REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

MAERSK GLOBAL SERVICES CENTRES (PHILIPPINES) LTD.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9015

Members:
BAUTISTA, Chairperson
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

NOV 17 2017
2:44 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

This Petition for Review filed by Maersk Global Services Centres (Philippines), Ltd. seeks the refund or the issuance of tax credit certificate (TCC) in the amount of Twenty-Nine Million Nine Hundred Fifty Thousand Seven Hundred Sixty and 67/100 Pesos (₱29,950,760.67), allegedly representing its unutilized input value-added tax (VAT) on its zero-rated sales for calendar year (CY) 2013.

The Facts

Petitioner Maersk Global Services Centres (Philippines), Ltd. is a foreign corporation, duly organized and existing under the laws of Hong Kong and licensed to do business in the Philippines.[1] Its principal office is at the 29th Floor, Wynsum Corporate Plaza, F. Ortigas Jr. Road, Ortigas Center, Pasig City.[2] It is also registered with the Bureau of Internal Revenue (BIR) as a VAT entity with Certificate of Registration No. 3RC0000466671 dated August 24, 1998.[3]

Petitioner renders corporate and administrative services for the ocean transportation business of its foreign affiliate, A.P. Moller-Maersk A/S ("APMM" for brevity).[4]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue empowered to perform the duties of said office, including among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its amended Quarterly VAT Returns[5] for CY 2013 on the following dates:

QUARTER	DATE OF FILING
1st	February 14, 2014
2nd	February 19, 2014
3rd	February 19, 2014
4th	February 19, 2014

On November 4, 2014, petitioner filed with the Department of Finance One-Stop Shop Inter-agency Tax Credit and Duty Drawback Center ("DOF-OSS" for brevity) an application for tax refund in the total amount of ₱29,950,760.67.[6] Petitioner submitted supporting documents in relation to its claim for VAT refund together with its application.[7]

Subsequently, pursuant to the mandatory audit-claim for VAT credit certificate, respondent issued Letter of Authority No. LOA-411-2014-00000140 dated November 10, 2014, which was received by petitioner on December 5, 2014.[8]

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[1] *Docket*, vol. 2, pp. 640-646, Exhibit "P-1".
[2] *Id.*, vol. 1, p. 6, par. 1, Parties, Petition for Review.
[3] *Id.* at Note 1, p. 694, Exhibit "P-9".
[4] *Id.* at Note 2, p. 7, par. 5, Petition for Review.
[5] *Id.* at Note 1, pp. 696-698, Exhibit "P-11"; pp. 699-701, Exhibit "P-12"; pp. 702-704, Exhibit "P-13; pp. 705-707, Exhibit "P-14".
[6] *Id.*, p. 714, Exhibit "P-17"; p. 715, Exhibit "P-18; p. 716, Exhibit "P-19"; p. 717, Exhibit "P-20"; p. 718, Exhibit "P-21".
[7] *Id.*, pp. 719-720, Exhibit "P-22".
[8] *Id.*, p. 722, Exhibit "P-24".

On March 23, 2015, petitioner filed the instant Petition for Review.

In his Answer[9] filed on May 21, 2015, respondent alleged the following counter-arguments:

> "3. She **DENIES** the allegations in paragraphs 12, 17, 18, and 19 for being as a whole, false, self-serving declarations, gratuitous assertions, and erroneous conclusions of fact and/or law.
>
> **The truth of the matter is that the Petitioner is not entitled to the benefit of the zero-rate (0%) pursuant to Section 108(B)(2) of the Tax Code. This is because A.P. Moller – Maersk A/S, the recipient of the services, is an entity doing business in the Philippines.**
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> This is alleged by the plaintiff in its Petition for Review under paragraph 9. Likewise, the Honorable Court of Tax Appeals in the case of Maersk Global Services Centres (Philippines) Ltd. v. Commissioner of Internal Revenue, CTA Case No. 8549, found that:
>
> > 'From the foregoing, it appears that A.P. Moller – Maersk A/S is doing business outside the Philippines. However, the fact that it is actually doing business in the Philippines is disclosed by Mr. Arthur Arana…
> >
> > xxx xxx xxx
> >
> > 'Clearly, petitioner was unable to comply with the third requisite because its non-resident foreign client, A.P. Moller-Maersk A/S, is actually doing business in the Philippines.
> >
> > 'Consequently, petitioner's sales of services to A.P. Moller-Maersk A/S cannot qualify for VAT zero-rating and the claimed input taxes attributable thereto in the amount of ₱7,862,002.84 cannot be refunded. Accordingly, it is unnecessary to discuss petitioner's compliance with the remaining requisites previously mentioned. (Emphasis supplied).

[9] *Id.* at Note 1, pp. 44-49.

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.' (Emphasis supplied).

To qualify as a transaction subject to zero percent (0%) rate, Section 108 (B)(2) of the Tax Code, as amended, explicitly requires, among other things, that the services be rendered to a person engaged in business conducted outside the Philippines. It is thus stated in this wise:

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No less than the Supreme Court in the case of Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 153205, ruled that:

> '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. <u>Another essential condition for qualification to zero-rating under Section 102 (b)(2) (now Section 108(B)(2) of the Tax Code, as amended) is that the recipient of such services is doing business outside the Philippines.</u>
>
> xxx xxx xxx
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> '<u>To interpret Section 102(b)(2) to apply to a payer-recipient of services doing business in the Philippines is to make the payment of the regular VAT under Section 102(a) dependent on the generosity of the taxpayer.</u> 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.
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> xxx xxx xxx

> 'Further, when the provider and recipient of services are both doing business in the Philippines, their transaction falls squarely under Section 102(a) (now Section 108 (A) of the Tax Code, as amended) governing domestic sale or exchange of services. Indeed, this is a purely local sale or exchange of services subject to the regular VAT, unless of course the transaction falls under the other provisions of Section 102(b) (now Section 108 (A) of the Tax Code, as amended).' (Emphasis supplied).

Considering the foregoing, **the Sale of Services to A.P. Moller – Maersk A/S in this case is subject to Value-Added Tax (VAT) pursuant to Section 108 (A)** of the National Internal Revenue Code, as amended. The said provision mandates that:

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4. Petitioner's alleged claim for refund is still under administrative routine investigation/examination by Respondent.

5. In order to validly claim for tax credit/refund, it is imperative for the Petitioner to prove its compliance with the following:

a. The registration requirements of a value-added taxpayer under the pertinent provision of the 1997 NIRC, as amended, and its implementing revenue regulations;

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT pursuant to the provisions of Sections 113 and 114 of the 1997 NIRC, as amended. Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax of the taxpayer claimant;

c. The submission of complete documents in support of the administrative claim for tax refund pursuant to Section 112 (C), as amended. Otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax credit/refund which is a condition *sine qua non* prior to the filing of such claim;

d. That the input taxes amounting to ₱29,950,760.67 allegedly representing the unutilized input VAT from its purchases of goods and services from VAT registered suppliers were:

i. Paid by Petitioner;
ii. Attributable to its zero-rated or effectively zero-rated sales; and,
iii. Such input taxes paid should not have been applied against any output tax.

e. That petitioner's claim for tax credit/refund allegedly representing unutilized input VAT in the amount of ₱29,950,760.67 was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112 (A) of the 1997 NIRC, as amended.

6. In an action for tax refund/credit, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund/credit, and failure to adduce sufficient proof is fatal to the action for tax refund/credit (Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 336).

7. Basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same (Philippine Geothermal, Inc. vs. Commissioner of Internal Revenue, G.R. No. 154028, July 27, 2005).

8. Taxes collected are presumed to be in accordance with laws and regulations. Hence, not refundable.

9. Petitioner failed to sufficiently prove and demonstrate that the subject tax was erroneously or illegally collected. Hence, not refundable."

On June 19, 2015, petitioner filed a Motion for Leave to Admit Reply[10], which the Court granted on July 9, 2015.[11] In its Reply[12], petitioner avers that the Decision cited by respondent in his Answer has been subsequently amended, wherein the Second Division of this Court held that petitioner is qualified to claim the refund of its unutilized excess input taxes attributable to its zero-rated sales to APMM, following Section 108(B)(4) of the Tax Code.

A Notice of Pre-Trial Conference was issued by this Court on May 25, 2015, setting the case for pre-trial conference on July 14, 2015.[13] Accordingly, petitioner's Pre-Trial Brief[14] was filed on July 9, 2015; while Respondent's Pre-Trial Brief[15] was filed on July 10, 2015.

Pre-trial conference ensued. The parties submitted their Joint Stipulation of Facts and Issues[16] on September 11, 2015. On October 8, 2015, the Court issued a Pre-Trial Order[17] adopting the parties' joint stipulations and the pre-trial was deemed terminated.

Upon petitioner's motion[18], the Court commissioned Mr. Richard R. Lapres of Navarro Amper & Co. (Deloitte), as Independent Certified Public Accountant (ICPA) for the case.[19]

During trial, petitioner presented as its witnesses (1) Ms. Analou Y. Meneses[20], its Finance Manager; and (2) Mr. Richard R. Lapres[21], the ICPA.

Petitioner filed its Formal Offer of Evidence[22] on February 29, 2016. In the Resolution[23] dated April 14, 2016, the Court admitted all of petitioner's evidence.

On the other hand, respondent manifested that he has no evidence to present.[24]

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[10] *Id.*, pp. 53-55.
[11] *Id.*, pp. 184-185, Resolution dated July 9, 2015.
[12] *Id.*, pp. 56-60.
[13] *Id.*, pp. 50-51.
[14] *Id.*, pp. 64-73.
[15] *Id.*, pp. 186-189.
[16] *Id.*, pp. 200-205.
[17] *Id.*, pp. 211-216.
[18] *Id.*, pp. 219-221, Motion to Commission an Independent Certified Public Accountant.
[19] *Id.*, p. 234, Minutes of the Hearing dated December 1, 2015.
[20] *Id.*, p. 234, Minutes of the Hearing dated December 1, 2015.
[21] *Id.* at Note 1, p. 599, Minutes of the Hearing dated February 9, 2016.
[22] *Id.*, pp. 603-615.
[23] *Id.*, pp. 913-914.
[24] *Id.*, p. 923, Minutes of the Hearing dated September 19, 2016.

The case was submitted for decision on November 28, 2016,[25] considering petitioner's Memorandum[26] filed on October 19, 2016 and respondent's failure to file a memorandum[27].

The Issues

The parties submitted the following issues[28] for this Court's resolution:

For petitioner:

Whether or not petitioner is entitled to a refund in the total amount of ₱29,950,760.67, representing unutilized and excess input VAT attributable to zero-rated sales for year 2013.

For respondent:

a. Whether or not APMM is doing business in the Philippines;

b. Whether or not petitioner is subject to VAT under Section 108(A) of the National Internal Revenue Code of 1997, as amended; and

c. Whether or not petitioner failed to comply with the requirements of Section 112(C) of the Tax Code.

The Court's Ruling

In claiming refund or tax credit of input VAT attributable to zero-rated or effectively zero-rated sales, the pertinent provisions of law are Sections 112(A) and (C) of the National Internal Revenue Code of 1997, as amended, which provide:

"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

[25] *Id.*, p. 955, Resolution dated November 28, 2016.
[26] *Id.*, pp. 925-946.
[27] *Id.*, p. 953, Records Verification dated November 22, 2016.
[28] *Id.* at Note 2, pp. 200-201, Stipulation of Issues, Joint Stipulation of Facts and Issues.

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

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

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

Clearly from the foregoing provisions, in order to be entitled to a refund or tax credit of input taxes attributable to zero-rated or effectively zero-rated sales, the following requisites must be satisfied:

1. that the taxpayer is VAT-registered;
2. that there must be zero-rated or effectively zero-rated sales;
3. that input taxes were incurred or paid;
4. that such input taxes are attributable to zero-rated or effectively zero-rated sales;

5. that the input taxes were not applied against any output VAT liability; and
6. that the claim for refund was filed within the two-year prescriptive period.

We shall first determine petitioner's compliance with the sixth requisite which pertains to the timeliness of the filing of the refund claim.

As explicitly stated under Section 112(A) of the Tax Code, the application for refund of unutilized excess input VAT must be filed within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the first, second, third, and fourth quarters of CY 2013, which closed on March 31, 2013, on June 30, 2013, on September 30, 2013, and on December 31, 2013, respectively. Counting two years from the said dates, petitioner had until March 31, 2015, June 30, 2015, September 30, 2015, and December 31, 2015, within which to file its administrative claims for refund or tax credit for the respective quarters. Thus, petitioner's consolidated administrative claim[29] for the four quarters of CY 2013, together with the Transmittal[30] of the supporting documents filed with the DOF-One Stop Shop on November 4, 2014, was seasonably filed, as shown below:

CY 2013	**Close of the Taxable Quarter**	**Last Day to File Administrative Claim**	**Date of Filing of Administrative Claim and Submission of Documents**
1st Quarter	March 31, 2013	March 31, 2015	November 4, 2014
2nd Quarter	June 30, 2013	June 30, 2015	
3rd Quarter	September 30, 2013	September 30, 2015	
4th Quarter	December 31, 2013	December 31, 2015	

On the other hand, Section 112(C) of the Tax Code states the time requirements for filing a judicial claim for the refund or tax credit of input VAT. The legal provision speaks of two periods: the period of 120 days, which serves as a waiting period to give time for the BIR Commissioner to act on the administrative claim for refund or tax credit; and the period of 30 days, which refers to the period for filing a judicial claim with the CTA.[31]

[29] *Id.* at Note 1, pp. 714, 715, 716, 717, and 718, Exhibits "P-17", "P-18", "P-19", "P-20", and "P-21", respectively.
[30] *Id.*, pp. 719-720, Exhibit "P-22".
[31] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue,* G.R. No. 168950, January 14, 2015.

Accordingly, from the filing of petitioner's administrative claim together with the supporting documents on November 4, 2014, respondent had 120 days or until March 4, 2015 to act on the claim. Since petitioner failed to act on the said claim within the 120-day period prescribed by law, petitioner had 30 days or until April 3, 2015, within which to file its judicial appeal before this Court. Hence, petitioner's judicial claim via Petition for Review for the four quarters of CY 2013 was also timely filed on March 23, 2015.

We shall now proceed to discuss petitioner's compliance with the remaining requisites.

Petitioner satisfied the first requisite as it is a VAT-registered taxpayer as evidenced by its Certificate of Registration No. OCN3RC0000466671[32].

Anent the second requisite, petitioner avers that it had a Service Agreement with APMM, allegedly a non-resident foreign corporation engaged in business conducted outside the Philippines; that pursuant to the said agreement, petitioner exported services to APMM which include, among others, procurement, finance, and accounting services, processing of import and export documentation, and information technology-related services; and that the payments were made in USD, were remitted inwardly through the banking system, and were accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP). As such, petitioner claims that the revenues it generated from rendering said services are subject to zero-percent (0%) VAT pursuant to Section 108(B)(2) of the NIRC of 1997, as amended, which reads:

> "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:
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);

[32] *Id.* at Note 1, p. 694, Exhibit "P-9".

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

Petitioner further submits that assuming that APMM is not "a person engaged in business conducted outside the Philippines" under the afore-quoted provision, its sale of services is still zero-rated under Section 108(B)(4) of the NIRC of 1997, as amended, because the recipient APMM is engaged in international shipping operations.

Evidently, petitioner knows and admits that its client, APMM, is actually doing business in the Philippines as petitioner itself stated that "while APMM's international shipping business is primarily conducted outside the Philippines, less than one percent of its shipping business may be considered related to the Philippines because its international vessels ply Philippine ports."[33] Considering that the recipient of petitioner's services is doing business in the Philippines, such sales of services cannot qualify for VAT zero-rating under Section 108(B)(2) of the Tax Code.

However, the Court finds that petitioner may claim refund under Section 108(B)(4) of the Tax Code, which provides:

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

[33] *Id.* at Note 2, p. 8, par. 9, Petition for Review.

Said provision must be read in connection with Section 4.108-5(b)(4) of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 4-2007, to wit:

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

To qualify for VAT zero-rating under the said provisions, export services by a VAT-registered person must be rendered in the Philippines to a person engaged in international shipping. No other qualification is required from the recipient of such services, and neither is there any prohibition for it to engage in other trade or business.[34]

Petitioner presented before this Court the following documents to prove that APMM is engaged in international shipping operations, to wit:

1. Service Agreement by and between APMM and petitioner;[35]
2. Articles of Association of APMM;[36]
3. Compiled Summary of APMM;[37] and

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[34] *Commissioner of Internal Revenue vs. Maersk Global Service Centres (Philippines) Ltd.*, CTA EB No. 1318 (CTA Case No. 8549), December 5, 2016.

[35] *Id.* at Note 1, pp. 647-659, Exhibit "P-2".

[36] *Id.*, pp. 660-671, Exhibit "P-3".

[37] *Id.*, pp. 672-680, Exhibit "P-4".

4. Judicial Affidavit of Ms. Analou Y. Meneses, petitioner's Finance Manager[38].

The foregoing documents reveal that APMM is a non-resident foreign corporation engaged in container transportation business worldwide, including transport and receipt of cargoes to and from the Philippines[39]; and that its "main objects are to carry on shipping, chartering and related business, but it shall be a further object to engage in other transport business, commercial and industrial activities at home and abroad within the scope deemed appropriate by the Board of Directors."[40]

Thus, petitioner's sales of services to APMM qualify for VAT zero-rating pursuant to Section 108(B)(4) of the Tax Code.

For the four quarters of CY 2013, petitioner derived zero-rated sales from services rendered to APMM in the amount of ₱2,084,418,826.03 (or equivalent to $49,256,529.13) as reported in its Amended Quarterly VAT Returns for the same period and evidenced by official receipts (ORs)[41] and billing statements[42] from January to December 2013, the details of which are as follows:

Period	Exhibit No. (Quarterly VAT Returns)	Amount
1st Qtr	P-11, *Line17* (Docket, Vol. 2, p.697)	₱ 507,533,072.53
2nd Qtr	P-12, *Line17* (Docket, Vol. 2, p.700)	540,893,019.18
3rd Qtr	P-13, *Line17* (Docket, Vol. 2, p.703)	551,868,424.56
4th Qtr	P-14, *Line17* (Docket, Vol. 2, p.706)	484,124,309.76
	Total	**₱2,084,418,826.03**

O.R. Exhibit No.	O.R. No.	Date	Amount in USD
P-38.1	0053	25-Jan-13	3,767,946.00
P-38.2	0054	11-Feb-13	4,265,368.00
P-38.3	0055	13-Mar-13	4,400,488.66
P-38.4	0056	11-Apr-13	4,343,481.14
P-38.5	0057	9-May-13	4,390,194.09
P-38.6	0058	7-Jun-13	4,307,147.08
P-38.7	0101	10-Jul-13	4,123,168.01
P-38.8	0104	12-Aug-13	4,439,683.98
P-38.9	0105	11-Sep-13	4,046,493.19
P-38.10	0107	23-Oct-13	4,270,948.38

[38] *Id.*, pp. 616-639, Exhibit "P-25".
[39] *Id.*, pp. 620-622, Exhibit "P-25", Q&A Nos. 18 to 27 of Judicial Affidavit of Ms. Analou Y. Meneses.
[40] *Id.*, p. 663, par. 4, Article 1, A.P. Moller-Maersk A/S Articles of Association.
[41] Exhibits "P-38.1" to "P-38-.12", Box 3 of 3, Folder 11 of 11.
[42] Exhibits "P-39.1" to "P-39.11", Box 3 of 3, Folder 11 of 11.

P-38.11	0108	5-Nov-13	5,303,606.33
P-38.12	0109	11-Dec-13	1,598,004.27
Total			**49,256,529.13**

Upon scrutiny of the above ORs, the Court found that the ORs issued from July to December 2013 with Serial Nos. 0101, 0104, 0105, 0107, 0108, and 0109, do not bear the words "zero-rated sale", which is a clear violation of the invoicing requirements prescribed by Section 113 of the Tax Code, to quote:

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

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

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

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

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

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

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

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

(b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

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

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt; *Provided,* That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

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

(4) In the case of sales in the amount of One thousand pesos (₱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)*

In the case of *Eastern Telecommunications Philippines, Inc. vs. The Commissioner of Internal Revenue*[43], the Supreme Court denied ETPI's claim for refund or tax credit of input VAT attributable to zero-rated sales because of non-compliance with invoicing requirements now embodied in Section 113(B)(2)(c) of the Tax Code. In the said case, the Supreme Court held that:

"The need for taxpayers to indicate in their invoices and receipts the fact that they are zero-rated or that its transactions are zero-rated became more apparent upon the integration of the above quoted provisions of Revenue Regulations No. 7-95 in **Section 113 of the NIRC** enumerating the invoicing requirements

[43] G.R. No. 168856, August 29, 2012.

of VAT-registered persons when the tax code was amended by Republic Act (R.A.) No. 9337.

A consequence of failing to comply with the invoicing requirements is the denial of the claim for tax refund or tax credit, as stated in Revenue Memorandum Circular No. 42-2003, to wit:

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The pronouncement in *Panasonic* has since been repeatedly cited in subsequent cases, reiterating the rule that **the failure of a taxpayer to print the word 'zero-rated' on its invoices or receipts is fatal to its claim for tax refund or tax credit of input VAT on zero-rated sales.**" *(Emphasis supplied)*

Consequently, petitioner's sales from July to December 2013 in the total amount of ₱1,035,992,734.32[44] (or equivalent to $23,781,904.16) shall be denied VAT zero-rating being supported by ORs without the words "zero-rated sale" written or imprinted therein.

Accordingly, out of the total declared zero-rated sales of ₱2,084,418,826.03 derived from services rendered to APMM, only the amount of ₱1,048,426,091.71[45], which pertains to sales from January to June 2013, represents petitioner's valid zero-rated sales for CY 2013.

Having resolved that petitioner had VAT zero-rated sales pursuant to Section 108(B)(4) of the NIRC of 1997, as amended, in the reduced amount of ₱1,048,426,091.71, We now determine the amount of unutilized excess input VAT attributable thereto.

Petitioner's input VAT claim of ₱29,950,760.67 arose from its purchases of capital goods exceeding ₱1 million, purchases of capital goods not exceeding ₱1 million, domestic purchases of capital goods other than capital goods, and domestic purchases of services as reported in its Amended Quarterly VAT Returns for the four quarters of CY 2013, computed as follows:

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[44] Sum of Zero-rated Sales declared in the Amended Quarterly VAT Returns for the 3rd and 4th quarters of CY 2013.

[45] ₱2,084,418,826.03 less ₱1,035,992,734.32; Sum of Zero-rated Sales declared in the Amended Quarterly VAT Returns for the 1st and 2nd quarters of CY 2013.

	1st Quarter[46]	2nd Quarter[47]	3rd Quarter[48]	4th Quarter[49]	Total
Input Tax Deferred on Capital Goods exceeding ₱1 Million from Previous Quarter *(Line 20B)*	₱ 5,734,621.09	₱ 5,167,679.19	₱ 4,645,419.06	₱ 3,999,168.33	₱ 19,546,887.67
Add: Input Tax on Purchases of Capital Goods exceeding ₱1 Million *(Line 21D)*	160,928.57	156,472.08	-	-	317,400.65
Total Unamortized Input Tax on Purchases of Capital Goods exceeding ₱1 Million	₱ 5,895,549.66	₱ 5,324,151.27	₱ 4,645,419.06	₱ 3,999,168.33	₱ 19,864,288.32
Less: Input Tax on Purchases of Capital Goods exceeding ₱1 Million deferred for the succeeding period *(Line 23A)*	5,167,678.70	4,645,419.06	3,999,168.33	3,352,916.48	17,165,182.57
Amortization of Input Tax on Purchases of Capital Goods exceeding ₱1 Million	**₱ 727,870.96**	**₱ 678,732.21**	**₱ 646,250.73**	**₱ 646,251.85**	**₱ 2,699,105.75**
Add: Input Taxes on Current Purchases					
Purchases of Capital Goods not exceeding ₱1 Million *(Line 21B)*	-	96,428.57	39,338.04	21,399.46	157,166.07
Domestic Purchases of Goods Other than Capital Goods *(Line 21F)*	851,516.76	476,483.19	908,261.09	1,422,602.45	3,658,863.49
Domestic Purchases of Services *(Line 21J)*	7,162,128.35	5,773,041.58	4,540,620.27	5,977,192.30	23,452,982.50
Total Input Tax on Current Purchases	**8,013,645.11**	**6,345,953.34**	**5,488,219.40**	**7,421,194.21**	**27,269,012.06**
Total Input tax for the period	**₱8,741,516.07**	**₱7,024,685.55**	**₱6,134,470.13**	**₱8,067,446.06**	**₱29,968,117.81**
Less: Output Tax Due *(Line 19B)*	9,696.43	857.14	4,928.57	1,875.00	17,357.14
Total Input VAT Claim	**₱8,731,819.64**	**₱7,023,828.41**	**₱6,129,541.56**	**₱8,065,571.06**	**₱29,950,760.67**

In support of its claim, petitioner offered in evidence various ORs and sales invoices (SIs) which were all examined by the Court-commissioned ICPA. In his report, the ICPA accounted the total amount of ₱29,950,760.67 as follows:[50]

Findings	Exhibit / Reference	Input VAT
VALID UNUTILIZED INPUT VAT		
A. Purchases of Services	Annex 2 / P-28.1 to P-28.7754	₱ 20,064,611.96
B. Purchases of Goods Other Than Capital Goods	Annex 3 / P-29.1 to P-29.664	2,835,016.40
C. Purchases of Capital Goods	Annex 4 / P-30.1 to P-30.10	2,775,898.97
Less: Utilized Input VAT		(17,357.14)
Total Valid Unutilized Input VAT		**₱25,658,170.19**
INPUT VAT WITH NOTED EXCEPTIONS		
A. Purchase of Service	Annex 5	
Failed to Comply with Substantiation Requirements		
A.1 Without ORs		₱ 21,169.47
A.2 ORs with no VAT breakdown	P-31.1 to P-31.62	50,443.05

[46] *Id.* at Note 1, p. 697, Exhibit "P-11".
[47] *Id.*, p. 700, Exhibit "P-12".
[48] *Id.*, p. 703, Exhibit "P-13".
[49] *Id.*, p. 706, Exhibit "P-14".
[50] *Id.*, pp. 748-750, Exhibit "P-27".

A.3 Out-of-period ORs	P-31.63 to P-31.132	54,779.63
A.4 ORs with no Payee Signature	P-31.133 to P-31.134	6,240.00
A.5 ORs whose Input VAT were claimed more than the indicated VAT amount	P-31.135 to P-31.180	27,168.05
A.6 ORs which were claimed twice during the year	P-31.181 to P-31.182	45,684.00
A.7 VAT-Exempt Sales	P-31.183 to P-31.184	91,953.13
subtotal		***₱ 297,437.33***
Inaccurate Reporting		
A.8 ORs with unmatched TIN against SLP	P-31.185 to P-31.218	₱ 146,112.67
A.9 ORs with unmatched Address against SLP	P-31.219 to P-31.416	2,175,195.63
A.10 ORs with unmatched TIN and Address against SLP	P-31.417 to P-31.420	48,964.29
A.11 ORs reported under different Supplier name	P-31.421 to P-31.953	267,941.72
A.12 Reported as Services but Goods in Nature	P-31.954 to P-31.957	26,812.23
A.13 Reported as Services but Goods in Nature supported by ORs with unmatched Address against SLP	P-31.958 to P-31.959	21,562.50
A.14 Reported as Services but Goods in Nature supported by ORs reported under different Supplier name	P-31.960 to P-31.961	7,714.29
A.15 Not reported in SLP	P-31.962 to P-31.982	396,630.36
subtotal		***₱ 3,090,933.69***
Total		***₱ 3,388,371.02***
B. Purchases of Goods other than Capital Goods	Annex 6	
Failed to Comply with Substantiation Requirements		
B.1 Without SIs		₱ 8,833.98
B.2 Out-of-period SIs	P-32.1 to P-32.51	274,307.25
subtotal		***₱ 283,141.23***
Inaccurate Reporting		
B.3 SIs with unmatched Address against SLP	P-32.52 to P-32.127	₱ 530,173.13
B.4 SIs reported under different Supplier name	P-32.128 to P-32.133	6,371.68
B.5 Reported as Goods but Service in Nature	P-32.134 to P-32.135	1,928.57
B.6 Not reported in SLP	P-32.136 to P-32.137	2,232.49
subtotal		***₱ 540,705.87***
Total		***₱ 823,847.10***
C. Purchases of Capital Goods	Annex 7	
Failed to Comply with Substantiation Requirements		
C.1 Without SIs		₱ 38,003.52
C.2 Out-of-period SIs	P-33.1 to P-33.2	19,200.00
subtotal		***₱ 57,203.52***
Inaccurate Reporting		
C.3 SIs with unmatched TIN and Address against SLP	P-33.3 to P-33.6	₱ 23,168.84
subtotal		***₱ 23,168.84***
Total		***₱ 80,372.36***
Total Input VAT with Exceptions		**₱ 4,292,590.48**
Grand Total of Input VAT accounted for		**₱29,950,760.67**

From the above findings of the ICPA, the input VAT under "Failed to Comply with the Substantiation Requirements" in the total amount of ₱637,782.08 (sum of ₱297,437.33, ₱283,141.23, and ₱57,203.52) should be disallowed for being not properly substantiated by VAT invoices or official receipts as prescribed under Sections 110(A) and 113(A) and (B) of the Tax Code, in relation to Sections 4.110-1, 4.110-8, and 4.113-1 of RR No. 16-05, as amended.

Further review of the ICPA's report and petitioner's supporting documents reveals that in addition to the disallowance of ₱637,782.08, input VAT in the amount of ₱2,579,614.88 should likewise be disallowed for the reasons stated hereunder:

		Name of Supplier	Exhibit / Reference	Input VAT Amount
Amortized Input VAT on Purchases of Capital Goods exceeding ₱1 Million from previous years				
1.	*No supporting documents*		Annex 4 of the ICPA Report (Exhibit P-27, docket, Vol. 2, p.876)	
		ALECTO GENERAL TECHNOLOGY CORP/CORNERSTEEL SYSTEMS CORPORATION/CUBELAND INC./GREAT YEAR INDUSTRIES CORP. MANILA		₱ 66,572.52
		GREAT YEAR INDUSTRIES CORP. MANILA		10,414.32
		HEWLETT-PACKARD PHILS. CORP.		6,367.66
		HEWLETT-PACKARD PHILS. CORP.		18,365.85
		ATLANTICA FIRE SAFETY SYSTEMS/EPHESIAN DESIGN INT'L FURNITURES/IBM PHILIPPINES, INC/ROSECO MARKETING VENTURES		125,024.28
		HANS PAPER CORPORATION/HEWLETT-PACKARD PHILS. CORP.		70,848.64
		HEWLETT-PACKARD PHILS. CORP.		14,409.00
		HEWLETT-PACKARD PHILS. CORP.		22,514.05
		ATLANTICA FIRE SAFETY SYSTEMS/NET PACIFIC, INC.		93,639.72
		ELID TECHNOLOGY INT'L INC/NET PACIFIC, INC./ROSECO MARKETING VENTURES		77,371.92
		ACCENT MICRO TECHNOLOGIES, INC/MICRODATA		50,212.44
		GREAT YEAR INDUSTRIES CORP MANILA/NET PACIFIC INC/ELID TECHNOLOGY INTL INC		16,061.52
		NET PACIFIC INC		57,002.52
		KLASSIK MOTOR CARS INTERNATIONAL		23,528.52
		ROSECO MARKETING VENTURES/NET PACIFIC, INC.		96,124.08
		NET PACIFIC, INC.		37,246.65
		NET PACIFIC, INC./ROSECO MARKETING VENTURES		26,846.28
		ICON INTERIORS INC./JAVIER PROJECT MANAGERS INC./NET PACIFIC, INC.		44,625.24
		NET PACIFIC, INC./ROSECO MARKETING VENTURES		9,381.12
		NET PACIFIC, INC./ICON INTERIORS INC.		79,339.56
		HEWLETT-PACKARD PHILS. CORP.		79,485.00
		JAVIER PROJECT MANAGERS INC./GREAT YEAR INDUSTRIES CORP. MANILA/ICON INTERIORS INC.		57,754.32
		NET PACIFIC, INC.		57,004.49
		ICON INTERIORS INC./NET PACIFIC, INC.		117,478.44

		ICON INTERIORS INC.		30,596.16
		ATLANTICA FIRE SAFETY SYSTEMS/ELID TECHNOLOGY INT'L INC/GREAT YEAR INDUSTRIES CORP. MANILA/ROSECO MARKETING VENTURES		75,868.80
		Cycle Systems Construction & Services		22,749.96
		FEA TRADE INC.		23,571.48
		ICON INTERIORS INC.		32,000.04
		NET PACIFIC, INC./ROSECO MARKETING VENTURES		363,911.64
		AUTOKLASSIK MOTORS CORP		34,735.68
		ROSECO MARKETING VENTURES		592,500.00
		3G CABLENET & CONSULTANCY, INC./ICON INTERIORS INC.		119,241.58
		subtotal		***₱ 2,552,793.48***
Amortized Input VAT on Current Purchases of Capital Goods exceeding ₱1 Million				
2.	*Supported by documents other than VAT invoice*		Annex 4 of the ICPA Report (Exhibit P-27, docket, Vol. 2, p.876)	
		HONDA CARS MAKATI	P-30.7 to P-30.8	₱ 26,821.40
		subtotal		***₱ 26,821.40***
Total				**₱ 2,579,614.88**

In sum, petitioner's net substantiated input VAT only amounts to ₱26,733,363.71, computed as follows:

Total Input VAT per Returns		₱ 29,968,117.81
Less: Disallowances		
Per ICPA findings ("Failed to Comply with Substantiation Requirements")	₱ 637,782.08	
Per this Court's further verification	2,579,614.88	3,217,396.96
Properly Substantiated Input VAT		**₱ 26,750,720.85**
Less: Output Tax[51]		17,357.14
Excess Input VAT		**₱ 26,733,363.71**

Consequently, only the remaining input VAT of ₱26,733,363.71 can be attributed to the total zero-rated sales declared by petitioner in the amount of ₱2,084,418,826.03 and only the input VAT of ₱13,446,412.82 is attributable to the valid zero-rated sales of ₱1,048,426,091.71, as computed below:

Excess Input VAT	₱ 26,733,363.71
÷ Total Declared Zero-Rated Sales	2,084,418,826.03
x Valid Zero-Rated Sales	1,048,426,091.71
Excess Input VAT attributable to Valid Zero-Rated Sales	**₱ 13,446,412.82**

Even though the claimed input VAT was carried over by petitioner in its succeeding Quarterly VAT Return[52] for the first quarter of 2014, the same

[51] Sum of the amounts in Line 19B of Exhibits "P-11", "P-12", "P-13", and "P-14".

[52] Exhibits "P-36.1" to "P-36.2", Box 3 of 3, Folder 11 of 11.

remained unutilized since it was deducted in the same quarter as "VAT Refund/TCC claimed"[53] from the total available input tax of ₱41,926,845.46[54]. Thus, the claimed input taxes for the four quarters of CY 2013 could not have been carried over or utilized in the succeeding second quarter of 2014[55].

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱13,446,412.82**, representing unutilized excess input VAT attributable to its zero-rated sales for the four quarters of CY 2013.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
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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[53] Exhibit "P-36.2", line 23D, Box 3 of 3, Folder 11 of 11.
[54] Exhibit "P-36.2", line 22, Box 3 of 3, Folder 11 of 11.
[55] Exhibits "P-36.3" to "P-36.4", Box 3 of 3, Folder 11 of 11.

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice