions of Sections 110 and 112(A) of the NIRC, *viz:*

xxx xxx xxx

9. Applying Sections 110 and 112 of the NIRC in a manner that allows tax credit in advance of actual use of a capital good could potentially lead to the squandering of public funds should the capital good turn out later to be used or disposed of in a manner not attributable to zero-rated transactions. In this regard, Article 10 of the Civil Code of the Philippines provides: *In case of doubt in the interpretation and application of laws, it is presumed that the lawmaking body intended right and justice to prevail.* To prevent the squandering of government funds, the phrase 'month of acquisition' as used in Section 110(A)(2) should be taken to mean as including the idea of 'month of completion of building construction' while the word 'attributable' in Section 112 should not be treated as synonymous with synchronous character, of the input tax against the concurring zero-rated transactions.

10. Well-established is the rule that tax refunds, which are in the nature of tax exemptions, are construed strictly against the taxpayer and liberally in favor of the government. This is because taxes are the lifeblood of the nation. Thus, the burden of proof is upon the petitioner to prove the factual basis of his tax refund/credit claim.

11. Among other things, petitioner must substantiate the following facts which neither the Petition nor the administrative claim for tax credit adequately establishes: existence (*e.g.,* name and location) of the building, date of completion thereof, type of transactions arising from the use of the building, and title over the building to show whether or not ownership thereof has passed on to another person who may or may not be engaged in zero-rated or effectively zero-rated transactions."

Respondent Commissioner of Internal Revenue filed her separate Answer[22] on January 3, 2014, which alleged the following special and affirmative defenses:

[22] Docket, pp. 98-100.

"1. Respondent reiterates and repleads the preceding paragraphs of the answer as part of his Special and Affirmative Defenses;

2. Petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue;

3. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;

4. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable;

5. It is incumbent upon Petitioner to show that it has complied with the provision of Section 204(C) in relation to Section 229 of the 1997 Tax Code, as amended;

6. Petitioner's claim for refund or issuance of tax credit certificate in the amount of Php 25,922,574.79 as alleged excess and unutilized input VAT paid on purchases of goods and services attributable to its zero-rated sales for the 1st, 2nd, 3rd and 4th Quarters of taxable year 2011(or for the period January to December 2011) was not fully substantiated by proper documents, such as sales invocies, official receipts and others.

7. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim (*Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206*);

8. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and as such, they are looked upon with disfavor. (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121*)."

On January 13, 2014, petitioner filed its Reply to the Answer dated December 10, 2013 of respondent OSS-DOF.[23]

The case was set for a Pre-Trial Conference on February 27, 2014.[24]

[23] Docket, pp. 112-121.
[24] Notice of Pre-Trial Conference, docket, p. 122.

On February 20, 2014, respondent Commissioner of Internal Revenue filed her Pre-Trial Brief.[25]

On February 21, 2014, the Office of the Solicitor General (OSG) filed a Manifestation and Motion praying that the OSG be excused from actively participating in the case.[26] The foregoing incident was noted by the Court in the hearing dated February 27, 2014.[27]

On February 24, 2014, petitioner filed its Pre-Trial Brief *Ad Cautelam.*[28]

On March 14, 2014, the parties filed their Joint Stipulation of Facts and Issues[29]. The same was approved by the Court via Pre-Trial Order[30] promulgated on March 26, 2014.

During trial, petitioner presented Bethoven Saguid, Kerry Lamb, and Myra Celeste O. Dabalos as its witnesses.

On June 23, 2014, petitioner filed its Formal Offer of Evidence[31]. In the Resolution promulgated on July 23, 2014, the Court admitted as evidence for petitioner Exhibits "P-1, P-2, P-3, P-4, P-4-A, P-4-B, P-5, P-5-A, P-5-B, P-6, P-7, P-13, P-13-A, P-13-B, P-14, P-14-A, P-14-B, P-14-C, P-15, P-16, P-17, P-18, P-19, P-20, P-22, P-23, P-24, P-32, P-32-A, P-32-B, P-32-B-1, P-32-B-2, P-32-B-3, P-32-B-4, P-32-B-5, P-32-B-6, P-32-B-7, P-32-B-8, P-32-B-9, P-32-B-10, P-32-B-11, P-32-B-12, P-32-B-13, P-32-B-14, P-32-B-15, P-32-C, P-32-C-1, P-32-C-2, P-32-C-010001 to P-32-C-010278, P-32-C-020001 to P-32-C-020322, P-32-C-030001 to P-32-C-030341, P-32-C-040001 to P-32-C-040279, P-32-C-050001 to P-32-C-050423, P-32-C-060001 to P-32-C-060294, P-32-C-070001 to P-32-C-070318, P-32-C-080001 to P-32-C-080315, P-32-C-090001 to P-32-C-090246, P-32-C-100001 to P-32-C-100336, P-32-C-110001 to P-32-C-110335, P-32-C-120001 to P-32-C-120200,

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[25] Docket, pp. 216-219.
[26] Docket, pp. 220-223.
[27] Minutes of the Hearing dated February 27, 2014, docket, p. 376
[28] Docket, pp. 351-361.
[29] Docket, pp. 381-384.
[30] Docket, pp. 386-390.
[31] Docket, pp. 561-595.

P-32-D, P-32-E, P-32-E-1, P-32-E-2, P-32-E-3, P-32-E-4, P-32-E-5, P-32-E-6, P-32-E-7, P-32-E-8, P-32-E-9, P-32-E-10, P-32-E-11, P-32-E-12, P-32-E-13, P-32-E-14, P-32-E-15, P-32-E-16, P-32-E-17, P-32-E-18, P-32-E-19, P-32-E-20, P-32-E-21, P-32-E-22, P-32-E-23, P-32-E-24, P-32-E-25, P-32-E-26, P-32-E-27, P-32-E-28, P-32-E-29, P-32-E-30, P-32-E-31, P-32-E-32, P-32-E-33, P-32-E-34, P-32-E-35, P-32-E-36, P-32-E-37, P-32-E-38, P-32-E-39, P-32-E-40, P-32-E-41, P-32-E-42, P-32-E-43, P-32-E-44, P-32-E-45, P-32-E-46, P-32-E-47, P-32-E-48, P-32-E-49, P-32-E-50, P-32-E-51, P-32-E-52, P-32-E-53, P-32-E-54, P-32-F (inclusive of sub markings), P-32-G, P-32-G-1 to P-32-G-6, P-32-H, P-32-I, P-32-J, P-32-J-1 to P-32-J-69, P-32-K, P-32-K-1 to P-32-K-21, P-32-K-22 to P-32-K-109, P-32-L, P-32-M, P-32-N, P-33, P-34, P-35, P-36, P-37, P-37-A, P-50, P-50-A, P-51, P-51-A, P-52, and P-52-A".

In the same Resolution, the Court denied the admission of Exhibits "P-38, P-41, P-42, P-43, P-44, P-45, P-46, P-47, P-48, P-49" for not being identified during trial; Exhibits "P-8-A, P-8-B, P-9, P-9-A, P-9-B, P-10, P-10-A, P-10-B, P-11, P-11-A, P-11-B, P-12, P-12-A and P-12-B" for failure of petitioner to submit the originals for comparison; Exhibit "P-32-G-7" for not being found in the records of this case; Exhibits "P-39 and P-40" for not being identified during trial and for failure of petitioner to submit the originals for comparison; and Exhibit "P-8" for failure to correspond with the document found in the records of this case.[32]

On July 28, 2014, petitioner filed a Motion for Partial Reconsideration[33] of the Court's Resolution promulgated on July 23, 2014.

Petitioner filed a Submission on September 8, 2014, submitting the attached supplemental judicial affidavits of Bethoven S. Saguid, Kerry Lamb, and Myra Celeste O. Dabalos and explained that the additional testimony is with regard to the identification and authentication of Exhibits "P-8" and "P-32-G-7".[34]

In a Resolution[35] promulgated on September 22, 2014, the Court granted petitioner's motion for partial

[32] Docket, pp. 603-605.
[33] Docket, pp. 610-623.
[34] Docket, p. 629-631.
[35] Docket, p. 672.

reconsideration. In a subsequent Resolution promulgated on November 4, 2014, the Court clarified that the grant of petitioner's motion for partial reconsideration is only with respect to the admission of Exhibits "P-8" and "P-32-G-7" as part of petitioner's evidence.[36]

In a Resolution promulgated on December 19, 2014, the Court admitted, as evidence for petitioner, Exhibits "P-8-A", "P-8-B", "P-12", "P-12-A", "P-12-B", "P-39", "P-40", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46", "P-47", "P-48", and "P-49". Again, the Court denied the admission of Exhibit "P-38".[37]

On January 21, 2015, petitioner filed a Motion for Partial Reconsideration of the Court's Resolution[38] promulgated on December 19, 2014. In a Resolution dated March 20, 2015, the Court admitted Exhibits "P-9", "P-9-A", "P-9-B", "P-10", "P-10-A", "P-10-B", "P-11", "P-11-A", and "P-11-B" as petitioner's evidence; and noted the manifestation of respondent that she would not be presenting any evidence.

During the hearing held on May 11, 2015, the Court required the parties to file their memoranda within thirty (30) days from receipt of the Court's resolution on petitioner's supplemental formal offer of evidence.[39]

On May 25, 2015, petitioner filed its Supplemental Formal Offer of Evidence[40]. In a Resolution[41] promulgated on June 30, 2015, the Court admitted Exhibits "P-53" and "P-53-A" as evidence for petitioner, and noted that Exhibits "P-2", "P-4-A", and "P-5-A" have already been previously admitted.

Petitioner filed its Memorandum[42] on August 20, 2015. On the other hand, respondent filed her Memorandum on September 4, 2015.[43] In a Resolution promulgated on September 18, 2015, the Court declared the case submitted for decision.[44]

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[36] Docket, p. 679-680.
[37] Docket, pp. 682-687.
[38] Docket, pp. 763-764.
[39] Docket, p. 766.
[40] Docket, pp. 773-776.
[41] Docket, pp. 785-786.
[42] Docket, pp. 796-867.
[43] Docket, pp. 869-873.
[44] Docket, p. 875.

ISSUES

The parties interposed the following issues[45] for this Court's resolution:

1. Whether or not Petitioner's sales during the taxable year 2011 qualify as zero-rated sales, or are subject to zero percent rate under Section 108(B)(2) of the Tax Code.

2. Whether or not Petitioner is entitled to a refund of or the issuance of tax credit certificate for its unapplied input VAT payments for the period January to December 2011 in the total amount of ₱25,922,574.79, which are directly attributable to its zero-rated sales for the year 2011.

   a. Whether for the 1st, 2nd, 3rd and 4th Quarters of taxable year 2011, Petitioner rendered services in the Philippines to persons engaged in business conducted outside the Philippines, the payments for which were paid for in acceptable foreign currency and accounted for in accordance with the rules of the Bangko Sentral ng Pilipinas.

   b. Whether Petitioner has accumulated excess input VAT for taxable year 2011 amounting to PhP25,922,574.79.

   c. Whether Petitioner's alleged input VAT in the amount of PhP25,922,574.79 for the taxable year 2011 are directly attributable to its alleged zero-rated sales.

   d. Whether Petitioner's input VAT in the amount of PhP25,922,574.79 for the taxable year 2011 remains unutilized.

[45] JSFI, docket, pp. 382-383.

e. Whether Petitioner's claim for refund or tax credit of alleged input VAT for the taxable year 2011 are duly substantiated by documentary evidence.

f. Whether Petitioner has complied with the invoicing requirements pursuant to Revenue Regulations No. 16-2005.

The above-enumerated issues can be summarized as follows:

> "Whether or not petitioner is entitled to the refund or issuance of tax credit certificate in the amount of ₱25,922,574.79, allegedly representing its unutilized input VAT attributable to its zero-rated sales for taxable year 2011."

RULING OF THE COURT

Pertinent to the resolution of this case is Section 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, quoted hereunder for ready reference:

> "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: *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.
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Pursuant to the afore-quoted provisions, and as laid down by the Supreme Court in a number of cases[46], a taxpayer may claim a refund or tax credit certificate for input taxes paid on purchases of goods and services attributable to zero-rated sales upon compliance with the following requisites:

1. the taxpayer-claimant must be VAT-registered;
2. there must be zero-rated or effectively zero-rated sales;
3. input taxes were incurred or paid;
4. the input taxes incurred or paid must be attributable to zero-rated or effectively zero-rated sales;
5. the input taxes were not applied against any output VAT liability; and
6. the claim for refund must be timely filed both in the administrative and judicial levels.

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[46] *Commissioner of Internal Revenue vs. Toledo Power Company*, G.R. Nos. 195175 & 199645, August 10, 2015; *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013; *Southern Philippines Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179632, October 19, 2011; *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011; *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.

Timeliness of the administrative and judicial claims

The Court shall first discuss the requisite pertaining to the timeliness of the filing of the administrative and judicial claims for refund.

Applying Section 112(A) of the NIRC of 1997, as amended, petitioner has two years to file a claim for refund or tax credit of input VAT attributable to zero-rated or effectively zero-rated sales reckoned from the close of the taxable quarter when the sales were made. In the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*[47], the Supreme Court made the following corroborating statements:

> "xxx unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years **reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not**."

Petitioner's last day for filing of its administrative claim for the four taxable quarters of 2011 fell on the following dates:

Period Covered	Last Day of the Two-Year Period
January to March 2011	March 31, 2013
April to June 2011	June 30, 2013
July to September 2011	September 30, 2013
October to December 2011	December 31, 2013

Petitioner filed its Application for Tax Credit/Refund on March 22, 2013[48], well within the period prescribed by law.

Having determined that petitioner's administrative claim was filed on time, the Court shall determine whether or not petitioner has complied with the mandatory and jurisdictional periods of 120+30 days provided by Section 112(C) of the NIRC

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[47] G.R. No. 172129, September 12, 2008.
[48] Exhibits "P-9" to "P-12".

of 1997, as amended. In this regard, this Court quotes the ruling of the High Tribunal in the case of *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*[49], thus:

> "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 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 120-day period begins to run from the date of submission of complete documents supporting the administrative claim. 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."

Here, petitioner filed its administrative claim on March 22, 2013. Subsequently, petitioner, in a letter dated May 28, 2013, submitted additional supporting documents to the OSS-DOF, which documents were received and acknowledged by OSS-DOF on May 30, 2013.[50] Hence, the running of the 120-day period within which respondent is required to act would commence on May 30, 2013.[51]

Counting 120 days from May 30, 2013, the end of the 120-day period would fall on September 27, 2013. Since respondent failed to act on petitioner's claim, petitioner had thirty (30) days from September 27, 2013 or until October 27, 2013 within which to file a judicial claim before the Court of Tax Appeals. Petitioner filed the instant petition on October 25, 2013. Thus, petitioner timely filed its administrative and judicial claims.

The taxpayer is a VAT-registered entity

Petitioner has complied with the first requisite. It is a duly registered VAT taxpayer with Taxpayer Identification No.

[49] G.R. No. 182737, March 2, 2016.
[50] Exhibit "P-13-B".
[51] Exhibit "P-13".

004-500-132-000, as evidenced by its Certificate of Registration issued by the BIR.[52]

Existence of zero-rated or effectively zero-rated sales

Petitioner asserts that it rendered services to its non-resident affiliates that qualify for VAT zero-rating in accordance with Section 108(B)(2) of the NIRC of 1997, as amended. Section 108(B)(2) provides:

> "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) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"

In the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[53] *(Burmeister case)*, the Supreme Court held that in order for the sale of services to be VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended, the following requisites must be met:

[52] Par. 1, Jointly Stipulated Facts, JSFI, docket, p. 381; Exhibit "P-14".
[53] G.R. No. 153205, January 22, 2007.

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

As to the above *first* requisite, records show that petitioner was duly registered with the Securities and Exchange Commission to carry on the business of a shipmanager and to act as agent or broker of any foreign shipping corporation and individual for the purpose of managing, operating, supervising, administering and developing the operation of vessels belonging to or which are or may be leased or operated by said foreign shipping corporation and individual and, for such purpose, to act as principal in and hire the services of a local manning agent for the overseas employment for seamen and to equip any and all kinds of ships, barges and vessels of every class and description owned by any foreign shipping corporation,[54] all of which are not under the same category as "processing, manufacturing or repacking of goods."

With regard to the *third* requisite, petitioner avers that in taxable year 2011, it rendered services to its foreign clients who are not engaged in trade or business in the Philippines. The said foreign clients are DIOM, PDSK, and NSSP. However, a closer perusal of petitioner's Notes to Financial Statements for the years ended December 31, 2011 and 2010, particularly Notes 11 and 16[55], shows that petitioner earned revenues from its principal, DIOM and PDSK, but not from NSSP.

The Court holds that petitioner has sufficiently established compliance with the third requisite, but only with respect to DIOM and PDSK through the following pieces of evidence:

a. SEC Certificate of Non-registration of Company;[56]

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[54] Exhibit "P-8"; Exhibit "33", Notes to Financial Statements, Note 1-General Information.
[55] Exhibit "P-33" (submarking "P-33-A").
[56] Exhibits "P-15" to "P-20" for DIOM and "P-39" for PDSK.

b. DIOM's Authenticated Certificate of Incorporation;[57]
c. DIOM's Authenticated Memorandum of Association with attached Articles of Association;[58]
d. Authenticated Certification of Change of Name [From Midocean Maritime Limited to Döhle (IOM) Limited];[59] and
e. PDSK's Authenticated Certificate of Commercial Register A of the Local Court of Hamburg.[60]

As regards NSSP, the sole document presented by petitioner to prove that NSSP is a non-resident foreign corporation is Invoice No. 103/11.[61] The said invoice, standing alone, failed to convince the Court that NSSP is a non-resident foreign corporation. If at all, the said invoice would only show that petitioner rendered services to NSSP. It cannot be regarded as being competent to prove that NSSP is a foreign corporation doing business outside the Philippines.

The pronouncement made by the Supreme Court in *Accenture, Inc. vs. Commissioner of Internal Revenue*[62] is applicable, to wit:

> "Consequently, to come within the purview of Section 108(B)(2), it is not enough that the recipient of the service be proven to be a foreign corporation; rather, it must be specifically proven to be a non-resident foreign corporation."

Therefore, only DIOM and PDSK complied with the third requisite as laid down in the *Burmeister case.*

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

[57] Exhibit "P-1".
[58] Exhibit "P-2".
[59] Exhibit "P-3".
[60] Exhibit "P-41".
[61] Exhibit "P-23".
[62] G.R. No. 190102, July 11, 2012.

issue a VAT official receipt which must contain the following information:

"SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –

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

xxx xxx xxx

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

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

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

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

xxx xxx xxx

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

xxx xxx xxx

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

"SECTION 4.113-1. *Invoicing Requirements.* –

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

xxx xxx xxx

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

Only VAT-registered persons are required to print their **TIN followed by the word 'VAT' in their invoice or official**

> **receipts**. Said documents shall be considered as a 'VAT Invoice' or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.
>
> VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.
>
> **(B)** ***Information contained in VAT invoice or VAT official receipt***. – The following information shall be indicated in VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his TIN;
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; Provided, That:
>
> xxx xxx xxx
>
> (c) If the sale is subject to zero percent (0%) VAT, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;" *(Emphasis supplied)*

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

In its Quarterly VAT Returns for the four quarters of 2011, petitioner reflected the following zero-rated sales:

Exhibit	**Period Covered**	**Zero-Rated Receipts**
P-32-B-2	1st Quarter 2011	₱ 35,756,562.72
P-32-B-3	2nd Quarter 2011	35,236,288.07
P-32-B-4	3rd Quarter 2011	35,127,768.74
P-32-B-7	4th Quarter 2011	43,195,576.19
Total		**₱149,316,195.72**

Petitioner presented VAT zero-rated official receipts (ORs)[63] that it issued to its affiliate-clients and Certificate of Inward Remittances issued by Rizal Commercial Banking

[63] Exhibits "P-32-K-1" to "P-32-K-15".

Corporation[64] (RCBC) to prove that it rendered services to DIOM and PDSK for the four quarters of 2011, and that the same were paid for in acceptable foreign currency duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP).

Based on the documents submitted by petitioner, only the amount of ₱145,546,436.12 pertains to its zero-rated sales for taxable year 2011 as detailed below:

Exhibit Reference	OR No.	OR Date	Payor	Amount in USD	Amount in PHP[65]
P-32-K-1	709	1/10/2011	Dohle (IOM) Ltd.	274,862.36	12,121,979.80
P-32-K-2	710	2/10/2011	Dohle (IOM) Ltd.	279,379.23	12,134,278.10
P-32-K-3	711	2/14/2011	Peter Dohle Schiffahrts KG c/o Dohle (IOM) Ltd.	2,231.06	97,483.94
P-32-K-4	712	3/4/2011	Dohle (IOM) Ltd.	277,308.86	12,027,994.49
P-32-K-5	713	4/6/2011	Dohle (IOM) Ltd.	274,297.53	11,899,301.15
P-32-K-6	715	5/6/2011	Dohle (IOM) Ltd.	148,443.29	6,373,115.77
P-32-K-7	0003ZR	6/6/2011	Dohle (IOM) Ltd.	272,754.78	11,785,188.53
P-32-K-8	0004ZR	7/8/2011	Dohle (IOM) Ltd.	278,726.30	11,938,404.88
P-32-K-9	0005ZR	8/3/2011	Dohle (IOM) Ltd.	269,932.29	11,355,241.64
P-32-K-10	0006ZR	9/5/2011	Dohle (IOM) Ltd.	271,097.57	11,440,317.45
P-32-K-11	0007ZR	10/7/2011	Dohle (IOM) Ltd.	237,277.71	10,374,493.31
P-32-K-12	0008ZR	11/9/2011	Dohle (IOM) Ltd.	272,951.11	11,751,091.19
P-32-K-13	0009ZR	12/7/2011	Dohle (IOM) Ltd.	196,011.89	8,504,759.90
P-32-K-15	716	11/25/2011	Peter Dohle Schiffahrts KG	314,992.00	13,742,785.97
Zero-rated Sales for CY 2011				**3,370,265.98**	**145,546,436.12**

It is noteworthy that the total zero-rated sales supported by official receipts amounting to ₱145,546,436.12 is lower than the amount of zero-rated sales as reported in Quarterly VAT Returns of petitioner. Thus, the unexplained discrepancy of ₱3,769,759.60 (₱149,316,195.72 less ₱145,546,436.12) shall be denied VAT zero-rating.

Moreover, the amount of ₱97,483.94 (highlighted in the above table) received by petitioner from Peter Dohle Schiffahrts KG c/o Dohle (IOM) Ltd. should be denied zero-rating for not having a corresponding foreign currency inward remittance.

[64] Exhibits "P-35" and "P-36".
[65] Converted using BSP Rate.

In sum, out of the ₱149,316,195.72 sales reported by petitioner to have been generated from services rendered to its non-resident affiliates for taxable year 2011, only the amount of ₱145,448,952.18 (₱149,316,195.72 less ₱3,769,759.60 and ₱97,483.94) qualifies for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

Input taxes paid or incurred which are attributable to zero-rated sales

In its Quarterly VAT Returns for 2011,[66] petitioner reported input VAT from its current purchases, comprised of domestic purchases of goods (other than capital goods) and services, in the total amount of ₱26,986,498.90, to wit:

	Input VAT on Domestic Purchases of Goods other than Capital Goods	Input VAT on Domestic Purchases of Services	Total Input VAT on Current Purchases
1st Quarter	₱ 1,945,484.77	₱ 8,396,978.93	₱ 10,342,463.70
2nd Quarter	636,572.35	5,609,875.15	6,246,447.50
3rd Quarter	273,114.62	5,224,557.41	5,497,672.03
4th Quarter	1,024,332.50	3,875,583.17	4,899,915.67
Total	**₱3,879,504.24**	**₱23,106,994.66**	**₱26,986,498.90**

In support thereof, petitioner presented various VAT invoices, ORs and other documents[67], which were all examined by the Court-commissioned Independent Certified Public Accountant (CPA).

As per findings of the Independent CPA,[68] the input VAT in the total amount of ₱2,961,415.87 should be disallowed from petitioner's claim for its failure to meet the substantiation requirements prescribed under Sections 110(A), 113(A) and

[66] Lines 21F and 21J , Exhibits "P-32-B-2", "P-32-B-3", "P-32-B-4" and "P-32-B-7".
[67] Exhibits "P-32-C-010001 to P-32-C-010278; P-32-C-020001 to P-32-C-020322; P-32-C-030001 to P-32-C-030341; P-32-C-040001 to P-32-C-040279; P-32-C-050001 to P-32-C-050423; P-32-C-060001 to P-32-C-060294; P-32-C-070001 to P-32-C-070318; P-32-C-080001 to P-32-C-080315; P-32-C-090001 to P-32-C-090246; P-32-C-100001 to P-32-C-100336; P-32-C-110001 to P-32-C-110335; P-32-C-120001 to P-32-C-120200".
[68] Exhibit "P-32-E", docket, pp. 413-416.

(B), 237, and 238 of the NIRC of 1997, as amended, and as implemented by Sections 4.110-1, 4.110-2, 4.110-8, and 4.113-1 of Revenue Regulations No. 16-2005, as shown below:

	Description	Exhibit Reference	Total
1	Input tax claimed on domestic purchase of goods supported only by a Certified True Copy of the VAT invoice	P-32-E-2	₱ 1,586.25
2	Input tax claimed on domestic purchases of goods supported by VAT invoices but without invoice date or without year in the invoice date	P-32-E-8	5,523.00
3	Input tax claimed on domestic purchases of goods supported by VAT Invoices but with correction in the invoice date without counter signature	P-32-E-9	14,834.60
4	Input tax claimed on domestic purchases of services supported by VAT ORs but with correction on the OR date (e.g. month of the OR date) without counter signature in the month/day of the invoice date	P-32-E-10	117,780.09
5	Supplier's name in the supporting documents is different from the supplier's name indicated in the summary list of purchase of goods	P-32-E-11	3,917.98
6	Supplier's name in the supporting documents is different from the supplier's name indicated in the summary list of purchase of services	P-32-E-12	12,444.11
7	Input tax claimed on domestic purchases of goods supported by VAT invoices but the TIN indicated is incorrect and supported by VAT ORs with TIN and Address	P-32-E-13	6,725.33
8	Input tax claimed on domestic purchase of services supported by VAT OR issued in the name of the Petitioner but the TIN of the Petitioner indicated is incorrect and supported by VAT Invoice with TIN and Address	P-32-E-14	4,857.60
9	Input tax claimed on domestic purchases of goods supported by VAT invoices but with correction in the amount without counter signature	P-32-E-16	7,732.39
10	Input tax claimed on domestic purchases of services supported by VAT ORs but with correction of amount (e.g. total amount) without counter signature	P-32-E-17	48,972.90
11	Input tax claimed on domestic purchase of goods supported by VAT invoice not issued in the name of the Petitioner but with TIN and address of the petitioner	P-32-E-18	267.86
12	Input tax claimed on domestic purchases of goods supported by VAT invoices but the TIN indicated is incorrect and supported by VAT ORs or any other document without TIN and/or Address	P-32-E-19	10,548.08
13	Input tax claimed on domestic purchases of services supported by VAT ORs issued in the name of the petitioner but the TIN of the petitioner indicated is incorrect and supported by VAT ORs or any other document without TIN and/or Address	P-32-E-20	10,147.76

14	Input tax claimed on domestic purchases of goods supported by VAT invoices bearing the incomplete name of the petitioner and without TIN and/or address of the petitioner	P-32-E-21	3,380.86
15	Input tax claimed on domestic purchases of goods supported by VAT invoices not issued in the name/in the complete name of the petitioner (e.g. DOHLE) and without TIN and/or address of the petitioner	P-32-E-22	5,552.03
16	Input tax claimed on domestic purchase of goods supported by VAT invoice but presented as VAT Exempt sale	P-32-E-23	401.79
17	Input tax claimed on domestic purchases of goods supported by TIN sales invoices or Non-VAT sales invoices	P-32-E-24	149,357.56
18	Input tax claimed on domestic purchases of goods supported by tape receipts without the petitioner's name and/or TIN	P-32-E-25	15,530.21
19	Input tax claimed on domestic purchases of goods supported by VAT invoices issued in the petitioner's name but without the petitioner's TIN and/or address and supported by VAT ORs with TIN and Address	P-32-E-26	21,579.37
20	Input tax claimed on domestic purchases of goods supported by VAT invoices issued in the petitioner's name but without petitioner's TIN and/or address and supported by VAT ORs or any other document without TIN and/or Address	P-32-E-27	17,431.64
21	Input tax claimed on domestic purchases of goods supported by VAT invoices but not dated within the VAT taxable year	P-32-E-28	15,491.71
22	Input tax claimed on domestic purchases of goods supported by TIN # only; TIN-V tape receipts	P-32-E-29	1,851.03
23	Input tax claimed on domestic purchases of goods supported by VAT invoices but are not BIR-registered	P-32-E-30	5,065.68
24	Input tax claimed on domestic purchase of services supported by a VAT OR not issued in the name of the Petitioner but with TIN and address of the Petitioner	P-32-E-31	3,750.00
25	Input tax claimed on domestic purchases of services supported by VAT ORs not issued in the name of the Petitioner and without TIN and/or address of the Petitioner	P-32-E-32	13,993.18
26	Input tax claimed on domestic purchases of services supported by TIN NV ORs with stamped TIN VAT; Non VAT Reg TIN ORs with stamped TIN VAT or VAT registered; VAT Reg. TIN ORs (VAT exempt sale)	P-32-E-33	47,567.12
27	Input tax claimed on domestic purchase of services supported by TIN OR only	P-32-E-34	23,760.00
28	Input tax claimed on domestic purchases of services supported by tape receipts without Petitioner's name and/or TIN	P-32-E-36	451.89
29	Input tax claimed on domestic purchases of services supported by VAT ORs issued in the Petitioner's name but without the Petitioner's TIN and/or address and supported by VAT invoices with TIN and Address	P-32-E-37	15,233.33

30	Input tax claimed on domestic purchases of services supported by VAT ORs issued in the Petitioner's name but without the Petitioner's TIN and/or address and supported by VAT invoices or any other document without TIN and/or Address	P-32-E-38	39,699.97
31	Input tax claimed on domestic purchases of services supported by VAT ORs not dated within the VAT-taxable year	P-32-E-39	62,679.50
32	Input tax claimed on domestic purchase of services supported by a VAT OR but is not BIR-Registered	P-32-E-40	133.93
33	Input tax claimed on domestic purchases of services supported by VAT ORs. However, the sentence "This is not a source of input tax" is printed in the VAT ORs	P-32-E-41	100,991.26
34	Input tax claimed on domestic purchases of goods supported by documents other than VAT invoices and supported by any other VAT documents (i.e., VAT OR etc.)	P-32-E-42	28,819.12
35	Input tax claimed on domestic purchases of goods supported by documents other than VAT invoices and supported by other Non-VAT documents	P-32-E-43	15,250.94
36	Input tax claimed on domestic purchases of services supported by documents other than VAT Official Receipts (ORs) and supported by any other VAT documents (i.e., VAT Invoice etc.)	P-32-E-44	273,687.64
37	Input tax claimed on domestic purchases of services supported by documents other than VAT Official Receipts (ORs) and supported by other Non-VAT documents	P-32-E-45	178,141.31
38	Input tax claimed on domestic purchases of goods supported by VAT invoices but not original copy	P-32-E-46	55,647.83
39	Input tax claimed on domestic purchases of services supported by VAT ORs but not original copy	P-32-E-47	86,364.52
40	Input tax claimed on importation of goods supported by a photocopy of IEIRD	P-32-E-48	34,986.00
41	Input tax claimed on domestic purchases of goods and services without supporting documents	P-32-E-49	566,380.93
42	Overclaimed portion of Input tax arising from erroneous computation of input VAT on domestic purchases of goods/services (e.g., arithmetical error, rounding differences)	P-32-E-50	68,249.83
43	Overclaimed portion of Input tax arising from non-amortization of deferred input VAT on purchases of capital goods exceeding 1 million	P-32-E-51	864,020.84
44	Overclaimed portion of input tax arising from forex rate used on foreign currency denominated purchases of goods and services	P-32-E-52	626.90
	Total		**₱2,961,415.87**

Moreover, the Court's own examination of the supporting documents submitted by petitioner disclosed that additional input VAT in the aggregate amount of ₱1,234,689.74 should also be disallowed for failure of petitioner to meet the substantiation requirements pursuant to the afore-mentioned laws and regulations, as shown below:

Vendor Name	Reference (P-32-C-)	Input VAT Amount
1. Exhibits referred to were not found in the records of the case		
Linens International Inc.	10037-10039	₱ 104,892.86
MFT International Corp	10134-10136	123,482.70
Linens International Inc.	10143-10144	33,321.43
Lgaire Metal Manufacturing (Marianito Arceo)	10145-10147	40,551.43
Lgaire Metal Manufacturing (Marianito Arceo)	10238-10241	44,467.71
Philippine Sundt C&D Corp	20040-20041	26,512.15
sub-total		***373,228.28***
2. Purchases of services supported by VAT ORs wherein the input VAT amounts were not separately indicated		
Ups Delbros Int'l Express Ltd	10132	478.09
Briton Oriental Worldwide Leisure Et Restaurants Inc.	20052	292.29
Citimotors, Inc.	20293	1,188.54
SQ Resources, Inc.	20298	890.70
Gendiesel Philippines Inc.	30011	24,000.00
Philippine & Scandinavian Design Filtra Inc.	90072	133,928.57
subtotal		***160,778.19***
3. Purchase of goods supported by VAT invoice but the input VAT was not separately indicated		
Memo Express	20145	511.07
subtotal		***511.07***
4. Purchase of service supported by VAT OR but with notation "Not valid as source of input VAT'		
Tower Club	20310	4,500.00
subtotal		***4,500.00***
5. Purchases of services supported by documents other than VAT ORs (collector's receipt)		
Jervis Termite Control	50273	21,428.57
Lane Moving and Storage	60179	1,050.60
Jervis Termite Control	60203	3,750.00
Jervis Termite Control	70200	3,750.00
Jervis Termite Control	80216	3,750.00
Jervis Termite Control	90100	3,750.00
Jervis Termite Control	100129	3,750.00
Jervis Termite Control	110100	3,750.00
Jervis Termite Control	120077	3,750.00
subtotal		***48,729.17***
6. Purchase of service supported by VAT OR with corrections on the name and amount but it cannot be ascertained whether the countersignature thereon is made by the issuer		
Athens Interior and Design Studio	20031-20032, 20320-30322	474,107.14
subtotal		***474,107.14***
7. Input VAT claimed twice (same with exhibits 20187-20189)		
Renmar General Merchandise	20209-20210	18,916.40
subtotal		***18,916.40***

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8. No reference/supporting documents		
DHL Express Philippines Corp	P-32-E-1, page 33	4,536.00
subtotal		***4,536.00***
9. Purchases of services supported by TIN# ORs		
PLDT	40056-40080	10,428.23
PLDT	40081-40101	17,308.00
PLDT	70096-70107	2,155.55
PLDT	70144-70147	10,054.84
PLDT	90101, 90106	74.12
PLDT	90101, 90102	160.71
PLDT	90101, 90104	160.71
PLDT	90101, 90107	239.40
PLDT	90101, 90105	160.71
PLDT	90101, 90108	160.71
PLDT	90101, 90109	160.71
PLDT	90101, 90110	160.71
PLDT	90101, 90111	160.71
PLDT	90101, 90111	160.71
PLDT	90101, 90108	160.71
subtotal		***41,706.53***
10. Purchases of services supported by TIN ORs		
Eastern Telecommunications Phils., Inc.	30187-30188	9,343.53
Eastern Telecommunications Phils., Inc.	110217-110218	13,430.83
Eastern Telecommunications Phils., Inc.	120141-120142	11,215.58
Eastern Telecommunications Phils., Inc.	40236-40237	11,303.71
Eastern Telecommunications Phils., Inc.	40236-40237	5,640.19
Eastern Telecommunications Phils., Inc.	40242-40244	1,753.55
Eastern Telecommunications Phils., Inc.	50123-50125	1,320.00
Eastern Telecommunications Phils., Inc.	60055-60056	1,320.00
Eastern Telecommunications Phils., Inc.	600195-600196	5,589.65
Eastern Telecommunications Phils., Inc.	600195-600197	5,589.65
Eastern Telecommunications Phils., Inc.	70187-70188	1,320.00
Eastern Telecommunications Phils., Inc.	80009-80010	1,320.00
Eastern Telecommunications Phils., Inc.	80262-80263	11,096.35
Eastern Telecommunications Phils., Inc.	90149-90150	10,995.26
Eastern Telecommunications Phils., Inc.	90225-90227	1,320.00
Eastern Telecommunications Phils., Inc.	11004-11005	1,320.00
Eastern Telecommunications Phils., Inc.	120010-120012	1,325.28
Eastern Telecommunications Phils., Inc.	90230-90231	1,320.00
Eastern Telecommunications Phils., Inc.	100114-100116	11,153.38
subtotal		***107,676.96***
Total		**₱ 1,234,689.74**

Thus, petitioner's substantiated input VAT amounts to ₱22,790,393.29, computed as follows:

Total Input VAT per Returns		₱ 26,986,498.90
Less: Disallowances		
Per Independent CPA Report	₱2,961,415.87	
Per the Court's verification	1,234,689.74	4,196,105.61
Substantiated Input VAT		**₱22,790,393.29**

However, a portion of the substantiated input VAT of ₱22,790,393.29 shall be applied against petitioner's total reported output VAT liability of ₱1,251,996.04.[69] Consequently, only the remaining input VAT of ₱21,538,397.25 can be attributed to the entire zero-rated sales declared by petitioner in the amount of ₱149,316,195.72, and only the input VAT of ₱20,980,559.39 is attributable to the substantiated zero-rated sales of ₱145,448,952.18, as computed below:

Substantiated Input VAT	₱ 22,790,393.29
Less: Output VAT	1,251,996.04
Excess Input VAT	**₱21,538,397.25**
Divided by Total Reported Zero-Rated Sales	149,316,195.72
Multiply by Substantiated Zero-Rated Sales	145,448,952.18
Excess Input VAT attributable to Substantiated Zero-Rated Sales	**₱20,980,559.39**

Excess input taxes were not applied against any output VAT liability

It must be remembered that when claiming refund or tax credit, the VAT-registered taxpayer must be able to establish that it has a refundable or creditable input VAT, and the same has not been applied against its output VAT liabilities – information which are supposed to be reflected in the taxpayer's VAT returns.[70]

Here, although petitioner carried over the claimed input VAT of ₱25,922,574.79, which includes the refundable amount of ₱20,980,559.39 to the succeeding quarters up to the first quarter of taxable year 2013,[71] the same was not applied against any output VAT in the said quarters and remained

[69] The total amount in *Line 19B* of Exhibits "P-32-B-2", "P-32-B-3", "P-32-B-4" and "P-32-B-7".
[70] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159471, January 26, 2011.
[71] Exhibits "P-32-B-8" to "P-32-B-12".

unutilized until it was deducted as "VAT Refund/TCC claimed"[72] in the first quarter of taxable year 2013.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of ₱20,980,559.39, representing its unapplied excess input VAT attributable to zero-rated sales for taxable year 2011.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

[72] Exhibit "P-32-B-12-a".

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice