REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

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AEGIS PEOPLESUPPORT, INC. [formerly: Peoplesupport (Philippines) Inc.],
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7404

Members:

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

Promulgated:
DEC 03 2010 ; 4:10pm

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DECISION

BAUTISTA, *J.*:

Before the Court is a Petition for Review filed by Aegis Peoplesupport, Inc., seeking the issuance of tax credit certificate (TCC) in the amount of P5,465,244.43, representing unutilized input value-added tax (VAT) for the fourth (4th) quarter of calendar year (CY) 2003.

Stripped of non-essentials, the facts of the case are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. As stated in its Articles of Incorporation, petitioner is authorized "[T]o engage in the business of customer support services by providing information and database services on the Internet including web-based applications in the Philippines and providing or furnishing any and all forms or types of services, data and facilities relating to providing information or customer products and services through the internet; and otherwise, to carry on and conduct a general business relating to internet services."

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue empowered to perform the duties of his office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law.

On January 26, 2004, petitioner filed its original Quarterly VAT Return for the 4th quarter of CY 2003 with the Bureau of Internal Revenue (BIR). However, petitioner filed an amended Quarterly VAT Return for the 4th quarter of CY 2003 on May 31, 2004.

On December 30, 2005, petitioner filed with the BIR Revenue District Office (RDO) No. 47 its "Application for Tax Credits/Refund" (BIR Form No. 1914), requesting the refund or issuance of TCC for petitioner's excess and unutilized input VAT for the 4th quarter of CY 2003 in the amount of P5,465,244.43.

When its application for refund/tax credit remained unresolved by the BIR, petitioner filed the instant Petition for Review[1] before this Court on January 24, 2006, docketed as CTA Case No. 7404, praying for the issuance of TCC for excess and unutilized input VAT for the 4th quarter of CY 2003.

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[1] *Rollo*, pp. 1-11

In his Answer[2] filed on March 16, 2006, respondent interposed the following Special and Affirmative Defenses:

> "5) Taxes paid and collected are presumed to have been made in accordance with the laws and regulations, hence, not refundable.
>
> 6) It is incumbent upon the Petitioner to show that it has complied with the provisions of Section 112(A) and 204(C) in relation to Section 229 of the Tax Code, as amended.
>
> 7) Petitioner's claim for refund has already prescribed as the two year period for claiming creditable input tax due or paid attributable to such sales must be made within two years *after the close of the taxable quarter* when the sales were made (Section 112(A), 1997 Tax Code).
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> 8) In Petitioner's case, its alleged zero-rated sales of services were made on the 4th quarter of 2003 (par. 7 of the Petition for Review), thus it has until the 4th quarter of 2005 within which to file its claim for refund, however, Petitioner filed its claim for refund with this Honorable Court only on 24 January 2006.
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> 9) 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, it is looked upon with disfavor. (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121*).
>
> 10) Further, Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected.
>
> 11) In an action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge said burden is fatal to the claim (*Emmanuel & Zenaida Aguilar vs. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206*)."

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[2] *Id.* at 38-40

Subsequently, petitioner filed a second Petition for Review[3] on March 31, 2006, docketed as CTA Case No. 7430, praying for the issuance of TCC in the amount of P3,222,630.92, representing unutilized and/or unapplied input VAT for the first quarter of 2004.

On June 30, 2006, petitioner filed a third Petition for Review[4] docketed as CTA Case No. 7499, praying for the issuance of TCC in the amount of P4,574,133.45, representing unutilized and/or unapplied input VAT for the second quarter of 2004.

Stating that CTA Case Nos. 7404, 7430, and 7499 involve the same parties and that the cases concern similar or common questions of fact and law since they all involve petitioner's claim for issuance of TCC for its unutilized input VAT, petitioner filed a "Motion to Consolidate" the three cases; which was subsequently granted by this Court.

Trial ensued.

On separate occasions during the trial of CTA Case Nos. 7430 and 7499, counsel for petitioner manifested his intention to withdraw said cases on the ground that petitioner's claim for refund have been granted albeit at reduced amounts. Accordingly, the Court granted petitioner's "Motion to Withdraw" CTA Case Nos. 7430 and 7499.

During the scheduled hearing on September 1, 2009, petitioner's counsel moved that respondent be declared to have waived the right to present evidence in view of the absence of respondent's counsel despite

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[3] *Rollo* (CTA Case No. 7430), pp. 1-9
[4] *Rollo* (CTA Case No. 7499), pp. 1-7

notice. Said motion was granted in open court.[5]

Thereafter, the parties were given a period of thirty (30) days within which to file their respective Memorandum. In compliance with said order, petitioner filed its Memorandum[6] on December 1, 2009. Hence, the instant case was submitted for decision via Resolution[7] dated December 4, 2009, *sans* respondent's Memorandum.

The parties raised the following issue and sub-issues for this Court's resolution[8]:

> "Whether or not petitioner is entitled to the issuance of a TCC in the amount of P5,465,244.43, representing unutilized input VAT on its purchases of capital goods and domestic purchases of goods and services attributable to zero-rated sales for the 4th quarter of CY 2003.'
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> The issue may be broken down into the following sub-issues:
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> 1. Whether or not petitioner is registered with the Philippine Economic Zone Authority ('PEZA').
>
> 2. Whether or not petitioner can claim any input taxes shifted to it as part of the cost of goods and services that it purchases.
>
> 3. Whether or not petitioner incurred input tax credits on its purchases of capital goods and domestic purchases of goods and services attributable to zero-rated sales for the 4th quarter of CY 2003.
>
> 4. Whether or not petitioner had effectively zero-rated sales during the 4th quarter of CY 2003.
>
> 5. Whether or not for the 4th quarter of CY 2003, petitioner had domestic purchases of goods and services, including capital goods, which were exclusively used for services rendered to

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[5] *Rollo*, p. 613
[6] *Id.* at 624-656
[7] *Id.* at 657
[8] *Id.* at 60-61

non-resident foreign clients the consideration of which are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

6. Whether or not the input VAT incurred by the petitioner for the 4th quarter of CY 2003, amounting to P5,465,244.43, is duly supported by VAT invoices and official receipts.

7. Whether or not the input VAT incurred by the petitioner for the 4th quarter of CY 2003, amounting to P5,465,244.43, was applied against any output VAT or carried over to succeeding month(s)/quarter(s).

8. Whether or not petitioner's administrative and judicial claims for the issuance of a TCC for its unutilized input VAT on purchases of capital goods and domestic purchases of goods and services attributable to its zero-rated sales for the 4th quarter of CY 2003 were filed within the two-year period prescribed under Sections 112, paragraphs (A) and (B), 204(C) and 229 of the Tax Code."

Simply put, the issue in this case is whether or not petitioner is entitled to the issuance of TCC in the amount of P5,465,244.43, representing petitioner's excess and unutilized input VAT for the 4th quarter of CY 2003.

Petitioner avers in its Memorandum that it is entitled to the issuance of TCC pursuant to Section 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997 in relation to Sections 110(B) and 112(A) of the same Code which, respectively, provides:

"SEC. 108. *Valued-added Tax on Sale of Services and Use or Lease of Properties.* –

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(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, 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)**." (*Emphasis supplied*)

"SEC. 110. *Tax credits.* –

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

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

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(A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable

> or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."

According to petitioner, since it has complied with all the legal requirements prescribed by the foregoing provisions for claiming a refund or issuance of TCC for its excess and unutilized input VAT on purchases of capital goods and purchases of non-capital goods and services attributable to zero-rated sales for the 4th quarter of CY 2003, it should be issued a TCC in the amount of P5,465,244.43.

After reviewing the records of the case, the Court finds that petitioner's claim for issuance of tax credit certificate is justified.

At the outset, we must first resolve whether petitioner's claim for refund or issuance of tax credit certificate was filed within the two-year prescriptive period. However, we must first settle the issue on the date of reckoning of the two-year period prescribed under Section 112(A) of the NIRC.

In the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[9] ("*Atlas case*"), promulgated on June 8, 2007, the Supreme Court held that the two-year prescriptive period should be reckoned from the **date of filing of the VAT return**. The High Tribunal reasoned in this wise:

[9] G.R. Nos. 141104 and 148763, June 8, 2007

"It is already well-settled that the two-year prescriptive period for instituting a suit or proceeding for recovery of corporate income tax erroneously or illegally paid under Section 230 of the Tax Code of 1977, as amended, was to be counted from the filing of the final adjustment return. This Court already set out in *ACCRA Investments Corporation v. Court of Appeals*, the rationale for such rule, thus –

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> It bears emphasis at this point that the rationale in computing the two-year prescriptive period with respect to the petitioner corporation's claim for refund from the time its final adjustment return is the fact that it was only then that ACCRAIN could ascertain whether it made profits or incurred losses in its business operations. The 'date of payment,' therefore, in ACCRAIN's case was when its tax liability, if any, fell due upon its filing of its final adjustment return on April 15, 1982.

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The very same reasons set forth in the afore-cited cases concerning the two-year prescriptive period for claims for refund of illegally or erroneously collected income tax may also apply to the Petitions at bar involving the same prescriptive period for claims for refund/credit of input VAT on zero-rated sales.

It is true that unlike corporate income tax, which is reported and paid on installment every quarter, but is eventually subjected to a final adjustment at the end of the taxable year, **VAT is computed and paid on a purely quarterly basis without need for a final adjustment at the end of the taxable year**. However, it is also equally true that until and unless the VAT-registered taxpayer prepares and submits to the BIR its quarterly VAT return, there is no way of knowing with certainty just how much input VAT the taxpayer may apply against its output VAT; how much output VAT it is due to pay for the quarter or how much excess input VAT it may carry-over to the following quarter; or how much of its input VAT it may claim as refund/credit. It should be recalled that not only may a VAT-registered taxpayer directly apply against his output VAT due the input VAT it had paid on its importation or local purchases of goods and services during the quarter; the taxpayer is also given the option to either (1) carry over any excess input VAT to the succeeding quarters for application against its future output VAT liabilities, or (2) file an application for refund or issuance of a tax credit certificate covering the amount of such input VAT. Hence, even in the absence of a final adjustment return, the determination of any output VAT payable necessarily requires that the VAT-registered taxpayer make adjustments in its VAT return every quarter, taking into consideration the input VAT which are creditable for the present quarter or had been carried over from the previous quarters.

Moreover, when claiming refund/credit, the VAT-registered taxpayer must be able to establish that it does have 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. Thus, an application for refund/credit must be accompanied by copies of the taxpayer's VAT return/s for the taxable quarter/s concerned.

Lastly, although the taxpayer's refundable or creditable input VAT may not be considered as illegally or erroneously collected, its refund/credit is a privilege extended to qualified and registered taxpayers by the very VAT system adopted by the Legislature. Such input VAT, the same as any illegally or erroneously collected national internal revenue tax, consists of monetary amounts which are currently in the hands of the government but must rightfully be returned to the taxpayer. Therefore, whether claiming refund/credit of illegally or erroneously collected national internal revenue tax, or input VAT, the taxpayer must be given equal opportunity for filing and pursuing its claim.

For the foregoing reasons, it is more practical and reasonable to count the two-year prescriptive period for filing a claim for refund/ credit of input VAT on zero-rated sales from the date of filing of the return and payment of the tax due xxx" (*Emphasis supplied*)

However, in *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*[10] (*"Mirant Case"*), promulgated on September 12, 2008, the Supreme Court held that the

[10] G.R. No. 172129, September 12, 2008

reckoning of the two-year prescriptive period is from the **close of the taxable quarter** when the relevant sales were made, *viz.*:

> "(S)ec. 112(A) of the NIRC pertinently reads:
>
> > (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 <u>when the sales were made, apply for the</u> issuance of a tax credit certificate or refund of creditable input tax <u>due or paid attributable to such sales,</u>** except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x. (*Emphasis ours.*)
>
> The above proviso clearly provides in no uncertain terms that 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**. As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112(A), '[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued.' Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid. Be that as it may, and given that the last creditable input VAT due for the period covering the progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input VAT refund or tax credit for said quarter prescribed two years after September 30, 1996 or, to be precise, on September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed." (*Emphasis supplied)*

It appears that the controlling doctrine on the present case is the *Mirant case*, which provides that the two-year prescriptive period must be reckoned from the close of the taxable quarter when the relevant sales or transactions were made.

However, in *Co vs. Court of Appeals, et al.*[11], the Supreme Court held that in accordance with Article 8 of the Civil Code which provides that "(j)udicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines" and Article 4 of the same Code which states that "(l)aws shall have no retroactive effect unless the contrary is provided," **the principle of prospectivity of statutes, original or amendatory, shall apply to judicial decisions, which, although in themselves are not laws, are nevertheless evidence of what the law means**.

In fact, the wisdom of this rule was discussed in the case of *People v. Jabinal.*[12] In said case, the Supreme Court held that when a doctrine of the High Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof. Therefore, the existing and judicially accepted jurisprudence at the time of the filing of the claim should govern how a case should be disposed of by the courts.

Thus, although the *Mirant case* was the latest pronouncement of the Supreme Court on the matter, it however finds no application in the instant case since the doctrine laid down in said case should be applied prospectively, *i.e.* only to administrative and judicial claims filed after September 12, 2008.

[11] G.R. No. 100776, October 28, 1993
[12] G.R. No. L-30061, February 27, 1974

Therefore, when petitioner filed its administrative claim on December 30, 2005 and the subsequent judicial claim before this Court on January 24, 2006, the then prevailing doctrine was that enunciated in the *Atlas case*. Accordingly, the doctrine set by the Supreme Court in the *Atlas case* must be applied in determining whether petitioner's claim for refund/tax credit was filed within the two-year period.

In view of the ruling in the *Atlas case*, petitioner had until January 26, 2006 within which to file its claim for refund in the administrative and judicial fora considering that petitioner's Quarterly VAT Return for the 4th quarter of CY 2003 was filed on January 26, 2004. It follows then that the administrative claim filed on December 30, 2005 and the judicial claim filed on January 24, 2006 before this Court were made within the two-year prescriptive period.

Given the foregoing perspective, we now tackle the determinative issue of whether petitioner is entitled to the issuance of tax credit certificate.

In its Memorandum, petitioner anchored its claim on Sections 112(A) and (B) of the NIRC of 1997, which read as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency

> exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.
>
> (B) *Capital Goods.* – A VAT registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made."

The afore-quoted provisions allow the refund/tax credit of excess input VAT in two instances, namely: (1) when the excess input VAT is attributable to zero-rated or effectively zero-rated sales; and (2) when the excess input VAT is attributable to capital goods purchased by a VAT-registered person.

The subject claim in the amount of 5,465,244.43 allegedly comprised of: (1) input tax on purchases of capital goods in the amount of P3,128,147.95; and (2) input tax on domestic purchases of goods and services other than capital goods in the amount of P2,168,831.19, which are all allegedly attributable to zero-rated sales.

In order to claim for refund or tax credit under Section 112(A) of the NIRC, petitioner must comply with the following requisites:

1. That there must be zero-rated or effectively zero-rated sales;
2. That input taxes were incurred or paid;
3. That such input VAT payments are directly attributable to zero-rated sales or effectively zero-rated sales;
4. That the input VAT payments were not applied against any output VAT liability; and

5. That the claim for refund was filed within the two-year prescriptive period.

With the fifth requirement already discussed, we should concentrate now on the four remaining requirements.

As stated in its Amended Articles of Incorporation, petitioner is authorized "[T]o engage in the business of customer support services by providing information and database service on the Internet including web-based applications in the Philippines and providing or furnishing any and all forms or types of services, data and facilities relating to providing information on consumer products and services through the internet; and otherwise, to carry on and conduct a general business relating to internet services."[13] Petitioner maintains that the services it rendered to its US-based parent company, Peoplesupport, Inc.(PSI), covering the fourth quarter of taxable year 2003, qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended, which states:

"SEC. 108. ***Value-added Tax on Sale of Services and Use or Lease of Properties. —***

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(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);

[13] Par. 4, Admitted Facts, Consolidated Joint Stipulation of Facts and Issues, docket, p. 103

> (2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"

In the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[14], the Supreme Court held that in order for the supply of services to be VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, the following requisites must be met: (1) the services must be other than processing, manufacturing or repacking of goods; (2) 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.

Petitioner satisfied all of the said requisites. The services it rendered to its parent company for the fourth quarter of 2003 are not the same category as "processing, manufacturing or repacking of goods" as can be seen from the Master Service Agreement between PSI and petitioner and the various sales invoices issued by petitioner to PSI.[15] Such services were paid for in US dollars in the amount of $3,624,413.98 with peso equivalent of P198,254,187.65[16] as evidenced by the Certifications issued by Citibank.[17]

Likewise, it was shown through petitioner's Master Service Agreement[18] with PSI, Certification of Non-Registration of Corporation and/or Partnership[19], issued by the Philippine Securities and Exchange Commission on September

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[14] G.R. No. 153205, January 22, 2007
[15] Exhibits "GGG" and "NNN-1" to "NNN-6"
[16] Exhibit "BBB"
[17] Exhibits "EEE" and "FFF"
[18] Exhibit "GGG"
[19] Exhibit "TTT"

25, 2008, and Certification[20] issued by the Secretary of State of the State of Delaware on November 17, 2008 that PSI is a non-resident foreign corporation engaged in business conducted outside of the Philippines.

Since no other sales were reported in its VAT Return for the fourth quarter of 2003,[21] all of petitioner's purchases for the same period are attributable to its zero-rated sales and the input taxes of P5,465,244.43 arising from said purchases are eligible for refund under Section 112(A) of the NIRC of 1997. Inasmuch as the said law allows the refund/tax credit of excess input tax attributable to zero-rated or effectively zero-rated sales **without distinction** as to whether or not the said input tax consists of VAT paid on the purchase of capital goods, the Court finds it unnecessary to determine whether the claimed amount of P5,465,244.43 consists of input VAT pertaining to capital goods.

Going now to the issue of whether or not petitioner actually incurred input VAT amounting to P5,465,244.43 for the fourth quarter of 2003, the Court-commissioned auditing firm of Constantino Guadalquiver & Co., through its Partner, Ms. Katherine O. Constantino, examined and verified the supporting documents of petitioner, and accordingly classified petitioner's reported input VAT into the following categories: [22]

[20] Exhibit "UU"
[21] Exhibit "H"
[22] Exhibit "HHHH", Annexes 6 and 56

		ANNEX REFERENCE (EXH. HHHH)	INPUT VAT
REGULAR GOODS			
Input taxes clamed on purchases of goods which are substantiated for VAT purposes:			
	Domestic purchase of goods properly supported by VAT invoices	Annex 7	91,793.40
	Domestic purchase of goods properly supported by VAT REG TIN invoices	Annex 8	43,785.01
	Domestic purchase of service properly supported by VAT official receipts erroneously classified as purchase of goods per VAT return	Annex 9	6,678.18
	Subtotal		*142,256.59*
Input taxes claimed on purchases of goods which are supported by the following documents:			
	Domestic purchase of goods supported by VAT invoice dated in the immediately succeeding quarter but not within the taxable year	Annex 10	3,949.55
	Domestic purchase of service supported by VAT official receipts dated in the immediately succeeding quarter but not within the taxable year erroneously classified as purchase of goods per VAT return	Annex 11	10,872.73
	Subtotal		*14,822.28*
	Input taxes claimed on purchases of goods wherein supporting documents are not available at the time of verification	Annex 12	11,199.17
	Unidentified difference		(12.75)
Total			**168,265.29**
REGULAR SERVICES			
Input taxes claimed on purchases of services which are substantiated for VAT purposes			
	Domestic purchase of services properly supported by VAT official receipts	Annex 13	206,441.99
	Domestic purchase of services properly supported by VAT REG TIN official receipts	Annex 14	175,622.21
	Domestic purchase of goods properly supported by VAT invoice erroneously classified as domestic purchase of service in VAT return	Annex 15	6,458.18
	Subtotal		*388,522.38*
Input taxes claimed on purchases of services which are supported by the following documents:			
	Domestic purchase of services supported by VAT official receipt dated in the immediately succeeding quarter but not within the taxable year	Annex 16	120,162.57
	Domestic purchase of services supported by VAT REG TIN official receipts dated in the immediately succeeding quarter but not within the taxable year	Annex 17	54,392.72
	Domestic purchase of services supported by VAT invoice	Annex 18	128,912.18
	Domestic purchase of services supported by VAT REG TIN invoice	Annex 19	162,233.76

Subtotal		*465,701.23*
Input taxes claimed on purchases of services wherein supporting documents are not available at the time of verification	Annex 20	1,314,742.26
Unidentified difference		(134.68)
Total		**2,168,831.19**
Grand Total		**2,337,096.48**
CAPITAL GOODS		
Input taxes claimed on purchases of capital goods/services which are substantiated for VAT purposes:		
Domestic purchase of capital goods properly supported by VAT invoice and verified to be recorded as capital goods in the books	Annex 57	1,628,700.59
Subtotal		*1,628,700.59*
Input taxes claimed on purchases of capital goods and services which are supported by the following documents:		
Domestic purchase of capital goods supported by VAT invoice dated in the immediately succeeding quarter and not within the year	Annex 58	75,632.29
Domestic purchase of capital goods supported by VAT invoice dated in the previous quarter but within the taxable year	Annex 79	298,388.08
Domestic purchase of services forming part of capital goods supported by VAT official receipts dated in immediately succeeding quarter but not within the taxable year	Annex 59	130,620.38
Subtotal		*504,640.75*
Domestic purchase of regular services properly supported by VAT official receipts which are erroneously classified as capital goods in the VAT return	Annex 60	9,818.18
Domestic purchase of regular goods properly supported by VAT official receipts	Annex 81	147,104.08
Domestic purchase of regular services supported by VAT official receipts which are erroneously classified as capital goods in the VAT return not dated within the taxable year	Annex 82	19,706.16
Input taxes claimed on purchases of capital goods with no available supporting documents at the time of verification	Annex 61	818,173.55
Unidentified difference		4.64
Total		**3,128,147.95**

Notice that the above summary included the following input taxes which had no supporting documents at the time of the Independent CPA's verification:

		ANNEX REFERENCE (EXH. HHHH)	INPUT VAT
1.	Input taxes claimed on purchases of goods wherein supporting documents are not available at the time of verification	Annex 12	P 11,199.17
2.	Input taxes claimed on purchases of services wherein supporting documents are not available at the time of verification	Annex 20	1,314,742.26
3.	Input taxes claimed on purchases of capital goods with no available supporting documents at the time of verification	Annex 61	818,173.55
	Total		**P 2,144,114.98**

Petitioner subsequently submitted as evidence certified true copies of VAT official receipts to support the following input taxes in the amount of P141,063.06:

		Supporting Documents	Annex Reference
Supplier	**Input VAT**	**Exhibit No.**	**(ICPA's Final Report, Exh. HHHH)**
PERF Realty Corporation	P 70,231.53	HH-2	Annex 20
PERF Realty Corporation	70,231.53	HH-4	Annex 20
Subtotal	**P 140,463.06**		
Philam Properties Corporation	600.00	HH-10	Annex 20
Total	**P 141,063.06**		

The Court checked and verified these documents and found that only the input VAT of P600.00, supported by VAT official receipt issued by Philam Properties Corporation, represents petitioner's valid claim. The input VAT of P140,463.06 shall be disallowed because the supporting official receipts issued by PERF Realty Corporation have preprinted "TIN-V" instead of "TIN-VAT" as required under Section 4.108-1 of Revenue Regulations No. 7-95. In other words, petitioner's input VAT claim in the amount of P2,144,114.98 found by the Independent CPA to have no supporting documents shall be reduced by P600.00 and the resulting amount of P2,143,514.98 shall be disallowed for not being substantiated by VAT invoices or official receipts.

Also, the Independent CPA observed that petitioner's claim included the following input taxes on domestic purchases of goods supported by VAT invoices and domestic purchases of services supported by VAT official receipts which are dated outside the fourth quarter of 2003:

			INPUT VAT
REGULAR GOODS			
	Domestic purchase of goods supported by VAT invoice dated in the immediately succeeding quarter but not within the taxable year	Annex 10	P 3,949.55
	Domestic purchase of service supported by VAT official receipts dated in the immediately succeeding quarter but not within the taxable year erroneously classified as purchase of goods per VAT return	Annex 11	10,872.73
REGULAR SERVICES			
	Domestic purchase of services supported by VAT official receipt dated in the immediately succeeding quarter but not within the taxable year	Annex 16	120,162.57
	Domestic purchase of services supported by VAT REG TIN official receipts dated in the immediately succeeding quarter but not within the taxable year	Annex 17	54,392.72
CAPITAL GOODS			
	Domestic purchase of capital goods supported by VAT invoice dated in the immediately succeeding quarter and not within the year	Annex 58	75,632.29
	Domestic purchase of capital goods supported by VAT invoice dated in the previous quarter but within the taxable year	Annex 79	298,388.08
	Domestic purchase of services forming part of capital goods supported by VAT official receipts dated in immediately succeeding quarter but not within the taxable year	Annex 59	130,620.38
	Domestic purchase of regular services supported by VAT official receipts which are erroneously classified as capital goods in the VAT return not dated within the taxable year	Annex 82	19,706.16
Total			**P 713,724.48**

In the case of *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*[23], the Supreme Court ruled that Section 113, in relation to Section 110 of the NIRC of 1997 (prior to its amendment under Republic Act No. 9337), does not create a distinction between a sales invoice and an official receipt for VAT substantiation purposes. Thus, domestic purchases of goods and services may be supported by either VAT invoices or receipts.

Applying the aforecited Supreme Court ruling in the present case, petitioner's claimed input VAT on domestic purchases of goods supported by VAT invoices dated outside the fourth quarter of 2003, but with corresponding VAT official receipts dated within the fourth quarter of 2003 shall be considered valid. Similarly, petitioner's claimed input VAT on domestic purchases of services supported by VAT official receipts dated outside the fourth quarter of 2003, but with corresponding VAT invoices dated within the fourth quarter of 2003 shall be allowed. Accordingly, out of petitioner's input VAT claim of P713,724.48, only the amount of P221,042.47, where neither the supporting VAT invoice nor the official receipt falls within the fourth quarter of 2003, shall be disallowed. Below is the breakdown of the amount of P221,042.47:

	ANNEX REFERENCE (EXH. HHHH)	**INPUT VAT**
Domestic purchase of goods supported by VAT invoice dated in the immediately succeeding quarter but not within the taxable year	Annex 10	3,949.55
Domestic purchase of services supported by VAT official receipt dated in the immediately succeeding quarter but not	Annex 16	120,162.57

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within the taxable year					
Less:	Domestic purchase of services supported by VAT invoice dated within the fourth quarter of 2003				
	Exh. No.	Inv. No.	Input Tax		
	VVV Q4-77	56440	4,780.45		
	VVV Q4-78	56439	3,025.42		
	VVV Q4-79	56670	2,665.36		
	VVV Q4-80	56671	4,491.48		
	VVV Q4-87	1567	6,191.70		
	VVV Q4-93	0200	7,909.09		
	VVV Q4-184	33917	1,828.70		
	VVV Q4-185	33243	2,202.46		(33,094.66)
Domestic purchase of services supported by VAT REG TIN official receipts dated in the immediately succeeding quarter but not within the taxable year				Annex 17	54,392.72
Domestic purchase of capital goods supported by VAT invoice dated in the immediately succeeding quarter and not within the year				Annex 58	75,632.29
Total					**221,042.47**

Moreover, the Independent CPA's noted discrepancy in the amount of P4.64 between petitioner's claimed input VAT on capital goods purchases as reflected in its VAT return vis-a-vis the amount shown in its Schedule of Purchases shall be disallowed:

	Input VAT on Domestic Purchase of Capital Goods
Per VAT return	3,128,147.95
Amount per Schedule of Purchases per VAT return	3,128,143.31
Difference – Amount per VAT return is over	**4.64**

In sum, out of the total input VAT claim of P5,465,244.43, petitioner was able to substantiate by proper VAT invoices or official receipts only the amount of P3,100,682.34, computed as follows:

Input VAT Claim			P 5,465,244.43
Less:	Disallowances		
	Input VAT without supporting documents	P 2,143,514.98	

	Input VAT where neither the supporting invoice nor official receipt is dated within the fourth quarter of 2003	221,042.47	
	Input VAT discrepancy per return and per schedule of purchases	4.64	2,364,562.09
Refundable Input VAT			**P 3,100,682.34**

Even though petitioner carried over the subject claim in its Quarterly VAT Returns for the succeeding first quarter of 2004 until the first quarter of 2006,[24] the same remained unutilized and unapplied against any output VAT. Moreover, petitioner deducted the claimed input VAT of P5,465,244.43[25] from the total available input tax as of the first quarter of 2006. Thus, the claimed amount of P5,465,244.43 no longer formed part of the input tax to be carried-over to the succeeding second quarter of 2006.[26]

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of P3,100,682.34 in favor of petitioner, representing its unutilized input VAT for the 4th quarter of calendar year 2003.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(With Separate Concurring Opinion)
ERNESTO D. ACOSTA
Presiding Justice

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[24] Exhibits "I" to "Q-4"
[25] Exhibit "Q-4", line 23D
[26] Exhibit "R-1"

(With Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division