REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION
****

PROCTER & GAMBLE ASIA, PTE. LTD., Petitioner,	**CTA Case Nos. 7523 and 7556**
	Members:
- versus -	**UY,** and **FABON-VICTORINO,** J.J.
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, Respondent.	MAY 17 2016 ; 1:55p.m.

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AMENDED DECISION

UY, J.:

These consolidated Petitions for Review were remanded by the Supreme Court to this Court, pursuant to its Resolution rendered in the case of ***"Procter and Gamble Asia Pte, Ltd., petitioner, v. Commissioner of Internal Revenue, respondent" in G.R. No. 202071[1],*** for further proceedings and determination of whether the claims of petitioner for refund or tax credit of unutilized input valued-added tax (VAT) are valid, in the aggregate amount of ₱32,706,446.71 .

Said case was a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Court of Tax Appeals (CTA) *En Banc* Decision and Resolution in CTA EB No. 746, which denied petitioner's claim for refund of unutilized input value-added tax (VAT) for not observing the mandatory 120-day waiting period under

[1] G.R.. No. 202071, February 19, 2014, Chief Justice Ma. Lourdes P.A. Sereno, ponente and Chairperson of the First Division of the Supreme Court, concurred by Associate Justice Teresita J. Leonardo-De Castro, Associate Justice Lucas P. Bersamin, Associate Justice Martin S. Villarama, Jr., and Associate Justice Bienvenido L. Reyes.

Section 112 of the National Internal Revenue Code.

Petitioner's claim for refund or tax credit of unutilized input valued-added tax (VAT) in the aggregate amount of ₱32,706,446.71 allegedly represents unutilized input VAT paid on purchases of goods and services attributable to zero-rated sales for the period covering July 1, 2004 to December 31, 2004, broken down as follows:

Case No.	Amount	Taxable Period
7523	₱ 17,117,309.41	July 1, 2004 to September 30, 2004
7556	15,589,137.30	October 1, 2004 to December 31, 2004
	₱ 32,706,446.71	

THE FACTS

Culled from Our Decision dated January 17, 2011, the undisputed facts of these cases are quoted hereunder, to wit :

> "Petitioner, Procter and Gamble Asia, Pte., Ltd., is a foreign corporation duly organized and existing under the laws of Singapore and is maintaining a Regional Operating Headquarter in the Philippines, with office address at the 18/F Petron Megaplaza, 358 Sen. Gil Puyat Ave., Makati City. It provides management, marketing, technical and financial advisory, and other qualified services to related companies as specified by its Certificate of Registration and License issued by the Securities and Exchange Commission. Petitioner as a VAT-registered taxpayer, is covered by a Bureau of Internal Revenue (BIR) Certificate of Registration No. 9RC0000071787.
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> Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, empowered to perform the duties of said office including, among others, the duty to act upon and approve claims for refunds or tax credits as provided by law. She holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.
>
> For the periods covering the quarters from July to September 2004, and from October to December 2004,

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petitioner allegedly rendered services to its affiliates in the Philippines and abroad pursuant to its Service Agreements. For its services abroad, petitioner was paid in the form of foreign currency, which was allegedly accounted for in accordance with the rules of the *Bangko Sentral ng Pilipinas* (BSP).

During the same period, petitioner purchased goods and services from VAT-registered suppliers and service providers, supported by invoices and official receipts, with input VAT in the following amounts:

Period	Goods	Input VAT	Services	Input VAT
July to September	P8,836,426.36	P883,642.64	P291,883,815.09	P29,188,381.51
October to December	P3,676,074.12	P367,607.41	P273,651,709.60	P27,365,170.96

On the belief that it is entitled to a refund of its alleged unutilized input VAT, petitioner filed applications and letter-requests with the BIR Revenue District Office (RDO) No. 49 for the refund or tax credit of its input tax attributable to its zero-rated sales, covering the periods of July to September 2004 and October to December 2004, on the following dates:

Period of Claim	Filing Date of Administrative Claim	Input Tax
July to September 2004	September 26, 2006	P17,117,309.41
October to December 2004	December 13, 2006	P15,589,137.30

As respondent has not yet issued any decision regarding its refund claims, petitioner filed the instant Petitions for Review for the periods covering July to September 2004 and October to December 2004 on the following dates:

CTACASE NO.	PERIOD OF CLAIM	FILING DATE OF PETITION FOR REVIEW	Amount of Claim
7523	July to September 2004	October 2, 2006	P17,117,309.41
7556	October to December 2004	December 29, 2006	P15,589,137.30

In the separate Answers filed in C.T.A. Case No. 7523 on November 27, 2006, and in C.T.A. Case No.

7556 on February 27, 2007, except for the amounts involved and the periods covered by the claims, respondent similarly interposes the following Special and Affirmative Defenses, summarized as follows:

> 1. Respondent reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
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> 2. Petitioner's alleged claim for refund or issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent Bureau;
>
> 3. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.
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> 4. Petitioner's claim for refund or issuance of tax credit certificate in the amounts of: **P17,117,309.41** for CTA Case No. 7523 and **P15,589,137.30** for CTA Case No. 7556, as alleged unutilized input VAT attributable to its zero-rated sales of goods and services for the periods covering: July 2004 to September 2004, and October to December 2004, respectively, were not fully substantiated by proper documents.
>
> 5. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit.
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> 6. Petitioner's sales of goods and services to various alleged clients/affiliates do not qualify as zero-rate VAT.
>
> 7. The amount subject of the claim for refund of petitioner do not pertain in full to its input VAT paid attributable to its zero-rated sales of goods and services for the periods covering July 2004 to September 2004 in CTA

> Case No. 7523 and October to December 2004 in CTA Case No. 7556.
>
> 8. Petitioner's right to claim for refund/tax credit of the alleged unutilized input VAT attributable to its zero-rated sales of goods and services for the period covering July 2004 to September 2004 have already prescribed pursuant to Section 112 of the NIRC.
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> 9. Petitioner failed to comply with the substantiation requirements under Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code.
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> 10. It is incumbent upon the latter to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.
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> 11. Claims for refund are construed strictly against the claimant for 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 1211***).

In the Resolution dated July 9, 2007, this Court granted petitioner's motion to consolidate these two cases to expedite the resolution thereof and in the interest of justice. During trial, both parties presented their respective documentary and testimonial evidence. Thereafter, upon submission of both parties' respective Memorandum, these consolidated cases were submitted for decision on July 12, 2010."[2]

On January 17, 2011, this Court rendered its Decision[3] dismissing the instant Petitions for Review for having been prematurely filed, the dispositive portion of which reads:

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[2] Docket (CTA Case No. 7523)—Vol. III, pp. 2118 to 2121.
[3] Docket (CTA Case No. 7523)—Vol. III, pp. 2117 to 2129.

> "**WHEREFORE**, the instant Petitions for Review are hereby **DISMISSED** for being prematurely filed.
>
> **SO ORDERED**."

A Motion for Reconsideration was filed on January 27, 2011,[4] which was denied in the Resolution dated March 15, 2011.[5]

On March 30, 2011, petitioner appealed to the CTA *En Banc*,[6] which docketed the case as CTA EB No. 746.

The CTA *En Banc* later affirmed the ruling of this Court in the Decision dated December 20, 2011.[7] On January 10, 2012, petitioner filed a Motion for Reconsideration, which was denied via the CTA *En Banc*'s Resolution dated May 24, 2012.[8]

Thereafter, petitioner filed a Petition for Review on Certiorari before the Honorable Supreme Court which was docketed as G.R. No. 202071 entitled ***"Procter & Gamble Asia Pte. Ltd., Petitioner. vs. Commissioner of Internal Revenue, Respondent.***"

On February 19, 2014, the High Court issued the Resolution[9] remanding the case to this Court for further proceedings and determination of the validity of petitioner's claims for refund or tax credit of unutilized input VAT. The dispositive portion of the said Resolution states:

> "**WHEREFORE**, the petition is **GRANTED**. The Decision and Resolution of the Court of Tax Appeals *En Banc* in CTA EB No. 746 are **REVERSED** and **SET ASIDE**. This case is hereby **REMANDED** to the CTA First Division for further proceedings and a determination of whether the claims of petitioner for refund or tax credit of unutilized input value-added tax are valid.
>
> **SO ORDERED**."

[4] Docket (CTA Case No. 7523)—Vol. III, pp. 2130 to 2149.
[5] Docket (CTA Case No. 7523)—Vol. III, pp. 2162 to 2167.
[6] Docket (CTA Case No. 7523)—Vol. III, pp. 2168 to 2195.
[7] Docket (CTA Case No. 7523)—Vol. III, pp. 2595 to 2609.
[8] Docket (CTA Case No. 7523)—Vol. III, pp. 2634 to 2640.
[9] Docket (CTA Case No. 7523)— Vol. IV, pp. 3326 to 3327.

Subsequently, the Honorable Supreme Court issued an Entry of Judgment,[10] declaring that its Resolution dated February 19, 2014 in G.R. No. 202071 became final and executory on July 9, 2014.

In view thereof, and taking into consideration the period of time from the promulgation of the Decision on January 17, 2011, and the remanding of the consolidated cases to this Court, the Resolution on February 23, 2015 was issued,[11] directing both parties to submit a Manifestation informing this Court of any supervening event which may have transpired that would affect the final resolution of the subject consolidated cases; and to determine whether there is a need to conduct further proceedings.

On March 16, 2015, petitioner submitted a Manifestation[12] stating that it will submit within thirty (30) days a supplemental memorandum to discuss petitioner's entitlement to the claimed refund for the subject periods.

The instant consolidated cases were submitted for decision as of May 19, 2015[13] after petitioner filed the Supplemental Memorandum[14] on April 29, 2015 while no compliance was filed by respondent,

Hence, this Decision.

THE ISSUES

The jointly stipulated issues for this Court's resolution are as follows:

> 1) Whether or not Petitioner's sales of services are zero-rated for VAT purposes under Section 108(B)(2) of the 1997 Tax Code;
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> 2) Whether or not Petitioner carried-over to the succeeding taxable quarter(s) or year(s) the alleged unutilized input VAT paid on goods and services

[10] Docket (CTA Case No. 7523)—Vol. IV, p. 3346.
[11] Docket (CTA Case No. 7523)—Vol. IV, pp. 3359 to 3361.
[12] Docket (CTA Case No. 7523)—Vol. IV, pp. 3362 to 3364.
[13] Docket (CTA Case No. 7523)—Vol. IV, p. 3372.
[14] Docket (CTA Case No. 7523)—Vol. IV, pp. 3367 to 3369.

attributable to its zero-rated sales, for the periods covering July 2004 to September 2004 and October 2004 to December 2004, and applied the same amount in full to its output VAT liability for the said periods;

3) Whether or not the amount of ₱17,117,309.41 and ₱15,589,137.30 being claimed by petitioner as unutilized input VAT, for the periods covering July 2004 to September 2004 and October 2004 to December 2004, respectively, pertain in full to its zero-rated sales of services;

4) Whether or not petitioner's sales of services to non-resident foreign corporations qualify as zero-rated VAT;

5) Whether or not petitioner complied with the substantiation requirements prescribed under Revenue Regulations (RR) No. 7-95 in relation to Sections 113 and 237 of the 1997 Tax Code; and

6) Whether or not petitioner is entitled to its claimed refund or tax credit in the amounts of ₱17,117,309.41 and ₱15,589,137.30, as alleged unutilized input VAT paid on goods and services attributable to its zero-rated sales, for the periods covering July 2004 to September 2004 and October 2004 to December 2004, respectively.[15]

Petitioner's arguments:

Petitioner primarily argues that while petitioner's sales of services to its affiliates in the Philippines were subjected to 10% VAT as shown in its monthly VAT declarations and quarterly VAT returns for the period July 1 to December 31, 2004, petitioner's sales of services to its affiliates abroad are definitely zero-rated for VAT purposes under Section 108(B)(2) of the 1997 Tax Code.

According to petitioner, it neither carried-over to the succeeding taxable quarter or quarters the alleged unutilized input VAT paid on goods and services attributable to its zero-rated sales for the periods July 1 to September 30, 2004 and October 1 to December 31, 2004

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[15] Refer to Docket (CTA Case No. 7523)—Vol. I, pp. 165 to 166; and Docket (CTA Case No. 7566), pp. 194 to 195.

nor applied the same to any of its output VAT liability during the same period.

Moreover, petitioner likewise claims that the amounts of ₱17,117,309.41 and ₱15,589,137.30 being claimed as unutilized input VAT for the periods covering July 1 to September 30, 2004 and October 1 to December 30, 2004, respectively, pertain in full to its zero-rated sales of services for the respective periods.

Furthermore, petitioner asserts that its affiliates abroad are non-resident foreign corporations to whom petitioner rendered services for the period July 1 to December 31, 2004; and that the consideration for the services rendered by petitioner to said affiliates were paid for in acceptable foreign currency and duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*. Thus, according to petitioner, its sales of services to non-resident foreign corporations qualify as zero-rated sales.

In addition, petitioner submits that it complied with the substantiation requirements provided under the law, as shown by the official receipts issued by petitioner to its affiliates abroad and to those based in the Philippines for the period of the claim.

Lastly, petitioner maintains that having satisfied all the requisites under Section 112(A) of the 1997 Tax Code, petitioner is entitled to the refund or issuance of tax credit certificate of its unutilized input VAT paid on goods and services attributable to its zero-rated sales of the periods under consideration.

Respondent's counter-arguments:

Respondent contends that petitioner failed to comply with the invoicing requirements under Section 113(A) in relation to Section 237 of the 1997 Tax Code, and Section 4.108-1 of Revenue Regulations No. 7-95.

According to respondent, although Sections 113 and 237 of the National Internal Revenue Code (NIRC) of 1997 use the words "invoice' and "receipt" without distinction, the 1997 Tax Code provides a separate provision, which must be read in relation thereto.

In connection, respondent avers that the VAT on the sale of goods or properties accrues upon the consummation of sale, whether or not the consideration was actually received already by the seller; thus, Section 106(D)(1) provides that the tax shall be computed by multiplying the total amount indicated in the invoice by one-eleventh (1/11). Upon the other hand, in the case of sale of services, as in the case at bar, the VAT is computed based on gross receipts as indicated in the official receipts as provided for under Section 108(A); therefore, Section 108(C) prescribes that the tax on the sale of services shall be computed by multiplying the total amount indicated in the official receipt by one-eleventh (1/11).

Finally, respondent stresses that tax refunds, being in the nature of tax exemption, are construed *strictissimi juris* against petitioner.

THE COURT'S RULING

The instant consolidated Petitions for Review are partly meritorious.

Considering that these consolidated cases involve claims for refund of alleged unutilized input VAT for the periods covering **July 1 to September 30** and **October 1 to December 31** of taxable year **2004**, the applicable provisions are Sections 110(B) and 112 of the NIRC of 1997, prior to its amendment under Republic Act (RA) No. 9337. These provisions state:

> SEC. 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: xxx *Provided, however,* That any input tax attributable 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
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> 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

(D) *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.

Pursuant to the afore-quoted provisions, and as laid down by the Supreme Court in a number of cases[16], a taxpayer may claim a

[16] *Commissioner of Internal Revenue vs. Toledo Power Company*, G.R. Nos. 195175 & 199645, August 10, 2015; *Luzon Hydro Corporation vs. Commissioner of Internal*

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. such input taxes are attributable to zero-rated or effectively zero-rated sales;
5. said input taxes were not applied against any output VAT liability; and
6. the claim was filed within the prescriptive period.

We shall first determine whether petitioner complied with the sixth and last requisite.

Timeliness of the filing of the administrative and judicial claims.

In accordance with the above-quoted Section 112(A), the administrative claim for the issuance of a tax credit certificate or refund of input VAT must filed with BIR *"within two (2) years after the close of the taxable quarter when the sales were made"*. Thus, as the subject claims are for the periods covering July 1 to September 30, and October 1 to December 31 of taxable year 2004, said administrative claims must be filed on or before September 30, 2006, and December 31, 2006, respectively. In this case, petitioner filed its administrative claims for the subject periods on September 26, 2006, and December 13, 2006, both well within the said prescriptive period.

As to whether petitioner timely filed its judicial claims, the Supreme Court has already settled the matter, when petitioner appealed this Court's Decision dated January 17, 2011, declaring that petitioner's case fall under the exception in the observance of the period of filing judicial claims under Section 112. As held in *Procter &*

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.

Gamble Asia Pte. Ltd. vs. Commissioner of Internal Revenue,[17] the High Court held:

> "xxx. Citing the recent case of *CIR v. San Roque Power Corporation*,[18] respondent counters that the 120-day period to file judicial claims for a refund or tax credit is mandatory and jurisdictional. Failure to comply with the waiting period violates the doctrine of exhaustion of administrative remedies, rendering the judicial claim premature. Thus, the CTA does not acquire jurisdiction over the judicial claim.
>
> Respondent is correct on this score. However, it fails to mention that *San Roque* also recognized the validity of BIR Ruling No. DA-489-03. The ruling expressly states that the 'taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review.'
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> The Court, in *San Roque*, ruled that equitable estoppel had set in when respondent issued BIR Ruling No. DA-489-03. This was a general interpretative rule, which effectively misled all taxpayers into filing premature judicial claims with the CTA. Thus, taxpayers could rely on the ruling from its issuance on 10 December 2003 up to its reversal on 6 October 2010, when CIR v. Aichi Forging Company of Asia, Inc. was promulgated.
>
> The judicial claims in the instant petition were filed on 2 October and 29 December 2006, well within the ruling's period of validity. Petitioner is in a position to 'claim the benefit of BIR Ruling No. DA-489-03, which shields the filing of its judicial claim from the vice of prematurity.'"

Hence, petitioner timely filed both its administrative and judicial claims.

We shall now proceed to make a determination of petitioner's compliance with the other requisites.

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[17] G.R. No. 202071, February 19, 2014.
[18] G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

Petitioner is a VAT-registered entity and had zero-rated sales during the subject periods.

Petitioner complied with the first requisite considering that it is a VAT-registered taxpayer with BIR Certificate of Registration No. 9RC0000071787 dated October 8, 1999.[19]

On the second requisite, *i.e.*, the existence of zero-rated sales, petitioner claims that the services it rendered to its affiliates abroad, which were paid for in foreign currency, are transactions subject to zero percent (0%) VAT in accordance with Section 108(B)(2) of the NIRC of 1997, as amended, which states that:

> "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);"

[19] Par. 3, Admitted Facts by Petitioner and Respondent, JSFI, Division docket (CTA Case No. 7523)—Vol. I, p. 165; Division Docket (CTA Case No. 7556), p. 202; Exhibit "B".

In the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[20], the Supreme Court held that in order for the sale of service to be zero-rated under Section 108(B)(2) of the NIRC of 1997, the following requisites must be met:

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

Records show that petitioner is a multinational company organized and existing under the laws of Singapore. In order to provide management, marketing, technical, and financial advisory services to related companies, it established a regional operating headquarters in the Philippines under Securities and Exchange Commission (SEC) Certificate of Registration and License No. A199913443.[21]

Pursuant to the Business Services Agreements[22] entered into between petitioner and its client-affiliates, petitioner shall provide its client-affiliates with accounting and financial reporting services, employee services, customer logistics financial services, purchases, business intelligence services, information technology business solution, workplace and other services within an agreed period including the subject periods. These services clearly fall within the scope of "services other than processing, manufacturing or repacking of goods" contemplated by the afore-mentioned provision.

For services rendered to its affiliates abroad, petitioner received US dollar payments that were accounted for in accordance with the BSP rules and regulations, as evidenced by the Certifications of Inward Remittances[23] issued by Citibank N.A, Philippine Branch and attested to by Ms. Teresita O. Sugay, Citibank's representative, through her Judicial Affidavit[24] and duly supported by VAT zero-rated

[20] G.R. No. 153205, January 22, 2007.
[21] Exhibit "A".
[22] Exhibits "C-1" to "C-27", inclusive of submarkings.
[23] Exhibits "G-1" and "G-2".
[24] Exhibits "AA" to "AA-1".

official receipts[25] issued by petitioner to its client-affiliates abroad.

However, out of the reported zero-rated receipts for the periods July 1, 2004 to September 30, 2004 and October 1, 2004 to December 31, 2004 in the amounts of ₱750,290,890.10[26] and ₱370,452,519.32[27], respectively, or in the sum of ₱1,120,743,409.42, the Court-commissioned Independent CPA (CPA), Atty. Alexander B. Cabrera, found a total disallowance of ₱7,019,703.89[28]; consisting of transactions which were not paid in acceptable foreign currency and a transaction where petitioner was the seller and the purchaser at the same time, in the respective amounts of ₱6,630,939.22[29] and ₱388,764.67[30] (USD6,955.00[31]).

Aside from the Independent CPA's recommended disallowance of ₱7,019,703.89, petitioner has declared zero-rated receipts in the amount of ₱217,573,351.71 for the period July 1, 2004 to September 30, 2004, and in the amount of ₱127,639,695.47 for the period October 1, 2004 to December 31, 2004, totaling ₱345,213,047.18, the foreign currency proceeds of which cannot be traced from the Certifications of Inward Remittances issued by Citibank N.A., Philippine Branch. Hence, in addition to the Independent CPA's disallowance, the receipts in the total amount of ₱345,213,047.18 will not be considered zero-rated sales, the breakdown of which is as follows:

OR No.	Exhibit No.	Client	Declared Zero-Rated Receipts	
			in USD	in PhP[32]
July - September 2004				
1411	G-8	P & G Far East Inc.	491,043.10	27,447,909.47
1424	G-15	P & G Taiwan Ltd.	347,904.60	19,446,875.49
1435	G-25	P & G K.K.	326,282.43	18,238,257.69
1439	G-28	P & G International Operation Pte Ltd	1,206,620.05	67,446,621.02
1440	G-29	P & G International Operation Pte Ltd	28,997.18	1,620,859.70
1447	G-31	P & G Far East Inc.	559.25	31,400.90

[25] Exhibits "G-3" to "G-142".
[26] Line 20, Exhibit "H".
[27] Line 20, Exhibit "L-3".
[28] Annex "R", Exhibit "D".
[29] Annex "R" as summarized in Annex "P", Exhibit "D".
[30] Annex "R", Exhibit "D".
[31] Annex "Q", Exhibit "D".
[32] Annex "F", Petition for Review, Division docket (CTA Case No. 7523)—Vol. I, pp. 76 to 83; Vol. III,
pp. 2488 to 2495.

1455	G-38	P & G Taiwan Ltd.	180,458.08	10,078,350.19
1456	G-39	P & G Trading (Thailand) Ltd.	275,988.75	15,427,760.82
1457	G-40	PT P & G Home Products Indonesia	180,566.34	10,093,209.34
1458	G-41	P & G Vietnam Ltd.	572.93	32,169.01
1460	G-43	P & G K.K.	1,090.50	61,229.64
1464	G-46	The P & G Company	91,415.06	5,118,424.41
1470	G-50	P&G Hygiene & Health Care	304,146.72	17,020,491.99
1474	G-54	P&G India Ltd	111,288.66	6,231,167.98
1478	G-58	P&G Home Prod (India) Ltd	139,292.48	7,786,052.53
1483	G-63	P&G Northeast Asia Pte Ltd	22,267.42	1,211,390.12
1484	G-64	P&G Northeast Asia Pte Ltd	183,621.90	10,281,181.41
Subtotal–July 1, 2004 to September 30, 2004			**3,892,115.45**	**217,573,351.71**
October - December 2004				
1496	G-69	The P&G Company	148,040.59	8,316,100.26
1497	G-70	P&G Far East	102,674.36	5,766,215.15
1498	G-71	P&G Australia	14,838.84	833,315.47
1500	G-73	P&G Hygiene & Healthcare Limited	60,708.48	3,402,692.53
1502	G-75	P&G Malaysia Sdn Bhd	62,273.58	3,492,895.26
1506	G-77	P&G Singapore Pte Ltd	16,696.76	938,042.67
1507	G-78	P&G Taiwan	106,000.91	5,955,107.31
1510	G-82	P&G Home Products	15,432.26	863,623.55
1516	G-89	P&G KK	44,585.06	2,504,403.51
1519	G-92	P&G International Operations Pte Ltd	141,862.61	7,969,809.55
1523	G-94	The P&G Company	91,514.57	5,152,847.41
1524	G-95	P&G Far East Inc.	105,958.73	5,966,144.71
1526	G-97	P&G Guangzhou	7,586.30	424,052.55
1528	G-99	P&G Hygiene & Healthcare Limited	45,919.42	2,579,742.70
1534	G-104	P&G Taiwan Ltd	102,147.77	5,751,563.63
1538	G-108	P&G Home Products (India) Ltd.	24,635.40	1,384,011.24
1546	G-117	P&G International Operations Pte Ltd	209,292.03	11,784,461.29
1549	G-119	P&G Far East Inc.	192,697.02	10,850,057.43
1552	G-122	P&G Hygiene & Healthcare Limited	136,827.62	7,704,257.89
1558	G-127	P&G Taiwan Ltd	164,920.20	9,286,047.30
1562	G-131	P&G Home Products (India) Ltd.	43,215.14	2,433,284.91
1564	G-133	P&G Vietnam Ltd	141,322.70	7,957,359.24
1571	G-141	P&G International Operations Pte Ltd	289,908.20	16,323,659.91
Subtotal–October 1, 2004 to December 31, 2004			**2,269,058.55**	**127,639,695.47**
Total – July 1, 2004 to December 31, 2004			**6,161,174.00**	**345,213,047.18**

In compliance with the third requisite, petitioner presented the following documents showing that its clients are non-resident foreign corporations doing business outside the Philippines: MS

1. SEC Certifications of Non-Registration[33];
2. Certificates of Incorporation or Registration and Judicial Affidavits executed by petitioner's foreign affiliates' officers[34];
3. Exhibit 21 of The Procter and Gamble Company and Subsidiaries Report to the U.S. Securities and Exchange Commission[35]; and
4. Business Services Agreements[36].

In order to be considered a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both Certificate of Non-registration of Corporation/Partnership issued by the Philippine SEC, and proof of foreign incorporation/association/business registration, and that there is no other indication which would disqualify said entity in being classified as a non-resident foreign corporation.

A careful scrutiny of the documents submitted shows that petitioner failed to establish that the following entities are non-resident foreign corporations doing business outside the Philippines:

With SEC Certification of Non-Registration but without proof of foreign incorporation
1. P. T. Procter & Gamble Indonesia TBK
2. Max Factor Kabushi Kaisha

Hence, petitioner's declared zero-rated receipts from the afore-mentioned entities for the period July 1, 2004 to September 30, 2004 in the amount of ₱37,446,240.22 and for the period October 1, 2004 to December 31, 2004 in the amount of ₱15,969,610.37, totaling ₱53,415,850.59, detailed below, shall not be considered zero-rated sales:

Transaction Date	OR No.	Exhibit No.	Client-Affiliate	Declared Zero-Rated Receipts	
				In USD	In PhP
July 26, 2004	1414	G-11	PT P&G Indonesia TBK	164,445.46	9,192,032.42
Aug, 30, 2004	1450	G-34	PT P&G Indonesia TBK	137.84	7,739.47
			credit note-no OR[37]	(16,711.29)	(938,309.38)
July 27, 2004	1415	G-12	Max Factor K.K.	527,750.97	29,499,774.73

[33] Exhibits "G-143" to "G-170".
[34] Exhibits "JJ" to "CCC", inclusive of submarkings.
[35] Exhibit "DDD".
[36] Exhibits "C-1" to "C-27", inclusive of submarkings.
[37] Annex "F", Petition for Review, Division docket (CTA Case No. 7523)—Vol. I, p. 79.

Aug. 30, 2004	1451	G-35	Max Factor K.K.	1,213.26	68,122.40
Sept. 24, 2004	1471	G-51	Max Factor K.K.	55,007.74	3,079,940.66
			credit note-no OR[38]	(61,677.10)	(3,463,060.08)
			Subtotal	**670,166.88**	**37,446,240.22**
Oct. 28, 2004	1501	G-74	Max Factor K.K.	4,404.48	243,864.32
Nov. 25, 2004	1529	G-100	Max Factor K.K.	80,945.12	4,557,720.72
Dec. 21, 2004	1553	G-123	Max Factor K.K.	198,344.13	11,168,025.33
			Subtotal	**283,693.73**	**15,969,610.37**
			Total	**953,860.61**	**53,415,850.59**

In sum, out of the ₱1,120,743,409.42 zero-rated receipts reported by petitioner for the period covering July 1, 2004 to December 31, 2004, only the amount of ₱715,094,807.76 represents valid zero-rated receipts, computed as follows:

Zero-Rated Receipts per VAT Returns			₱1,120,743,409.42
Less:	Disallowances		
	Per Independent CPA's findings	₱ 7,019,703.89	
	Per this Court's Further Verification		
	Without foreign currency remittances	345,213,047.18	
	Receipts from entities without proof of foreign incorporation/association/business registration	53,415,850.59	405,648,601.66
Valid Zero-Rated Receipts			**₱715,094,807.76**

Petitioner incurred/paid input taxes attributable to zero-rated sales and said input taxes were not applied against any output VAT liability.

We shall now determine whether petitioner incurred input taxes in connection with its zero-rated sales and if said input taxes were not applied against any output VAT liability of petitioner.

Petitioner's Amended Quarterly VAT Returns for the periods covering July 1, 2004 to September 30, 2004 and October 1, 2004 to December 31, 2004 reflected input VAT carried over from previous quarter (*i.e.*, April 1, 2004 to June 30, 2004) in the amount of ₱5,793,355.41, and input VAT from current purchases for July 1,

[38] *Ibid.*

2004 to September 30, 2004 in the amount of ₱30,072,024.15, and for October 1, 2004 to December 31, 2004 in the amount of ₱27,732,778.37, totaling ₱63,598,157.93, broken down as follows:

	July 1, 2004 to Sept 30, 2004 *(Exhibit "H")*	Oct. 1, 2004 to Dec. 31, 2004 *(Exhibit "L-3")*	Total
Input Tax Carried Over from Previous Quarter (Apr 1, 2004 - June 30, 2004)	**₱ 5,793,355.41**		**₱ 5,793,355.41**
Input Tax from Current Purchases:			
Domestic Purchases-Capital Goods	₱ 306,887.36	₱ 38,099.09	₱ 344,986.45
Domestic Purchases-Goods other than Capital Goods	468,830.28	329,508.32	798,338.60
Domestic Purchases-Services	29,188,381.51	27,365,170.96	56,553,552.47
Importations-Capital Goods	107,925.00	-	107,925.00
Subtotal	**₱30,072,024.15**	**₱27,732,778.37**	**₱57,804,802.52**
Total Input VAT per Returns	**₱35,865,379.56**	**₱27,732,778.37**	**₱63,598,157.93**

In support thereof, petitioner presented various VAT invoices and official receipts (ORs)[39], which were all examined by the Independent CPA. In the Reports dated December 27, 2007[40] and August 15, 2008[41], the Independent CPA found unallowable input VAT credits in the amounts of ₱3,644,242.75 and ₱1,735,579.07 from the input VAT carried over from previous quarter (April 1, 2004 to June 30, 2004) and input VAT from current purchases (July 1, 2004 to December 31, 2004), respectively, or in the aggregate sum of ₱5,379,821.82, detailed as follows:

Findings/Exceptions	Input VAT Claim	Reference
Input VAT Carried Over from Previous Quarter (April 1, 2004 to June 30, 2004)		
Input VAT relating to purchases of goods which are not supported by invoices	₱ 948,003.21	Exhibit "FF, Annex "A"
Input VAT relating to importation of goods which are not covered by Import Entry and Internal Revenue Declarations	52,985.00	Exhibit "FF", Annex "A"
Input VAT relating to purchases of services which are not covered by official receipts	1,006,885.59	Exhibit "FF", Annex "B"
Input VAT relating to purchases of services which are supported by non-VAT official receipts	29,540.75	Exhibit "FF", Annex "C"
Input VAT relating to purchases of services which were paid outside the period covered by the claim	1,606,828.20	Exhibit "FF", Annex D
Subtotal	**₱3,644,242.75**	
Input VAT from Current Purchases (July 1, 2004 to December 31, 2004)		
Purchases of goods supported by non-VAT invoices	₱ 11,903.64	Exhibit "D", Annex "C"

[39] Exhibits "I-1" to "I-334", "J-1" to "J-554", and "GG-1" to "GG-282".
[40] Exhibit "D".
[41] Exhibit "FF".

Purchases of services supported by non-VAT official receipts	312,137.71	Exhibit "D", Annex "D"
Out of period purchases of goods	377,645.09	Exhibit "D", Annex "E"
Out of period purchases of services	175,872.99	Exhibit "D", Annex "F"
Out of period importation	60,757.74	Exhibit "D", Annex "G"
Purchases of goods not supported by invoices	31,568.65	Exhibit "D", Annex "H"
Purchases of services not supported by official receipts	673,181.47	Exhibit "D", Annex "I"
Importation not supported by an Import Entry and Internal Revenue Declaration	961.00	Exhibit "D", Annex "J"
Purchases of goods not made by P&G Asia Pte. Ltd.	69.00	Exhibit "D", Annex "K"
Purchases of services not made by P&G Asia Pte. Ltd.	1,818.18	Exhibit "D", Annex "L"
Importations where P&G Asia Pte. Ltd. is not the consignee or importer of record	43,713.78	Exhibit "D", Annex "M"
Purchases of goods covered by invoices not registered with the BIR	1,690.18	Exhibit "D", Annex "N"
Non-VAT transaction	44,259.64	Exhibit "D", Annex "O"
Subtotal	**₱1,735,579.07**	
Total	**₱5,379,821.82**	

Upon examination of the Independent CPA's disallowed input VAT, amounting to ₱5,379,821.82, due to failure to comply with the substantiation requirements prescribed under Sections 110(A) and 113(A) of the NIRC of 1997, and Sections 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulations No. 7-95, the Court finds the same to be proper.

Thus, out of petitioner's reported accumulated input VAT credits of ₱63,598,157.93, only the amount of ₱58,218,336.11 represents its valid input VAT, computed as follows:

Input VAT Carried Over from Previous Quarter	₱ 5,793,355.41
Input VAT from Current Purchases	
July to September 2004	₱ 30,072,024.15
October to December 2004	27,732,778.37
Subtotal	₱ 57,804,802.52
Total Accumulated Input VAT	₱ 63,598,157.93
Less: Not Properly Substantiated Input VAT	5,379,821.82
Valid Input VAT	**₱58,218,336.11**

However, a portion of the ₱58,218,336.11 input VAT shall be applied against petitioner's reported output VAT liability of ₱15,265,389.08[42], for the period July 1, 2004 to September 30, 2004,

[42] Line 19B, Exhibit "H".

and ₱10,998,152.52[43], for the period October 1, 2004 to December 31, 2004, or a total of ₱26,263,541.60. As a result, for the subject periods, only the remaining input VAT of ₱31,954,794.51 can be attributed to the entire zero-rated receipts amounting to ₱1,120,743,409.42, and only the input VAT of ₱20,388,884.24 is attributable to the valid zero-rated receipts of ₱715,094,807.76, as computed below:

Valid Input VAT		₱ 58,218,336.11
Less: Output VAT		26,263,541.60
Excess Input VAT		₱ 31,954,794.51
Mulitplied by:		
Valid Zero-Rated Receipts	₱ 715,094,807.76	
÷ Total Declared Zero-Rated Receipts	₱1,120,743,409.42	63.8053993%
Excess Input VAT Attributable to Valid Zero-Rated Receipts		**₱20,388,884.24**

Finally, it was established that the aforesaid excess input VAT was not carried over in the succeeding quarters. Records show that petitioner's entire excess input VAT claims for the periods July 1, 2004 to September 30, 2004 and October 1, 2004 to December 31, 2004 in the respective amounts of ₱17,117,309.41[44] and ₱15,589,137.30[45] were deducted as "VAT Refund/TCC claimed" in the Quarterly VAT Returns for the same taxable quarters preventing the carry-over or application of such input taxes in the next taxable quarters.

In fine, petitioner has sufficiently proven its entitlement to a refund or issuance of tax credit certificate in the amount of ₱20,388,884.24 representing its unutilized excess input VAT for the periods covering July 1 to December 31, 2004 attributable to its zero-rated receipts for the same period.

WHEREFORE, premises considered, the instant Petitions for Review are hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **TWENTY MILLION THREE HUNDRED EIGHTY-EIGHT THOUSAND EIGHT**

[43] Line 19B, Exhibit "L-3".
[44] Line 25A, Exhibit "H".
[45] Line 25A, Exhibit "L-3".

HUNDRED EIGHTY-FOUR PESOS AND 24/100 (₱20,388,884.24), representing petitioner's unutilized input VAT for the periods July 1 to September 30, 2004 and October 1 to December 31, 2004.

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
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.

ERLINDA P. UY
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice