REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

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

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6904

Members:

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

Promulgated:
MAR 05 2008 ; 10:05 am

x - x

DECISION

CASANOVA, *J.*:

STATEMENT OF THE CASE

Before Us is a Petition for Review filed by Sitel Philippines Corporation (formerly known as Clientlogic Philippines, Inc.) seeking that judgment be issued ordering respondent to refund or issue a tax credit certificate in favor of petitioner for the total amount of P5,177,516.32. The amount claimed allegedly represents unutilized input Value Added Tax (VAT) arising from petitioner's domestic purchases of goods and services which are attributable to petitioner's zero-rated transactions and purchases/importation of capital goods for the four quarters of the taxable year 2002.

THE FACTS

Petitioner is a corporation organized and existing under the laws of the Philippines with office address at 14th Floor, Wynsum Corporate Plaza, Emerald Avenue, Ortigas Center, Pasig City.[1] It is engaged in the business of providing call center services from the Philippines to domestic and offshore business including, but not limited to, tactical telemarketing campaigns and programs and customer relationship management services.[2] It is formerly known as "Contact World, Inc." prior to the change of its corporate name to "ClientLogic Philippines, Inc." effective February 19, 2004 as evidenced by the Certificate of filing of Amended Articles of Incorporation issued by the Securities and Exchange Commission.[3] However, effective June 15, 2007, its name was again amended to Sitel Philippines Corporation.[4] It is registered with the Bureau of Internal Revenue ("BIR") as a VAT taxpayer with Tax Identification Number (TIN)/VAT Registration No. 208-780-708 effective December 14, 2000 and with Bureau of Internal Revenue (BIR) Certificate of Registration No. OCN 3RC0000244761 issued by BIR Revenue District Office No. 43 (Pasig).[5] It is also registered with the Board of Investments as a new information technology service firm in the field of call center on pioneer status with Board of Investments Certificate of Registration No. 2001-091.[6]

---

[1] Paragraph 1, Joint Stipulation of Facts (JSOF), Rollo p.61.
[2] Paragraph 4, JSOF, Rollo p.62.
[3] Paragraph 5, Ibid.
[4] Rollo, p.180.
[5] Paragraph 6, Ibid.
[6] Paragraph 7, Ibid.

For the period from January 1, 2002 to December 31, 2002, petitioner filed with the BIR its quarterly VAT returns as follows:[7]

Period Covered	Date Filed
1st Quarter 2002	10 April 2002
2nd Quarter 2002	10 July 2002
3rd Quarter 2002	10 October 2002
4th Quarter 2002	13 January 2003

On December 3, 2003, however, petitioner amended the aforesaid returns, declaring, among others, the following:[8]

	1st Qtr (Exhibit E)	2nd Qtr (Exhibit F)	3rd Qtr (Exhibit G)	4th Qtr (Exhibit H)	Total
Zero-Rates Sales	P 700,770.93	P 7,782,562.26	P4,960,276.15	P15,368,468.52	P28,812,077.86
Taxable Sales	5,306,488.20	2,572,673.33	3,542,989.78	4,482,300.20	15,904,451.51
Total Sales	P6,007,259.13	P10,355,235.59	P8,503,265.93	P19,850,768.72	P44,716,529.37
Output VAT	P 530,648.82	257,267.33	354,298.98	448,230.02	1,590,445.15
Input VAT on Capital Goods	P 98,315.16	P -	P 75,189.79	P 3,183,235.48	P 3,356,740.43
Input VAT on Domestic Purchases Other than Capital Goods	918,507.59	419,653.81	298,287.63	1,581,285.61	3,217,734.64
Total Input VAT	**P1,016,822.75**	**P 419,653.81**	**P 373,477.42**	**P 4,764,521.09**	**P6,574,475.07**

On March 22, 2004, petitioner timely filed separate formal claims for refund or issuance of a tax credit with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance for its unutilized input VAT arising from domestic purchases of goods and services attributable to zero-rated transactions and purchases/importations of capital

[7] Paragraph 8, Ibid.
[8] Paragraph 9, JSOF, Rollo p. 63

goods for the 1st, 2nd, 3rd and 4th quarters of 2002 in the aggregate amount of P5,177,516.32.[9]

In order to toll the running of the two-year prescriptive period under Section 229 of the 1997 National Internal Revenue Code (NIRC), as amended, and thus preserve petitioner's right to pursue the instant claim for refund or tax credit, which respondent has neither denied nor approved, petitioner filed this Petition for Review on March 26, 2004.[10]

Respondent, in his Answer filed on August 5, 2004, interposed the following Special and Affirmative Defenses, and We quote:

> "8. The subject claim for refund is still undergoing routinary examination/investigation;
>
> 9. The instant Petition for Review was prematurely filed as petitioner has not exhausted the administrative remedies prescribed by law and jurisprudence on the actions of this nature as no decision has as yet been rendered by the respondent;
>
> 10. In an action for refund, it is the taxpayer who has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action;
>
> 11. Claims for refund are strictly construed against the taxpayer. Petitioner has no cause of action."

To support its claim, petitioner presented documentary and testimonial evidence. On the other hand, respondent had waived his right to present any. After which, the parties were required to submit their respective memoranda.

---

[9] Paragraph 10, Ibid.
[10] Paragraph 11, Ibid.

On June 18, 2007, petitioner filed its memorandum, while respondent failed to file the same. Hence, on July 16, 2007, this case was submitted for decision. Nevertheless, while this case is being penned for decision, on January 14, 2008, petitioner submitted a "Manifestation and Ex-parte Motion" notifying and requesting Us that petitioner's name be changed to Sitel Philippines, Inc. from Clientlogic Philippines, Inc. where We noted and granted such a request in a Resolution promulgated on February 4, 2008.

ISSUES

The parties jointly stipulated the following issues for Our resolution:[11]

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

2. Whether or not the transactions of the petitioner are subject to VAT at zero percent (0%);

3. Whether or not there is unutilized VAT after applying the output VAT; and

4. Whether or not the claim is duly substantiated.

THE COURT'S RULING

The petition is partly meritorious.

Petitioner anchors its claim on Sections 112(A) and (B) of the 1997 NIRC, as amended, which provide as follows:

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

[11] Joint Stipulation of Issues, Rollo p.65.

(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 where made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

(B) Capital Goods. — A VAT registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made."

And for the taxable period January 1, 2002 to December 31, 2002, petitioner claims that it incurred an unutilized input VAT of 1,820,775.89 arising from its purchases of goods and services allegedly attributable to zero-rated sales and an input VAT of P3,356,740.43 arising from its purchases of capital goods. The aforesaid amounts are illustrated as follows:[12]

2002	Taxable Sales	Zero-Rated Sales	Total Sales	Input Tax For the Qtr.	**Input Tax From Capital Goods**	Input Tax From Regular Transactions	Input Tax Allocated to Taxable Sales	**Input Tax Allocated to Zero-Rated Sales**
	(A)	(B)	(C=A+B)	(D)	**(E)**	(F=D-E)	[G=(A/C)x(F)]	**[H=(B/C)x(F)]**

[12] Paragraph 9, JSOF, Rollo p. 63.

1st qtr	5,306,488.20	700,770.93	6,007,259.13	1,016,822.75	**98,315.16**	918,507.59	811,359.99	**107,147.60**
2nd qtr	2,572,673.33	7,782,562.26	10,355,235.59	419,653.81	-	419,653.81	104,259.55	**315,394.26**
3rd qtr	3,542,989.78	4,960,276.15	8,503,265.93	373,477.42	**75,189.79**	298,287.63	124,285.19	**174,002.44**
4th qtr	4,482,300.20	15,368,468.52	19,850,768.72	4,764,521.09	**3,183,235.48**	1,581,285.61	357,054.02	**1,224,231.59**
	15,904,451.51	28,812,077.86	44,716,529.37	6,574,475.07	**3,356,740.43**	3,217,734.64	1,396,958.75	**1,820,775.89**

Nevertheless, since the foregoing amount of claims are based on different categories, We shall first discuss petitioner's claim of input VAT on its purchases of goods and services that is attributable to zero-rated sales in the alleged amount of P1,820,775.89.

In this claim, We again decipher Section 112 (A) of the 1997 NIRC, as amended, which provides that in order to be entitled to a refund/tax credit certificate of its unutilized input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1. there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes are directly attributable to zero-rated sales or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and
5. that the claim for refund was filed within the two-year prescriptive period.

And to substantiate its entitlement thereto, petitioner presented various suppliers' invoices and official receipts on its input taxes from its domestic purchases of goods and services.[13] These were verified by the commissioned auditing firm, SGV & Co.

In its report dated August 22, 2005, SGV & Co. noted the following findings and observations as follows:[14]

Findings	*Reference*	*Amount of Input Tax*
1. *There are input taxes claimed on purchases of goods and services which are substantiated for VAT purposes:*		
a. *Domestic purchases of services properly supported by VAT ORs*	***(Annex 14)***	*P1,579,377.98*
b. *Domestic purchases of goods properly supported by VAT invoices*	***(Annex 15)***	*13,177.36*
c. *Purchase of services supported by original Monthly Remittance Return of VAT and other Percentage Taxes Withheld (BIR Form No. 1600)*	***(Annex 16)***	*523,988.91*
d. *Domestic purchases of services supported By ORs pre-printed TIN-V after July 31, 1991 but before January 1, 1996*	***(Annex 17)***	*380,940.00*
2. *There are input taxes claimed on purchases of goods and services which are supported by the following documents:*		
a. *Domestic purchases of services supported by documents, other than VAT ORs, showing that VAT was passed (e.g. VAT invoices, VAT statements of account, etc.)*	***(Annex 18)***	*135,628.12*
b. *Domestic purchases of goods supported by documents, other than invoices, showing that VAT was passed (e.g. VAT ORs)*	***(Annex 19)***	*578.81*
c. *Domestic purchases of services supported by documents other than VAT ORs (e.g. Deposit slips, progress billings, etc.)*	***(Annex 20)***	*160,486.36*
d. *Domestic purchases of services where the*	***(Annex 21)***	*17,510.16*

[13] Exhibits II-1 to II-1253.
[14] Commissioned Certified Public Accountant Report, August 22, 2005, Exhibit Y, pp.15-16.

name of the supplier as indicated in the Summary of Input Taxes is different from the name of the supplier indicated in the VAT ORs		
e. Domestic purchases of goods and services supported by invoices and ORs printed with "TAN-VAT", "NON VAT" or "TIN"	***(Annex 22)***	*5,380.63*
f. Domestic purchases of services supported by VAT ORs where the amount of claimed input tax is in excess of the amount claimable as independently computed	***(Annex 23)***	*536.28*
g. Domestic purchases of services supported By Ors without date of printing	***(Annex 24)***	*39,233.02*
h. Domestic purchases of services supported by provisional receipts	***(Annex 25)***	*8,602.59*
i. Domestic purchases of services supported by VAT ORs but the same are not dated within the taxable year of claim	***(Annex 26)***	*34,050.01*
j. Domestic purchases of goods supported by invoices not in the name of the Company	***(Annex 27)***	*454.45*
4. There are input taxes claimed on purchases of goods and services without supporting documents	***(Annex 28)***	*317,789.95*
Grand Total		*P3,217,734.63*

From this grand total of P3,217,734.63 on petitioner's reported input tax on its regular purchases of goods and services for the four quarters of taxable period 2002, only the amount of P2,116,544.25 (representing the sum of the input taxes under numbers 1(a), (b) and (c) of the aforesaid Findings) is properly substantiated in accordance with Section 110 (A) in relation to Section 113 (A) of the 1997 NIRC, as amended, as implemented by Sections

4.104-1, 4.104-5 and 4.108-1 of Revenue Regulations No. 7-95, dated December 9, 1995.

And since petitioner has reported an output tax liability in the total amount of P1,590,445.15 for the four quarters of the aforesaid taxable period, petitioner remained to have an unutilized input VAT in the amount of P526,099.10 which was not carry-over in the succeeding quarters[15], computed as follows:

Substantiated input VAT	P2,116,544.25
Less: output VAT	1,590,445.15
Total available input VAT not carried over	P 526,099.10

From the foregoing, We can now see that out of petitioner's claimed input VAT of P1,820,775.89, only the amount of P526,099.10 is the valid unutilized input VAT. But, before considering this amount as unutilized input VAT, We need to determine whether or not petitioner had zero-rated sales from which this amount can be attributed by taking into account Section 108 (B) (2) of the 1997 NIRC, as amended, which states:

> "Sec. 108. **Value-Added Tax on Sale of Services and Use or Lease of Properties.-**
>
> (A) 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;
>
> (2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"

[15] Exhibits E, F, G, H, and J.

In this regard, petitioner alleges that the call center services it rendered for the four quarters of taxable period 2002 which were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP subject to zero percent (0%) fall within this aforesaid services.[16]

To support its claim, petitioner presented the following documents:

DOCUMENT	EXHIBIT
Certificate of Inward Remittance dated November 17, 2004 issued by Metropolitan Bank and Trust Company	K
Agreements with Various Non-Resident Foreign Customers	L to X, inclusive of sub-markings
Summary of Zero-Rated Sales for the Calendar Year 2002	Z-1 to Z-4
Breakdown of Zero-Rated Sales for the Calendar Year 2002	AA-1 to AA-6
Various Documents Supporting Zero-Rated Sales (VAT Service Invoices, Billing Statements, etc.) for the Calendar Year 2002	BB-1 to BB-345
Supplemental Report on the Result of the Procedures Performed on the Verification of the Amount of the Company's Inward Remittances which are not related to its Zero-Rated Sales	JJ
Schedule of Inward Remittance for the Calendar Year 2002	KK
Breakdown of Remittances Not Related to Zero-Rated Sales for the Calendar Year 2002	LL
Various Documents Supporting Remittances Not Related to Zero-Rated Sales (Written	

[16] Paragraph 10, Petition for Review, Rollo p.4.

Communications, Service Agreements and Schedules) for the Calendar Year 2002	MM-1 to MM-9

A perusal of the aforementioned documents reveals that petitioner actually rendered call center services to various non-resident foreign clients and in consideration thereof, petitioner received foreign currency payments in the amount of US$539,668.89 with peso equivalent of P27,952,381.11 lower than the reported amount of P28,812,077.86[17], which was inwardly remitted in accordance with the BSP rules and regulations. These sales of services indeed fall within those transactions subject to zero percent (0%) VAT referred to under Section 108(B)(2) of the 1997 NIRC, as amended.

However, this Section 108(B)(2) of the 1997 NIRC, as amended must be read in relation to Section 113(A) of the same Code and Section 4.108-1 of Revenue Regulations No. 7-95, dated December 9, 1995, which prescribe that a VAT registered person like petitioner, shall for every sale, issue an invoice or receipt which must contain the following information:

> **"SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. —**
> **"(A) Invoicing Requirements**. — <u>A VAT-registered person</u> shall, <u>for every sale</u>, <u>issue</u> an invoice or <u>receipt</u>. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
> "(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and
> "(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.

[17] Commissioned Certified Public Accountant Report, August 22, 2005, Exhibit Y, p. 9.

> **SECTION 4.108-1. Invoicing Requirements** — All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:
>
> 1. the name, TIN and address of seller;
> 2. date of transaction;
> 3. quantity, unit cost and description of merchandise or nature of service;
> 4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
> 5. the word "zero rated" imprinted on the invoice covering zero-rated sales; and
> 6. the invoice value or consideration.
>
> In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.
>
> Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or receipts and this shall be considered as a "VAT Invoice". All purchases covered by invoices other than "VAT" Invoice" shall not give rise to any input tax.
>
> If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A "VAT Invoice" shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the Code."

In the aforesaid law and regulations, it appears that it makes no distinction as to the evidentiary value of an invoice or official receipt, however, the same must be taken in relation to Sections 106 (A) and (D) as well as Sections 108(A) and (C) of the 1997 NIRC, as amended, which provide the manner of determining the output VAT due on the sale of goods or properties and sale of services, respectively.

For the sale of goods or properties, the 10% VAT is imposed upon the ***gross selling price***, which is defined under Section 106(A) of the 1997 NIRC, as amended, to wit:

> "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. The excise tax, if any, on such goods or properties shall form part of the gross selling price."

In other words, the VAT on the sale of goods or properties accrues upon the ***consummation of sale*** regardless of whether or not the consideration thereof was actually received. It is for this reason that Section 106(D) of the 1997 NIRC, as amended, provides that the tax shall be computed by multiplying the total amount indicated in the ***invoice*** by one-eleventh (1/11).

While in the case of sale of services, the 10% VAT is computed based on ***gross receipts***, which is defined under Section 108(a) of the 1997 NIRC, as amended, as follows:

> "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 the 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."

Plainly, from the foregoing, the VAT on the sale of services accrues upon ***actual or constructive receipt of the consideration*** irrespective of whether or not the service has been rendered. Accordingly, Section 108(C) of the 1997 NIRC, as amended, provides that the tax on the sale of services shall be computed by multiplying the total amount indicated in the ***official receipt*** by 1/11.

In fine, the VAT law and regulations require that sales invoices must support the sale of goods or properties whereas official receipts must support the sale of services. It is further required that the invoices and official receipts must contain all the necessary information such as the taxpayer's TIN, the BIR authority to print or BIR permit number and the imprinted word "zero-rated" in the case of zero-rated sales transactions.

Considering that the subject revenue of P27,952,381.11 refers to sale of services, therefore it is taxed based on gross receipts, valid VAT official receipts and not sales invoices should have been submitted in support thereof. Without proper VAT official receipts, the foreign currency payments received by petitioner from services rendered for the four quarters of taxable year 2002 in the sum of US$539,668.89 with peso equivalent of P27,952,381.11 cannot qualify for zero-rating for VAT purposes. Consequently, the unutilized input VAT in the amount of P526,099.10 allegedly attributable to zero rated sales cannot be granted. It is clear from the provisions of Section 112(A) of the NIRC of 1997 that there must be zero-rated or effectively zero-rated sales in order that a refund of input VAT could prosper.

Having settled the first claim, We now proceed to petitioner's remaining claim on unutilized input VAT of P3,356,740.43 that is incurred on its purchases of capital goods for the four quarters of 2002.

In considering this, Section 4.106-1 of Revenue Regulations No. 7-95, dated December 9, 1995 implementing Section 112(B) of the 1997 NIRC, as amended, which defines "capital goods or properties" as follows, is taken into account:

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

Clearly, in order that the items purchased can be classified as capital goods or properties, petitioner must show that:

> (1) the goods or properties have economic useful life of more than one year;
>
> (2) such goods or properties are treated as depreciable assets under Section 29(f) [now 34F of the NIRC of 1997]; and
>
> (3) they are used directly or indirectly in the production or sale of taxable goods or services.

As can be seen in its Schedule of Additions to Property and Equipment Account for the year ended December 31, 2002[18], audited balance sheets as of December 31, 2002 and 2001 and item no. 5 of the related Notes to Financial Statements[19], petitioner's claimed input tax of P3,356,740.43 pertained to purchases for air-conditioning units, computer software/hardware and peripherals, telecommunications equipment, office

[18] Exhibit OO.
[19] Exhibit NN.

furniture and equipment, leasehold improvements and construction costs of additional call center facilities, for the year 2002 amounting to P36,081,209.92[20], which formed part of its Property and Equipment account as of December 31, 2002 in the amount of P92,251,559.00[21]. These purchases which a) have economic useful life of more than one year; b) treated by petitioner as depreciable assets; and c) used in petitioner's sale of call center services fall within the definition of capital goods or properties under Section 4.106-1 of Revenue Regulations 7-95, dated December 9, 1995.

But again, a study of the records would show that not all of the claimed input tax of P3,356,740.43 is duly substantiated by VAT invoices or official receipts. The commissioned independent CPA, upon verification of petitioner's supporting documents[22], classified petitioner's reported input tax of P3,356,740.43 into the following categories[23]:

Findings	***Reference***	***Amount of Input Tax***
1. There are input taxes claimed on purchases of Capital goods and services which are substantiated for VAT purposes:		
a. Domestic purchases of goods properly Supported by VAT invoices	***(Annex 30)***	*P 435,630.12*
b. Domestic purchases of services properly Supported by VAT Ors	***(Annex 31)***	*527,591.63*
c. Domestic purchases of services Supported by ORs pre-printed TIN-V after	***(Annex 32)***	*1,699,591.23*

[20] Exhibit OO.
[21] Exhibit NN.
[22] Exhibit II-1 to II-1253.
[23] Commissioned Certified Public Accountant Report, August 22, 2005, Exhibit Y, pp.17-18.

July 31, 1991 but before January 1, 1996		
d. Domestic purchase of services supported by ORs printed before July 31, 1991	***(Annex 33)***	*213,063.37*
2. There are input taxes claimed on purchases of capital goods and services which are supported by the following documents:		
a. Domestic purchases of goods supported by documents, other than invoices, showing that VAT was passed (e.g. VAT ORs)	***(Annex 34)***	*109,973.26*
b. Domestic purchases of services supported by documents other than VAT ORs (e.g. deposit slips, progress billings, etc.)	***(Annex 35)***	*321,324.21*
c. Domestic purchases of goods and services Supported by invoices and ORs printed with "TAN-VAT", "NON VAT" or "TIN"	***(Annex 36)***	*5,227.28*
d. Domestic purchases of services supported by provisional receipts	***(Annex 37)***	*18,041.09*
e. Domestic purchases of goods supported by VAT ORs but the same are not dated within the taxable year of claim	***(Annex 38)***	*16,704.54*
3. There are input taxes claimed on purchases of Capital goods and services without supporting Documents	***(Annex 39)***	*9,593.70*
Grand Total		***P3,356,740.43***

Based on the above findings, out of the claimed input VAT of P3,356,740.43, only the amount of P963,221.75 is petitioner's valid claim. This represents the sum of petitioner's input taxes of P435,630.12 arising from petitioner's domestic purchases of goods which were properly supported by VAT invoices (no. 1(a) of the Findings) and input taxes of P527,591.63 incurred by petitioner on domestic purchases of services that were properly supported by VAT official receipts (no. 1 (b) of the above said Findings).

The remaining input taxes in the amount of P2,393,518.68 (nos. 1(c) to 3 of the Findings) shall be disallowed for non-compliance with the substantiation requirements under Section 110(A) in relation to Section 113(A) of the 1997 NIRC, as amended, as implemented by Sections 4.104-1, 4.104-5 and 4.108-1 of Revenue Regulations No. 7-95, dated December 9, 1995.

In fine, petitioner has sufficiently proven its entitlement to a refund or issuance of a tax credit certificate representing unutilized input taxes on capital goods purchased for the four quarters of 2002 in the reduced amount of P963,221.75.

WHEREFORE, in the light of the foregoing, the instant petition is **PARTIALLY GRANTED**. Respondent is **ORDERED to REFUND** or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P963,221.75 representing unutilized input VAT paid on its capital goods purchased for the taxable period 2002.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With Concurring and Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division