REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

DEUTSCHE KNOWLEDGE SERVICES, PTE., LTD.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8012

Members:
BAUTISTA, *Chairperson,* and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
JUN 26 2013
11:28 a.m.

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DECISION

BAUTISTA, J.:

The Petition for Review, filed pursuant to Section 7(a)(2) of Republic Act ("RA") No. 1125,[1] as amended by RA No. 9282,[2] and RA No. 9503,[3] seeks for the refund or issuance of a tax credit certificate in the amount of Forty Million Two Hundred Fifteen Thousand Five Hundred Sixty-Seven and 29/100 Pesos (₱40,215,567.29), representing excess an unutilized input value-added tax ("VAT") attributable to zero-rated sales for the 4th quarter of calendar year ("CY") 2007.[4]

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[1] "An Act Creating the Court of Tax Appeals."
[2] "An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose certain Sections of Republic Act No. 1125, as amended, otherwise known as the law creating the Court of Tax Appeals, and for Other Purpose."
[3] "An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes."
[4] *Records*, pp. 1-43, with Annexes.

FACTS OF THE CASE

Petitioner is licensed to do business as a regional operating headquarters in the Philippines by the Securities and Exchange Commission ("SEC") on April 25, 2005, pursuant to Omnibus Investment Code of 1987, as amended by Republic Act No. 8756,[5] and its implementing rules and regulations, to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistics services; research and development services and product development; technical support and maintenance; data processing and communication and business development.[6]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of his office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law, with office address at the 5th Floor, Bureau of Internal Revenue ("BIR") National Office Building, Agham Road, Diliman, Quezon City.[7]

Petitioner was registered with the BIR on June 16, 2005 as a VAT registered taxpayer with Taxpayer Identification No. ("TIN") 238-763-115-000.[8]

In the 4th quarter of CY 2007, petitioner rendered services in the Philippines to persons engaged in business conducted outside the Philippines, the payments for which were made in Euro and other acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*.[9]

On January 21, 2008, petitioner filed its original Quarterly VAT Return for the 4th quarter of CY 2007 with the BIR through the electronic filing and payment system ("EFPS"). On May 19, 2008, petitioner filed

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[5] An Act Providing for the Terms, Conditions and Licensing Requirements of Regional or Area Headquarters, Regional Operating Headquarters, and Regional Warehouses of Multinational Companies, Amending for the purpose certain provisions of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987.
[6] Joint Stipulation of Facts and Issues, Admitted Facts, paragraph 1, Records, pp. 91-92.
[7] *Id.*, at paragraph 2, Records, p. 93.
[8] *Id.*, at paragraph 3, Records, p. 93.
[9] *Records*, p. 3.

an amended Quarterly VAT Return for the 4th quarter of CY 2007 with the BIR through the EFPS.[10]

For the 4th quarter of CY 2007, petitioner accumulated excess input tax in the total amount of ₱40,215,567.29 attributable to zero-rated sales which, to date, has remained unutilized and/or unapplied against petitioner's output VAT liability.[11]

On November 9, 2009, petitioner filed with the BIR-Revenue District Office No. 47 an Application for Tax Credits/Refunds (BIR Form No. 1914) of its excess and unutilized input VAT for the 4th quarter of CY 2007 in the amount of ₱40,215,567.29.[12]

To date, respondent has not act on petitioner's administrative claim for refund of excess and unutilized input VAT for the 4th quarter of CY 2007. Petitioner is, thus, constrained to file this Petition for Review. [13]

On February 11, 2010, respondent filed her Answer,[14] interposing the following Special and Affirmative Defenses:

> 4. Petitioner is not entitled to refund or tax credit in the amount of ₱40,215,567.29 representing alleged unutilized input tax because it failed to submit necessary and relevant documents pertaining to the above-mentioned amount with respondent in the administrative claim for refund or tax credit of excess input tax.
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> 5. In an administrative claim for refund or tax credit of input taxes attributable to zero-rated sales, a VAT registered person must submit complete documents to support its application for refund pursuant to Section 112(D) of the National Internal Revenue Code (NIRC) of 1997. Otherwise, there will be no sufficient compliance with the filing of an administrative claim for refund, which is a condition *sine qua non* prior to the filing of judicial claim.

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[10] *Id.*
[11] *Id.*
[12] *Annex "E."*
[13] *Records*, p. 4.
[14] *Id.*, at pp. 52-56.

6. To support its claim, it is imperative for petitioner to prove and present the following, *viz*:

a. The registration requirements of a value-added taxpayer in compliance with Section 6(a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-a(a) of Revenue Regulations No. 7-95, and Section 236 of the NIRC of 1997;

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the NIRC of 1997;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98. It is worthy of emphasis that Section 112(D) of the NIRC of 1997 requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review;

d. That the input taxes of ₱40,215,567.29 allegedly paid by petitioner on its domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods for the 4th quarter of taxable year 2007 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

e. That petitioner's administrative claim for tax credit or refund of the unutilized input tax (VAT) was filed within two (2)--year after the close of the taxable quarter when the sales were made in accordance with Sections 112(A) and (D) of the NIRC of 1997;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase journal, showing that it actually paid VAT in accordance with Sections 110(A)(2) and 113 of the NIRC of 1997, and in pursuance to Section 4.104-5(a) and (b) of Revenue Regulations No. 7-95 (RE: Substantiation of Claims for Input Tax Credit);

g. The requirements as enumerated under Section 4.104-2 of Revenue Regulations 7-95 (Re: Persons who can avail of the Input Tax Credits).

7. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue (BIR).

8. Petitioner likewise did not submit any proof that it rendered services to persons engaged in business conducted outside the Philippines, the payments of which were made in Euro other acceptable foreign currency in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

9. Section 108(B)(2) of the NIRC of 1997 states that:

"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

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);"

As shown by the above provision, the taxpayer must comply with the following requirements: 1) the recipient is doing business outside the Philippines, 2) the payment of the service fees was in acceptable foreign currency, and 3) accounting of such remittance was in accordance with BSP rules.

10. In the case of *Commissioner of Internal Revenue vs. Burmeister & Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007, the Supreme Court stated:

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

> of services doing business in the Philippines is to make the payment of regular VAT under Section 102(a) dependent on the generosity of the taxpayer. The provider of services can choose to pay the regular VAT or avoid it by stipulating payment in foreign currency inwardly remitted by the payer-recipient. Such interpretation removes Section 102(a) as a tax measure in the Tax Code, an interpretation this Court cannot sanction. A tax is a mandatory exaction, not a voluntary contribution.

Hence, petitioner should have at the very least shown evidence on where their recipient is doing business. Outside such proof, there is negligence on petitioner for not showing sufficient evidence to support its claim.

11. Petitioner filed their judicial claim for refund prematurely as less than 120 days have passed from the alleged filing of the administrative claim to the filing of the judicial claim. Under Section 112(D) of the NIRC of 1997, petitioner has 120 days within which to process claims for refund of unutilized input tax, to wit:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.*
>
> xxx xxx xxx
>
> (D) *Period Within Which Refund or Tax Credit of Input Taxes Shall Be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.
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> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

> 12. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications (**Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal revenue vs. Manila Jockey Club, Inc., 98 Phil 670**).

On April 6, 2010, the parties filed their "Joint Stipulation of Facts and Issues."

Petitioner submitted the sworn statement of Ms. Aileen Felix-Romano,[15] Mr. Romeo De Jesus, Jr.[16] (the Court-Commissioned Independent Certified Public Accountant) ("CPA"), and Ms. Rachel Concepcion,[17] and documentary evidence marked as *Exhibits "A" to "DDDD-1,"* inclusive of submarkings.[18]

On the other hand, respondent submitted the judicial affidavit of Mr. Albert Camba,[19] and documentary evidence marked as *Exhibits "1"* to "*4-a*," inclusive of their submarkings.[20]

After the presentation of evidence by both parties, on June 25, 2012,[21] the Court resolved to submit the case for decision, taking into consideration the "Memorandum" of petitioner filed on August 17, 2012, and the "Memorandum filed by respondent on August 24, 2012.

Hence, this Decision.

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[15] *Id.* at p. 118
[16] *Id.* at pp. 177-188.
[17] *Id.* at pp. 196-200.
[18] *Id.* at pp. 225-242.
[19] *Id.* at pp. 263-276.
[20] *Id.* at pp. 291-302.
[21]. *Id.* at pp. 322-323.

ISSUE

As stipulated upon by the parties, the issue for the Court's consideration is:[22]

WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE OF ITS ALLEGED UNUTILIZED INPUT VAT IN THE AMOUNT OF FORTY MILLION TWO HUNDRED FIFTEEN THOUSAND FIVE HUNDRED SIXTY SEVEN AND 29/100 PESOS (PHP40,215,567.29), ARISING FROM DOMESTIC PURCHASES OF GOODS AND SERVICES ATTRIBUTABLE TO ZERO-RATED SALES FOR THE 4TH QUARTER OF CY 2007.

The main issue is broken down into the following sub-issues:

A. WHETHER OR NOT PETITIONER INCURRED INPUT VAT ON ITS PURCHASES OF GOODS AND SERVICES ATTRIBUTABLE TO ZERO-RATED SALES FOR THE 4TH QUARTER OF CY 2007;

B. WHETHER OR NOT PETITIONER HAD ZERO-RATED SALES DURING THE 4TH QUARTER OF CY 2007, THE CONSIDERATION OF WHICH ARE PAID FOR IN ACCEPTABLE FOREIGN CURRENCY AND ACCOUNTED FOR IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE BSP;

C. WHETHER OR NOT THE INPUT VAT INCURRED BY PETITIONER FOR THE 4TH QUARTER OF CY 2007 IS DULY SUPPORTED BY VAT INVOICES AND OFFICIAL RECEIPTS;

D. WHETHER OR NOT THE INPUT VAT INCURRED BY PETITIONER FOR THE 4TH QUARTER OF CY 2007 AMOUNTING TO PHP40,215,567.29 WAS APPLIED AGAINST ANY OUTPUT VAT OR CARRIED OVER TO SUCCEEDING TAXABLE PERIODS; and

E. WHETHER OR NOT PETITIONER'S ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND OR ISSUANCE OF TCC FOR ITS EXCESS AND UNUTILIZED INPUT VAT ON PURCHASES OF CAPITAL GOODS, NON-CAPITAL GOODS AND SERVICES ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR THE

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[22] Joint Stipulation of Facts and Issues, Stipulated Issue for Resolution, Records, p. 94.

PHP40,215,567.29 WERE PREMATURELY FILED UNDER SECTIONS 110, 112 AND 229, TAX CODE.[23]

RULING OF THE COURT

Petitioner is claiming a refund of ₱40,215,567.29, allegedly attributable to its zero-rated sales for the fourth quarter (4th) of 2007 reflected as follows:

Fourth Quarter 2007[24]

Input Tax on:	
Purchases of Capital Goods Exceeding 1 Million	₱ 2,561,813.70
Domestic Purchases of Goods Other Than Capital Goods	1,163,218.74
Domestic Purchases of Services	35,862,057.08
Services Rendered by Non-Residents	1,258,763.36
Total Input Tax – 4th Quarter of 2007	₱40,845,852.88
Less: Output VAT	630,285.59
Unutilized Input VAT Claimed for Refund	**₱ 40,215,567.29**

In resolving petitioner's claim, the following provisions are pertinent: Sections 108(B)(2) and 112(A), in relation to Section 110(B) of the National Internal Revenue Code (NIRC) of 1997, as amended, to wit:

> *"Section 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:
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> *xxx xxx xxx*

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[23] Ibid.
[24] Exhibit "C-3."

(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)."

xxx *xxx* *xxx*

"**SEC. 110.** ***Tax Credits.*** **-**

xxx *xxx* *xxx*

(*B*) Excess Output or Input Tax.- If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."

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

"(A) Zero-rated or Effectively Zero-rated Sales. – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the

> acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of volume of sales: *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.

From the foregoing, to be entitled to a refund or issuance of a Tax Credit Certificate (TCC) of unutilized input taxes attributable to zero-rated or effectively zero-rated sales, petitioner must prove compliance with the following requirements:

1) that there must be zero-rated or effectively zero-rated sales;

2) that input taxes were incurred or paid;

3) that such input taxes are attributable to zero-rated or effectively zero-rated sales;

4) that input taxes were not applied against any output VAT liability; and

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

At this point, there is a need to determine whether petitioner complied with the fifth requirement--the seasonably filing of its administrative and judicial claims for refund and/or issuance of TCC.

In the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue, Philex Mining Corporation vs. Commissioner of Internal Revenue,*[25]

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[25] G.R. No. 187485, 196113, 197156, February 12, 2013.

the Supreme Court clarified the effectivity and scope of the application of the Atlas, Mirant and Aichi Doctrines in claims for refund or credit of input VAT pursuant to Sections 229, 112(A), and 112(C) of the NIRC, as amended. The effectivity of the Atlas doctrine is from June 8, 2007 to September 11, 2008, while the Mirant Doctrine is effective at the time of its promulgation, September 12, 2008.[26]

In Atlas and Mirant cases, it ruled on the counting of the two-year prescriptive period. In Atlas case, the counting of the two-year prescriptive period is from the date of payment of the output VAT, while in Mirant case, the counting is from the close of the taxable quarter when the sales were made.[27]

On the other hand, in the Aichi doctrine, it ruled on the mandatory and jurisdictional requirement of the 120-day period, that a taxpayer cannot file its claim with the Tax Court before the lapse of 120 days for the Commissioner to decide the administrative claim.[28]

However, the mandatory and jurisdictional requirement of 120-day period admits of an exception: Claimants relying on "BIR Ruling No. DA-489-03 dated 10 December 2003," which states that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review." The effectivity of BIR Ruling No. DA-489-03 is from December 10, 2003 to October 6, 2010.[29] Thus, those who filed their claims on December 10, 2003 to October 6, 2010 need not comply with the mandatory and jurisdictional requirement of 120-day period.

In the instant case, petitioner filed its Petition for Review on December 23, 2009. Thus, the Mirant Doctrine is applicable. And a perusal of the records reveals that petitioner paid its Quarterly VAT Return for the 4th quarter of Calendar Year (CY) 2007 on January 21, 2008. Counting from this date, petitioner had until January 21, 2010, within which to file its administrative and judicial claims. Hence, the filing of the administrative and judicial claims for the 4th quarter of CY 2007 on November 9, 2009[30] and December 23, 2009, respectively, are well within the two-year prescriptive period.

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[26] Ibid., p. 34.
[27] Ibid.
[28] Ibid.
[29] Ibid., pp. 37-40.
[30] Exhibit "D."

Furthermore, BIR Ruling No. DA-489-03 is enforced at the time of filing petitioner's administrative and judicial claim. Hence, the filing of judicial claim before the expiration of the 120-day period did not divest this Court of its jurisdiction.

Now, We proceed to determine whether petitioner complied with the first requisite.

Petitioner alleges that it is a multinational company organized and existing under the laws of Singapore. It is licensed to do business as a regional operating headquarters in the Philippines by the SEC on April 25, 2005, pursuant to the Omnibus Investment Code of 1987, as amended by Republic Act No. 8756[31] and its implementing rules and regulations, to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistics services; research and development services and product development; technical support and maintenance; data processing and communication and business development.[32]

Furthermore, it alleges that for the 4th quarter of 2007, it generated sales from services rendered to non-resident foreign corporations engaged in business conducted outside the Philippines for which it got paid in Euro or other acceptable foreign currency remitted inward through the banking system and duly accounted for in accordance with the rules and regulations of the BSP. Thus, it maintains that such services qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

It may be recalled that in the case of ***Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.***,[33] the Supreme Court explained that for the services rendered to be considered VAT zero-rated under **Section 108(B)(2) of the NIRC of 1997, as amended [then Section 102(b)(2) of the NIRC of 1977**, as amended], the following requisites must be met: 1) the services must be other than processing, manufacturing or repacking of goods; 2) payment for such

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[31] An Act Providing for the Terms, Conditions and Licensing Requirements of Regional or Area Headquarters, and Regional Warehouses of Multinational Companies, amending for the purpose certain provisions of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987.

[32] Joint Stipulation of Facts and Issues, Admitted Facts, par. 1, Records, p. 92.

[33] G.R. No. 153205, January 22, 2007, 512 SCRA 124.

services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and 3) the recipient of such services is doing business outside the Philippines. The pertinent portion of the Decision, reads:

> "The Tax Code not only requires that the services be other than 'processing, manufacturing or repacking of goods' and that payment for such services be in acceptable foreign currency accounted for in accordance with BSP rules. Another essential condition for qualification to zero-rating under Section 102(b)(2) is that the recipient of such services is doing business outside the Philippines. While this requirement is not expressly stated in the second paragraph of Section 102(b), this is clearly provided in the first paragraph of Section 102(b) where the listed services must be 'for other persons doing business outside the Philippines.' The phrase 'for other persons doing business outside the Philippines' not only refers to the services enumerated in the first paragraph of Section 102(b), but also pertains to the general term 'services' appearing in the second paragraph of Section 102(b). In short, services other than processing, manufacturing, or repacking of goods must likewise be performed for persons doing business outside the Philippines."

Records show that petitioner only satisfactorily complied with the first and third requisites of the aforesaid Decision of the Supreme Court.

As shown, petitioner is duly registered with the BIR as a VAT taxpayer[34] and the services it performs in the Philippines, through its ROHQ, like: financial accounting; market and instrument control; expense, revenue and information, information systems integrity and application development and support services[35] are not the same category as "processing, manufacturing or repacking of goods."

And for the 4th quarter of CY 2007, petitioner rendered services to the following entities:[36]

1. Deutsche Bank Aktiengesellschaft, Inlandsbank;

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[34] Exhibit "B."
[35] Exhibit "AAAA-819," Notes to Financial Statements, No. 18.
[36] Exhibit "TTT," pages 5 and 6.

2. Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office;
3. Deutsche Bank Aktiengesellschaft, Filiale New York;
4. Deutsche Bank Aktiengesellschaft, Filiale London;
5. Deutsche Asia Pacific Holdings Pte. Ltd.;
6. Deutsche Group Services Pty., Limited;
7. Deutsche Securities, Inc.;
8. Deutsche Bank Aktiengesellschaft, Filiale Hongkong;
9. Deutsche Bank Aktiengesellschaft, Filiale Jakarta;
10. Deutsche Bank Aktiengesellschaft, Filiale Singapur;
11. Deutsche Bank (China) Co. Ltd, Shanghai Branch;
12. Deutsche Asset Management (Asia) Limited;
13. Deutsche Bank Real Estate (Japan) Y.K.;
14. DBOI Global Services Private Limited;
15. Deutsche Bank Aktiengesellschaft, Filiale Bangkok;
16. Deutsche Bank Aktiengesellschaft, Filiale Mumbai;
17. Deutsche Bank Aktiengesellschaft, Filiale Seoul;
18. Deutsche Bank Aktiengesellschaft, Filiale Taipei;
19. DB Finance Inc.;
20. DB Trust Company Limited Japan.

These entities are non-resident foreign corporations engaged in business conducted outside the Philippines as indicated in the SEC Certifications of Non-Registration of Corporation/Partnership,[37] Certifications from different government agencies in the country of origin of petitioner's clients, all duly authenticated by the nearest consulate of the Philippines, [38] and the Intragroup Service Agreements.[39]

As regards to the second requisite, petitioner miserably failed to demonstrate that the remittances of foreign currency payments correspond to its zero-rated sales. Even though it submitted in support of its inward remittances its Fund Transfer Credit Advices, it cannot be ascertained whether these remittances pertain to the company's zero-rated sales for that period and how much of the purported zero-rated sales were duly receipted. Noteworthy of emphasis that in its "*Summary of Gross Receipts for Period 01 October to 31 December 2007*",[40] the official receipts amounts were not indicated. Besides, the official receipts submitted by the petitioner were not reconciled with the amounts per Bank Debit Advices. At this juncture, it is to be stressed that petitioner as a claimant has the burden of proof to present all that is required for

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[37] Exhibits "F" to "Z."
[38] Exhibits "AA" to "LL."
[39] Exhibits "NN" to "HHH."
[40] Exhibit "CCCC," Annex C.

successful prosecution of its claim. Hence, mere allegation is not evidence[41] and is not equivalent to proof.[42]

In sum, this Court finds the evidence adduced by petitioner to be insufficient to support its claim for a refund or issuance of a TCC representing petitioner's excess unutilized input VAT on purchases of goods and services attributable to zero-rated sales for the period 4th quarter of CY 2007

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

I CONCUR:

AMELIA R. COTANGCO-MANALASTAS
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

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[41] Martinez v. National Labor Relations Commission, G.R. No. 117495, May 29, 1997, 272 SCRA 793.
[42] Philippine National Bank v. Court of Appeals, G.R. No. 116181, April 17, 1996, 266 SCRA 136.

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice