REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD.,
Petitioner,

CTA Case No. 7921

Members:

- versus -

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated: JUL 23 2020

10:50 a.m.

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by Deutsche Knowledge Services, Pte. Ltd. (**petitioner**) pursuant to Rule 8, Section 3(a)[2] in relation to Rule 4, Section 3(a)(2)[3] of the Revised Rules of the Court of

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[1] Filed on 17 April 2009, Division Docket, Volume I, pp. 4-11.

[2] **SEC. 3.** *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal [R]evenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

[3] **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

...

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the

Tax Appeals[4] (**RRCTA**). It seeks the refund or issuance of tax credit certificate (**TCC**) in the amount of ₱12,549,446.30, representing excess and unutilized input Value-Added Tax (**VAT**) on purchases of goods and services attributable to zero-rated sales for the first quarter of calendar year (**CY**) 2007.

Petitioner is the Philippine branch of a multinational company organized and existing under and by virtue of the laws of Singapore, with registered office address at One Raffles Quay, #17-10 South Tower, Singapore 048583. On 25 April 2005, the Securities and Exchange Commission (**SEC**), pursuant to the Omnibus Investments Code of 1987, as amended by Republic Act (**RA**) No. 8756[5] and its implementing rules and regulations, issued a license to petitioner to do business as a regional operating headquarters (**ROHQ**) in the Philippines; to engage in general administration and planning, business planning and coordination, sourcing/procuring of raw materials and components, corporate finance advisory services, marketing control and sales promotion, training and personal management, logistic services, research and development services, product development, technical and support and maintenance, and data processing and communication and business development. On 16 June 2005, petitioner also registered with the Bureau of Internal Revenue (**BIR**) as a VAT taxpayer with Taxpayer Identification No. (**TIN**) 238-763-115-000.[6]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**CIR/respondent**) empowered to perform the duties of her office, including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law.[7]

Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: ...

4 A.M. No. 05-11-07-CTA dated 22 November 2005.

5 AN ACT PROVIDING FOR THE TERMS, CONDITIONS AND LICENSING REQUIREMENTS OF REGIONAL OR AREA HEADQUARTERS, REGIONAL OPERATING HEADQUARTERS, AND REGIONAL WAREHOUSES OF MULTINATIONAL COMPANIES, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF EXECUTIVE ORDER NO. 226, OTHERWISE KNOWN AS THE OMNIBUS INVESTMENTS CODE OF 1987.

6 Joint Stipulation of Facts and Issues (JSFI) dated 11 July 2018, Division Docket, Volume III, pp. 1078-1079.

7 JSFI, id., pp. 1079.

FACTS OF THE CASE

In the first quarter of CY 2007, petitioner rendered services in the Philippines to persons engaged in business conducted outside the Philippines; the payments for which were made in Euro and other acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (**BSP**).[8]

On 25 April 2007, petitioner filed its original quarterly VAT return for first quarter of CY 2007 with the BIR. Through electronic filing and payment system (**eFPS**), petitioner filed an amended quarterly VAT return for first quarter of CY 2007 on 17 April 2008.[9]

On 31 March 2009, petitioner filed with the BIR-Revenue District Office No. 47 an Application for Tax Credits/Refunds of its excess and unutilized input VAT for the first quarter of CY 2007 in the amount of ₱12,549,446.30.[10]

PROCEEDINGS BEFORE THE SECOND DIVISION

Claiming inaction on the part of respondent, petitioner filed this present Petition for Review[11], dated 17 April 2009, praying for the Court to order respondent to refund or issue TCC in the amount of ₱12,549,446.30, representing its excess and unutilized input VAT on purchases of goods and services attributable to zero-rated sales for the first quarter of CY 2007. Petitioner based its claim on Section 108(B)(2)[12] in relation to Section 110(B)[13] and 112(A)[14] of the National Internal Revenue Code (**NIRC**) of 1997, as amended by RA 9337.[15]

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8 Id., Volume I, p. 6.

9 JSFI, id., Volume III, p. 1079.

10 Id.

11 Supra at note 1.

12 **SEC. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties.* –

...

(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.

...

(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)[.]

...

On 08 June 2009, respondent filed a Motion to Dismiss[16] dated 27 May 2009 seeking the dismissal of the present case for lack of jurisdiction alleging that the claim for refund or tax credit was filed out of time, citing *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*[17] (**Mirant**). Respondent argued that *Mirant* has put to rest the issue on the reckoning of the prescriptive period on claims for refund of input VAT attributable to zero-rated or effectively zero-rated sales which should be from the close of the taxable quarter when the relevant sales were made. Respondent thus contended that, while the administrative claim for refund was filed on 31 March 2009, the judicial claim was filed with this Court only on 17 April 2009, beyond the two-year period prescribed by law. On the same day, respondent likewise filed his Answer.[18]

On 04 August 2009, the Court received a Manifestation[19] from petitioner stating that it filed and served copies of the attached Comment/Opposition Re: Respondent's Motion to Dismiss dated 27 May 2009 (with Motion to Set Case for Pre-Trial) by registered mail.

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13 **SEC. 110.** *Tax Credits.* –

...

(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. *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.

...

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

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

...

15 AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

16 Division Docket, Volume I, pp. 51-57.

17 G.R. No. 172129, 12 September 2008.

18 Division Docket, Volume I, pp. 59-62.

19 Id., pp. 65-66.

In its Resolution[20] dated 28 October 2009, the Court granted respondent's motion and dismissed the instant Petition for Review for having been filed out of time.

On 16 November 2009, petitioner filed a Motion for Reconsideration [**MR**] (Re: Resolution dated 28 October 2009)[21] and prayed for the Court to reconsider its Resolution dated 28 October 2009 and to set the case for pre-trial.

On 11 January 2010, the Court issued an Order[22] transferring the present case to the Third Division pursuant to CTA Administrative Circular No. 01-2010.[23]

On 08 February 2010, the Court's Former Second Division issued a Resolution[24] denying petitioner's MR.

After having been granted an extension of time[25] (to file), petitioner filed a Petition for Review[26] before the Court *En Banc* on 15 March 2010; docketed as CTA EB Case No. 596.

In its Resolution[27] dated 02 June 2010, the Court *En Banc* noted that, despite notice, respondent failed to file his Comment to the said Petition for Review. The Court *En Banc* then gave due course to the Petition for Review and directed the parties to submit their memoranda within a period of thirty (30) days.

On 29 July 2010[28], the Court *En Banc* noted that petitioner filed its Memorandum on 22 July 2010 while respondent failed to file his own within the period granted. The Court *En Banc* thereafter deemed the case submitted for decision.

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[20] Id., pp. 148-152.
[21] Id., pp. 154-184.
[22] Id., p. 188.
[23] Entitled "Implementing the Fully Expanded Membership in the Court of Tax Appeals".
[24] Division Docket, Volume I, pp. 190-196.
[25] See Resolution, id., Volume II, p. 203.
[26] Id., pp. 204-247.
[27] Id., pp. 301-302.
[28] Id., pp. 365-366.

On 22 July 2011, the Court *En Banc* promulgated a Decision[29] affirming with modification the 28 October 2009 Resolution of the Former Second Division and its 08 February 2010 Resolution. It held that CTA Case No. 7921 was prematurely filed pursuant to the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[30]

In disagreement with the Court *En Banc*, petitioner filed a Petition for Review[31] before the Supreme Court (docketed as G.R. No. 197980) assailing the 22 July 2011 Decision of the Court *En Banc*. Further, it sought the issuance of an order directing the parties to continue with the trial of the case before the Court in Division.

After the filing of the Solicitor General's Comment[32] and petitioner's Reply[33] (and Motion for Leave to File Supplemental Reply with the attached Supplemental Reply)[34], the Supreme Court issued a Decision[35] on 01 December 2016 reversing and setting aside the Court *En Banc*'s assailed Decision in CTA EB Case No. 596. It also ordered this Court to proceed with the hearing and resolution of CTA Case No. 7921 (present case).

On 26 April 2018, the Court *En Banc*[36] remanded the instant case to the Former Second Division for further proceedings. On 24 May 2018[37], the case was set for pre-trial on 21 June 2018. Later, the parties submitted their respective pre-trial briefs.[38]

On 11 July 2018, petitioner filed a Motion to Commission an Independent Certified Public Accountant[39] requesting that Glenn Ian D. Villanueva (**Villanueva**) be commissioned as Independent Certified

29 Id., pp. 368-383.
30 G.R. No. 184823, 06 October 2010.
31 Division Docket, Volume II, pp. 423-506.
32 *See* Notice of Resolution in G.R. No. 197980 dated 27 June 2012, id., p. 593.
33 Id., pp. 608-626.
34 Id., pp. 651-661.
35 Id., pp. 677-682.
36 See Resolution, id., pp. 690-691.
37 Id., Volume III, pp. 695-697.
38 Petitioner's Pre-Trial Brief was filed on 18 June 2018, id., pp. 1046-1056; Respondent's Pre-Trial Brief was filed on 19 June 2018, id., pp. 1057-1059.
39 Id., pp. 1063-1065.

Public Accountant (**ICPA**). On the same day, both parties filed a Joint Stipulation of Fact and Issues.[40]

On 20 July 2018, the Court issued a Pre-Trial Order.[41]

Trial thereafter ensued where petitioner presented the testimony of (1) Maricel Tio-Balagtas (**Balagtas**), petitioner's Legal Entity Controller; and, (2) Villanueva, the court-commissioned ICPA.

On the witness stand, Balagtas identified her Sworn Statement, deemed as her Judicial Affidavit[42], where she declared essentially that: (1) as the Legal Entity Controller of petitioner, she is responsible for all the financial and statutory reporting; (2) petitioner filed a claim for refund of or issuance of TCC for the amount of ₱12,549,446.30 and that respondent did not act upon the same; (3) petitioner incurred input VAT credits subject of the claim for refund from its purchase of goods and services in the course of rendering services in the Philippines as a shared service center to clients engaged in business conducted outside the Philippines who are part of Deutsche Bank Aktiengesellschaft; (4) petitioner's services were provided to entities engaged in business conducted outside the Philippines; (5) petitioner has IntraGroup Service Agreements with its foreign clients, business registration documents and AMInet Company Profile Fact Sheets of petitioner's clients, commercial licenses of petitioner's clients, and Certifications issued by the SEC; (6) as Legal Entity Controller, she has in her custody the documents she testified on; and, (7) petitioner carried over its excess input VAT of ₱12,549,446.30 from the first quarter of CY 2007 to the succeeding quarters until they were deducted as "VAT Refund/TCC Claimed" from the total input VAT in its Quarterly VAT Return for the first quarter of CY 2009.

On cross examination, Balagtas testified, among others, that: (1) she is not a party to the preparation of documents identified in her Judicial Affidavit such as the returns and service agreement[43]; and, (2)

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40 Id., pp. 1078-1087.
41 Id., pp. 1088-1092.
42 Exhibit "P-19", id., pp. 704-729.
43 TSN dated 25 July 2018, pp. 10-11.

petitioner is being paid through bank transfer in foreign currencies, particularly, Euro.[44]

Upon clarificatory question from the Court, Balagtas explained that the BSP has approved the "bank to bank transaction" since the transfer is processed through Deutsche Bank, Manila Branch which also reports to BSP.[45] On re-direct examination, Balagtas confirmed that part of her responsibilities is to manage the financial and statutory reports (including the documents she identified in her Sworn Statement).[46]

As for Villanueva, he identified his Amended Sworn Statement[47] and the Amended Report[48] which he prepared in connection with the subject claim for refund.

On cross examination[49], Villanueva testified, among others, that: (1) petitioner's sales subject to VAT pertain to local sales[50]; (2) they only allowed as zero-rated sales those that are properly supported and they treat the said disallowed zero-rated sales as subject to VAT[51]; (3) the substantiated input VAT is only in the amount of ₱1,201,159.46[52]; and, (4) they considered the original sales invoice with erasures but with countersignature of alleged authorized representative, as petitioner was able to produce a notarized Sworn Statement from the supplier themselves.[53] Petitioner did not conduct any re-direct examination.[54]

On 17 December 2018, petitioner filed its Formal Offer of Evidence (**FOE**) with Motion to Correct Marking of Evidence.[55] On 15 February 2019, the Court granted petitioner's Motion to Correct

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44 TSN dated 25 July 2018, p. 15.
45 Id.
46 Id., p. 16.
47 Exhibit "P-20", Division Docket, Volume III, pp. 1127-1138.
48 Exhibit "P-11", ICPA Report dated 18 September 2018.
49 TSN dated 15 October 2018.
50 Id., p. 9.
51 Id., pp. 10-11.
52 Id., p. 11.
53 Id., pp. 11-12.
54 Id., p. 13.
55 Division Docket, Volume IV, pp. 1169-1198.

Marking of Evidence and directing the latter to file an amended FOE[56] (**Amended FOE**) which petitioner did on 11 March 2019.[57]

In its Resolution[58] dated 17 April 2019, the Court admitted all of petitioner's documentary evidence formally offered subject to the Court's final evaluation and/or appreciation of their purposes, materiality, relevancy and probative value. The Court, however, noted the discrepancies in Exhibits "P-3.1"[59], "P-3.3"[60] and "P-3.5"[61]. In addition, considering respondent's manifestation during the hearing held on 15 October 2018 (that he will no longer present evidence), the Court also directed the parties to submit their respective memoranda within thirty (30) days from receipt.

On 26 July 2019, petitioner filed its Memorandum[62] after seeking an extension to file the same. On the other hand, respondent failed to submit his memorandum. Accordingly, on 23 August 2019, the Court considered the case submitted for decision.[63]

ISSUES

As the parties so stipulated, the main issue for this Court's determination is:[64]

> WHETHER PETITIONER IS ENTITLED TO THE CLAIM FOR REFUND OF OR ISSUANCE OF TCC FOR EXCESS OR UNUTILIZED INPUT VALUE-ADDED TAX IN THE AMOUNT OF ₱12,549,446.30 FOR THE 1ST QUARTER OF CY 2007;

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56 Id., pp. 1611-1641.

57 See Resolution, id., pp. 1600-1603.

58 Id., pp. 1644-1646.

59 Original Quarterly VAT Return for the first quarter of CY 2007 instead of Amended Quarterly VAT Return for the same period as stated in the Amended FOE.

60 Amended Quarterly VAT Return for the third quarter of CY 2007 instead of Quarterly VAT Return for the same period as stated in the Amended FOE.

61 Amended Quarterly VAT Return for the first quarter of CY 2008 instead of Quarterly VAT Return for the same period as stated in the Amended FOE.

62 Division Docket, Volume IV, pp. 1657-1677.

63 Id., p. 1679.

64 JSFI, id., Volume III, p. 1079.

The parties likewise stipulated that the said main issue may be broken down further as follows:[65]

I.

WHETHER PETITIONER INCURRED INPUT VALUE-ADDED TAX ON ITS PURCHASES OF GOODS AND SERVICES ATTRIBUTABLE TO ZERO-RATED SALES FOR THE 1st QUARTER OF CY 2007;

II.

WHETHER THE INPUT VALUE-ADDED TAX INCURRED BY PETITIONER FOR THE 1ST QUARTER OF CY 2007 ARE DULY SUPPORTED BY VAT INVOICES AND OFFICIAL RECEIPTS;

III.

WHETHER THE INPUT VALUE-ADDED TAX INCURRED BY PETITIONER FOR THE 1ST QUARTER OF CY 2007 AMOUNTING TO P12,549,446.30 WAS APPLIED AGAINST ANY OUTPUT VAT; AND,

IV.

WHETHER PETITIONER'S ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND OF OR ISSUANCE OF TCC FOR ITS EXCESS AND UNUTILIZED INPUT VAT ON ITS ZERO-RATED SALES WERE FILED WITHIN THE PERIOD PRESCRIBED UNDER THE TAX CODE.

RULING OF THE COURT

After a thorough review of the records of the case, this Court finds partial merit in the present Petition for Review.

Petitioner's claim for refund or issuance of TCC finds legal basis in Section 112(A) and (C) of the NIRC of 1997, as amended, which provides:

...

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

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65 Id., pp. 1079-1080.

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 nonzero-rated sales.

...

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

...

Pursuant to the above-quoted provision and as laid down by the Supreme Court in a number of cases[66], a taxpayer engaged in zero-rated or effectively zero-rated sales is entitled to a claim for refund or

[66] *Commissioner of Internal Revenue v. Toledo Power Company*, G.R. No. 195175, 10 August 2015; *Luzon Hydro Corporation v. Commissioner of Internal Revenue*, G.R. No. 188260, 13 November 2013; *Southern Philippines Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 179632, 19 October 2011; *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 172378, 17 January 2011; *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, 03 August 2010; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, 25 November 2009; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, 27 April 2007.

credit of excess input taxes attributable to such sales upon compliance with the following requisites:

1. the taxpayer is VAT-registered;
2. the claim for refund was filed within the prescriptive period;
3. the taxpayer is engaged in zero-rated or effectively zero-rated sales;
4. the input taxes were incurred or paid;
5. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; and,
6. the input taxes were not applied against any output VAT liability.

1[ST] and 2[nd] REQUISITES:
PETITIONER IS A VALUE ADDED TAX-REGISTERED ENTITY and FILED ITS ADMINISTRATIVE AND JUDICIAL CLAIMS WITHIN THE PRESCRIPTIVE PERIOD

It is undisputed that petitioner is duly registered with the BIR as a VAT-registered entity with TIN No. 238-763-115-000[67].

Per Section 112(A) of the NIRC of 1997, as amended, the administrative claim for the issuance of a TCC or refund of input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

Prior to the parties' presentation of evidence, the issue on the timeliness of the filing of the judicial claim for refund has already been raised and was eventually passed upon by the Supreme Court in the case of *Deutsche Knowledge Services, Pte. Ltd. v. Commissioner of Internal Revenue*[68] where it was ruled that:

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67 Exhibit "P-2", Division Docket, Volume IV, p. 1219; JSFI, Division Docket, Volume III, p. 1079.
68 G.R. No. 197980, 01 December 2016.

> ...
>
> In the present case, the records indicate that petitioner filed its administrative claim for tax credit/refund of its allegedly excess and unutilized input VAT for the 1st quarter of the calendar year 2007 in the amount of P12,549,446.30 with respondent on March 31, 2009. Subsequently, petitioner filed its judicial claim on the same matter through a petition for review with the CTA on April 17, 2009. It is undisputed that the aforementioned date of filing falls within the period following the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 but before the promulgation of the *Aichi* case on October 6, 2010. In accordance with the doctrine laid down in *San Roque*, we rule that petitioner's judicial claim had been timely filed and should be given due course and consideration by the CTA.
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> ...

Inasmuch as the Supreme Court has already ruled in petitioner's favor (with respect to the timeliness of its filing of administrative as well as judicial claims for refund), this Court finds it unnecessary to further discuss petitioner's compliance with the foregoing requisite.

3RD REQUISITE:
PETITIONER IS ENGAGED IN ZERO-RATED OR EFFECTIVELY ZERO-RATED SALES DURING 1ST QUARTER OF CY 2007

Anent the third requisite, petitioner claims that it rendered services to non-resident entities not engaged in trade or business in the Philippines, the payments for such services were made in Euro and other acceptable foreign currency and accounted for in accordance with the BSP rules and regulations. As such, these sales are subject to zero percent (0%) VAT pursuant to 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. –*
>
> ...
>
> (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)[.][69]

...

In the case of *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[70], the Supreme Court ruled:

...

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.[71]

...

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69 Emphasis supplied.
70 G.R. No. 153205, 22 January 2007.
71 Emphasis supplied.

In essence, therefore, the following requisites must be satisfied before the sale of services under the said provision may be considered as VAT zero-rated:

1. services other than processing, manufacturing or repacking of goods rendered by VAT registered persons in the Philippines;
2. the transaction paid for in acceptable foreign currency duly accounted for in accordance with BSP rules and regulations; and,
3. the recipient of such services must be performing business outside the Philippines.[72]

(i) THE SERVICES MUST BE OTHER THAN PROCESSING, MANUFACTURING OR REPACKING OF GOODS

Petitioner complied with the first requisite. Records show that the SEC issued to petitioner a license to do business as an ROHQ in the Philippines, pursuant to the Omnibus Investments Code of 1987, as amended by RA 8756, and its implementing rules and regulations. Particularly, to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel development; logistic services; research and development services and product development; technical support and maintenance; data processing and communication and business development.[73] These services clearly fall within the scope of services other than processing, manufacturing or repacking of goods as contemplated by the afore-mentioned provision.

Whether the payment for the above services was paid in acceptable foreign currency accounted for in accordance with BSP rules, this Court deems it propitious to first tackle the third requisite in order to determine which entities qualify as *not* doing business in the Philippines (such that only the sales made in favor of these entities shall be considered in the determination of petitioner's compliance with the second requisite).

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[72] *Accenture, Inc. v. Commissioner of Internal Revenue*, G.R. No. 190102, 11 July 2012.
[73] Exhibit "P-1", Division Docket, Volume IV, p. 1199.

(ii) THE RECIPIENT OF SUCH SERVICES IS DOING BUSINESS OUTSIDE THE PHILIPPINES

In the case of *Sitel Philippines Corporation (formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue,*[74] the Supreme Court reiterated that it is not enough that the recipient of the services is a foreign corporation, but also that the said corporation is doing business *outside* the Philippines, *viz:*

> ...
>
> Following Burmeister, the Court, in *Accenture, Inc. v. Commissioner of Internal Revenue,* (*Accenture*), emphasized that a taxpayer claiming for a VAT refund or credit under Section 108(B) **has the burden to prove not only that the recipient of the service is a foreign corporation, but also that said corporation is doing business outside the Philippines**. For failure to discharge this burden, the Court denied *Accenture*'s claim for refund.
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> ...
>
> In the same vein, Sitel fell short of proving that the recipients of its call services were foreign corporations doing business outside the Philippines. **As correctly pointed out by the CTA Division, while Sitel's documentary evidence, which includes Certifications issued by the Securities and Exchange Commission and Agreements between Sitel and its foreign clients, may have established that Sitel rendered services to foreign corporations in 2004 and received payments therefor through inward remittances, said documents failed to specifically prove that such foreign clients were doing business outside the Philippines or have a continuity of commercial dealings outside the Philippines.**[75]
>
> ...

As to what documents could establish the foregoing requirements, this Court in *Chevron Holdings, Inc., v. Commissioner of Internal Revenue*[76], had the occasion to rule that, in order to be considered as a non-resident foreign corporation doing business outside the Philippines; each entity must be supported, at the very least, by **both** the SEC's negative certification and the

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[74] G.R. No. 201326, 08 February 2017.
[75] Citation omitted and emphasis supplied.
[76] CTA EB Case Nos. 1508 and 1509, 21 March 2018.

certificate/articles of foreign of incorporation/association. This Court went on to further rule that:

> ...
>
> **These two (2) documents are necessary. The SEC's negative certification establishes that the recipient of the service has no registered business in the Philippines** (i.e., not engaged in trade or business within the Philippines). On the other hand, **the certificate/articles of incorporation/association prove two things: (1) that the recipient of the service is indeed foreign, and (2) it is engaged in business in the country of incorporation/association** (i.e., a showing of a continuity of commercial dealings and intention to establish a continuous business).[77]
>
> ...

Accordingly, to show compliance with the third requisite, petitioner presented the following documents to prove that the recipient of its sales of services are non-resident foreign corporations doing business outside the Philippines:

1. SEC Certificate of Non-Registration of Company[78];
2. IntraGroup Service Agreements[79];
3. Company Registration Documents (authenticated copies of Articles of Association[80], Certification[81], Certificate of Registration of Foreign Company[82], Certificate of Registration of Oversea Company[83], Certificate of Incorporation on Change of Name of Company[84], Certificate of Business Registration[85], and Certified Copy of All Historical Registered Matters[86]);
4. AMInet Company Profile Fact Sheets[87]; and,
5. Deutsche Bank Comprehensive List of Shareholdings 2013.[88]

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77 Emphasis supplied.
78 Exhibits "P-5" to "P-5.14", Division Docket, Volume IV, pp. 1246-1260.
79 Exhibits "P-6" to "P-6.12", id., pp. 1261-1344.
80 Exhibit "P-7", id., pp. 1345-1363.
81 Exhibit "P-7.1", id., pp. 1364-1366.
82 Exhibit "P-7.2", id., pp. 1367-1369.
83 Exhibit "P-7.3", id., pp. 1370-1372.
84 Exhibit "P-7.4", id., pp. 1373-1375.
85 Exhibit "P-7.5", id., pp. 1376-1378.
86 Exhibit "P-7.6", id., pp. 1379-1403.
87 Exhibits "P-8" to "P-8.14", id., pp. 1404-1519.
88 Exhibit "P-9", id., pp. 1520-1577.

Based on the foregoing, the following table shows whether the recipients of the services that petitioner extends may be considered as non-resident foreign corporation doing business outside the Philippines (for having presented both the SEC's negative certification or the Certificate of Non-Registration and proof of incorporation or registration in a foreign country):

Name of the Service Recipient[89]	**SEC Certificate of Non-Registration**		**Authenticated proof of foreign incorporation / registration**	
	Exhibit	**Name**	**Exhibit**	**Name**
Deutsche Bank Aktiengesellschaft	"P-5"	Deutsche Bank Atiengesellschaft Filiale Inlandsbank	"P-7"	Deutsche Bank Aktiengesellschaft
Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	"P-5.1"	Deutsche Bank Atiengesellschaft Asia Pacific Head Office	"P-7-1"	Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office
Deutsche Bank Aktiengesellschaft, Filiale Singapur	"P-5.2"	Deutsche Bank Atiengesellschaft Filiale Singapur	"P-7-2"	Deutsche Bank Aktiengesellschaft
Deutsche Asset Management (Asia) Limited	"P-5.3"	Deutsche Asset Management Asia Limited	None	None
Deutsche Bank Aktiengesellschaft, Filiale Bangkok	"P-5.4"	Deutsche Bank Atiengesellschaft Filiale Bangkok	None	None
Deutsche Bank Aktiengesellschaft Hongkong Branch	"P-5.5"	Deutsche Bank Atiengesellschaft Filiale Hongkong	"P-7-3"	Deutsche Bank Aktiengesellschaft
Deutsche Bank Aktiengesellschaft, Filiale Jakarta	"P-5.6"	Deutsche Bank Atiengesellschaft Filiale Jakarta	None	None
Deutsche Bank Aktiengesellschaft, Filiale Mumbai	"P-5.7"	Deutsche Bank Atiengesellschaft Filiale Mumbai	None	None
Deutsche Bank (China) Co., Ltd., Shanghai Branch	"P-5.8"	Deutsche Bank China Co. Ltd. Shanghai Branch	None	None
Deutsche Asia Pacific Holdings Pte Ltd	"P-5.9"	Deutsche Asia Pacific Holdings Pte Ltd	"P-7-4"	Deutsche Asia Pacific Holdings Pte Ltd
Deutsche Bank Aktiengesellschaft Seoul Branch	"P-5.10"	Deutsche Bank Atiengesellschaft, Seoul Branch	"P-7-5"	Deutsche Bank Aktiengesellschaft Seoul Branch
Deutsche Securities Inc.	"P-5.11"	Deutsche Securities Inc.	"P-7-6"	Deutsche Securities Inc.
Deutsche Bank Real Estate (Japan) Y.K.	"P-5.12"	Deutsche Bank Real Estate (Japan) Y.K.	None	None
DB Finance Inc.	"P-5.13"	DB Finance Inc.	None	None
Deutsche Trust Company Limited Japan	"P-5.14"	Deutsche Trust Company Limited Japan	None	None

[89] Based on petitioner's Memorandum dated 26 July 2019, id., pp. 1670-1671.

While this Court notes that the discrepancies in the names of Deutsche Bank Aktiengesellschaft, Deutsche Bank Aktiengesellschaft, Filiale Singapur, Deutsche Bank Aktiengesellschaft Hongkong Branch, as regards the words "Inlandsbank" and "Filiale", petitioner has nevertheless explained sufficiently the reason for the disparity; such that the word "Inlandsbank" is merely a descriptive word which, in German, means "domestic bank"[90]. "Filiale", on the other hand, is a German translation of the term "branch".[91] Therefore, "Deutsche Bank Aktiengesellschaft" may be considered as the same entity as "Deutsche Bank Atiengesellschaft Filiale Inlandsbank" and that "Deutsche Bank Aktiengesellschaft, Filiale Singapur" and "Deutsche Bank Aktiengesellschaft Hongkong Branch" are mere branches of the said entities in Singapore and Hongkong, respectively.

With the above, the Court is convinced to consider the same as properly supported by the two required documents.

Moreover, this Court further notes the difference in the word "Atiengesellschaft" as provided in the SEC Certificates of Non-Registration to the eword "Aktiengesellschaft" in various documents[92] and deems the names stated in the SEC Certificates of Non-Registration as substantially compliant with the requirement to show that the said entities have no registered business in the Philippines.

In any case, proceedings in this Court shall not be governed strictly by technical rules of evidence. In *Filinvest Development Corporation v. Commissioner of Internal Revenue and Court of Tax Appeals*[93], the Supreme Court ruled:

> ...
>
> ...This provision must be taken in the light of Republic Act No. 1125, as amended, the law creating the CTA, which provides that proceedings therein shall not be governed strictly by technical rules of evidence. Moreover, this Court has held time and again that

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[90] Amended FOE, id., p. 1615.

[91] Id., p. 1618.

[92] Exhibit "P-7", id., p. 1346; Exhibit "P-7.1", id., p. 1366; Exhibit "P-7.2", id., p. 1369; Exhibit "P-7.3", id., p. 1372; Exhibit "P-5", id., p. 1377; Exhibits "P-8" to "P-8.3", id., pp. 1404-1409; Exhibits "P-8.5" to "P-8.6", id., pp. 1497-1499; Exhibit "P-8.10", id., p. 1514; Exhibit "P-10", id., p. 1580.

[93] G.R. No. 146941, 09 August 2007.

> technicalities should not be used to defeat substantive rights, especially those that have been established as a matter of fact.
>
> ...

However, this Court cannot apply the same rule with respect to Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office. We find the Certification[94] by its own representatives, Low Soon Heng and Roger Lee Hoong Kwon, both Attorneys pursuant to a Power of Attorney dated 30 September 2008, self-serving. Moreover, the said entity is alleged to be registered in Singapore, similar to Deutsche Bank Aktiengesellschaft, Filiale Singapur and Deutsche Asia Pacific Holdings Pte Ltd. Thus, if petitioner was able to present documents showing that said entities have been registered in Singapore, there is no reason not to expect it to produce similar registration documents for Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office.

As to the other documents (Service Agreements, AMInet Company Profile Fact Sheets, and Deutsche Bank Comprehensive List of Shareholdings 2013) that petitioner submitted, this Court has held consistently that said documents are insufficient to prove that petitioner's client is a non-resident foreign corporation doing business outside the Philippines. In a case[95] involving the same parties, this Court ruled:

> ...
>
> Likewise, the **Service Agreements** only show the names and addresses of petitioner's clients to whom it renders services, but the **same do not establish that such clients are non-resident foreign corporations doing business outside the Philippines.**
>
> ...
>
> Meanwhile, the Court cannot give credence to the purported foreign business registration **print-outs retrieved from the AMInet database**, which is a database set up by Deutsche Bank Group. Said documents are not sufficient to establish the fact that the service recipients are non-resident foreign corporations doing business outside the Philippines, as they **may be considered self-serving and can be easily manipulated to favor petitioner** in view of its affinity with the entity that maintains or keeps the said database. In addition, the business registration documents attached

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94 Exhibit "P-7.1", Division Docket, Volume IV, p. 1366.

95 *Deutsche Knowledge Services Pte., Ltd. v. Commissioner of Internal Revenue*, CTA Case No. 9496, 12 February 2019.

to their counterpart AMInet Company Profile Facts Sheets are not duly authenticated.[96]

...

Consequently, only petitioner's sales of services to entities which are duly supported by the two required documents will be treated as zero-rated sale, pursuant to Section 108(B)(2) of the NIRC of 1997, as amended.

(iii) THE PAYMENT FOR SUCH SERVICES MUST BE IN ACCEPTABLE FOREIGN CURRENCY ACCOUNTED FOR IN ACCORDANCE WITH BSP RULES

With regard to the second requisite, Sections 113(A)(2), (B)(1) and (2)(c), and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(2), B(1) and (2)(c) of Revenue Regulations (**RR**) No. 16-05 provide that a VAT taxpayer, like herein petitioner, shall, for every lease of goods or properties and for every sale, barter or exchange of services, issue a VAT official receipt (**OR**) which must contain the following information:

...

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

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

...

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

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

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

[96] Emphasis supplied.

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

(a) **The amount of the tax shall be shown as a separate item in the invoice or receipt;**

...

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

...

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

...

SEC. 4.113-1. *Invoicing Requirements. —*

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

...

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

Only VAT-registered persons are required to print their **TIN followed by the word "VAT" in their invoice or official receipts**. Said documents shall be considered as a "VAT Invoice" or "VAT official receipt." All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) *Information contained in VAT invoice or VAT official receipt.* — The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the **seller is a VAT-registered person, followed by his TIN;**

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; Provided, That:

(a) **The amount of tax shall be shown as a separate item in the invoice or receipt**;

...

(c) If the sale is subject to zero percent (0%) VAT, the term "**zero-rated sale**" shall be written or printed prominently on the invoice or receipt;[97]

...

Pursuant thereto, the foreign currency remittances referred to under Section 108(B)(2) of the NIRC of 1997, as amended, must also be supported by VAT zero-rated ORs, together with the details prescribed above.

Petitioner has established that it was paid in Euro, an acceptable foreign currency, for the services rendered to its affiliates which were duly accounted for in accordance with the BSP rules and regulations as evidenced by the VAT zero-rated ORs[98], Cash Ledger - Cash (Euro)[99] and Notarized Certification of inward remittances[100]. However, out of the ₱211,483,368.56[101] zero-rated sales/receipts declared *per* VAT return for the first quarter of CY 2007, only the amount of ₱86,602,634.90 (equivalent to €1,355,482.20), as detailed below, qualifies for VAT zero-rating under Section 108(8)(2) of the NIRC of 1997, as amended:

Client	OR No.[102]	Date	Amount in Euro	Amount in PHP
Deutsche Bank AG	0321 & 0322	3/2/2007	794,682.32	50,967,665.79
Deutsche Bank Aktiengesellschaft, Filiale Singapur	0324	2/6/2007	289,055.80	18,367,505.14
Deutsche Bank Aktiengesellschaft,	0325	2/2/2007	259,136.30	16,466,326.42

[97] Emphasis supplied.
[98] Exhibit "P-13", as contained in compact disk (CD) marked as Exhibit "P-11-b" submitted to the Court on 18 September 2018.
[99] Exhibit "P-14", id.
[100] Exhibit "P-15", id.
[101] Line 17 of Exhibit "P-3.1", Division Docket, Volume IV, p. 1221.
[102] Supra at note 98.

Filiale Hongkong				
Deutsche Asia Pacific Holdings Pte Ltd	0330	2/1/2007	12,607.78	801,137.55
Total			**1,355,482.20**	**86,602,634.90**

As petitioner explained, the descriptive term "AG" is merely an abbreviation of "Aktiengesellschaft"[103]. Accordingly, this Court considers OR Nos. 0321 and 0322 as issued to Deutsche Bank Aktiengesellschaft, an entity duly proven to be a non-resident foreign corporation.

Anent petitioner's remaining zero-rated sales/receipts in the amount of ₱124,880,733.66 (equivalent to €1,278,291.60), as detailed below, this Court is constrained to disqualify the same from VAT zero-rating due to the following reasons:

	OR No.[104]	Date	OR Amount in Euro	Disallowed Zero-Rated Sales
Over claimed zero-rated sales (Amount per OR in PHP is lower than the amount claimed as zero-rated sales)				
Deutsche Asia Pacific Holdings Pte Ltd	0330	2/1/2007	12,607.78	₱ 1,770,649.82
Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	0323	3/7/2007	197,725.12	58,022,733.66
Deutsche Bank Aktiengesellschaft, Filiale Hongkong	0325	2/2/2007	259,136.30	13,260,100.54
Subtotal			***469,469.20***	***₱ 73,053,484.02***
Sale to entities not considered as non-resident foreign corporations doing business outside the Philippines (Without proof of foreign registration/incorporation)				
Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	0323	3/7/2007	197,725.12	₱ 12,681,278.52
Deutsche Bank Aktiengesellschaft, Filiale Jakarta	0326	3/21/2007	26,352.16	1,690,119.50
Subtotal			***224,077.28***	***₱ 14,371,398.02***
Sale to entities not considered as non-resident foreign corporations doing				

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103 Amended FOE, Division Docket, Volume IV, p. 1618.

104 Supra at note 98.

business outside the Philippines (without proof of foreign registration/incorporation) and without supporting ORs				
DB Finance Inc.	None	None	3,375.00	214,458.00
Deutsche Asset Management (Asia) Limited	None	None	3,387.10	218,932.56
Deutsche Bank (China) Co., Ltd., Shanghai Branch	None	None	20,645.16	1,311,857.67
Deutsche Bank Aktiengesellschaft, Filiale Bangkok	None	None	18,870.97	1,199,120.13
Deutsche Bank Aktiengesellschaft, Filiale Mumbai	None	None	20,645.16	1,311,857.67
Deutsche Bank Real Estate (Japan) Y.K.	None	None	15,750.00	1,000,803.98
Deutsche Trust Company Limited Japan	None	None	3,375.00	214,458.00
Subtotal			***86,048.39***	***₱ 5,471,488.01***
Without supporting ORs				
Deutsche Bank Aktiengesellschaft, Filiale Seoul	None	None	15,000.00	₱ 962,038.50
Deutsche Securities Inc.	None	None	483,696.73	31,022,325.11
Subtotal			***498,696.73***	***₱ 31,984,363.61***
TOTAL DISALLOWED ZERO-RATED SALES				**₱ 124,880,733.66**

4TH AND 5TH REQUISITES:
PETITIONER INCURRED AND PAID INPUT TAXES WHICH ARE ATTRIBUTABLE TO ITS ZERO-RATED SALES

In its Amended VAT Return[105] for the first quarter of CY 2007, petitioner reported a total input VAT from its purchase goods (other than capital goods and purchase of services) in the amount of **₱12,743,393.25**, of which the amount of **₱12,549,446.29**, is the subject of the present claim, as shown below:

[105] Exhibit "P-3.1", Division Docket, Volume IV, p. 1221.

Domestic Purchases of Goods Other than Capital Goods[106]	₱ 2,132,640.67
Domestic Purchases of Services[107]	10,610,752.58
Total input VAT claimed for the quarter	12,743,393.25
Less: Input VAT applied against output VAT for the quarter[108]	193,946.96
Total Unutilized input VAT for the quarter	**₱ 12,549,446.29**

To prove that it incurred/paid the aforementioned input VAT, petitioner submitted Summary of Input VAT Claimed[109], various sales invoices and ORs[110] which were examined by the Court-commissioned ICPA Villanueva.

In his Report, the ICPA noted the following exceptions:[111]

Description	**Reference**	**Input VAT**
Domestic purchases of goods not properly supported by VAT invoices	Annex I-1	₱ 828,057.12
Domestic purchases of services not properly supported by VAT ORs	Annex I-2	1,102,460.97
Domestic purchases of goods not supported by invoice but pre-printed as a "Not Valid Source of Input Tax"	Annex I-3	20,120.56
Purchase of goods supported by original invoices where VAT amount is not separately indicated	Annex I-4	4,591.04
Purchase of services supported by original ORs where VAT amount is not separately indicated	Annex I-5	2,309,918.50
Purchase of goods supported by original invoices not in the name of the Company	Annex I-6	24,032.12
Purchase of services supported by original ORs not in the name of the Company	Annex I-7	4,821.43
Purchase of goods supported by original invoices with incomplete/abbreviated Company name	Annex I-8	2,709.20
Purchase of services supported by original ORs with incomplete/abbreviated Company name	Annex I-9	3,240.00
Purchase of goods supported by original invoices with incomplete/abbreviated Company	Annex I-10	10,313.89

106 Line 21F of Exhibit "P-3.1", id., p. 1221.
107 Line 21J of Exhibit "P-3.1", id., p. 1221.
108 Line 15B of Exhibit "P-3.1", id., p. 1221.
109 Exhibit "P-16", as contained in compact disk (CD) marked as Exhibit "P-11-b" submitted to the Court on 18 September 2018.
110 Exhibits "P-17-1" to "P-17-20", id.
111 Exhibit "P-11", ICPA Report, pp. 11-12.

name, and address and/or TIN are not indicated/incorrect/incomplete		
Purchase of services supported by original ORs with incomplete/abbreviated Company name, and address and/or TIN are not indicated/incorrect/incomplete	Annex I-11	1,053.16
Purchase of services supported by original ORs with incomplete/abbreviated Company name and/or the nature of payment is not indicated	Annex I-12	9,001.20
Purchase of goods supported by original invoices where the address and/or TIN is not indicated/incorrect/incomplete	Annex I-13	153,832.13
Purchase of services supported by original ORs where the address and/or TIN is not indicated/incorrect/incomplete	Annex I-14	137,093.41
Purchase of services supported by original ORs where the address indicated is incomplete and/or alterations made are not countersigned	Annex I-15	5,625.00
Purchase of goods supported by original invoices dated outside the period of claim	Annex I-16	50,784.43
Unsupported purchase of goods	Annex J-1	2,080,110.14
Unsupported purchase of services	Annex J-2	2,623,637.66
Total Input VAT with exceptions		**₱ 9,371,401.96**

We agree with the ICPA's findings.

The above-noted exceptions as the ICPA found to be in the amount of ₱9,371,401.96 should be disallowed for not being properly substantiated by VAT invoices or ORs as required under Sections 110(A)[112] and 113(A) and (B),[113] 237[114] and 238[115] of the NIRC of 1997, as

[112] **SEC. 110.** *Tax Credits.* -

(A) *Creditable Input Tax.* -
(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
(a) Purchase or importation of goods:
(i) For sale; or
(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
(iii) For use as supplies in the course of business; or
(iv) For use as materials supplied in the sale of service; or
(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.
(b) Purchase of services on which a value-added tax has been actually paid.
...

[113] **SEC. 113.** *Invoicing and Accounting Requirements for VAT-Registered Persons.* -

(A) *Invoicing Requirements.* - A VAT-registered person shall issue:
(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

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

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* - The following information shall be indicated in the VAT invoice or VAT official receipt:
(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax. *Provided, That*:

> (a) The amount of the tax shall be known as a separate item in the invoice or receipt;
> (b) If the sale is exempt from value-added tax, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;
> (c) If the sale is subject to zero percent (0%) value-added tax, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt.
> (d) If the sale involved goods, properties or services some of which are subject to and some of which are VAT zero-rated or Vat exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be known on the invoice or receipt: *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and
(4) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.

...

114 **SEC. 237.** *Issuance of Receipts or Sales or Commercial Invoices.* - All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however, That where the receipt is issued* to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided, further*, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious cases, exempt any person subject to internal revenue tax from compliance with the provisions of this Section.

115 **SEC. 238.** *Printing of Receipts or Sales or Commercial Invoices.* - All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

All persons who print receipt or sales or commercial invoices shall maintain a logbook/register of taxpayers who availed of their printing services. The logbook/register shall contain the following information:

(1) Names, Taxpayer Identification Numbers of the persons or entities for whom the receipts or sales or commercial invoices were printed; and,

amended, in relation to Sections 4.110-2[116], 4.110-8(a)[117], and 4.113-1[118] of RR No. 16-05, as amended.

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(2) Number of booklets, number of sets per booklet, number of copies per set and the serial numbers of the receipts or invoices in each booklet.

116 **SEC. 4.110-2.** *Persons Who Can Avail of the Input Tax Credit.* - The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:

(a) To the importer upon payment of VAT prior to the release of goods from customs custody;

(b) To the purchaser of the domestic goods or properties upon consummation of the sale; or

(c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee.

117 **SEC. 4.110-8.** *Substantiation of Input Tax Credits.* -

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

(1) For the importation of goods - import entry or other equivalent document showing actual payment of VAT on the imported goods.

(2) For the domestic purchase of goods and properties – invoice showing the information required under Secs. 113 and 237 of the Tax Code.

(3) For the purchase of real property – public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.

(4) For the purchase of services – official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code.

118 **SEC. 4.113-1.** *Invoicing Requirements.* -

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

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

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

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or official receipts. Said documents shall be considered as a "VAT Invoice" or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice /official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) Information contained in VAT invoice or VAT official receipt. – The following information shall be indicated in VAT invoice or VAT official receipt:

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

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

> (a) The amount of tax shall be shown as a separate item in the invoice or receipt;
>
> (b) If the sale is exempt from VAT, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;
>
> (c) If the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;
>
> (d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

In addition to the ICPA's foregoing disallowances, the Court finds that the additional input VAT amounting to ₱778,354.43 should likewise be disallowed for the following reasons:

Exhibit	Supplier	Reason for disallowance	Disallowed Input VAT
P-17-1[119]	Stamp Works Enterprises	Purchase of goods supported by VAT invoice where the name of the company is incomplete	₱ 34.39
P-17-1[120]	ePLDT, Inc.	Purchase of service not properly supported by OR	110,931.72
P-17-2[121]	ePLDT, Inc.	Purchase of service supported by OR but dated outside the period of claim	110,931.72
P-16[122]	Bureau of Internal Revenue	Purchase of service rendered by non-residents not supported by original ORs	556,456.60
Total Disallowed Input VAT per Court's further verification			₱ **778,354.43**

Thus, out of petitioner's total declared input VAT of ₱12,743,393.25 for the first quarter of CY 2007, only the amount of ₱2,593,636.86 represents its valid input VAT, as computed below:

Input VAT claim		₱ 12,743,393.25
Less: Disallowances		
Per ICPA Report	₱ 9,371,401.96	
Per this Court's further examination	778,354.43	10,149,756.39
Valid Input VAT		₱ **2,593,636.86**

Since petitioner has both zero-rated sales and sales subject to 12% VAT and its input VAT cannot be directly and entirely attributed to either of the transactions, its valid input VAT shall be proportionally allocated on the basis of volume of sales, pursuant to Section 112(A) of the NIRC of 1997, as amended, which provides in part as follows:

(3) In the case of sales in the amount of one thousand pesos (P1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section.

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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**. *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.[123]

...

Based on the its Amended Quarterly VAT Return, petitioner's sales subject to 12% VAT amounts to ₱1,616,224.68[124] while its zero-rated sales totaled ₱211,483,368.56[125]. Hence, petitioner had total sales of ₱213,099,593.24 for the first quarter of CY 2007.

Thus, the valid input VAT of ₱2,593,636.86 shall be allocated proportionately on the basis of the volume of sales, as shown below:

Total sales subject to 12% VAT for the period	₱ 1,616,224.68
Divided by total sales for the period	213,099,593.24
Multiplied by total valid input VAT	2,593,636.86
Valid input VAT allocated to sales subject to 12% VAT	**19,671.08**

123 Emphasis supplied.
124 Line 15A of Exhibit "P-3.1", Division Docket, Vol. IV, p. 1221.
125 Line 17 of Exhibit "P-3.1", id., p. 1221.

Total sales subject to 0% VAT for the period	₱211,483,368.56
Divided by total sales for the period	213,099,593.24
Multiplied by total valid input VAT	2,593,636.86
Valid input VAT allocated to sales subject to 0% VAT	**2,573,965.78**

Applying the valid input VAT allocated to sales subject to 12% VAT amounting to ₱19,671.08 to the reported output VAT liability of ₱193,946.96[126], petitioner would still have an output VAT liability of ₱174,275.88.

Consequently, a portion of the valid input VAT of ₱2,593,636.86 shall be applied against the remaining reported output VAT liability of ₱174,275.88 resulting to remaining input VAT of ₱2,419,360.98. However, out of said excess input VAT allocated to total zero-rated sales of ₱2,419,360.98, only the remaining input VAT of ₱990,730.56 is attributable to its valid zero-rated sales of ₱86,602,634.90, computed as follows:

Valid Input VAT	₱	2,593,636.86
Less: Remaining output VAT liability		174,275.88
Excess Input VAT		2,419,360.98
Divide by: Declared Zero-Rated Sales		211,483,368.56
Multiply by: Valid Zero-Rated Sales		86,602,634.90
Excess Input VAT attributable to Valid Zero-Rated Sales	**₱**	**990,730.56**

Although petitioner carried over in its succeeding Quarterly VAT Returns[127] the claimed input VAT, the same remained unutilized until it was deducted as "VAT Refund/TCC Claimed" in its Quarterly VAT Return for the first quarter of CY 2009. As such, the subject claim no longer formed part of the excess input VAT of ₱251,942,080.29[128] as of the end of the first quarter of CY 2009 that was to be carried over or applied to the succeeding quarters. Therefore, the possibility that the present claim would be applied to future output VAT liability has been eliminated.

126 Line 19B of Exhibit "P-3.1", id., p. 1221.
127 Exhibits "P-3.2" to "P-3.10", id., pp. 1223-1240.
128 Line 29 of Exhibit "P-3.9", id., p. 1238.

WHEREFORE, premises considered, the instant Petition for Review filed by Deutsche Knowledge Services, Pte. Ltd. is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the amount of **NINE HUNDRED NINETY THOUSAND SEVEN HUNDRED THIRTY PESOS AND FIFTY-SIX CENTAVOS** (₱990,730.56), representing its excess and unutilized input VAT attributable to zero-rated sales for the first quarter of CY 2007.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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