REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

MANILA PENINSULA HOTEL, INC., Petitioner,	C.T.A. CASE NO. 8519
	Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 14 2015 3:11 p.m.

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DECISION

This case involves petitioner's claim for refund or issuance of a tax credit certificate (TCC) in the aggregate amount of Three Million Eight Hundred Seven Thousand Seven Hundred Seventy One Pesos and Seventy Seven Centavos (Php3,807,771.77), allegedly representing its erroneously paid or illegally collected value-added tax (VAT) for the four quarters of taxable year 2010.

THE FACTS

Petitioner Manila Peninsula Hotel, Inc. is a duly registered domestic corporation with address at Ayala Avenue corner Makati Avenue, Makati City. It was incorporated on April 4, 1974 with the primary purpose as follows:

> "To lease real estate, and to erect thereon hotels and other buildings and improvements; to own, lease, operate, manage and administer hotels, apartment

> hotels, and all other facilities, accommodations, adjunct and accessories appurtenant to a general hostelry business; to furnish entertainment and otherwise perform any and all things for the pleasure, comfort and convenience of hotel guests, tenants and other customers; to promote travel and tourism; and otherwise, to handle and engage in other allied businesses; provided that the Corporation will cater only to its hotel customers and their guests.[1]

Petitioner is also registered with the Large Taxpayers Division of the Bureau of Internal Revenue (BIR) with Tax Identification No. (TIN) 000-170-847-000.[2]

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR), with the authority to act on claims for refund or tax credit of erroneously or excessively paid taxes. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

During taxable year 2010, petitioner provided room accommodations and food and beverage services to Delta Air Lines, Inc. (Delta Air), a foreign corporation with a License to Transact Business in the Philippines dated December 29, 2009[3] issued by the SEC. By virtue of such License, Delta Air is allowed to establish a branch office in the Philippines to engage in international air transport services.

Delta Air provides room accommodations and food and beverage services to its pilots and cabin crew during flight layovers in the Philippines. For this purpose, an agreement was executed between Delta Air and petitioner wherein the latter would provide room accommodations and food and beverage services to the former's pilots and cabin crew during flight layovers in the Philippines.[4] The cost of hotel services would be directly charged upon Delta Air[5] and would

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[1] Exhibit "A".
[2] Exhibit "B".
[3] Exhibit "K".
[4] Exhibit "M".
[5] Exhibits "J-1" to "J-24".

not constitute compensable income of its crew but as business expense of airline.

For taxable year 2010, petitioner paid respondent the amount of Php74,764,313.49, net of VAT, with the Quarterly VAT Returns (BIR Form No. 2550Q) filed on the following dates:

Quarter (TY 2010)	Date of Filing Return	Date of Payment
First[6]	April 23, 2010	April 23, 2010[7]
First (amended)[8]	July 6, 2011	July 6, 2011[9]
Second[10]	July 23, 2010	July 23, 2010[11]
Second (amended)[12]	July 6, 2011	July 6, 2011[13]
Third[14]	October 22, 2010	October 22, 2010[15]
Fourth[16]	January 25, 2011	January 25, 2011[17]

On June 19, 2012, petitioner filed with BIR's Large Taxpayer Services (BIR-LTS) and Large Taxpayers Regular Audit Division 2 (BIR-LTRAD 2) an administrative claim for refund of alleged erroneously paid or illegally collected VAT for taxable year 2010 amounting to Php3,807,771.77, consisting of the twelve percent (12%) VAT payments on its sales to Delta Air.[18]

On July 24, 2012, petitioner filed the instant claim for tax refund or TCC claiming inaction on the part of respondent on its application for refund and in order to suspend the running of the two-year prescriptive period under the law.[19]

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6 Exhibit "D".
7 Exhibit "D-3".
8 Exhibit "D".
9 Exhibit "D-4".
10 Exhibit "E".
11 Exhibit "E-3".
12 Exhibit "F".
13 Exhibit "F-1".
14 Exhibit "G".
15 Exhibit "G-3".
16 Exhibit "H".
17 Exhibit "H-3".
18 Exhibit "C".
19 Docket, pp. 6-13.

On October 2, 2012, respondent filed her Answer[20], praying for the dismissal of the petition primarily on the ground of lack of cause of action since it neither has a legal standing nor is the real party in interest to maintain the present case as defined under Section 2, Rule 3 of the Rules of Court. Records disclosed that the imposed VAT was part of the payment for the services petitioner rendered to Delta Air. In other words, it was Delta Air and not petitioner, who paid the VAT. Besides, prescription had set in insofar as the period covering the first quarter up to a part of the second quarter of taxable year 2010. Notably, the receipts issued by Delta Air contain the words "zero-rated", indicating that VAT should not have been imposed on the hotel services petitioner rendered to the airline's crew. Petitioner also failed to exhaust administrative remedies and observe the doctrine of primary jurisdiction as it prematurely filed the instant petition only thirty five (35) days from institution of the administrative claim for refund.[21] There was also non-compliance with Revenue Memorandum Order No. 53-98 requiring submission of complete documentary requirements in the administrative application for refund/TCC. Finally, a claim for refund/TCC is in the nature of tax exemptions, hence, construed *strictissimi juris* against the claimant and liberally in favor of the taxing authority.[22]

On October 15, 2012, petitioner filed its Reply, arguing that:

1. Petitioner has the legal standing to file the claim for refund of erroneously paid VAT;
2. Petitioner clearly showed its cause of action;
3. The claim for VAT refund was timely filed;
4. Petitioner timely and properly filed with respondent the administrative claim for refund; and
5. The alleged failure to submit documents as provided in RMO No. 53-98 is not fatal to petitioner's claim for refund.

[20] Docket, pp. 240-252.
[21] *Gaw Guy vs. Bureau of Immigration*, G.R. No. 168622, July 2, 2010.
[22] *Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation*, 204 SCRA 377

After the pre-trial conference, the parties filed their Joint Stipulation of Facts and Issues[23] upon which the Pre-Trial Order[24] dated January 22, 2013 was based.

To support its case, petitioner presented five (5) witnesses, namely: Gamiel Gumapon, Josefina P. Malpas, Atty. Ceazar Lorenzo T. Veneracion III, Atty. Noel M. Malaya and Venus Villarosa.

Witness **Gamiel D. Gumapon**, by way of Judicial Affidavit[25] testified that he is a paralegal of Follosco, Morallos & Hearce, who filed petitioner's Claim for Refund of Erroneously Paid/Illegally Collected Value-Added Tax for the Taxable Year ending 2010 in the amount of Php3,807,771.77, together with the supporting documents on June 19, 2012[26].

Witness **Josefina P. Malpas** declared in her Judicial Affidavit[27] that as petitioner's Assistant Financial Controller - Operation Financial Controls, she approves the tax returns prepared by petitioner's accountant and reviewed by the Assistant Financial Controller - Financial Controls before submission to the BIR, as well as petitioner's Monthly and Quarterly VAT Returns, ensuring that they are timely filed and the corresponding payments are made.

In 2010, petitioner provided hotel rooms and food and beverage services to Delta Air. Petitioner paid VAT for the sales attributable to Delta Air and filed the corresponding BIR Forms 2550Q or Quarterly VAT Returns for 2010[28] reflecting the twelve percent (12%) VAT on its sales to Delta Air.

On June 19, 2012, petitioner filed an administrative claim for refund[29], which she signed, with the BIR-LTS and BIR-LTRAD for taxable year 2010 in the amount of Php3,807,771.77. To date, it is still pending.

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[23] Docket, pp. 290-295.
[24] Docket, pp. 299-303.
[25] Exhibit "N" and "N-1".
[26] Exhibit "C".
[27] Exhibit "O" and "O-1".
[28] Exhibits "D", "E", "F", "G" and "H".
[29] Exhibits "C" and "C-1".

She added that petitioner included the VAT in the receipts for sales it issued to Delta Air evidencing payments for the services it rendered. The said VAT payment was reported as output VAT. She clarified that Delta Air paid the VAT and petitioner only collected and remitted it to the BIR.[30]

Witness, **Atty. Ceazar Lorenzo T. Veneracion III** corroborated the foregoing testimony[31] adding that he was Northwest Airlines, Inc.'s Finance, Human Resources & Legal Manager until its merger with Delta Air on December 31, 2009. After such merger, he became Delta Air's Human Resources/Legal Manager for the Philippines, Australia and New Zealand until December 31, 2012. As such, he handled all the finance and human resource issues and legal problems and concerns of petitioner. He likewise reviewed all the invoices before their distribution to other departments. On December 31, 2012, he resigned from Delta Air to join Cathay Pacific Airways as Personnel and Administrative Manager.

He further testified that Delta Air is engaged in international air transport services with License to Transact Business in the Philippines issued by the SEC.[32] For the year 2010, petitioner provided room accommodations and food and beverage services to Delta Air pilots and cabin crew during flight layovers in the Philippines in accordance with Delta Air's Hotel Room Agreement 106750 effective October 1, 2010 to September 30, 2013. Prior to October 1, 2010, petitioner provided hotel services to Northwest Airlines pilots and cabin crew per Hotel Service Agreement Contract No. BH697304[33] effective October 1, 2008 to September 30, 2010.

Petitioner directly billed Delta Air for the services rendered, inclusive of VAT.[34] Delta Air, in return, paid for the said hotel services considering the same as essential business expense of the airline.

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[30] *Ibid*, pp. 8-9.
[31] Exhibits "Q" and "Q-1".
[32] Exhibit "K".
[33] Exhibit "P".
[34] Exhibits "J-1" to "J-24".

Although not a party to the Agreement between petitioner and Delta Airlines,[35] he knew that it was duly executed by the signatories therein having received a copy thereof as part of his duty and responsibility.

The witness further clarified that Delta Air paid VAT because the BIR insisted that the subject transactions were subject to VAT. He added that Delta Air filed a claim for refund with the BIR and also requested for a BIR ruling, but both were denied.

In his Supplemental Judicial Affidavit[36], Atty. Veneracion III declared that petitioner is engaged in air transport business and had been issued a License to Transact Business in the Philippines by the SEC and a Foreign Air Operator's Operation Specification by Civil Aviation Authority of the Philippines.[37] Delta Air is registered with the BIR, but it is not a registered VAT taxpayer, thus, it has no output VAT against which the 12% input VAT can be offset. For the same reason, Delta Air cannot file any claim for refund of any unutilized input VAT. Also being an international airline, it cannot realize any income benefit because it is taxed on its Gross Philippine Billings, any additional cost or expense such as the 12% input VAT is irrelevant in the computation of its income tax

When informed by petitioner about its remittance to the BIR of the 12% VAT for the hotel services it rendered to Delta Air during flight layover in Manila in 2010, he advanced that such imposition was of doubtful validity. Delta Air did not enjoy any tax benefit from the 12% VAT collected from it by petitioner.

Witness **Venus T. Villarosa**, through her Judicial Affidavit,[38] stated that from July 2010 to January 2013, she was petitioner's Tax Accountant. She is presently its Income Auditor since February 2013. Part of her duty is to ensure that petitioner's tax obligations are paid and that all other BIR requirements are complied with.

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[35] TSN, hearing held on June 24, 2013, pp. 35-40.
[36] Exhibits "X" and "X-1".
[37] Exhibit "W".
[38] Exhibit "S" and "S-1".

For the period July to December 2010, she prepared petitioner's Monthly and Quarterly VAT Returns[39] and ensured that they were filed and the corresponding tax thereon were timely paid through the BIR Electronic Filing and Payment System (EFPS). She also made sure that petitioner's Monthly Summary List of Sales for the year 2010[40] was submitted with the customer's name, TIN, address, amount of transaction and the corresponding VAT.

Based on petitioner's Summary List of Sales and Quarterly VAT Returns for taxable year 2010, the total sales and output VAT on sales made to Delta Air amounted to Php31,731,431.39 and Php3,807,771.77 respectively. The said documents were based on petitioner's various official receipts[41] and invoices[42] issued for the hotel services it rendered to Delta Air for taxable year 2010. However, Official Receipt Number 28684 in the amount of Php3,281,502.00 was in the name of Northwest Airlines as it was issued prior to the merger. Although not a signatory to the official receipt,[43] she knew that there were separate receipts for the VAT component, which was paid by their client but remitted by petitioner to the BIR. [44]

Petitioner paid the total VAT of Php3,807,771.77[45] pertaining to its services rendered to Delta Air. The first payment was made on July 26, 2010.

She opined that petitioner is entitled to a refund because the BIR wrongfully collected the VAT paid by Delta Air for transactions that were zero-rated.

Petitioner's Corporate Secretary and In-house Counsel since 2007, **Atty. Noel M. Malaya**, declared in his Judicial Affidavit[46] that he handles petitioner's corporate records, attends to all its board meetings, prepares the minutes of board meetings, reviews all its contracts and gives legal advices to its corporate officers and personnel.

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[39] Exhibits "D" to "H".
[40] Exhibits "L-1" to "L-12".
[41] Exhibits "I-1" to "I-16".
[42] Exhibits "J-1" to "J-24".
[43] TSN, hearing held on June 24, 2013, pp. 71-72.
[44] *Ibid*, pp. 75.
[45] Exhibits "D-1" to "D-4", "E-1" to E-3, "F"-1", "G-1" to "G-3", "H-1" to "H-3".
[46] Exhibits "R" and "R-1".

He reviewed the Hotel Room Agreement 106750[47] between Delta Air and petitioner. Section 4(b), page 4 thereof provides that petitioner shall directly charge the fees to Delta Air and not to the individuals availing of the said hotel services. The agreement shall be effective from October 1, 2010 until September 30, 2013.

Prior to Hotel Room Agreement 106750, petitioner executed a similar contract with Northwest Airlines, Inc. denominated as Hotel Service Agreement Contract No. BH697304,[48] effective October 1, 2008 until September 30, 2010. He reviewed the said contract after it was signed by petitioner's General Manager Jonathan Crook.[49] After the original contract was signed in the Philippines, a copy thereof was sent to the other party abroad for signature, then sent back to the Philippines for filing.

Per practice, petitioner keeps only the hard copies of the current contracts with its various clients due to office space restrictions. However, it maintains scanned or electronic copies of terminated contracts. Thus, petitioner only has the copy of Hotel Room Agreement 106750 since it is the current contract.

After petitioner rested, respondent submitted the case for decision *sans* presentation of any evidence in support of her position.[50]

On August 15, 2014, the case was deemed submitted for decision.[51]

THE ISSUES

The following is the lone issue submitted by the parties for the resolution of the Court:[52]

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[47] Exhibit "M".
[48] Exhibit "P".
[49] Exhibits "U" and "U-1"
[50] Docket, pp. 1351-1353.
[51] Docket, p. 1477.
[52] Par. 6, Stipulation of the Issue, JSFI, docket, p. 292.

> "Whether or not Petitioner is entitled to its refund claim in the aggregate amount of Php3,807,771.77, representing its erroneously paid/illegally collected VAT for the four quarters of taxable year 2010."

THE COURT'S RULING

First, the Court must determine whether petitioner has the legal standing to claim for refund/tax credit, despite the admission of its own witnesses that it was Delta Air who paid for VAT for the subject transactions and that petitioner merely remitted the payments to the BIR.

In the early case of *Philippine Geothermal, Inc. v. The Commissioner of Internal Revenue,*[53] the Supreme Court held that for indirect taxes like VAT, the proper party to question or seek a refund of the tax is the statutory taxpayer. In other words, it is the person on whom the tax is imposed by law and paid the same even when the taxpayer shifts the burden to another. This ruling was echoed in the latter case of *Silkair (Singapore) Pte, Ltd. vs. Commissioner of Internal Revenue.*[54]

Undoubtedly, petitioner is the statutory taxpayer in this case. The parties stipulated that petitioner billed Delta Air for the hotel services it rendered to the latter's pilots and cabin crew, inclusive of VAT. Delta Air, in return paid the total bill, inclusive of VAT, which petitioner remitted to the BIR. These were affirmed by petitioner's own witnesses who identified confirming documents, namely, the Hotel Room Agreements[55], invoices[56], official receipts[57], Quarterly VAT Returns[58], EFPS Payment Details[59], and Summary List of Sales[60], as proof that it paid to the BIR the VAT attributable

53 G.R. No. 154028, July 29, 2005.
54 G.R. No. 173594, February 6, 2008.
55 Exhibits "M", "P" and "T".
56 Exhibits "J-1" to "J-24".
57 Exhibits "I-1" to "I-16".
58 Exhibits "D", "E", "F", "G", and "H".
59 Exhibits "D-1" to "D-4", "E-1" to "E-3", "F-1", "G-1" to "G-3" and "H-1" to "H-3".
60 Exhibits "L-1" to "L-12".

to sales to Delta. In fine, petitioner has the legal standing to file the instant claim for refund.

Notwithstanding this favorable finding, the telling details of the case as will be discussed are too serious to ignore.

Pursuant to Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended,[61] both the administrative claim for refund/tax credit filed with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within two (2) years from the date of payment of tax.

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[61] "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may -

xxx xxx xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund."

"SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

The pertinent dates to petitioner's claim for refund are as follows:

Exhibit	Period	Date of Payment	End of Two-Year Period	Date of Filing of Administrative Claim	Petition for Review[62]
"D-3"[63]	1st Quarter (Original)	April 23, 2010	April 23, 2012	June 19, 2012 (Exhibit "C"[64])	July 24, 2012
"D"[65], "D-4"[66]	1st Quarter (Amended)	July 6, 2011	July 6, 2013		
"E"[67], "E-3"[68]	2nd Quarter (Original)	July 23, 2010	July 23, 2012		
"F"[69], "F-1"[70]	2nd Quarter (Amended)	July 6, 2011	July 6, 2013		
"G"[71]	3rd Quarter	October 22, 2010	October 22, 2012		
"H"[72]	4th Quarter	January 25, 2011	January 25, 2013		

Clear from the foregoing table that petitioner's administrative and judicial claims for the third and fourth quarters of 2010, were both within the two-year prescriptive period.

As regards the first and second quarters of 2010, both the administrative and judicial claims shall also be considered as timely filed but only with respect to the output VAT paid per the amended returns. Hence, the output VAT paid per the original returns for the first and second quarters of 2010 shall be disallowed due to prescription.

On respondent's contention that petitioner failed to exhaust administrative remedies since it prematurely filed the instant Petition for Review only thirty-five (35) days after the filing of the administrative claim, the same simply lacks merit.

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62 Docket, pp. 6-13.
63 Docket, p. 910.
64 Docket, pp. 900-903.
65 Docket, pp. 904-905.
66 Docket, p. 911.
67 Docket, pp. 912-913.
68 Docket, p. 916.
69 Docket, pp. 917-918.
70 Docket, p. 921.
71 Docket, pp. 922-923.
72 Docket, pp. 927-928.

The law explicitly allows a taxpayer a period of two years from the erroneous payment of tax within which to file a written claim for refund. However, if the BIR Commissioner takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Commissioner.[73]

The mandatory two-year prescriptive period in Sections 204 and 229 of the NIRC of 1997, as amended, is for the filing of the administrative claim for refund and institution of a judicial action with the Court of Tax Appeals. To preserve its right to claim for refund, petitioner needed to file its judicial claim merely days after it filed its administrative claim for refund. Otherwise, its right to claim for refund would have been barred.[74]

The next issue is whether the alleged output VAT in the amount of Php3,807,771.77 was erroneously paid by petitioner.

The records divulge that petitioner is a VAT-registered entity with Certificate of Registration No. OCN8RC0000019694 dated June 26, 1998.[75]

Pursuant to its Hotel Room Agreement 106750[76] and Hotel Service Agreement Contract No. BH697304[77] with Delta Air,[78] petitioner rendered hotel services to Delta Air during flight layovers in the Philippines in the year 2010. The gross receipts derived from such services amounted to Php31,731,431.39 exclusive of the 12% output VAT due thereon in the amount of Php3,807,771.77, detailed as follows:

Exhibit	Invoice Number	Invoice Date	Billing Period	Room Charges	Total Services Provided for the Month	Output VAT
"J-1"	200462	1/27/2010	Jan. 01-15, 2010	Php 1,527,200.00		
"J-2"	200462	2/2/2010	Jan. 16-31, 2010	1,439,800.00	Php 2,967,000.00	Php 356,040.00
"J-3"	200463	2/18/2010	Feb. 01-15, 2010	1,320,200.00		

[73] *Gibbs, et al. vs. Collector of Internal Revenue and Court of Tax Appeals,* G.R. No. L-13453, February 29, 1960.
[74] *Commissioner of Internal Revenue vs. Team [Philippines] Operations Corporation [formerly Mirant (Phils.) Operations Corporation],* G.R. No. 179260, April 2, 2014.
[75] Exhibit "B", docket, p. 899.
[76] Exhibit "M", docket, pp. 1057-1068.
[77] Exhibit "P", docket, pp. 1086-1107.
[78] Exhibit "K", docket, pp. 1040-1044.

"J-4"	200464	3/3/2010	Feb. 16-28, 2010	1,191,400.00	2,511,600.00	301,392.00
"J-5"	200465	3/26/2010	Mar. 01-15, 2010	1,274,200.00		
"J-6"	200466	5/10/2010	Mar. 16-31, 2010	1,380,000.00	2,654,200.00	318,504.00
"J-7"	200467	5/4/2010	Apr. 01-15, 2010	1,274,200.00		
"J-8"	200468	5/6/2010	Apr. 16-30, 2010	1,320,200.00	2,594,400.00	311,328.00
"J-9"	200469	5/26/2010	May 01-15, 2010	1,334,000.00		
"J-10"	200470	6/4/2010	May 16-30, 2010	1,389,200.00	2,723,200.00	326,784.00
"J-11"	200470	7/8/2010	Jun. 01-15, 2010	1,315,600.00		
"J-12"	200471	7/8/2010	Jun. 16-30, 2010	1,297,200.00	2,612,800.00	313,536.00
"J-13"	200472	7/29/2010	Jul. 01-15, 2010	1,182,831.39		
"J-14"	200473	8/5/2010	Jul. 16-31, 2010	1,398,400.00	2,581,231.39	309,747.77
"J-15"	200474	8/18/2010	Aug. 01-15, 2010	1,338,600.00		
"J-16"	200475	9/6/2010	Aug. 16-31, 2010	1,357,000.00	2,695,600.00	323,472.00
"J-17"	200476	9/23/2010	Sep. 01-15, 2010	1,288,000.00		
"J-18"	200477	10/8/2010	Sep. 16-30, 2010	1,255,800.00	2,543,800.00	305,256.00
"J-19"	200477	11/2/2010	Oct. 01-15, 2010	1,205,200.00		
"J-20"	200478	11/3/2010	Oct. 16-31, 2010	1,380,000.00	2,585,200.00	310,224.00
"J-21"	200479	11/22/2010	Nov. 01-15, 2010	1,283,400.00		
"J-22"	200480	12/18/2010	Nov. 16-31, 2010	1,209,800.00	2,493,200.00	299,184.00
"J-23"	200481	1/6/2011	Dec. 01-15, 2010	1,292,600.00		
"J-24"	200482	1/6/2011	Dec. 16-31, 2010	1,476,600.00	2,769,200.00	332,304.00
Total				**Php31,731,431.39**	**Php31,731,431.39**	**Php3,807,771.77**

Relative to the Monthly VAT Declarations (BIR Form No. 2550M) and Quarterly VAT Returns (BIR Form No. 2550Q) it filed for the year 2010, petitioner paid an output VAT of Php74,764,313.49, broken down as follows:

Exhibit	**Particulars**	**Date of Payment**	**Output VAT Paid**
First Quarter of 2010			
"D-1"[79]	Monthly VAT Return for the month of January 2010	2/24/2010	Php 5,231,775.92
"D-2"[80]	Monthly VAT Return for the month of February 2010	3/24/2010	6,403,049.23
"D-3"[81]	Original Quarterly VAT Return for the 1st Quarter of 2010	4/23/2010	5,950,661.88
"D-4"[82]	Amended Quarterly VAT Return for the 1st Quarter of 2010	7/6/2011	1,504,465.98
		Subtotal	*19,089,953.01*
Second Quarter of 2010			
"E-1"[83]	Monthly VAT Return for the month of April 2010	5/24/2010	4,911,491.43
"E-2"[84]	Monthly VAT Return for the month of May 2010	6/23/2010	5,985,385.66
"E-3"[85]	Original Quarterly VAT Return for the 2nd Quarter of 2010	7/23/2010	6,995,526.39
"F-1"[86]	Amended Quarterly VAT Return for the 2nd Quarter of 2010	7/6/2011	939,724.53
		Subtotal	*18,832,128.01*
Third Quarter of 2010			

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[79] Docket, p. 908.
[80] Docket, p. 909.
[81] Docket, p. 910.
[82] Docket, p. 911.
[83] Docket, p. 914.
[84] Docket, p. 915.
[85] Docket, p. 916.
[86] Docket, p. 921.

"G-1"[87]	Monthly VAT Return for the month of July 2010	8/24/2010	7,109,100.35
"G-2"[88]	Monthly VAT Return for the month of August 2010	9/24/2010	5,745,673.78
"G-3"[89]	Original Quarterly VAT Return for the 3rd Quarter of 2010	10/22/2010	7,519,393.11
		Subtotal	*20,374,167.24*
Fourth Quarter of 2010			
"H-1"[90]	Monthly VAT Return for the month of October	11/24/2010	6,131,349.72
"H-2"[91]	Monthly VAT Return for the month of November 2010	12/28/2010	4,896,898.48
"H-3"[92]	Original Quarterly VAT Return for the 4th Quarter of 2010	1/25/2011	5,439,817.03
		Subtotal	*16,468,065.23*
		Total	**Php74,764,313.49**

Based on petitioner's Summary List of Sales for the months of January to December 2010[93], the Php3,807,771.77 output VAT due on petitioner's sales to Delta formed part of the total output VAT payment of Php74,764,313.49.

Petitioner seeks the refund of the amount of Php3,807,771.77 on the ground that its sales of services to Delta should be subject to zero percent (0%) instead of twelve percent (12%) VAT pursuant to Section 108(B)(4) of the NIRC of 1997, as amended, which reads as follows:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero-percent (0%) rate:
>
> xxx xxx xxx
>
> (4) Services rendered to persons engaged in international shipping or international air transport operations, including leases of property for use thereof;"

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[87] Docket, p. 924.
[88] Docket, p. 925.
[89] Docket, p. 926.
[90] Docket, p. 929.
[91] Docket, p. 930.
[92] Docket, p. 931.
[93] Exhibits "L-1" to "L-12", docket, pp. 1045-1056.

Corollary thereto, Section 4.108-5(b)(4) of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 4-2007, provides as follows:

> "SEC. 4.108-5. *Zero-Rated Sale of Services.* –
>
> xxx xxx xxx
>
> (b) *Transactions Subject to Zero Percent (0%) VAT Rate.* – The following services performed in the Philippines by a VAT-registered person shall be subject to zero-percent (0%) VAT rate:
>
> xxx xxx xxx
>
> (4) Services rendered to persons engaged in international shipping or air transport operations, including leases of property for use thereof: *Provided, however*, That the services referred to herein shall not pertain to those made to common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines, the same being subject to twelve percent (12%) VAT under Sec. 108 of the Tax Code starting February 1, 2006."

The rule on zero-rating of sales of services to international air carriers was further clarified in Revenue Memorandum Circular No. 046-08 dated February 1, 2008, to wit:

> "REVENUE MEMORANDUM CIRCULAR NO. 046-08
>
> SUBJECT: Clarification of Issues Concerning Common Carrier by Air and Their Agents Relative to the Revenue and Receipt from Transport of Passengers, Goods/Cargoes and Mail, and from Excess Baggage
>
> xxx xxx xxx

> *Q-11: Are sales of goods, supplies, equipment, fuel and services to persons engaged in international air transport operation subject to VAT?*
>
> A-11: The sale of goods, supplies, equipment, fuel and services (including leases of property) to the common carrier to be used in its international air transport operations is zero-rated. *Provided*, that the same is limited to goods, supplies, equipment, fuel and services pertaining to or attributable to the transport of goods and passengers from a port in the Philippines directly to a foreign port without docking or stopping at any other port in the Philippines to unload passengers and/or cargoes loaded in and from another domestic port; *Provided*, further, that if any portion of such fuel, equipment, goods or supplies and services is used for purposes other than mentioned in this paragraph, such portion of fuel, equipment, goods, supplies and services shall be subject to 12% VAT."

Thus, to qualify for zero-rating, the services rendered by a VAT-registered person to a person engaged in international air transport operations must pertain to or must be attributable to the transport of goods and passengers from a port in the Philippines directly to a foreign port without docking or stopping at any port in the Philippines.

Moreover, under BIR Ruling No. 099-2011 dated April 6, 2011, "the services provided by the Hotel to its clients engaged in international air transport operations pertain to room accommodations and food and beverage services. As they are rendered within the Hotel's premises, they have no direct connection with the transport of goods or passengers, and as such, they cannot be considered as services directly attributable to the transport of goods and passengers from a Philippine port directly to a foreign port entitled to zero-rating. Such being the case, the sale of the foregoing services by the Hotel is not zero rated, but is appropriately subject to the 12% VAT."

This ruling was affirmed in Revenue Memorandum Circular No. 031-11[94] dated August 4, 2011, the pertinent portion of which reads:

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[94] SUBJECT: Revocation of BIR Ruling [DA-(VAT-057) 552-08] Dated December 18, 2008 Pursuant to BIR Ruling 099-2011 Dated April 6, 2011.

> "Based on the foregoing, **in order to qualify for zero-rating, the services rendered by a VAT-registered person to a person engaged in international air transport operations must pertain to or must be attributable to the transport of goods and passengers from a port in the Philippines directly to a foreign port without docking or stopping at any port in the Philippines**.
>
> Accordingly, applying Section 108 (B) (4) of the 1997 Tax Code, as amended, in connection with Section 4.108-5 (b) (4) of Revenue Regulations (RR) No. 16-2005, as amended by RR 4-2007, the **services provided by hotels to their clients engaged in international air transport operations pertaining to room accommodations and food and beverage services should be subject to the 12% VAT**." *(Emphasis supplied)*

Significantly, the cited BIR Ruling was not reversed or modified by the Secretary of Finance, thus it should be deemed valid with force and effect as held in the case of *Commissioner of Internal Revenue vs. Negros del Norte Planters Association Multi-Purpose Cooperative*[95].

Since the services to Delta Air's pilots and cabin crew during flight layovers were rendered within petitioner's premises, they have no direct connection with the transport of goods or passengers, and as such, they cannot be considered as services directly attributable to the transport of goods and passengers from a Philippine port directly to a foreign port entitled to zero-rating.

Furthermore, Section 108(B)(4) of the NIRC of 1997, as amended, should be read in conjunction with the Destination Principle and Cross Border Doctrine to which the Philippine VAT System adheres. According to the Destination Principle, goods and services are taxed only in the country where these are consumed. In connection with the said principle, the Cross Border Doctrine mandates that no VAT shall be imposed to form part of the cost of the goods destined for consumption outside the territorial border of the taxing authority.[96] Precisely, under our VAT Law, goods, property

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[95] CTA EB No. 1012, August 14, 2014.

[96] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 141104 and 148763, June 8, 2007.

or services destined, used or consumed in the Philippines are subject to the 12% VAT whereas those destined, used or consumed abroad are subject to 0% VAT.

The services rendered to the pilots and cabin crew of Delta Air did not cross the Philippine territory. They could not also be considered as services directly used in connection with international air transport operation unlike in the case of general sales agents of international airlines whose services are directly connected or attributable to the transport of goods or passengers from the Philippines to a foreign port.

Clearly, petitioner's sale of services to Delta Air could not be deemed zero-rated. In fact it was appropriately subject to the 12% VAT. All said, there was no erroneous payment of the claimed output VAT in the amount of Php3,807,771.77. Therefore, petitioner is not entitled to a refund or issuance of tax credit certificate in the aggregate amount of Php3,807,771.77, allegedly representing erroneously paid or illegally collected value-added tax for the four quarters of taxable year 2010.

WHEREFORE, the instant Petition for Review is hereby **DENIED,** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ON LEAVE
LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division's 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