REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

DEUTSCHE KNOWLEDGE SERVICES PTE. LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8065

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

MAR 01 2018 10:10 am

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RESOLUTION

MINDARO-GRULLA, *J.*:

For resolution are:

1. respondent's **Motion for Partial Reconsideration (Re; Decision promulgated 20 September 2017)**, filed on October 6, 2017, with petitioner's **Comment (Re: Respondent's Motion for Partial Reconsideration Dated October 4, 2017)**, filed on October 30, 2017; and

2. petitioner's **Motion for Partial Reconsideration (Re: Decision dated September 20, 2017)**, filed through registered mail on October 9, 2017 and received by the Court on October 19, 2017, without petitioner's comment despite notice as per Records Verification dated November 22, 2017.

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Both petitioner and respondent seek reconsideration of the Court's Decision dated September 20, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of ₱3,956,213.61, representing petitioner's unutilized excess input VAT attributable to zero-rated sales for the first quarter of CY 2008.
>
> **SO ORDERED**."

Respondent assails the aforesaid Decision on the following grounds:

1. The Court erred in ruling that petitioner's input tax in the amount of ₱3,956,213.61 is attributable to its zero-rated sales; and

2. The Court erred in ruling that the claimed input value-added tax (VAT) subject of the instant case remained unutilized.

Respondent contends that the Court's ruling that petitioner's input tax in the amount of ₱3,956,213.61 was entirely attributable to the latter's zero-rated sales is erroneous because Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, requires the input tax to be "directly attributable" to the zero-rated sale and not "entirely attributable". Respondent also states that the input tax must come from purchases of goods and services that form part of the finish product of the taxpayer. Further, respondent urges the Court to take a second look and reconsider the findings that petitioner's claimed input VAT remained unutilized despite being carried over to the succeeding periods. Allegedly, the information contained in petitioner's VAT Return for taxable year 2010 should not be given weight as the same were mere results of self-declarations of petitioner and still subject to audit investigation by respondent. Respondent insists that petitioner failed to overcome the burden that the subject input VAT being claimed remained unutilized or have not been applied against any output tax for the current and the succeeding quarters of the following taxable year.

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Petitioner opposes respondent's motion for partial reconsideration on the ground that it is a mere scrap of paper for failure of respondent to state the time and place for the hearing on the said motion, pursuant to Section 3, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA) in relation with Sections 4 and 5, Rule 15 of the Rules of Court.

Allegedly, even assuming that respondent's motion complies with the Rules on motion, petitioner argues that the arguments raised therein are mere reiterations of the arguments raised in respondent's memorandum which have already been carefully considered and thoroughly disposed of by this Court in the assailed Decision.

Section 4, Rule 15 of the Rules of Court provides that every written motion is required to be heard and notice of such hearing shall be served to opposing party at least three days before the date of hearing. Section 5 of the same Rules states that the notice of hearing shall be addressed to all parties concerned and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

Nonetheless, the Supreme Court ruled in the case of *Marylou Cabrera vs. Felix Ng*[1], that while the three-day notice requirement in motions under Sections 4 and 5, Rule 15 of the Rules of Court is mandatory, however, it is not a hard and fast rule, *viz*:

> "The general rule is that the three-day notice requirement in motions under Sections 4 and 5 of the Rules of Court is mandatory. It is an integral component of procedural due process. 'The purpose of the three-day notice requirement, which was established not for the benefit of the movant but rather for the adverse party, is to avoid surprises upon the latter and to grant it sufficient time to study the motion and to enable it to meet the arguments interposed therein.'
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> Nevertheless, the three-day notice requirement is not a hard and fast rule. When the adverse party had been afforded the opportunity to be heard, and has been

[1] G.R. No. 201601, March 12, 2014.

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indeed heard through the pleadings filed in opposition to the motion, the purpose behind the three-day notice requirement is deemed realized. In such case, the requirements of procedural due process are substantially complied with. xxx."

Considering that petitioner was able to file a comment on respondent's motion, the former has been afforded opportunity to be heard. Thus, the rationale behind Section 5, Rule 15 of the Rules of Court has been substantially complied.

After a thorough evaluation of respondent's arguments in the motion for reconsideration, the Court finds that the same are mere rehash of the facts and issues which have already been extensively passed upon in the assailed Decision.

Nevertheless, the Court clarifies that Section 112 (A) of the NIRC of 1997, as amended, provides that the input tax due or paid must be attributable to its zero-rated sales, to wit:

"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**

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> **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. (*Emphasis supplied*)

Clearly, when a taxpayer has zero-rated sales and has no taxable or exempt sales, the input tax due or paid will be directly and entirely attributed to such zero-rated sales.

Further, it is worthy to note the ruling of the Supreme Court in the case of *Republic vs. Team (Phils.) Energy Corporation (formerly Mirant [Phils.] Energy Corporation)*[2], that when taxpayer was able to establish *prima facie* its right to the refund by testimonial and object evidence, the BIR should have presented rebuttal evidence to shift the burden of evidence back to the taxpayer, *viz*:

> "We are likewise unmoved by the assertion of the petitioner that the respondent should have submitted the quarterly returns of the respondent to show that it did not carry-over the excess withholding tax to the succeeding quarter. **When the respondent was able to establish *prima facie* its right to the refund by testimonial and object evidence, the petitioner should have presented rebuttal evidence to shift the burden of evidence back to the respondent. Indeed, the petitioner ought to have its own copies of the respondent's quarterly returns on file, on the basis of which it could rebut the respondent's claim that it did not carry over its unutilized and excess creditable withholding taxes for the immediately succeeding quarters.** The BIR's failure to present such vital document during the trial in order to bolster the petitioner's contention against the respondent's claim for the tax refund was fatal." (*Emphasis supplied.*)

In ruling that petitioner's input taxes were attributable to its zero-rated sales and were not applied against any output VAT liability, the Court considered petitioner's amended Quarterly VAT Return[3] for the first quarter of CY 2008, suppliers' invoices, official

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[2] G.R. No. 188016, January 14, 2015.
[3] Exhibit "D".

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receipts, and other documents[4], succeeding Quarterly VAT Returns, as well as petitioner's testimonial evidence.

Apparently, petitioner was able to prove that it had zero-rated sales and no taxable sales subject to 12% VAT nor exempt s net substantiated input VAT for the 1st quarter of taxable year 2008; thus, petitioner's sales were entirely attributable to zero-rated sales in the absence of any evidence to the contrary.

Thus, the Court reiterates the ruling in the assailed Decision that:[5]

> "Since petitioner had no taxable sales subject to 12% VAT nor exempt sales for the first quarter of CY 2008, the net substantiated input VAT of ₱4,642,134.16 is entirely attributable to the zero-rated sales/receipts declared by petitioner for the same quarter amounting to ₱517,369,339.93. xxx.
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> xxx xxx xxx
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> Petitioner had no output tax liability for the first quarter of 2008 against which the subject input VAT claim may be applied or credited. Even though the claimed input VAT was carried over by petitioner in its succeeding Quarterly VAT Returns, the same remained unutilized until it was deducted as 'VAT Refund/TCC Claimed' in its Quarterly VAT Return for the first quarter of CY 2010, thus, preventing the carry over or application of the claimed input VAT in the next taxable quarters."

As already mentioned, it is upon respondent to present a rebuttal evidence to shift the burden of evidence back to petitioner to establish its entitlement for a refund. Failing in this regard, respondent's motion is found to be bereft of merit.

On the other hand, petitioner likewise filed its motion for partial reconsideration of the assailed Decision, alleging that this Court erred

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[4] Exhibits "TTT-1" to "TTT-757".
[5] Docket, vol. 3, pp. 1154 to 1155.

in denying a substantial amount of its total claim for input VAT refund for the 1st quarter of CY 2008, based on the following grounds:

a. Petitioner proved by preponderant evidence, that all of its zero-rated sales for the 1st quarter of CY 2008 were made to non-resident foreign corporations doing business outside the Philippines; and

b. Petitioner's sales in the amount of excess ₱47,336,273.41 must be declared as a VAT zero rated sales and unutilized input VAT in the amount of ₱29,679,844.90 must be allowed to be refunded.

The Court finds petitioner's motion unmeritorious.

Disallowed zero-rated sales for failure of petitioner to prove that the entities to whom it rendered services are non-resident foreign corporations doing business outside the Philippines - ₱29,110,087.55

In the assailed Decision, the Court has ruled that in order to be considered as non-resident foreign corporation doing business outside the Philippines, each entity must be supported at the very least by **both** SEC Certificate of Non-Registration of Corporation/Partnership **and** proof of foreign incorporation/association/business registration and that there is no other indication that the recipient of the services is doing business in the Philippines.[6]

Petitioner posits that it proved by preponderance of evidence that its sales to its non-resident foreign clients for the 1st quarter of CY 2008 were zero-rated. Petitioner avers that the Certificates of Non-Registration of Corporation issued by the Securities and Exchange Commission (SEC) proved that the named entities therein are not registered corporations/partnerships in the Philippines, and the IntraGroup Service Agreements (IGSA) with its foreign clients and foreign business registration documents proved the locations and addresses of petitioner's clients. Allegedly, these business

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[6] Docket, vol. 3, p. 1145.

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registration documents should be given the same probative value as the Articles of Incorporation/Association required by this Court.

According to petitioner, the IGSAs do not only show the names of petitioner's customers to whom it rendered service but also confirm that said clients are doing business outside the Philippines considering that the specific nature of the services rendered by petitioner is specified in the said IGSAs. Petitioner maintains that these documents should be deemed sufficient to prove that its foreign clients are doing business outside the Philippines in the absence of any proof to the contrary.

This argument lacks of merit.

The Court finds that while IGSAs state the nature of the services rendered by petitioner to its clients, the same do not establish that the said clients are engaged in business outside the Philippines. They do not constitute sufficient proof that petitioner's clients are non-resident foreign corporations doing business outside the Philippines.

Actions for tax refund, as in the instant case, are in the nature of claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[7]

Disallowed Zero-Rated Sales for not being supported by VAT Official Receipts - ₱278,273.18

The disallowed amount of ₱278,273.18 arose from the comparison of the amount of zero-rated sales reflected in the zero-rated VAT official receipts (₱517,091,066.75) and the amount declared in the petitioner's amended Quarterly VAT Return for the first quarter of CY 2008 (₱517,369,339.93). The discrepancy was denied for VAT zero-rating on the ground that the said discrepancy was unsupported by VAT official receipts.

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[7] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

Petitioner argues that the Tax Code does not require the issuance of official receipts before a transaction may be considered zero-rated. Petitioner posits that Section 108(B)(2) of the Tax Code merely provides that the services rendered to entities doing business outside the Philippines must be "paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP". Thus, the taxpayer need not present official receipts or invoices to prove zero-rated sales of services or goods. The invoicing requirement under Section 113 of the Tax Code is not necessary to prove zero-rated sales but only to substantiate the amount of unutilized input VAT being claimed for refund.

The Court finds petitioner's arguments bereft of merit.

Section 113(A) and (B) of the NIRC of 1997, as amended, states the invoicing requirements for VAT taxpayers and the information that shall be indicated therein, thus:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.-*
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> (A) *Invoicing Requirements.*-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**.
>
> (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 tax shall be shown as a separate item in the invoice or receipt;
>
> xxx xxx xxx
>
> (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 (₱1,000) 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." *(Emphasis supplied.)*

The aforestated provisions of Section 113(A)(1) and (2) explicitly require that the sale of goods or properties must be supported by VAT invoice while the sale of services must be supported by VAT official receipt (OR). This is in consonance with Sections 106(A) and 108(B) of the same Code, which provide:

"SEC. 106. *Value-added Tax on Sale of Goods or Properties.-*

(A) *Rate and Base of Tax.*-There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor: *Provided*, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), xxx.

The term '**gross selling price**' means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax.xxx"

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

(A) *Rate and Base of Tax.-* There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of the gross receipts, derived from the sale or exchange of services, including the use or lease of properties: *Provided*, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), xxx.

"The term '**gross receipts**' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax."

Based on the foregoing, the VAT on sale of goods or properties accrues upon the consummation of sale regardless of the receipt of consideration thereof while the VAT on sale of services accrues upon actual or constructive receipt of consideration regardless of actual rendition of service. Thus, the taxpayer's sale of goods or properties must be supported by an invoice, defined as *a written account of goods sold or services rendered indicating the prices charged therefore or a list by whatever name it is known which is used in the ordinary course of business <u>evidencing sale</u> and transfer or agreement to sell or transfer goods and services*[8] and the taxpayer's sale of services must be supported by an official receipt, defined as *a written acknowledgement of the <u>fact of payment</u> in money or other settlement between seller and buyer of goods, debtor or creditor, or a person rendering services and client or customer*[9].

Clearly, there is a fine distinction between a VAT invoice and a VAT OR. The VAT invoice is the sellers best proof of the sale of the goods or services to the buyer while the VAT receipt is the buyers best evidence of the payment of goods or services received from the seller. Hence, VAT invoice and VAT receipt should not be confused as referring to one and the same thing. Certainly, neither does the law intend the two to be used alternatively.[10]

Petitioner is engaged in the sale of services, thus, it must present appropriate VAT official receipts. Proofs of inward remittances like bank credit advices cannot be used in lieu of VAT official receipts to demonstrate petitioner's zero-rated transactions. Under Section 113 of the NIRC of 1997, as amended, irrespective of the nature of transaction, be it taxable, exempt or zero-rated sale, the law mandates that the taxpayer "for every sale, issue an invoice or receipt". Thus, the enumerated zero-rated transactions under Section 106 and 108 are those which are duly covered by VAT invoices (in the case of sales of goods), and VAT official receipts (in the case of sales of services).

Disallowed Zero-Rated Sales (₱47,058,000.23) and Input VAT (₱1,621,983.13) for being supported by VAT Official Receipts dated outside the period of claim

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[8] *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.
[9] *Ibid.*
[10] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181858, November 24, 2010.

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Petitioner argues that Revenue Memorandum Circulars (RMC) No. 42-03 specifically allows out-of-period claims provided the following requirements are complied with: (a) that the VAT invoices/receipts are issued within the taxable year that the claim was made; (b) that the VAT invoices/receipts cover transactions for the same taxable year; (c) that they have not been claimed in any other quarter of the same or different taxable year; and (d) the invoices/receipts are not claimed in any period ahead of the actual date of the said invoices/receipts. Petitioner has cited the case of *Commissioner of Internal Revenue vs. CE Cebu Geothermal Power Company*[11], where this Court held that:

> "Without a doubt, RMC No. 42-03 allows claims of input VAT evidenced by official receipts dated within the same taxable year to be refunded as long as the VAT invoices and official receipts are issued and cover transactions within the taxable year that the claim was made, and as long as these have not been claimed in any other quarter of the same taxable year."

The Court does not agree with petitioner.

This Court takes into consideration the decision by the Court of Tax Appeals *En Banc* in a recent case[12] involving the same parties and issues but covering different taxable period, the pertinent portion of which reads:

> "It is true that RMCs (such as RMC No. 42-03), as administrative issuances, have the force and effect of law, and benefit from the same presumption of validity and constitutionality enjoyed by statutes. However, it must be remembered that BIR circulars and rulings cannot prevail over the clear and plain language of the Tax Code.
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> Furthermore, while We recognize that the CIR is vested with the power to interpret the provisions of the NIRC of 1997, it is still subject to the review powers of the Secretary of Finance, in accordance with the first paragraph of Section 4 of the NIRC of 1997, *viz*:
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> > 'SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax' Cases*.- The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and

[11] CTA E.B. Case No. 435, May 5, 2009.

[12] *Deutsche Knowledge Services, PTE. LTD. vs. Commissioner of Internal Revenue*, CTA EB No. 1374 & 1383, December 15, 2017.

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> original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.'

In this connection, RMCs are considered administrative *rulings* which are issued from time to time by the CIR.

In any event, the Secretary of Finance, in turn, is empowered to promulgate rules and regulations, usually in the form of Revenue Regulations (RRs), upon the recommendation of the CIR, pursuant to Section 244 of the NIRC of 1997, to wit:

> 'SEC. 244. *Authority of Secretary of Finance to Promulgate Rules and Regulations.* - The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.'

Thus, RRs should always prevail over RMCs; the former being promulgations by a superior; while the latter, being issuances by a subordinate official. As a corollary then, a RMC cannot supplant provisions of RRs.

In this case, one of the pertinent provisions applicable to the refund claim of Deutsche Knowledge in CTA Case No. 8300 is Section 110(2) of the NIRC of 1997, as amended by RA No. 9337, which lays down the rules as to when the input VAT is creditable against the output VAT, to wit:

> 'SEC. 110. *Tax Credits.*-
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> xxx xxx xxx
>
> (2) The input tax on domestic purchases or importation of goods or properties by a VAT-registered person **shall be creditable**:
>
> (a) To the purchaser **upon consummation of sale and on importation of goods or properties**; and
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> (b) To the importer **upon payment of the value-added tax** prior to the release of the goods from the custody of the Bureau of Customs.
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> xxx, That in case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee **upon payment of the compensation, rental, royalty or fee**.' (*Emphases and underscoring supplied*)

The law is clear. Thus, as to the purchaser of goods or properties, the input VAT is creditable against the output VAT,

upon consummation of the sale; as to the importer, **upon payment of the VAT**; and as to the purchaser of services, lease or use of properties, the input VAT therefor is creditable **upon payment of the compensation, rental, royalty or fee**. With the use of the word "upon", it can be easily discerned from the said provisions that the creditability of the pertinent input VAT against the output VAT must be made as it happens, and not to be made at any other time. Nevertheless, the aforequoted provisions of Section 110(2) should be correlated with Section 114(A) of the NIRC of 1997, as amended by RA No. 9337, which provides as follows, to wit:

> 'SEC. 114. *Return and Payment of Value-added Tax* - (A) In General. - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.'

Correspondingly, since the filing of the Quarterly VAT Return, which reports the gross sales or receipts, and the payment of the VAT would come at a later date than the actual crediting of the input VAT, such crediting can be made, only upon such filing and payment. However, considering that the said Section 110(2) is clear as to when should the pertinent input VAT shall be creditable, it should not go beyond the month or quarter during which the input VAT was incurred or paid, as the case may be. This has been clarified by the following provisions of RRs No. 16-2005, which implemented the said Sections 110(2) and 114(A), to wit:

'xxx xxx xxx

> SEC. 4.110-5. *Determination of Input Tax Creditable during a Taxable Month or Quarter.* - **The amount of input taxes <u>creditable during a month or quarter</u> shall be determined in the manner illustrated above by adding all creditable input taxes arising from the transactions enumerated under the preceding subsections of Sec. 4.110 <u>during the month or quarter</u>** plus any amount of input tax carried over from the preceding month or quarter, reduced by the amount of claim for VAT refund or tax credit certificate (whether filed with the BIR, the Department of Finance, the Board of Investments or the BOC) and other adjustments, such as purchase returns or allowances, input tax attributable to exempt sales and input tax attributable to sales subject to final VAT withholding.

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SEC. 4.11 0-6. Determination of the Output Tax and VAT Payable and Computation of VAT Payable or Excess Tax Credits. - In a sale of goods or properties, the output tax is computed by multiplying the gross selling price as defined in these Regulations by the regular rate of VAT. For sellers of services, the output tax is computed by multiplying the gross receipts as defined in these Regulations by the regular rate of VAT.

xxx xxx xxx

There shall be allowed as a deduction from the output tax <u>the amount of input tax deductible as determined under Sec. 4-110-1 to 4.110-5 of these Regulations to arrive at VAT payable on the monthly VAT declaration and the quarterly VAT returns</u>, subject to the limitations set forth in Section 4.110-7.

xxx xxx xxx

SEC. 4.114-1. *Filing of Return and Payment of VAT.-*

(A) *Filing of Return.* - Every person liable to pay VAT shall file a quarterly return of the amount of his quarterly gross sales on receipts within twenty five (25) days following the close of taxable quarter using the latest version of Quarterly VAT Return. Xxx.

Amounts reflected in the monthly VAT declarations for the first two (2) months of the quarter shall still be included in the quarterly VAT return which reflects the cumulative figures for the taxable quarter. Payments in the monthly VAT declarations shall, however, be credited in the quarterly VAT return to arrive at the net VAT payable or excess input tax/over-payment as of the end of a quarter.

xxx xxx xxx

The monthly VAT Declarations (BIR Form 2550M) of taxpayers whether large or non-large shall be filed and the taxes paid not later than the 20th day following the end of each month." (*Emphases and underscoring supplied*)

Based on the foregoing provisions, to arrive at the VAT payable on the Monthly VAT Declaration and the Quarterly VAT Return, the input VAT allowed to be deducted or credited from the

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> output VAT are those that are creditable during the corresponding month and quarter.
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> Thus, even when RMC No. 42-03 allows out-of-period claims of input VAT, the same cannot be adhered to, because it contravenes the above-quoted Section 110(2) in relation to Section 114(A) of the NIRC of 1997, as amended by RA No. 9337, and clearly supplants Sections 4.110-2,4.110-4, 4.110-5, 4.110-6, and 4-114-1 of RRs No. 16-2005." (*Citations omitted*)

Based on the foregoing, the Court sustains the disallowance of petitioner's zero-rated sales in the amount of ₱47,058,000.23[13] and input VAT in the amount of ₱1,621,983.13[14] for being supported by VAT official receipts dated outside the period claim.

Disallowed Input VAT for not being properly substantiated by VAT invoices or official receipts - ₱29,401,789.26

In the September 20, 2017 Decision, the Court disallowed petitioner's input VAT claim in the amount of ₱29,401,789.26 for not being properly substantiated by VAT invoices or official receipts as prescribed under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-8, and 4.113-1 of Revenue Regulations No. 16-05, as amended.

Petitioner alleges that to deny its claim on such technical grounds is unjust, oppressive, and confiscatory. Petitioner submits that it should not be penalized for its suppliers' error in its invoices and official receipts issued such as the amount of VAT not separately indicated or undated official receipts since it has no control over the issuance of its suppliers.

The Court finds the arguments bereft of merit.

Out of *₱29,401,789.26*, the Court upholds, as earlier discussed, the disallowance of the amount of ₱1,621,983.13 as input VAT for being supported by VAT official receipts dated outside the period claim.

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[13] Docket, vol. 3, p. 1143.

[14] ₱1,232,381.26 (supported by official receipt dated outside the period of claim and the amount of Vat is not separately indicated) + ₱389,601.87 (supported by official receipt dated outside the period of claim), docket, vol. 3, p. 1151.

Further, the disallowance of the remaining amount of ₱27,779,806.13 should still be maintained, considering that it is petitioner's burden to prove its entitlement for a claim of refund.

While it may be true that the said VAT invoices or official receipts were issued without its participation and control, petitioner, to whom the burden of proof rests claiming tax refunds, must be vigilant to require its suppliers of goods and services to issue pertinent VAT invoices or official receipts, as the case may be, which bear all the information required by law and revenue regulations. In other words, having been charged with the burden to prove its claim for refund, petitioner must have been watchful in ensuring that its every purchases of goods and services is supported by a legally compliant VAT official receipt or invoice, as the case may be.[15]

Petitioner's Input VAT on Capital Goods exceeding ₱1M amortized over a period of 60 months

Petitioner avers that its purchases of capital goods exceeding ₱1Million for the first quarter of CY 2008 have estimated useful lives of forty-eight (48) months, instead of sixty (60) months. It is allegedly indicated in its Quarterly VAT Return for the 1st quarter of CY 2008; thus, petitioner's allowable input VAT should allegedly be ₱278,055.64.

Contrary to petitioner's claim, it is shown nowhere in the Quarterly VAT Return[16] for the 1st quarter of CY 2008 that the estimated useful life of the subject capital goods purchases is 48 months. Notably, based on petitioner's Audited Financial Statements[17], the estimated useful lives of petitioner's assets are as follows:

	Number of Years
Leasehold improvements	2 - 6
Information technology/operations equipment	4-10
Office equipment	10

[15] *Deutsche Knowledge Services, PTE. LTD. vs. Commissioner of Internal Revenue*, CTA EB No. 1374 & 1383, December 15, 2017.
[16] Exhibits "TTT-978 and "TTT-979".
[17] Exhibit "TTT-996".

However, the Court cannot determine the **actual** life of the subject capital goods purchases.

Assuming that the estimated useful life is indeed 48 months, the Court disagrees with the petitioner's assertion that the amount of ₱278,055.64 is refundable as the said amount pertains to the unamortized input VAT on capital goods purchases exceeding ₱1Million.

Pursuant to Section 110(A)(2) of the NIRC of 1997, as amended, the amount of ₱278,055.64 should be spread evenly over forty-eight (48) months and only the amount of ₱14,643.48 is creditable to the first quarter of CY 2008 computed as follows:

Supplier	Exhibit	Month Acquired	Input VAT	Useful Life	Monthly Input Tax	Allowable Input Tax for the 1st Quarter of CY 2008
Accent Micro Technologies Inc.	TTT-3	January	₱ 19,875.00	48	414.06	₱ 1,242.19
Accent Micro Technologies Inc.	TTT-9	January	4,178.57	48	87.05	261.16
Accent Micro Technologies Inc.	TTT-10	January	2,785.71	48	58.04	174.11
Accent Micro Technologies Inc.	TTT-8	January	1,834.07	48	38.21	114.63
Accent Micro Technologies Inc.	TTT-2	January	439.29	48	9.15	27.46
Accent Micro Technologies Inc.	TTT-1	January	1,512.86	48	31.52	94.55
Accent Micro Technologies Inc.	TTT-6	January	27,895.71	48	581.16	1,743.48
Accent Micro Technologies Inc.	TTT-7	January	1,157.14	48	24.11	72.32
Accent Micro Technologies Inc.	TTT-12	January	698.36	48	14.55	43.65
Accent Micro Technologies Inc.	TTT-16	January	8,892.86	48	185.27	555.80
Accent Micro Technologies Inc.	TTT-4	January	14,563.50	48	303.41	910.22
Accent Micro Technologies Inc.	TTT-14	January	1,285.71	48	26.79	80.36
Accent Micro Technologies Inc.	TTT-18	January	12,483.00	48	260.06	780.19
Accent Micro Technologies Inc.	TTT-5	January	31,135.50	48	648.66	1,945.97
Accent Micro Technologies Inc.	TTT-17	January	26,839.29	48	559.15	1,677.46
Accent Micro Technologies Inc.	TTT-21	January	439.29	48	9.15	27.46
Accent Micro Technologies Inc.	TTT-11	February	5,571.43	48	116.07	232.14
Accent Micro Technologies Inc.	TTT-13	February	964.29	48	20.09	40.18
Accent Micro Technologies Inc.	TTT-15	February	698.36	48	14.55	29.10
Accent Micro Technologies Inc.	TTT-19	February	27,895.71	48	581.16	1,162.32
Accent Micro Technologies Inc.	TTT-20	February	75,000.00	48	1,562.50	3,125.00
Accent Micro Technologies Inc.	TTT-22	February	1,157.14	48	24.11	48.21
Accent Micro Technologies Inc.	TTT-23	February	1,512.86	48	31.52	63.04
Accent Micro Technologies Inc.	TTT-24	March	2,875.71	48	59.91	59.91
Accent Micro Technologies Inc.	TTT-25	March	4,735.71	48	98.66	98.66
Accent Micro Technologies Inc.	TTT-26	March	1,628.57	48	33.93	33.93
			₱ 278,055.64			**₱ 14,643.48**

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Be that as it may, since petitioner failed to prove that the applicable economic useful life for the above capital goods purchases is 48 months, petitioner is entitled to a refund of input VAT only in the amount of ₱11,714.79 as determined by the Court in the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration (Re; Decision promulgated 20 September 2017)** and petitioner's **Motion for Partial Reconsideration (Re: Decision dated September 20, 2017)** are **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice