REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SITEL PHILIPPINES. INC.,
(Formerly Clientlogic Philippines, Inc.)
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7186

Members:

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

Promulgated:

JAN 28 2009 ; 9:00a.

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DECISION

ACOSTA, P.J.:

The instant Petition for Review seeks the refund or issuance of tax credit certificate in the total amount of P28,416,338.34, representing unutilized input value-added tax (VAT) allegedly incurred by petitioner for taxable year 2003 from its domestic purchases of goods and services attributable to zero-rated transactions and purchases/importations of capital goods.

STATEMENT OF FACTS

Sitel Philippines, Inc. (Petitioner) is a corporation organized and existing under the laws of the Philippines, with office address at the 22nd floor, Wynsum Corporate Plaza, Emerald Avenue, Ortigas Center, Pasig City.[1] It is engaged in the business of providing call center services from the Philippines to domestic and offshore businesses, including tactical telemarketing campaigns and programs and customer relationship management services. Petitioner was formerly known as "Contact World, Inc." prior to the change in its corporate name to "Clientlogic Philippines, Inc.", as evidenced by the Certificate of Filing of Amended Articles of Incorporation issued by the Securities and Exchange Commission (SEC). It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, with Tax Identification No. (TIN)/VAT Registration No. 208-780-708 effective December 14, 2000 and BIR Certificate of Registration No. OCN 3RC0000244761. It is also registered with the Board of Investments (BOI) as a new information technology service firm in the field of call center on pioneer status, with BOI Certificate of Registration No. 2001-091.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, vested under appropriate laws with the authority to carry out all the functions, duties and responsibilities of the said office, including, *inter alia*, the power to decide, approve, and grant refunds and tax credits of erroneously paid or illegally collected internal revenue taxes. He holds office at 5th Floor, BIR National Office Building, Agham Road, Quezon City.

[1] Par. 1, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 70.

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For taxable year 2003, petitioner filed[2] and subsequently amended[3] its Quarterly VAT Returns on the following dates:

Period Covered	Date Filed	Date Amended
1st Quarter 2003	April 11, 2003	April 12, 2004
2nd Quarter 2003	July 10, 2003	December 6, 2004
3rd Quarter 2003	October 27, 2003	December 17, 2004
4th Quarter 2003	January 26, 2004	December 28, 2004

Petitioner filed its separate formal claims for refund or issuance of tax credit with the One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance on the following dates[4]:

Period Covered	Date Filed
1st Quarter 2003	July 21, 2004
2nd Quarter 2003	December 13, 2004
3rd Quarter 2003	December 20, 2004
4th Quarter 2003	December 29, 2004

Up to this date, respondent has not acted upon petitioner's claim for refund or tax credit. Thus, in order to toll the running of the statutory period of two (2) years within which to file a judicial action for refund or issuance of tax credit certificate, petitioner filed this instant Petition for Review on March 31, 2005.

On May 30, 2005, respondent filed his Answer raising the following Special and Affirmative Defenses:

[2] Par. 8, JSFI, Docket, p. 71
[3] Par. 9, JSFI, Docket, p. 71
[4] Annexes "E", "F", "G", "H", Petition for Review; Par. 10, JSFI, Docket, pp. 71-72

"8. The claim for refund is still under examination by the respondent's Bureau;

9. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund or issuance of tax credit certificate;

10. The grant of claim for refund tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;

11. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same."

On February 7, 2008, this case was submitted for decision considering the Memorandum filed by petitioner on January 17, 2008, while respondent did not file any.

STATEMENT OF ISSUES

"1. Whether or not the petitioner has unutilized input VAT arising from purchases of goods and services;

2. Whether or not the transactions of the Petitioner are subject to VAT at zero percent (0%);
3. Whether or not there is unutilized VAT after applying the output VAT; and

4. Whether or not the claim is duly substantiated."

THE COURT'S RULING

The issues raised by the parties may be summed up into one issue:

Whether or not petitioner is entitled to a refund or issuance of tax credit certificate of its alleged unutilized input VAT in the amount of P28,416,338.34, arising

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from domestic purchases of goods and services attributable to zero-rated sales and purchases/importations of capital goods for taxable year 2003.

For the four quarters of taxable year 2003, petitioner filed with the BIR its VAT Returns declaring zero-rated sales/receipts in the amount of P378,217,532.95, taxable sales in the amount of P11,671,688.80, output VAT due in the amount of P1,167,168.87, and input VAT in the amount of P28,872,713.69, broken down as follows:

Exhibit	Year 2003	Zero-Rated Sales/Receipts	Taxable Sales	Output VAT	Input VAT
A	1st qtr	P 30,769,797.62	P 5,114,598.32	P 511,459.83	P 4,298,417.44
B	2nd qtr	76,150,758.12	2,506,766.89	250,676.68	8,460,869.81
C	3rd qtr	92,193,058.46	1,324,654.34	132,465.43	10,900,669.29
D	4th qtr	179,103,918.75	2,725,669.25	272,566.93	5,212,757.15
Total		**P378,217,532.95**	**P11,671,688.80**	**P1,167,168.87**	**P28,872,713.69**

Out of the reported input VAT of P28,872,713.69, only the amount of P28,416,338.34 is the subject of the present claim, which allegedly consisted of P14,941,962.02 input VAT on capital goods purchased and P13,474,376.32 input VAT attributable to zero-rated sales, detailed as follows:

Period	Input Tax from Capital Goods	Input Tax Attributable to Zero-rated Sales	Total Input Tax For Refund or Tax Credit
1st qtr	P 2,808,909.96	P 1,277,208.17	P 4,086,118.13
2nd qtr	4,742,292.17	3,600,068.86	8,342,361.03
3rd qtr	4,616,450.09	6,195,204.85	10,811,654.94
4th qtr	2,774,309.80	2,401,894.44	5,176,204.24
Total	**P 14,941,962.02**	**P 13,474,376.32**	**P 28,416,338.34**

Petitioner anchors its claim on Sections 110(B) and 112(A) and (B) of the National Internal Revenue Code (NIRC) of 1997, which are all quoted hereunder:

"**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. 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.** –

(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 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 Court shall first discuss petitioner's claimed input VAT attributable to zero-rated sales in the amount of P13,474,376.32.

Section 112 of the NIRC of 1997 entitles a VAT-registered person to a refund/tax credit of input VAT attributable to zero-rated sales/receipts subject to its compliance with the following requisites:

1. 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.

Petitioner generated majority of its sales for taxable year 2003 from its call center services from the Philippines to domestic and offshore business including, but not limited to, tactical telemarketing campaigns and programs and customer relationship management services. In order to prove its alleged zero-rated sales, petitioner formally offered, among others, its *VAT Services Invoices and Billing Statements*[5], *VAT Official Receipts*[6], *Bank Account Passbook*[7], *Certificate of Inward Remittance dated July 26, 2004 bearing number 0124/04 issued by Metropolitan Bank and Trust Company*[8], *Schedule of Inward Remittances for 2003*[9], *Breakdown of Remittances Not Related to*

[5] Exhibits "VV", "VV-1" to "VV-951", inclusive of sub-markings
[6] Exhibits "WW", "WW-1" to "WW-41", inclusive of sub-markings
[7] Exhibits "XX", "XX-1" to "XX-11", inclusive of sub-markings
[8] Exhibit "NN"
[9] Exhibits "YY" and "YY-1", inclusive of sub-markings

Zero-Rated Sales[10], *and Various Documents Supporting Remittances Not Related to Zero-Rated Sales*[11].

Value-added tax at zero percent (0%) rate is imposed on revenues derived from sale of services aside from processing, manufacturing or repackaging of goods for other person doing business outside the Philippines which goods are subsequently exported, provided that the transaction is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP) under Section 108(B)(2) of the NIRC of 1997, which states:

> "**SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties.** -
>
> xxx xxx xxx
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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:
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> (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);
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> (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);"

Nevertheless, after a thorough review and evaluation of the documentary evidence submitted, the Court notes that petitioner did not present any evidence to prove that

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[10] Exhibits "ZZ" and "ZZ-1", inclusive of sub-markings
[11] Exhibits "AAA-1" to "AAA-73", inclusive of sub-markings

the foreign clients to whom petitioner rendered service were doing business outside the Philippines.

In the case of **Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.**[12], the Supreme Court held that another essential condition to qualify for zero-rating under Section 108(B)(2) [then Section 102(b)(2)] is that the recipient of such services is doing business outside the Philippines. The Court quotes the pertinent portion of the said Decision:

> "The Tax Code not only requires that the services be other than 'processing, manufacturing or repacking of goods' and that payment for such services be in acceptable foreign currency accounted for in accordance with BSP rules. Another essential condition for qualification to zero-rating under Section 102 (b) (2) **is that the recipient of such services is doing business *outside* the Philippines.** While this requirement is not expressly stated in the second paragraph of Section 102 (b), this is clearly provided in the first paragraph of Section 102 (b) where the listed services must be **'for other persons doing business outside the Philippines.'** The phrase 'for other persons doing business outside the Philippines' not only refers to the services enumerated in the first paragraph of Section 102 (b), but also pertains to the general term 'services' appearing in the second paragraph of Section 102 (b). In short, services other than processing, manufacturing, or repacking of goods must likewise be performed for persons doing business outside the Philippines.
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> This can only be the logical interpretation of Section 102 (b) (2). If the provider and recipient of the 'other services' are both doing business in the Philippines, the payment of foreign currency is irrelevant. Otherwise, those subject to the regular VAT under Section 102 (a) can avoid paying the VAT by simply stipulating payment in foreign currency inwardly remitted by the recipient of services. To interpret Section 102 (b) (2) to apply to a payer-recipient of services doing business in the Philippines is to make the payment of the regular VAT under Section 102 (a) dependent on the generosity of the taxpayer. The provider of services can choose to pay the regular VAT or avoid it by stipulating payment in foreign currency inwardly remitted by the payer-recipient. Such interpretation removes Section 102 (a) as a tax measure in the Tax Code,

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

an interpretation this Court cannot sanction. A tax is a mandatory exaction, not a voluntary contribution."

Likewise in the case of **Accenture Inc. vs. Commissioner of Internal Revenue**[13], this Court ruled that it is improper to simply assume that a foreign client is doing business outside the Philippines, and explained the same in the following manner:

> "The phrase 'foreign clients' is couched in its generality that the Court cannot simply just assume that they are engaged in doing business outside the Philippines. A 'foreign client' may also be engaged in doing business in the Philippines and in that case, when petitioner and recipient of its services are both doing business in the Philippines, their transaction falls squarely under Section 108 (A) of NIRC of 1997 governing domestic sale or exchange of services subject to 12% VAT. Even if there is an allegation that these foreign clients are doing business outside the Philippines, still the Court cannot give weight to such allegation. Mere allegations are not sufficient but must be accompanied by supporting evidence."

In the instant case, petitioner did not submit proof that petitioner's foreign clients are doing business outside the Philippines. The documents submitted by petitioner merely established the existence of the following: (1) the sale; (2) the payments of its service fees were in acceptable foreign currency; and (3) the proceeds of such sales transactions were inwardly remitted to the Philippines and accounted for in accordance with BSP rules. In this regard, petitioner failed to prove that its sales of services to foreign clients qualify for zero percent VAT.

Well-settled is the rule that a claim for refund is construed *strictissimi juris* against the taxpayer as it partakes the nature of exemption from taxation.[14] Besides,

[13] CTA Case Nos. 7158, 7285 and 7313, August 7, 2008

the Court believes that in claims for refund, the law mandates courts to observe a higher standard of caution in appreciating and evaluating evidence. If indeed a claim for refund is wanting in pertinent and supporting evidence, then the granting thereof could prove to be improper, if not difficult.[15] Therefore, petitioner in claiming for tax refund has the burden of proof to establish the factual basis of its claim.

Due to petitioner's failure to establish that it had zero-rated sales/receipts for the subject period of claim, the input VAT claim in the amount of P13,474,376.32 which is allegedly attributable thereto cannot be granted; since the refund/tax credit of input VAT under Section 112(A) of the NIRC of 1997 is premised on the existence of zero-rated or effectively zero-rated sales.

The Court now proceeds to discuss the remaining input VAT claim of P14,941,962.02 allegedly attributable to petitioner's capital goods purchases.

Pursuant to the earlier quoted provision of Section 112(B) of the NIRC of 1997, in order to be entitled to a refund/tax credit of input tax paid on capital goods purchased, petitioner must prove:

1. that it is a VAT-registered entity;
2. that input taxes were paid on capital goods imported or locally purchased;
3. that such input taxes were not applied against any output VAT liability; and

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[14] Citibank N.A. vs. Court of Appeals, *et al.*, G.R. No. 107434, October 10, 1997
[15] ECW Joint Venture Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6398, May 26, 2003

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4. that the claim for refund was filed within the two-year prescriptive period.

The parties stipulated that petitioner is a VAT-registered entity[16]. Similarly, it is established that the claimed amount of P14,941,962.02 was not applied against any output VAT liability during and in the succeeding period of claim, as evidenced by petitioner's Quarterly VAT Returns for the four quarters of taxable year 2003 and first quarter of taxable year 2004.[17] Moreover, records disclosed that the subject claim was seasonably filed both in the administrative and judicial levels. The reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund commences from the date of filing of the corresponding Quarterly VAT Return and payment of the tax due,[18] which in the instant case was on April 11, 2003. Counting from the said date, the administrative claims filed on July 21, 2004, December 13, 2004, December 20, 2004, and December 29, 2004,[19] and the Petition for Review filed on March 31, 2005, were timely filed within the two-year prescriptive period.

As to whether or not petitioner incurred input taxes in the amount of P14,941,962.02 on capital goods purchased, the Court-commissioned Independent CPA made the following findings and observations in her Final and Consolidated Report dated November 15, 2006:[20]

[16] Par. 6, Stipulated Facts, JSFI, Docket, p. 71
[17] Exhibits "A"," B", "C", "D", "E" and "F"
[18] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 141104 and 148763, June 8, 2007
[19] Annexes "E", "F", "G", and "H", Petition for Review
[20] Exhibit "TT", pages 17 and 18

VI. VERIFICATION OF THE UNUTILIZED/UNAPPLIED INPUT VAT ON PURCHASES OF CAPITAL GOODS.

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2. Based on the procedures we performed to check the Company's compliance with the substantiation requirements of input tax on purchases of capital goods claimed for the period from January 1, 2003 to December 31, 2003 amounting to P14,941,962.76, which is part of the Company's claim for refund/tax credit as indicated in the Petition for Review, we present below our findings and observations:

Findings	Reference	Amount of Input Tax
1. There are input taxes claimed on purchases of goods and services which are substantiated for VAT purposes:		
a. Domestic purchases of goods properly supported by VAT invoices	(Annex 30)	P 4,594,035.12
b. Domestic purchases of services properly supported by VAT ORs	(Annex 31)	753,733.93
c. Domestic purchases of services supported by ORs pre-printed TIN-V after July 31, 1991 but before January 1, 1996	(Annex 32)	3,576,444.27
d. Domestic purchases of services supported by ORs printed before July 31, 1991	(Annex 33)	721,511.87
2. There are input taxes claimed on purchases of Capital goods and services which are supported by the following documents:		
a. Domestic purchases of goods supported by documents, other than invoices, showing that VAT was passed (e.g. VAT ORs)	(Annex 34)	17,823.64
b. Domestic purchases of goods and services supported by documents, other than VAT invoices or ORs (e.g. telegraphic transfer, deposit slips, progress billings, etc.)	(Annex 35)	764,047.49
c. Domestic purchases of goods and services supported by invoices and ORs printed with "TAN-VAT", "NON VAT" or "TIN"	(Annex 36)	627,140.58
d. Domestic purchases of goods supported by VAT invoices but the same are not dated	(Annex 37)	1,685,371.82

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within the taxable year of claim		
e. Purchases of Capital Goods Supported by Photocopy of Import Entry & Internal Revenue Declaration where the amount of Claimed Input Tax is in Excess of the Amount Claimable as Independently Computed	(Annex 38)	2,019,949.00
3. There are input taxes claimed on purchases of capital goods and services without supporting Documents	(Annex 39)	181,905.04
Grand Total		**P14,941,962.76**

Based on the above findings, only the input taxes under items 1.a, 1.b, 2.a and 2.c, in the respective amounts of P4,594,035.12, P753,733.93, P17,823.64, and P627,140.58 respectively, in the total amount of P5,992,733.27 are duly supported by the evidence required by law. The remaining input VAT claim in the amount of P8,949,229.49 shall be denied for the above-stated reasons.

Per petitioner's Reconciliation of Additions to Property, Plant and Equipment,[21] audited balance sheets as of December 31, 2003 and 2002, and the related Notes to Financial Statements (Nos. 3 and 5, pages 3 and 5),[22] the substantiated input VAT of P5,992,733.27 pertains to petitioner's purchases of software, computers and peripherals, telecommunication equipment, office furniture and equipment and leasehold improvements. Since these purchases (a) are in the nature of depreciable assets which have economic useful life of more than one year, (b) formed part of petitioner's Property, Plant and Equipment and (c) used directly or indirectly in petitioner's business,

[21] Exhibits "EEE-1" to "EEE-8"
[22] Exhibit "SS"

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the same fall within the definition of "capital goods" under Section 4.106-1 of RR 7-95, to wit:

> "SEC. 4.106-1. Refunds or Tax Credits of Input Tax. – (a) xxx
>
> (b) Capital Goods – xxx
>
> *'Capital goods or properties' refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29 (f), used directly or indirectly in the production or sale of taxable goods or services."*

From the foregoing, petitioner is entitled to the issuance of tax credit certificate or refund of the amount of P5,992,733.27, representing input VAT paid on capital goods purchased for taxable year 2003.

WHEREFORE, petitioner's claim for refund or issuance of tax credit certificate is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of P5,992,733.27, representing input VAT paid on capital goods purchased for taxable year 2003.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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