REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

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NOKIA (PHILIPPINES), INC., Petitioner,	**CTA CASE NO. 8304**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** AUG 1 2 2014 4:30 p.m.

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DECISION

CASANOVA, *J.*:

This is a claim for refund or issuance of a Tax Credit Certificate (TCC) in the amount of Twelve Million Thirty-Five Thousand Seven Hundred Forty-Two and 55/100 Pesos (₱12,035,742.55) allegedly representing Nokia (Philippines), Inc.'s creditable input Value-Added Tax (VAT) allocated to its zero-rated sales for the second quarter of taxable year 2009.

Petitioner Nokia (Philippines), Inc. is a corporation duly organized under Philippine laws and is engaged in the business of providing marketing support and other services to its parent company Nokia Corporation (Finland). Its principal office is located at 40th Floor, Philamlife Tower, 8767 Paseo de Roxas Street, Salcedo Village, Makati City.[1]

Petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT registered entity under Certificate of Registration No. OCN 8RC0000019384,[2]

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[1] Par. 1, The Parties, Petition for Review, Docket, p. 2; and Exhibit "E"

[2] Exhibit "A"

Respondent is the duly appointed Commissioner of Internal Revenue ("CIR"), vested by law in general to implement and enforce the provisions of the National Internal Revenue Code ("NIRC") and other tax laws and, in particular, decide claims for refund of internal revenue taxes. She may be served with summons, notices and other court processes at her office at the BIR National Office Building, Diliman, Quezon City.

During the 2nd Quarter of taxable year 2009, petitioner claims to have rendered marketing support and other services to its parent company Nokia Corporation (Finland),[3] a non-resident foreign corporation not registered to engage in business in the Philippines.[4]

On July 24, 2009, petitioner filed its Quarterly VAT Return[5] for the second quarter of taxable year 2009 wherein it reported its accumulated unutilized creditable input VAT amounting to ₱12,098,285.06. Petitioner asserts that said creditable input VAT was neither directly nor entirely attributed to its zero-rated sales or to its sales subject to VAT.

Thus, on March 1, 2011, petitioner filed an administrative claim[6] with the BIR for refund or issuance of TCC for its unutilized excess input VAT attributable to its zero-rated sales for the second quarter of 2009.

Claiming respondent's inaction thereof, petitioner filed on June 30, 2011 the instant Petition for Review[7] with the Court of Tax Appeals (CTA).

After filing a Motion for Extension of Time, respondent filed her Answer[8] on September 9, 2011 alleging the following special and affirmative defenses, to wit:

> "*xxx* *xxx* *xxx*
>
> 4. She reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.
>
> 5. To support its claim, it is imperative for petitioner to prove the following, *viz*:

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[3] Exhibit "G"
[4] Exhibits "B", "C", and "D"
[5] Exhibit "K"
[6] Exhibits "N", "N-1" and "O"
[7] Docket pp. 1-11
[8] Docket pp. 38-60

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 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;

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 Section 113 and 114 of the Tax Code, as amended;

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, otherwise there would 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 a judicial claim in accordance with Section 112 of the Tax Code, as amended. This 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 the 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 petitioner's petition for review;

d. That the input taxes of ₱12,035,742.55 allegedly paid by petitioner on its purchases of goods and services for the 2nd quarter of taxable year 2009 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) were filed within the periods provided in Sections 112 (A) and (D) of the Tax Code, as amended;

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 Tax Code, as amended, and pursuant to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits); a

g. The requirements as enumerated under Section 4.104-5 of Revenue Regulations No. 7-95. (Re: Substantiation of Claims for Input Tax Credits)

6. Petitioner must prove that the aggregate amount of Php12,035,742.55 allegedly representing excess and unutilized input VAT for the 2nd quarter of taxable year 2009 is properly documented.

7. As petitioner states in its petition before this Honorable Court, the subject of its claim for refund are allegedly excess and unutilized input VAT on its purchases of goods and services for the 2nd quarter of taxable year 2009.

8. The instant petition involving petitioner's claim for refund in the amount of Twelve Million Thirty-Five Thousand Seven Hundred Forty-Two 55/100 (Php12,035,742.55) being claimed by petitioner allegedly paid and incurred for the 2nd quarter of taxable year 2009 is not warranted for lack of jurisdiction as petitioner failed to exhaust all administrative remedies before elevating this case to the Honorable Court.

9. Unmistakably, Section 1 (j) of Rule 16 of the 1999 Rules of Civil Court Procedure provides that:

> 'MOTION TO DISMISS
>
> SECTION 1. *Grounds.*—Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
>
> xxx
>
> (j) That a condition precedent for filing the claim has not been complied with.'

10. Corollary thereto, Section 112 (D) [now Section 112(c) of the Tax Code of 1997] provides as follows, to wit:

> 'SEC. 112. Refunds or Tax Credits of Input Tax. –
>
> X X X
>
> (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.
>
> 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.'

Pursuant to the aforequoted provision of law, the Commissioner of Internal Revenue ("CIR", for brevity) has 120 days from the submission of the complete supporting documents to decide the claim for refund. It logically follows that a taxpayer must first submit the complete supporting documents before the 120-day period should commence. The CIR cannot decide the claim for refund without the complete supporting documents.

10.1 The implementing rule for these complete documents required by law is RMO 53-98. Annex B-1 of said RMO lists all the required documents as follows:

VALUE-ADDED TAX
(For audit involving a Claim for Refund / TCC)

A.) Requirements from Taxpayer
I. Requirements mention in Annex B
II. Additional General Requirements
1) 3 copies of 'Application for VAT Credit / Refund'
2) Summary List of Local Purchases specifying the following:
xxx xxx xxx
3) Photocopies of VAT purchase invoices for purchase of goods and official receipts for purchase of services. (The invoices/official receipts must be arranged according to the summary list)
4) Summary of importations made during the period with the following details:
xxx xxx xxx
5) Photocopies of invoices, import entry documents, official receipts or confirmation receipts evidencing payment of VAT. (Segregate documents paid by cash from those paid by tax debit memo)
6) VAT Returns filed for the quarter showing that the amount applied for refund/TCC has been reflected as a deduction from the total available input tax, as well as VAT Return for the succeeding quarter
7) Certification of taxpayer showing the amount of Zero-rated Sales, Taxable Sales and Exempt Sales
8) A statement showing the amount and description of the sale of goods and services, name of persons or entities (except in case of exports) to whom the goods or services were sold and date of the transaction, where the applicant's zero-rated transactions are regulated by certain government agency.
9) Articles of Incorporation – for first time filers
10) Sales Contract/Agreement
11) BOI Certificate of Registration
12) BIR Certificate of Registration

13) Certification form BOI, DOF, BOC, EPZA, etc., that subject taxpayer has not filed similar claim for refund covering the same period.
14) Sworn statement that ending inventory as of the close of the period covered by the Claim has been used directly or indirectly in the products subsequently exported as supported by export documents, if the applicant is 100% exporter
15) Documents of liquidation evidencing the actual utilization of the raw materials in the manufacture of goods at least 70% of which has been actually exported, if the applicant is an indirect exporter
16) Copy of the ITR and Certified Financial Statements, if applicable
17) Beginning and ending inventory of raw materials, work-in-process, finished goods, supplies and materials

Additional Specific Requirements

1. For Zero-Rated Sales of Services (contractor, mining, etc.)
   a. Authenticated copy/ies of the contract/s showing the person/s for whom the services were rendered, amount of consideration, description of the services and documents evidencing actual payments.
   b. Photocopies of official receipts and billings together with a summary of the date of billing, name of principal, official receipt number, date of receipt, amount in foreign currency and the corresponding value thereof, date of remittance, name of bank, bank credit memo number and amount remitted in pesos
   c. Bank credit memoranda and certificate from the BSP with information similar to 1-c (export sales)

As stated above, the first documentary requirement is that provided in Annex B of the same RMO. Annex B provides for more requirements as follows:

VALUE-ADDED TAX

A.) Requirements from Taxpayers
1) Proof of claimed tax credits
2) Proof of Tax Compliance Certificates applied
3) Xerox copy of used Tax Credit Certificate (TCC) with annotation of issued TDM at the back, if applicable
4) Proof of payment of deficiency tax, if any
   a) current year / period
   b) previous year / period
5) Certification of the appropriate government agency as to taxpayer's entitlement to tax incentives, if applicable
6) Xerox copies of the Official Receipts evidencing VAT payment on imported purchases, if applicable
7) Proof of exemption under special law, if applicable

8) Certification of the appropriate regulatory agency as to the exempt or zero-rated sales of the taxpayer under its regulatory supervision, if applicable
9) Certificate of Registration issued by the appropriate regulatory agency, together with the conditions attached to such registration, if applicable
10) Proof of 'Approval for Effective Zero-Rating of Sales', if applicable
11) Sample invoice/s for 'Export/Exempt Sales', if applicable
12) Proof that the acceptable foreign currency exchange proceeds on export sales/foreign currency denominated sales had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), if applicable.

Indubitably, the law 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.

10.2 Far from complying with the checklist of requirements, evidence on record shows that petitioner merely submitted twelve (12) classes of documents in its administrative claim for refund. This fact is clearly stated in petitioner's claim for refund dated February 28, 2011. These documents are enumerated therein as follows:

1. Application for Tax Credits/Refunds (BIR Form 1914);
2. Official receipts for services rendered to Nokia Corporation (Finland);
3. Certificate of Inward Remittance;
4. Monthly Value-Added Tax Declaration Return (BIR Form 2550M) for the month of January 2009;
5. Monthly Value-Added Tax Declaration Return (BIR Form 2550M) for the month of February 2009;
6. Quarterly Value-Added Tax Return (BIR Form 2555Q) for the 1st Quarter ending March 2009;
7. Monthly Value-Added Tax Declaration Return (BIR Form 2550M) for the month of April 2009;
8. Monthly Value-Added Tax Declaration Return (BIR Form 2550M) for the month of May 2009;
9. Quarterly Value-Added Tax Return (BIR Form 2555Q) for the 2nd Quarter ending June 2009;
10. Monthly Summary List of Purchases and the corresponding VAT Official Receipts/Invoices;
11. Monthly Summary List of Importations and the corresponding Import Entry and Internal Revenue Declaration/Official Receipts/Invoices; and
12. Bank Certification on payments for input VAT on importation.

10.3 A careful examination of the BIR records shows that petitioner failed to prove that it has submitted complete documents to substantiate its administrative claim for refund and to reckon the commencement of the 120-day period for the CIR. This is a requirement established by law and jurisprudence. Ergo, petitioner's failure to comply with the duly mandated legal requirements in such claims for refund/tax credit warrants the denial by inaction of the administrative claim. Furthermore, respondent humbly submits that failure on the part of petitioner to submit the required complete supporting documents would render the instant petition with this Honorable Court to have been prematurely filed.

10.4 Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.

11. Respondent respectfully avers that before judicial inquiry into the issue of whether taxpayers, in general, are entitled to a refund/tax credit under substantive law may be considered, they have an initial burden to discharge. They must prove that they complied with all the administrative requirements continuing up to judicial review. In other words, before trial de novo proceeds and disposes of the issue of refund entitlement under substantive law, it must first be proved that there was procedural compliance in pursuing the administrative claim leading to the appellate proceedings. As stated by the Honorable Supreme Court:

> 'Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceedings in that court. First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims. In this case, it was necessary for petitioner to show CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit. Second, cases filed in the CTA are litigated de novo. Thus, a respondent should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.'

12. The doctrine of exhaustion of administrative remedies ensures an orderly procedure which favors a preliminary sifting process, particularly with respect to matters peculiarly within the competence of the administrative agency. After this sifting process comes the availability of judicial review of administrative decisions such as exercised by the Honorable Court herein. Judicial review of administrative decisions entails the Court to examine the method in which the decision was arrived at, and finding no error, lets the administrative decision stand. This is precisely because, as previously stated, these are matters peculiarly within the competence of the administrative agency.

13. Well-settled is the rule that exhaustion of available administrative remedies is a condition sine qua non before taking a judicial action. The Honorable Supreme Court, in a long line of cases, has consistently held that if a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought.

14. Moreso, the Honorable Supreme Court had the occasion to rule that where a remedy is available within the administrative machinery, this should be resorted to before resort can be made to courts, not only to give the administrative agency the opportunity to decide the matter by itself correctly, but also to prevent unnecessary and premature resort to courts. Thus, the party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter correctly and prevent unnecessary and premature resort to the court.

15. The doctrine of exhaustion of administrative remedies has practical and legal reasons. Resort to administrative remedies entails lesser expenses and provides for speedier disposition of controversies. Thus, for reasons of comity and convenience, courts will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency every opportunity to correct its error and to dispose of the case. The underlying principle of the rule rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly.

16. Respondent respectfully submits that the 120-day period provided for by law within which the CIR has to act on petitioner's claim for refund has not yet commenced considering petitioner's failure to comply with the duly mandated legal requirements in such claims for

refund/tax credit (i.e. submission of complete supporting documents). While it is true that petitioner filed an administrative claim for refund, the same is considered merely *pro forma* as it failed to submit documentary evidence to prove its entitlement thereto. Petitioner here failed to substantiate its administrative claim for refund.

17. Had petitioner submitted all relevant documents to substantiate its claim for refund or tax credit, respondent would have the opportunity to determine the veracity of its claim and might refund or issue a tax credit certificate for the claimed amount. Such failure of petitioner to submit relevant documents deprived respondent of the opportunity and time to study petitioner's claim for refund and to fully exercise its function. It must be remembered, that in the case of *Jariol vs Commissioner on Elections*, the Supreme Court reasoned that a party must not merely initiate the prescribed administrative procedure to obtain relief, the party concerned must pursue this relief until the appropriate conclusion takes place before seeking judicial intervention in order to give the administrative an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court.

18. It is well settled rule in tax laws, that the taxpayer who feels aggrieved by the actions taken by tax authorities may not seek redress in the courts of justice without first exhausting available administrative remedies, except for certain well-recognized exceptions. It is the policy of the law and good practice to discourage court litigations and encourage resort to administrative action whenever the latter is feasible, adequate and speedy. Another thing, the respect and consideration due to each branch of the government demand that the judicial department abstain, whenever possible from interfering in the acts of the other departments except when the latter transcend their respective shares of action and suitable remedies cannot be obtained by them.

19. Equally noteworthy is the fact that the Highest Tribunal in the case of Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, GR No. 145526 promulgated on March 26, 2007 held:

> 'Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceedings in that court. First a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny

> its claims. In this case, it is necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary evidence and evidentiary requirements for an administrative claim for refund or tax credit. Xxx'

Thus, as clearly stated by the above jurisprudence, the necessity for petitioner to submit all relevant documents to substantiate its administrative claim for refund is imperative. The filing of the petition for review to this Honorable Court must be due to the denial of its claim or inaction which is tantamount to a denial of the said action. Absent these circumstances, the judicial claim merely becomes an attempt by the taxpayer to circumvent the role and duties of the Commissioner in evaluating taxpayer's claim for refund.

20. Failure of petitioner to exhaust all administrative remedies is fatal to its claim considering that the non-exhaustion of administrative remedy is not merely for purposes of formality but is jurisdictional in nature.

21. Prescinding from and anent the foregoing considerations, petitioner's failure to exhaust all available administrative remedies which led to the premature filing of the instant petition divests the Honorable Court jurisdiction over the instant petition.

22. 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.

23. 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. Hence, a taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. Failure to comply therewith warrants a dismissal of the taxpayer's claim for refund. Respondent humbly submits that petitioner failed to establish its right to refund.

24. It can never be emphasized enough that in this jurisdiction tax refunds/credits are in the nature of tax exemptions, hence, laws relating to them call for a strict application against the claimant. As held by the Honorable Supreme Court:

> 'Tax refunds are in the nature of tax exemptions, and are to be construed *strictissimi juris* against the entity claiming the same. Thus, the burden of proof rests upon the taxpayer to establish by

sufficient and competent evidence, its entitlement to a claim for refund.'

25. Taxes collected are presumed to be in accordance with laws and regulations.

26. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and as such, they are looked upon with disfavor. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed strictissimi juris against the person or entity claiming the exemption. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.

27. Based on the foregoing, petitioner's claim for refund has no basis in fact and in law. Thus, the instant petition should be dismissed for lack of jurisdiction and/or for lack of merit." *(Citations and Emphases Omitted)*

Thereafter, both parties filed their Joint Stipulations of Facts and Issues[9] on October 25, 2011. Subsequently, a Pre-Trial Order[10] was issued by this Court on November 14, 2011.

On February 13, 2012, petitioner filed a Motion to Commission an Independent Certified Public Accountant[11] manifesting its intention to avail the services of Mr. Abbet R. Barce of Reyes Tacandong & Co. as an Independent Certified Public Accountant (ICPA) pursuant to Section 5 (a), Rules 12 and 13 of the Revised Rules of the Court of Tax Appeals. Finding merit therein, this Court granted petitioner's motion in the Resolution[12] dated February 23, 2012, and commissioned Mr. Abbet R. Barce as the ICPA, ordering him to submit his ICPA report within thirty (30) days therefrom.

After presentation of its evidence, petitioner filed its Formal Offer of Evidence[13] offering Exhibits "A" to "BB-1", inclusive of sub-markings. Acting thereon, this Court in its Resolution[14] dated June 28, 2012, admitted most of the exhibits offered save for exhibits "A" to "M" and "O" for not

[9] Docket pp. 110-115
[10] Docket pp. 137-142
[11] Docket pp. 149-152
[12] Docket p. 164
[13] Docket pp. 183-240
[14] Docket pp. 246-247

having been identified in Court; exhibit "F" for failure to present the original document for comparison, and exhibits "BB" and "BB-1" for not being properly marked.

On August 29, 2012, petitioner filed a Motion for Reconsideration[15] praying that the June 28, 2012 Resolution be set aside and that petitioner be allowed to recall one of its witnesses, Ms. Jocelyn Lapira, to rectify the errors in the marking and identification of its exhibits. In the November 7, 2012 Resolution,[16] this Court granted the said motion. Accordingly, after completion of the testimony of petitioner's recalled witness, this Court, during the March 13, 2013 hearing, reconsidered and admitted the previously denied exhibits.

Then, during the May 29, 2013 hearing, respondent formally offered in open court Exhibits "1" to "6", inclusive of sub-markings, as her evidence. Considering that petitioner interposed no objections thereto, this Court simultaneously resolved to admit respondent's exhibits and, thereafter, gave both parties a period of thirty (30) days therefrom within which to submit their respective memorandum.

On June 28, 2013, petitioner submitted its Memorandum[17] while respondent failed to submit hers as per Records Verification[18] dated August 7, 2013.

Accordingly, this Court considered the instant petition submitted for decision in its August 13, 2013 Resolution.[19]

As stipulated[20] by the parties, the following issues are submitted to this Court for resolution:

> I. WHETHER OR NOT PETITIONER IS ENTITLED TO A TAX REFUND OR A TAX CREDIT CERTIFICATE FOR THE ALLEGED INPUT VAT PAYMENTS ATTRIBUTABLE AND ALLOCATED TO ITS ZERO-RATED SALES FOR THE 2ND CALENDAR QUARTER OF 2009 IN THE AMOUNT OF ₱12,035,742.55.

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[15] Docket pp. 268-270
[16] Docket pp. 281-284
[17] Docket pp. 373-384
[18] Docket p. 394
[19] Docket p. 395
[20] Statement of Issues to be Tried or Resolved, Joint Stipulation of Facts and Issues (JSFI), Docket pp. 111-112

II. WHETHER OR NOT PETITIONER FILED ITS ADMINISTRATIVE APPLICATION AND JUDICIAL CLAIM FOR REFUND WITHIN THE PERIODS PRESCRIBED BY LAW.

III. WHETHER PETITIONER HAS COMPLIED WITH THE GOVERNING RULES AND REGULATIONS WITH REGARD TO RECOVERY OF TAXES COLLECTED/RECEIVED AS PROVIDED IN SECTION 229 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.

IV. WHETHER PETITIONER HAS COMPLIED WITH THE SUBMISSION OF COMPLETE DOCUMENTS IN SUPPORT OF ITS ADMINISTRATIVE CLAIM FOR REFUND;

The foregoing issues boil down to one major issue, *viz*, "Whether or not petitioner is entitled to a refund or a TCC for its zero-rated sales during the 2nd quarter of taxable year 2009".

In claiming input VAT refund or tax credits for zero-rated or effectively zero-rated VAT, Section 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, respectively provide that:

> "**SEC. 112.** ***Refunds or Tax Credits of Input Tax. -***
> *(A) Zero-Rated or Effectively Zero-Rated Sales.* - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of 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.
>
> *xxx xxx xxx*

> *(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."

Based from the above provision and pertinent jurisprudence[21] over the matter, a taxpayer engaged in zero-rated or effectively zero-rated transactions is entitled to claim a refund or tax credit of input taxes attributable to such sales upon compliance with the following requisites:

1. There must be zero-rated sales or effectively zero-rated sales;
2. Input taxes were incurred or paid;
3. That such input taxes are attributable to zero-rated 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. The claim for refund was filed within the two (2) year prescriptive period.

This Court shall first discuss the timeliness of instant claim both in the administrative and judicial levels.

In applying Section 112(C) of the NIRC of 1997, as amended, the Supreme Court, in the case of *COMMISSIONER OF INTERNAL REVENUE vs. AICHI FORGING COMPANY OF ASIA, INC.*[22] exhaustively explained the significance of the period mentioned therein in relation to the validity of filing administrative and judicial claims for refund. It elucidated as follows:

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[21] *citing* among others Taganito Mining Corporation vs. CIR, G.R. No. 196113, October 8, 2013; San Roque Power Corporation vs. CIR, G.R. No. 180345, November 25, 2009; Hedcor Sibulan, Inc. vs. CIR, CTA EB Case No. 890, September 17, 2013
[22] G.R. No. 184823, October 6, 2010

"The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in Commissioner of Internal Revenue v. Mirant Pagbilao Corporation, where we ruled that Section 112(A) of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and that Sections 204(C) and 229 of the NIRC are inapplicable as 'both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes. We explained that:

The above proviso [Section 112 (A) of the NIRC] clearly provides in no uncertain terms that <u>unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not</u>. *xxx.*

xxx *xxx* *xxx*

Section 112(D) of the NIRC clearly provides that the CIR has '120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit],' within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, <u>if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days</u>.

xxx *xxx* *xxx*

xxx Subsection (A) of the said provision states that 'any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two 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.' The phrase 'within two (2) years *x x x* apply for the issuance of a tax credit certificate or refund' refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has '120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)' within which to decide on the claim.

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) <u>when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA</u>." *(Underscoring Ours)*

As gleaned in the above-cited case, the two (2) year prescriptive period is reckoned from the close of the taxable quarter when the sales were made. In the instant case, the two-year period in filing administrative claim is counted from June 30, 2009, the close of the second quarter of 2009, or until June 30, 2011. Clearly, petitioner timely filed its administrative claim for refund on March 1, 2011.[23]

Conversely, respondent alleges that petitioner failed to submit the complete documents in support of its administrative claim. Respondent claims that she sent formal notices to petitioner for the presentation of its records which the latter received on September 20, 2011,[24] December 8, 2011,[25] and January 24, 2012.[26]

However, the documents reveal that petitioner simultaneously submitted supporting documents[27]upon filing of its administrative claim on March 1, 2011. This was affirmed by respondent in her Answer filed before this Court on September 9, 2011.[28]

Considering that it was only on September 20, 2011 that the first notification for the presentation of additional documents was sent by respondent to petitioner, the one hundred twenty (120) days prescriptive period commenced from March 1, 2011, the date when petitioner filed its administrative claim together with its supporting documents, until June 29, 2011, the date when the 120-day period for the BIR Commissioner to decide the claim expired. This is in accordance with Revenue Memorandum Circular No. 29-09[29] which states that:

> "III. *Period within which Refund a Tax Credit of Input Taxes shall be Made.*
>
> Section 112(C) of the Tax Code of 1997, as amended by Republic Act No. 9337, provides among others, that in proper cases, <u>the Commissioner shall grant a refund or issue the tax credit certificate (TCC) for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents.</u> For the purpose of defining "proper cases" in the said provision, the taxpayer/claimant must have complied with the following conditions/requirements upon audit/verification of his/its claim:

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[23] Exhibit "N", Docket, pp. 237-239
[24] Exhibit "6", Q & A, no. 11, Docket, p. 253; Exhibit "1", BIR Records, Folder 2, pp. 1-3
[25] Exhibit "6", Q & A, no. 14, Docket, p. 254; Exhibit "2", BIR Records, Folder 2, pp. 4-6
[26] Exhibit "6", Q & A, no. 17, Docket, p. 254; Exhibit "3", BIR Records, Folder 2, pp. 7-9
[27] Exhibit "N"; BIR Records, Folder 1, pp. 3-47
[28] Par. 10.2, Answer, Docket, pp. 47-48
[29] "Clarifying Certain Issues Relative to the Processing of Claims for Tax Credit/Refund" dated April 16, 2009

a. **Submission of complete documents** necessary to determine and/or ascertain the correctness of the return and the amount to be refunded/credited;

b. That all books of accounts and accounting records pertaining to the claim are immediately available to the concerned Revenue Office (RO) for audit/verification;

c. Any discrepancies/findings upon audit/verification shall be reconciled/explained in writing by the taxpayer/claimant within five (5) days from receipt of the notification from the RO; and

d. The taxpayer/claimant has signified his concurrence to the outcome of the audit/verification, which shall be evidenced by an Agreement Form.

In cases where taxpayer failed to comply with the above conditions/requirements, i.e., failure to present accounting books and records for audit/verification, additional documents to explain discrepancies/findings are not submitted, taxpayer refuses or incurs delay in the submission of the Agreement Form, the running of the 120-day period shall stop from the date of notification to the taxpayer. Likewise, the running of the 120-day period shall be suspended in case a question of law arises during the conduct of audit/verification and/or review of the claim for tax refund/credit, and the issue is referred to the Legal Division or the Legal Service, as the case may be, for resolution and issuance of legal opinion, which should be rendered within thirty (30) working days from receipt of the request." *(Underscoring Ours)*

It bears stressing that in claims for VAT refund, the alleged non-submission of complete supporting documents in the administrative level is NOT fatal to petitioner's judicial claim. This Court is not barred from receiving, evaluating and appreciating evidence submitted before it. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the grant of a claim for refund lies within the sound discretion and judgment of the Court.[30]

Thus, petitioner timely filed its appeal by way of a Petition for Review on June 30, 2011, as the same was filed well within the 30-day period after the 120-day period of respondent ended on June 29, 2011.

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[30] Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc., CTA EB Case No. 474, September 1, 2009; Commissioner of Internal Revenue vs. Toledo Power Company, CTA EB Case No. 589 (CTA Case No. 7471), September 15, 2010; Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue, CTA Case No. 7800, January 12, 2012

In its claim, petitioner alleged that during the second quarter of taxable year 2009, it rendered marketing support and other services to its parent company Nokia Corporation (Finland). It argued that the services rendered to Nokia Corporation (Finland) were paid for in foreign currency, accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP) and were subjected to zero percent (0%) VAT as covered by Section 108(B)(2) of the 1997 NIRC, which states:

> "**SEC. 108.** ***Value-added Tax on Sale of Services and Use or Lease of Properties.-***
>
> (A) *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);
>
> (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);"

Moreover, in the case of *COMMISSIONER OF INTERNAL REVENUE vs. BURMEISTER AND WAIN SCANDINAVIAN CONTRACTOR MINDANAO, INC.*,[31] the Supreme Court held that in order for the sale of services to be VAT zero-rated under Section 108(B)(2) of the 1997 NIRC, as amended, the following requisites must be met:

1) the services by a VAT registered person must be other than processing, manufacturing or repacking of goods;

2) payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and

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[31] G.R. No. 153205, January 22, 2007

3) the recipient of such services is doing business outside the Philippines.

Corollary to the second requisite, Sections 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(2), B(1) and (2)(c) of Revenue Regulations (R.R.) No. 16-05 provide that a VAT taxpayer shall for every lease of goods or properties and for every sale, barter or exchange of services, issue a VAT official receipt which must contain the following information:

> "**Sec. 113.*Invoicing and Accounting Requirements for VAT-registered Persons.-***
>
> (A) *Invoicing Requirements.* - A VAT-registered person shall issue:
>
> xxx xxx xxx
>
> (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:
>
> xxx xxx xxx
>
> (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;
>
> (3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and xxx" (*emphasis supplied)*
>
> "**Sec. 4.113-1.***Invoicing Requirements.* –
>
> (A) A Vat-registered person shall issue: -
>
> xxx xxx xxx
>
> (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

> Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or official receipts. Said documents shall be considered as a 'VAT Invoice' or VAT official receipt. All purchases covered by invoice/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.
>
> VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.
>
> (B) *Information contained in VAT invoice or VAT official receipt.* – The following information shall be indicated in VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his 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 VAT; *Provided,* That: xxx
>
> > (c) If the sale is subject to zero percent (0%) VAT, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt; xxx" *(Underscoring Ours)*

Pursuant thereto, the foreign currency remittances referred to under Section 108(B)(2) of the 1997 NIRC, must be supported by VAT zero-rated official receipts.

Going back to the instant case, evidence presented to this Court shows that petitioner satisfactorily complied with the first and third requisites.

Petitioner is registered with the BIR as a VAT taxpayer per Certificate of Registration No. OCN 8RC0000019384.[32] Perusal of petitioner's Audited Statements of Total Comprehensive Income for the years ended December 31, 2009 and 2008[33] and Notes to Financial Statements as of and for the years ended December 31, 2009 and 2008, particularly Note 12,[34] disclosed that it earned revenues from services rendered to Nokia Corporation (Finland) and other affiliates, the bulk of which coming from the former. The services included marketing support and other support services in handling any specific or general business matter arising from Nokia Corporation (Finland)'s business in the Philippines and other territories as

[32] Exhibit "A"
[33] Exhibit "V-5"
[34] Exhibit "V-31"

defined in the Service Agreement.[35] These services are not the same category as 'processing, manufacturing or repacking of goods'.

It was established that petitioner's client, Nokia Corporation (Finland), is a non-resident foreign corporation not registered to engage in business in the Philippines as can be gleaned from the Authenticated Extract from the Trade Register of the National Board of Patents and Registration of Finland[36] showing that Nokia OYJ is its registered company name domiciled in Helsinki, Finland; Authenticated Certificate of Fiscal Residence issued by the Finland Tax authority[37] stating that Nokia OYJ was resident in Finland for the whole taxable year 2009; and Certificate of Non-Registration of Nokia OYJ (Nokia Corporation) issued by the Philippines Securities and Exchange Commission.[38]

Anent the second requisite of proving that the services rendered by petitioner to Nokia Corporation (Finland) for the second quarter of 2009 were paid for in acceptable foreign currency duly accounted for in accordance with the rules and regulations of the BSP, petitioner presented its Quarterly VAT Return, zero-rated VAT official receipts (ORs),[39] zero-rated VAT invoices[40] for the second quarter of 2009 and Bank Statements issued by the Bank of America.[41]

However, the amount of zero-rated sales declared in the Quarterly VAT Return when compared with the amount reflected in the VAT zero-rated ORs disclosed a discrepancy of ₱12,448,694.17:

Zero-rated Sales per Fourth Quarter VAT Return	₱ 140,651,606.28[42]
Zero-rated Sales per VAT ORs	128,202,912.21[43]
Difference	**₱ 12,448,694.07**

Since the difference of ₱12,448,694.07 is not supported by VAT zero-rated ORs, the same shall be denied zero-rating.

[35] Exhibit "E", Docket, pp. 218-225.
[36] Exhibit "B", docket, pp. 192-214
[37] Exhibit "C", docket, pp. 215-216
[38] Exhibit "D", docket, p. 217
[39] Exhibit "S"
[40] Exhibit "S-1"
[41] Exhibit "T"
[42] Exhibit "P-3-2", line 17
[43] Exhibit "P-1", p. 12, under Procedures Performed, no. 2

A comparison of the total zero-rated sales per VAT invoices (traced from Netting Statements[44]) against the total zero-rated sales per VAT ORs revealed a difference of ₱820,591.15, detailed as follows:

Per VAT Zero-rated Sales Invoice (Exhibit S-1)			Per VAT Zero-rated ORs (Exhibit S)			Difference (in Php)
Invoice No.	**Amount (in USD)**	***Amount (in Php)**	**OR No.**	**Amount (in USD)**	***Amount (in Php)**	
APRIL 2009						
229000019	88,976.32	4,359,127.87	0015			
229000020	997.86	48,887.16	0015			
229000023	46,952.34	2,300,289.04	0015			
229000024	372,904.66	18,269,345.10	0015			
229000025	491,732.13	24,090,940.51	0015			
229000026	815.61	39,958.37	0015			
229000027	1,675.26	82,074.34	0015			
229000028	12,977.14	635,776.04	0015			
229000029	2,713.04	132,917.26	0015			
Subtotal	**1,019,744.36**	**49,959,315.69**		**1,008,871.26**	**49,426,620.77**	**532,694.92**
MAY 2009						
229000031	113,972.76	5,509,443.22	0016			
229000033	11,113.46	537,224.66	0016			
229000034	526,001.33	25,426,904.29	0016			
229000035	436,796.36	21,114,736.04	0016			
229000036	3,004.15	145,220.61	0016			
229000037	776.74	37,547.61	0016			
229000038	18,262.09	882,789.43	0016			
229000039	1,988.44	96,121.19	0016			
Subtotal	**1,111,915.33**	**53,749,987.05**		**1,111,915.33**	**53,749,987.05**	**0.00**
JUNE 2009						
229000042	2,040.17	96,806.07	0017			
229000043	18,761.83	890,248.83	0017			
229000044	347,077.18	16,468,812.19	0017			
229000045	155,239.53	7,366,115.70	0017			
229000046	1,500.70	71,208.22	0017			
229000047	992.37	47,087.96	0017			
229000048	7,880.33	373,921.66	0017			
Subtotal	**533,492.11**	**25,314,200.62**		**527,424.75**	**25,026,304.39**	**287,896.23**
Total	**2,665,151.80**	**129,023,503.36**		**2,648,211.34**	**128,202,912.21**	**820,591.15**

*Amounts were translated using the forex rate in the netting statements (Exhibit R, pp 2, 6 & 9).

[44] Exhibit "R"

Based on the above, the total amount per invoices of ₱129,023,503.36 is higher than the amount of ₱128,202,912.21 per ORs. The difference resulted from the following intercompany offsetting transactions between petitioner and Nokia Corporation (Finland):

Date	Amount (in USD)[45]	Forex Rate	Amount (in Php)
April 2009	10,873.10	48.992	532,694.92
June 2009	6,067.36	47.450	287,896.23
Total	**16,940.46**		**820,591.15**

The intercompany offsetting of ₱820,591.15 is part of the ₱12,448,694.07 disallowed zero-rated sales which are not covered by zero-rated VAT ORs. Therefore, the total allowable zero-rated sales as substantiated by zero-rated VAT ORs amounts to ₱128,202,912.21.

Having resolved that petitioner had VAT zero-rated sales of ₱128,202,912.21 for the second quarter of 2009, We now determine the amount of input VAT attributable thereto.

Petitioner reflected in its Quarterly VAT Return,[46] for the second quarter of 2009, input VAT from domestic purchases of goods (other than capital goods) and services and importation of goods in the total amount of ₱12,098,285.06, broken down as follows:

	Input Tax
Domestic Purchases of Goods Other than Capital Goods	₱ 2,616,967.72
Importation of Goods Other than Capital Goods	2,756,906.41
Domestic Purchases of Services	6,724,410.93
Total	**₱ 12,098,285.06**

In support of its reported input VAT, petitioner presented various VAT ORs and invoices,[47] Import Entry Internal Revenue Declaration (IEIRD) and Bureau of Customs (BOC) ORs.[48] Upon examination of these documents, the Court-commissioned ICPA, Mr. Abbet R. Barce, noted the following exceptions:[49]

[45] Exhibit "R", pp. 2 and 9
[46] Exhibit "P-3"
[47] Exhibit "Q-1" and "Q-2"
[48] Exhibit "Q-3"
[49] Exhibit "P-1", pp. 3-4

Reference	Nature	Total
Annex 2Q-Bs (pp. 20-21)	Input VAT on domestic purchases of services claimed during the period April to June 2009 but the VAT ORs were dated in the 3rd and 4th Quarters of 2009	₱246,364.82
Annex 2Q-Cs (pp. 22-23)	Input VAT on domestic purchases of services supported by TIN VAT Official Receipts dated within April to June 2009 issued in the name of the Company but TIN and/or registered address of the Company is not indicated	473,821.78
Annex 2Q-Cg (pp. 24-25)	Input VAT on domestic purchases of goods supported by TIN VAT invoices dated within April to June 2009 issued in the name of the Company but TIN and/or registered address of the Company is not indicated	9,048.16
Annex 2Q-Gs (p. 26)	Input VAT on domestic purchases of services supported by TIN VAT Official Receipts dated within April to June 2009 issued in the name of the Company but with erroneous TIN and/or registered address of the Company	76,861.61
Annex 2Q-J (p. 27)	Input VAT on domestic purchases of goods/services supported by TIN VAT invoices or official receipts, whichever is applicable, dated within April to June 2009 with alterations in the word TIN VAT or TIN NON-VAT and not stamped "VAT-registered as of date"	5,244.00
Annex 2Q-K (pp.28-30)	Input VAT on domestic purchases of goods or services supported by TIN VAT invoices or official receipts, whichever is applicable, dated within April to June 2009 with transactions subject to VAT clearly presented as "VAT Exempt" on the face of the document	37,256.94
Annex 2Q-Xs (pp. 31-32)	Input VAT on domestic purchases of services not duly supported by original pre-printed TIN VAT Official Receipt	127,691.71
Annex 2Q-Xg (p. 33)	Input VAT on domestic purchases of goods not duly supported by original pre-printed TIN VAT invoices	2,714.74
Annex 2Q-O (pp. 34-39)	Input VAT overclaimed on supported domestic purchase of services	35,447.89
Annex 2Q.I-B (p. 40)	Input VAT on importation duly supported by original copy of first page of Import Entry and Internal Revenue Declarations (IEIRDs) without machine validation and/or BOC receipt dated within the period April to June 2009	129,347.00
Annex 2Q.I-E (pp. 41-44)	Input VAT on importation made through a freight forwarder supported only by original BOC Official Receipt with no date but claimed by the Company within the period April to June 2009	93,645.00
Annex 2Q.I-X (p. 47)	Input VAT on importation supported by photocopy of Import Entry and Internal Revenue Declarations (IERDs) dated within April to June 2009	1,556.00
Annex 2Q.I-O (pp. 48-49)	Input VAT overclaimed on supported importation of goods	10,226.00

Annex 2Q-Z (pp. 50-51)	Input VAT on domestic purchases of goods and/or services not supported by any document	1,846,039.69
Total		**₱ 3,095,265.34**

However, after careful review, the aforesaid input taxes of ₱3,095,265.34 shall be disallowed from petitioner's claim for not being properly substantiated by VAT invoices or receipts as prescribed under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of R.R. No. 16-05.

In addition, petitioner's input VAT claim in the amount of ₱5,332,861.75 should, likewise, be disallowed for failure to meet the substantiation requirements under the aforesaid VAT law and regulations. Below is the breakdown of the amount of ₱5,332,861.75:

Reason for Disallowance	Reference	Amount
Purchase of goods		
VAT amount was not separately indicated in the invoice	Exhibit Q-2 (pp. 382-384)	₱ 17,380.62
the address shown on the "sold to" portion of the invoice was different from Nokia Phil's registered address	Exhibit Q-2 (pp. 389-390)	840.00
Purchase of services		
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 3-11)	142,466.91
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 12-13)	22,500.00
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 14-17)	294,404.78
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 18-21)	384,561.46
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 22-23)	13,832.76
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 24-29)	399,959.00
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 46-63)	1,204,769.44
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 64-65)	121.71
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 66-67)	300.24
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 68-76)	729.15
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 77-78)	12.00
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 79-80)	228.55
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 81-83)	121.46
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 84-86)	3,221.82
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 91-92)	152.23
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 93-94)	228.53
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 126-129)	4,359.15
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 130-133)	186,648.00
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 137-140)	73,188.00
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 141-142)	19,200.00
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 143-146)	38,649.60
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 147-150)	96,000.00

VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 158-160)	42,062.57
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 163-164)	4,579.17
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 165-166)	445.14
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 167-168)	7,671.51
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 169-171)	22,473.16
The amount per OR (P360.62) is lower than the amount per claim (397.49)	Exhibit Q-1 (pp. 188-189)	36.87
The amount per OR (P304.96) is lower than the amount per claim (344.23)	Exhibit Q-1 (pp. 192-193)	39.27
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 204-215)	734.32
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 216-236)	2,015.22
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 271-272)	71.25
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 273-278)	168.00
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 279-280)	694.93
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 281-282)	33.60
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 283-295)	37,977.26
VAT amount was not separately indicated in the OR	Exhibit Q-1 (pp. 296-334)	19,761.10
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 337-338)	1,635.72
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 339-340)	1,970.18
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 341-342)	1,802.95
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 343-344)	1,416.23
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 345-346)	17,420.24
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 347-348)	16,382.95
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 349-350)	12,508.29
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 351-352)	24,268.75
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 353-354)	26,322.68
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 355-357)	55,515.35
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 358-362)	840,865.77
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 363-364)	35,916.40
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 365-367)	67,686.91
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 404-408)	38,840.00
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 411-412)	80,357.14
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 413-414)	6,513.50
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 415-416)	11,626.32
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 417-418)	14,008.32
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 419-420)	18,257.14
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 426-429)	16,908.00
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 430-431)	11,400.00
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 432-435)	44,110.80
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 438-439)	1,275.00
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 440-441)	1,275.00
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 444-445)	9,375.00
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 446-447)	18,750.00
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 452-454)	166.07
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 455-456)	1,440.00
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 459-461)	5,256.00
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 462-463)	1,440.00

VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 464-465)	230.94
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 466-467)	1,440.00
The amount per OR (4,403.68) is lower than the amount per claim (5,903.16.)	Exhibit Q-2 (pp. 468-472)	1,499.48
The amount per OR (5,331.86) is lower than the amount per claim (5,885.82)	Exhibit Q-2 (pp. 473-475)	553.96
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 476-478)	80.58
The amount per OR (5,052.57) is lower than the amount per claim (6,159.45)	Exhibit Q-2 (pp. 476-478)	1,106.88
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 482-487)	12,636.00
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 497-501)	222,630.43
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 505-506)	707.14
VAT amount was not separately indicated in the OR and the authority to print is dated later than OR date	Exhibit Q-2 (p. 507)	2,410.71
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 519-520)	18.00
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 521-522)	3.60
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 523-525)	53,578.08
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 526-527)	172,478.57
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 528-531)	207,552.00
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 540-544)	5,185.18
Not sold in the name of Nokia Phils.and the TIN indicated is different from the company's TIN	Exhibit Q-2 (pp. 566-567)	1,982.68
VAT amount was not separately indicated in the OR	Exhibit Q-2 (pp. 568-570)	214.29
Not sold in the name of Nokia Phils. and the TIN of the company was not indicated	Exhibit Q-2 (pp. 571-573)	468.74
IMPORTATION		
The amount per IEIRD/OR (23,010) is lower than the amount per claim(43,730)	Exhibit Q-3 (pp.737-740)	20,720.00
Not supported by IEIRD	Exhibit Q-3 (p.741)	44,098.00
Not supported by IEIRD	Exhibit Q-3 (p.742)	4,406.00
Not supported by IEIRD	Exhibit Q-3 (p.743)	147.00
Not supported by IEIRD	Exhibit Q-3 (p.744)	125.00
Not supported by IEIRD	Exhibit Q-3 (p.749)	2,858.00
The amount per IEIRD/OR(16,119) is lower than the amount per claim(56,416)	Exhibit Q-3 (pp.750-753)	40,297.00
Not supported by IEIRD	Exhibit Q-3 (p.754)	67,855.00
Not supported by IEIRD	Exhibit Q-3 (p.755)	40,229.00
Total Disallowed Input VAT		**₱ 5,332,861.75**

Thus, of the total reported input VAT of ₱12,098,285.06, only the amount of ₱3,670,157.97 represents petitioner's valid input VAT, computed as follows:

Total Input VAT per Quarterly VAT Return	₱12,098,285.06
Less: Disallowances	
Per ICPA's findings	₱ 3,095,265.34
Per the Court's further verification	5,332,861.75
Total Disallowances	₱ 8,428,127.09
Total Valid Input VAT	**₱ 3,670,157.97**

Furthermore, a portion of the ₱3,670,157.97 input VAT shall be applied against petitioner's reported output VAT liability for the second quarter of 2009 in the amount of ₱87,705.82.[50] Consequently, only the remaining input VAT of ₱3,582,452.15 can be attributed to the entire zero-rated sales declared by petitioner in the amount of ₱140,651,606.26 and only the input VAT of ₱3,265,378.98 is attributable to the valid zero-rated sales of ₱128,202,912.21, as computed below:

Valid Input VAT	₱ 3,670,157.97
Less: Output VAT	87,705.82
Excess Input VAT	₱ 3,582,452.15
Valid Zero-Rated Sales	₱128,202,912.21
Divided by Total Declared Zero-Rated Sales	÷ 140,651,606.26
Multiplied by Excess Input VAT	× 3,582,452.15
Excess Input VAT Attributable to Valid Zero-Rated Sales	**₱ 3,265,378.98**

Hence, based on its Quarterly VAT Returns for the third quarter of 2009 to the second quarter of 2011,[51] petitioner was able to prove that the input VAT of ₱3,265,378.98 was not applied against any output VAT in the succeeding quarters. It formed part of the ₱12,035,742.55[52] total subject claim which, though carried over to the succeeding quarters, remained unutilized and was deducted as "VAT Refund/TCC claimed" in the second quarter of 2011.

WHEREFORE, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of THREE MILLION TWO HUNDRED SIXTY-FIVE THOUSAND THREE HUNDRED SEVENTY-EIGHT and 98/100 PESOS (₱3,265,378.98) representing its unutilized excess input VAT attributable to zero-rated sales for the second quarter of 2009.

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[50] Exhibit "P-3-2", line 15B
[51] Exhibit "P-6" and "P-7"
[52] Exhibit "P-6-2", line 23D

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

We Concur:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice