REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

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

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9432

Members:

UY, *Chairperson*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
OCT 23 2019
2:34 p.m.

x---x

DECISION

RINGPIS-LIBAN, J.:

The Case

The present Petition for Review is a claim for refund or issuance of tax credit certificate in the amount of Php34,088,112.64, representing excess and unutilized input value-added tax ("VAT") attributable to Maersk Global Services Centres (Philippines) Ltd.'s zero-rated sales for the four quarters of taxable year 2014.

The Facts

Petitioner Maersk Global Services Centres (Philippines), Ltd. is a foreign corporation duly organized and existing under the laws of Hong Kong SAR, and licensed to do business in the Philippines as a regional operating headquarters (ROHQ), with principal office at Levels 5-8, North Wing, Estancia Office, Capital Commons, Meralco Avenue, Brgy. Oranbo, Pasig City.[1] It is registered

[1] Exhibit "P-1".

with the Bureau of Internal Revenue ("BIR") as, among others, a VAT entity with Certificates of Registration No. 3RC0000466671[2] dated April 07, 2010 and No. 3RC0000685349[3] on February 10, 2015.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue ("CIR"), vested by law with the authority to, *inter alia,* act upon and approve claims for refund or tax credit. He holds office at the BIR Building, BIR Road, Diliman, Quezon City.

Petitioner renders corporate and administrative services for the ocean transportation business of its affiliate, A.P. Moller-Maersk A/S ("APMM"), a nonresident foreign corporation doing business outside the Philippines with address at Denmark, Esplanaden 50, 1098 Copenhagen.[4]

For taxable year 2014, petitioner filed its quarterly VAT Returns on the following dates, *viz.*:

Quarter	Date Filed
1st	April 25, 2014[5]
2nd	July 27, 2014[6]
3rd	October 25, 2014[7]
4th (amended)	February 18, 2016[8]

On March 22, 2016, petitioner filed with BIR Revenue District Office (RDO) No. 43A – East Pasig, an Application for Tax Credits/Refunds[9] (BIR Form No. 1914) of its excess and unutilized input VAT attributable to zero-rated sales for the four (4) quarters of taxable year 2014 in the total amount of Php34,088,112.64, broken down as follows:

Quarter	Amount of Claim
1st	Php 7,681,980.14
2nd	12,013,750.47
3rd	7,170,746.57
4th	7,221,635.46
Total	**Php34,088,112.64**

2 Exhibit "P-7".
3 Exhibit "P-8".
4 Exhibits "P-2" to "P-6".
5 Exhibit "P-9".
6 Exhibit "P-10".
7 Exhibit "P-11".
8 Exhibit "P-12".
9 Exhibits "P-15" and "P-15-A".

In support of the above claim, petitioner likewise submitted on the same day the supporting documents *via* transmittal letter[10] dated March 21, 2016, with attached Checklist of Mandatory Requirements for Claims for VAT Credit/Refund[11].

On June 06, 2016, petitioner received a Letter of Authority (LOA) No. 43A-2016-00000278[12] dated June 02, 2016, assigning Revenue Officer Maria Sally Jesalva/ Group Supervisor Zaldy Dioscoro Dy to audit petitioner's books of accounts regarding its claim for VAT refund for taxable year 2014.

Thereafter, claiming inaction thereof, petitioner filed before this Court the present Petition for Review[13] on August 18, 2016.

On November 02, 2016, respondent filed a Motion to Admit Answer[14]. Respondent acknowledged that while the deadline to file the answer was on October 01, 2016, it was through confusion and oversight that the handling lawyer mistakenly thought he had filed a motion for extension of time. Thus, respondent prayed that the attached answer be admitted by this Court. In response, petitioner filed on November 28, 2016 a Comment (to Respondent's Motion to Admit Answer) and Motion to Declare Respondent in Default and Direct Respondent to Transmit BIR Records[15].

In the Resolution[16] dated January 11, 2017, this Court granted respondent's Motion to Admit Answer and denied petitioner's Motion to Declare Respondent in Default. This Court elucidated that since the answer was filed before the declaration of default, and also considering no prejudice was caused to petitioner, there can be no declaration of default.

Accordingly, in his Answer[17] respondent interposed the following special and affirmative defenses, *viz*:

"4. x x x.

---

10 Exhibit "P-16".
11 Exhibit "P-17".
12 Exhibit "P-18".
13 Docket (vol. 1), pp. 10-20.
14 *Id.*, pp. 38-40.
15 *Id.*, pp. 48-57.
16 *Id.*, pp. 60-62.
17 *Id.*, pp. 41-45.

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.

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:

> '(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.
>
> x x x
>
> Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a non-resident person 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 off the Bangko Sentral ng Pilipinas (BSP);'

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. 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.
>
> x x x

> <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.
>
> x x x
>
> <u>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.</u> 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).' (Emphases 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:

> '**SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties.** -
>
> (A) ***Rate and Base of Tax***. - There shall be levied, assessed and collected, a value-added tax equivalent to <u>twelve percent (12%) of gross receipts</u> derived from the sale or exchange of services, including the use or lease of properties:
>
> x x x
>
> The phrase '<u>sale or exchange of services</u>' means the performance of <u>all kinds of services in the Philippines</u> for others for a fee, remuneration or consideration, including

those performed or rendered by construction and service contractors;' (Emphases Supplied.)

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

6. 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 [Php]34,088,112.64 allegedly representing the unutilized input VAT from its purchases of goods and services from VAT registered suppliers were:

i. Paid by the 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

Php34,088,112.64 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.

7. 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).

8. 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).

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

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

Then, a Notice of Pre-Trial Conference[18] was issued on January 12, 2017. On April 07, 2017, petitioner filed its Pre-Trial Brief[19], while Respondent's Pre-Trial Brief[20] was filed on July 03, 2017.

On July 19, 2017, the parties filed their Joint Stipulation of Facts and Issue[21], which was approved and adopted by this Court in the Pre-Trial Order[22] dated August 03, 2017. As such, pre-trial was deemed terminated.

Meanwhile, on July 04, 2017, petitioner filed a Motion to Commission Independent Certified Public Accountant[23]. Petitioner prayed that Mr. Richard R. Lapres of Navarro Amper & Co. be appointed as the independent certified public accountant ("ICPA") for the present case. Thus, in the Order[24] dated

[18] *Id.*, pp. 63-64.
[19] *Id.*, pp. 75-84.
[20] *Id.*, pp. 185-187.
[21] *Id.*, pp. 206-210.
[22] *Id.*, pp. 213-218.
[23] *Id.*, pp. 189-192.
[24] *Id.*, pp. 224-227.

September 25, 2017, this Court granted petitioner's Motion thereby commissioning Mr. Richard R. Lapres as the ICPA.

During trial, petitioner presented as witnesses, Ms. Rochelle V. Duclay[25], its Finance Accountant; and, Mr. Richard R. Lapres[26], the court-commissioned ICPA, who both testified on direct by way of judicial affidavits.

On December 12, 2017, petitioner filed a Formal Offer of Evidence for Petitioner Maersk Global Services Centres (Philippines), Ltd.[27]. Consequently, this Court in the Resolutions dated February 2, 2018[28] and June 19, 2018[29], respectively, admitted all of petitioner's exhibits and thereafter deemed it to have rested its case.

When called to present his case, respondent manifested that he will no longer present the witnesses listed in the pre-trial order. Thus, the parties were given a period of thirty (30) days within which to submit their respective memoranda.[30]

On October 10, 2018, a Memorandum for Petitioner Maersk Global Services Centres (Philippines), Ltd.[31] was filed, while respondent, on the other hand, failed to file his memorandum as per Records Verification[32] dated October 11, 2018. Accordingly, in the Resolution[33] dated November 9, 2018, the present case was deemed submitted for decision.

The Issues

The parties raised the common issue[34] of whether petitioner is entitled to a refund in the total amount of Php34,088,112.64, representing unutilized and excess input VAT attributable to zero-rated sales for the year 2014.

Furthermore, respondent also raised the following additional issues[35], *viz*:

---

25 Exhibits "P-19" to "P-19-A"; Docket (vol. 1), Judicial Affidavit of Rocehelle V. Duclay dated April 6, 2017, pp. 89-107.
26 Exhibits "P-20" to "P-20-A"; Docket (vol. 2), Judicial Affidavit of Mr. Richard R. Lapres dated November 20, 2017, pp. 572-585.
27 Docket (vol. 1), pp. 475-486.
28 Docket (vol. 2), pp. 808-809.
29 *Id.*, pp. 833-835.
30 *Id.*, Order dated September 10, 2018, p. 837.
31 *Id.*, pp. 838-857.
32 *Id.*, p. 859.
33 *Id.*, p. 861.
34 Docket (vol. 1), Pre-Trial Order, Issues, p. 214.
35 *Id.*

1) Whether APMM is doing business in the Philippines; and

2) Whether petitioner failed to comply with the requirements of Section 112(C) of the NIRC of 1997, as amended.

Discussion/Ruling

Pertinent to the resolution of the instant case is Section 112(A) and (C) of the National Internal Revenue Code ("NIRC") of 1997, as amended, which provide, to wit:

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

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

x x x

(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."

Pursuant to the above paragraphs, in order to be entitled to a refund or tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1) the taxpayer-claimant is VAT-registered;
2) the claim for refund was filed within the prescriptive periods both in the administrative and judicial levels;
3) that there must be zero-rated or effectively zero-rated sales;
4) that input taxes were incurred or paid;
5) such input taxes are attributable to zero-rated or effectively zero-rated sales; and
6) the input taxes were not applied against any output VAT liability.

Petitioner is a VAT-registered entity.

As to the first requisite, petitioner satisfactorily proved that it is a duly-registered VAT taxpayer as evidenced by its BIR Certificate of Registration Nos. OCN 3RC0000466671[36] issued on April 7, 2010 and OCN 3RC0000685349[37] issued on February 10, 2015.

Petitioner's administrative and judicial claims were filed within the prescriptive period.

The second requisite is crucial since it will ascertain the timeliness of petitioner's claims, which will determine whether it is still necessary to proceed with the other requisites for input VAT refund.

---

36 Exhibit "P-7".
37 Exhibit "P-8".

Again, Section 112(A) of the NIRC of 1997, as amended, provides that the application for tax credit/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.

In the present case, petitioner's claims cover the first, second, third and fourth quarters of taxable year 2014, which closed on March 31, 2014, June 30, 2014, September 30, 2014 and December 31, 2014, respectively. Counting two (2) years from the said dates, petitioner had until March 31, 2016, June 30, 2016, September 30, 2016 and December 31, 2016, within which to file its administrative claim for tax credit/refund for the respective quarters. By filing its administrative claim[38] with the BIR on March 22, 2016, petitioner for has seasonably complied within the period provided by law. A table below is provided for ease of reference, *viz.*:

Taxable Quarters of 2014	Close of the Taxable Quarter	Last Day to File Administrative Claim	Date of Filing of Administrative Claim
1st	March 31, 2014	March 31, 2016	March 22, 2016
2nd	June 30, 2014	June 30, 2016	
3rd	September 30, 2014	September 30, 2016	
4th	December 31, 2014	December 31, 2016	

Meanwhile, Section 112(C) of the same tax code provides for the period within which to file a judicial claim for the refund or tax credit of input VAT. Indeed, the provision speaks of two (2) periods: the period of one hundred twenty (120) days, which serves as a waiting period to give time for the CIR to act on the administrative claim for a refund or credit; and the period of thirty (30) days, which refers to the period for filing a judicial claim with the CTA.[39]

Going back, from the filing of petitioner's administrative claim, together with the transmittal of its supporting documents[40], on March 22, 2016, respondent had one hundred twenty (120) days or until July 20, 2016 within which to act on the said claim. Since respondent failed to act thereto after the lapse of the 120-day period, petitioner had thirty (30) days therefrom or until August 19, 2016 within which to file its judicial appeal before this Court. As such, by filing its judicial claim *via* the present Petition for Review on August 18, 2016, petitioner is deemed to have seasonably complied with the required prescriptive period.

---

38 Exhibit "P-15".

39 Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue, G.R. No. 168950, January 14, 2015.

40 Exhibit "P-16".

Having determined that petitioner timely filed both its administrative and judicial claims for refund, this Court shall now proceed to determine petitioner's compliance with the remaining requisites.

Petitioner had zero-rated sales during the four quarters of taxable year 2014

With regard to the third requisite, petitioner avers that it renders corporate and administrative services for the ocean transportation business of its sole client, APMM, a nonresident foreign corporation organized and existing under the laws of Denmark and doing business outside the Philippines. That the said services include, among others, processing of import and export documentation, procurement, finance and accounting services and information technology-related services; and that its billings to APMM are in foreign currency and the payments therefore are made in US dollars, which are remitted inwardly through the banking system and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). As such, petitioner claims that its export sales of services to APMM are subject to zero-percent (0%) VAT pursuant to Section 108(B)(2) of the NIRC of 1997, as amended.

This Court does not agree.

Incidentally, petitioner admits that its sole client, APMM, is actually doing business in the Philippines when it stated that *[w]hile 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.*[41] It is clear, therefore, that petitioner's sales of services to APMM cannot qualify for VAT zero-rating under Section 108(B)(2) of the Tax Code since the recipient of such services, APMM, is doing business in the Philippines.

However, all is not lost. As already established, petitioner's sole client, APMM, is a corporation organized and existing under the laws of Denmark and engaged in international shipping. Hence, the sale of services to the latter are subject to VAT at zero-percent (0%) rate pursuant to Section 108(B)(4) of the NIRC of 1997, as amended, which provides:

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

---

[41] Docket (vol. 1), Petition for Review, Par. 9, p. 12.

x x x

(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:**

x x x

(4) **Services rendered to persons engaged in international shipping** or international air transport operations, including leases of property for use thereof;" *(Emphasis supplied)*

In relation to the immediately quoted provision, Section 4.108-5(b)(4) of Revenue Regulations ("RR") No. 16-2005, as amended by RR No. 4-2007, further provides that, to wit:

"**SEC. 4.108-5. *Zero-Rated Sale of Services*. –**

x x x

(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:

x x x

(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)*

Verily, to qualify for VAT zero-rating, export services by a VAT-registered person must be rendered in the Philippines to a person engaged in international shipping. The law is clear. No other qualification is required from the recipient of such services neither is there any prohibition for it to engage in other trade or business.[42]

Thus, in compliance thereof, petitioner offered in evidence the following documents proving that its client, APMM, is engaged in international shipping business:

1) Judicial Affidavit of Ms. Rochelle V. Duclay[43], petitioner's Finance Accountant, stating that APMM is one of the biggest international shipping lines in the container transportation business in the world and its international shipping lines transport and receive cargoes to and from the Philippines;

2) Service Agreement [44] between APMM and petitioner, showing that APMM owns container vessels/containers, operates worldwide through its subsidiaries and contracted the service of petitioner for certain back office tasks, including transport documentation and other processes related to its operations;

3) Articles of Association[45] of APMM, stating that its registered office is situated in Copenhagen, Denmark 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*; and

4) Compiled Summary [46] for APMM, showing that it is domiciled at City of Copenhagen 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.*

---

42 Commissioner of Internal Revenue v. Maersk Global Service Centres (Philippines) Ltd., CTA EB No. 1318, December 05, 2016.
43 Docket (vol. 1), Exhibit "P-19", Q&A Nos. 27 and 28, p. 94.
44 Exhibit "P-2".
45 Exhibit "P-3", Article 1.
46 Exhibit "P-4".

With the foregoing testimonial and documentary evidence, petitioner's sales of services to APMM qualify for VAT zero-rating pursuant to Section 108(B)(4) of the NIRC of 1997, as amended.

More so, in its Quarterly VAT Returns for the four quarters of taxable year 2014, petitioner declared zero-rated sales in the total amount of Php2,153,252,566.67, as shown below:

Period Covered	Exhibit No.	Zero-Rated Sales
1st Quarter	"P-9", *Line 17*	Php 414,374,704.92
2nd Quarter	"P-10", *Line 17*	679,430,873.89
3rd Quarter	"P-11", *Line 17*	442,491,476.03
4th Quarter	"P-12", *Line 17*	616,955,511.83
Total		**Php2,153,252,566.67**

In support of its zero-rated sales for taxable year 2014, petitioner submitted official receipts ("ORs")[47] and billing statements[48], which were duly examined by the court-commissioned ICPA.

Based on the ICPA Report [49] , the declared zero-rated sales of Php2,153,252,566.67 can be broken down into the following amounts, *viz*, Php2,153,027,566.67, which pertains to sale of corporate and administrative services to APMM, and Php225,000.00, which pertains to sale of equipment to Boutique Outsource Solution Pty. Ltd. – Philippine Branch (hereinafter "Boutique"), a Philippine entity duly registered with the Philippine Economic Zone Authority (PEZA).[50]

Upon further scrutiny of the submitted documents, this Court finds that petitioner's sales of services to its sole client APMM in the amount of Php2,153,027,566.67 (or equivalent to US$48,550,248.62) was properly substantiated by VAT zero-rated ORs, in compliance with the invoicing requirements prescribed by Section 113[51] of the NIRC of 1997, as amended, the details are presented below, thus:

---

47 Exhibits "P-37.1" to "P-37.24".
48 Exhibits "P-38.1" to "P-38.13".
49 Exhibit "P-21".
50 Par. 4 of Exhibit "P-21" (ICPA Report), p. 18.
51 "**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:

Exhibit No.	O.R. No.	Date	Amount (in USD)
P-37.1	0111	08-Jan-14	738,097.80
P-37.2	0112	17-Jan-14	1,689,058.55
P-37.3	0113	24-Jan-14	270,877.86
P-37.4	0114	07-Feb-14	169,970.37
			1,071,210.18
P-37.5	0115	05-Mar-14	1,596,463.41
P-37.6	0116	19-Feb-14	1,988,995.11
P-37.7	0118	12-Mar-14	686,263.98
			1,143,586.41
P-37.8	0120	07-Apr-14	2,899,217.29
			732,267.81
P-37.9	0121	23-Apr-14	3,166,374.31
			149,036.77
P-37.10	0122	06-May-14	2,799,854.39
P-37.11	0123	23-May-14	1,289,846.84
P-37.12	0124	13-Jun-14	1,840,682.69
P-37.13	0125	26-Jun-14	1,840,682.70
			455,486.05
P-37.14	0127	04-Jul-14	1,737,814.33
P-37.15	0128	17-Jul-14	2,146,078.52
			735,210.69
P-37.16	0131	13-Aug-14	1,747,702.00
P-37.17	0132	03-Sep-14	1,031,935.08
			650,304.15
P-37.18	0134	23-Sep-14	2,067,359.32
P-37.19	0135	10-Oct-14	1,646,203.48
P-37.20	0136	22-Oct-14	1,797,336.11
P-37.21	0138	07-Nov-14	2,517,080.40
			1,504,058.18
P-37.22	0139	21-Nov-14	2,367,581.89
P-37.23	0140	19-Nov-14	4,073,611.95
Total			**48,550,248.62**

---

(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:

x x x

(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;

x x x

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

Moreover, with regard to its zero-rated sale to Boutique, petitioner offered in evidence a VAT Zero-Rating Certification[52] issued by PEZA to Boutique, confirming the PEZA registration of the latter on December 11, 2014 and the VAT zero-rating of its transactions with local suppliers for the year 2014. Therefore, the sales to Boutique, a PEZA-registered entity, from December 11, 2014 to December 31, 2014 qualify for VAT zero-rating pursuant to Section 106(A)(2)(c)[53] of the NIRC of 1997, as amended.

However, petitioner's sale of equipment to Boutique in the amount of Php225,000.00 shall be denied VAT zero-rating for not being supported by VAT zero-rated invoice which is in clear violation of the invoicing requirements set forth in Section 113 of the NIRC of 1997, as amended.

Accordingly, out of the reported zero-rated sales of Php2,153,252,566.67, only the amount of Php2,153,027,566.67, pertaining to sales to APMM, validly represents petitioner's zero-rated sales for taxable year 2014.

Petitioner incurred input taxes which were attributable to its zero-rated sales

As to the fourth and fifth requisite, petitioner's quarterly VAT returns for the four quarters of taxable year 2014, reflected input VAT in the total amount of Php35,130,073.66, out of which the amount of Php34,088,112.64 is the subject of petitioner's claim for refund, to wit:

	1st Quarter *Exhibit "P-9"*	**2nd Quarter** *Exhibit "P-10"*	**3rd Quarter** *Exhibit "P-11"*	**4th Quarter** *Exhibit "P-12"*	**Total**
Input Tax Deferred on Capital Goods exceeding Php1 Million from Previous Quarter *(Line 20B)*	Php3,352,917.43	Php4,136,378.11	Php4,316,708.23	Php3,934,620.95	Php15,740,624.72
Add: Input Tax on Purchases of Capital Goods exceeding Php1 Million *(Line 21D)*	1,470,559.29	970,037.36	430,491.71	3,728,571.43	6,599,659.79
Total	Php4,823,476.72	Php5,106,415.47	Php4,747,199.94	Php7,663,192.38	Php22,340,284.51
Less: Input Tax on Purchases of Capital Goods exceeding Php1 Million deferred for the succeeding period *(Line 23A)*	4,136,378.11	4,326,398.70	3,934,620.95	6,373,165.01	18,770,562.77

[52] Exhibit "P-46".
[53] "**SEC. 106.** *Value-added Tax on Sale of Goods or Properties.-*
(A) *Rate and Base of Tax.* xxx
(2) The following sales by VAT-registered persons shall be subject to zero-percent (0%) rate:
(c) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate."

Amortization of Input Tax on Capital Goods exceeding Php1 Million	**Php687,098.61**	**Php780,016.77**	**Php812,578.99**	**Php1,290,027.37**	**Php3,569,721.74**
Add: Input Taxes on Current Purchases					
Purchase of Capital Goods not exceeding Php1M *(Line 21B)*	Php31,071.43	Php16,639.29	Php37,791.85	Php70,576.23	Php156,078.80
Domestic Purchases of Goods other than Capital Goods *(Line 21F)*	1,065,868.92	553,764.84	1,077,955.28	873,019.53	3,570,608.57
Importations of Goods other than Capital Goods *(Line 21H)*	131,032.00	17,899.06	-	-	148,931.06
Domestic Purchase of Services *(Line 21J)*	5,869,492.21	10,638,588.61	5,270,778.42	5,761,033.36	27,539,892.60
Services Rendered by Non-residents *(Line 21L)*	55,144.49	9,606.19	51,162.06	28,928.15	144,840.89
Total Input Taxes on Current Purchases	**Php7,152,609.05**	**Php11,236,497.99**	**Php6,437,687.61**	**Php6,733,557.27**	**Php31,560,351.92**
Total Input taxes for the period	**Php7,839,707.66**	**Php12,016,514.76**	**Php7,250,266.60**	**Php8,023,584.64**	**Php35,130,073.66**
Less: Output tax *(Line 19B)*	157,727.52	2,764.29	79,244.04	801,949.74	1,041,685.59
Net Input Tax	7,681,980.14	12,013,750.47	7,171,022.56	7,221,634.90	34,088,388.07
Input VAT Claim	**7,681,980.14**	**12,013,750.47**	**7,170,746.57**	**7,221,635.46**	**34,088,112.64**

Apparently, from the above, in the net input tax of Php7,171,022.56 for the 3rd quarter of taxable year 2014, petitioner only included in its claim for refund the amount of Php7,170,746.57. Hence, the unclaimed input VAT of Php275.99 (Php7,171,022.56 less Php7,170,746.57) shall be excluded from the reported input VAT in determining petitioner's valid input VAT.

In support of its input VAT claim, petitioner submitted in evidence various sales invoices (SIs), ORs, and other related documents, which were examined by the ICPA. Based on the ICPA Report, this Court finds that the input VAT in the total amount of Php1,114,954.80, shall be disallowed for failure to meet the substantiation requirements under Sections 110(A), 113(A) and (B), 237 and 238 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-3, 4.110-8 and 4.113-1 of RR No. 16-2005, as amended, the details of which are provided below:

Findings	Reference to ICPA Report	Exhibit	Input VAT Amount
E. Domestic Purchase of Services			
E.1. Without ORs		P-28.1 to P-28.413	Php55,543.94
E.2 ORs with no VAT breakdown	Annex 8	P-28.414 to P-28.457	123,411.56
E.4. ORs with no payee signature		P-28.486 to P-28.491	5,717.62

E.6. ORs which were claimed twice during the year		P-28.915 to P-28.924	12,518.97
E.7. VAT-Exempt Sale		P-28.925 to P-28.946	62,674.24
E.8. ORs with no or incomplete date		P-28.947 to P-28.1817	65,373.37
E.9. ORs with no VAT breakdown and with no or incomplete date		P-28.1818 to P-28.1961	11,385.83
E.10. ORs with no payee signature and with no or incomplete date		P-28.1962 to P-28.1963	47.19
E.11. ORs whose input VAT were claimed more than VAT amount and with no or incomplete date		P-28.1964 to P-28.1973	644.36
E.12. ORs which were claimed twice during the year and with no or incomplete date		P-28.1974 to P-28.1977	380.44
subtotal			***Php337,697.52***
F. Purchases of Goods Other than Capital Goods			
F.1. Reported as goods but service in nature and without ORs	Annex 9	P-29.1 to P-29.4	Php6,321.83
F.2. SIs with no VAT breakdown		P-29.5 to P-29.8	11,325.00
F.5. VAT-Exempt Sale		P-29.39 to P-29.40	2,808.22
subtotal			***Php20,455.05***
G. Importation of Goods Other than Capital Goods			
G.1. Without SIs and Importation Documents	Annex 10		Php148,931.06
subtotal			***Php148,931.06***
H. Purchases of Services Rendered by Non-residents			
H.1. Without BIR Form No. 1600	Annex 11		Php64,750.68
subtotal			***Php64,750.68***
I. Purchases of Capital Goods Not Exceeding One Million			
I.1. Input Tax on Purchases of Capital Goods exceeding 1Million that should be deferred to the succeeding periods.	Annex 12	P-31.1 to P-31.9	Php49,479.93
subtotal			***Php49,479.93***
J. Purchases of Capital Goods Exceeding One Million from Prior Years (2010 to 2013)			
J.1. Without SIs	Annex 13	P-32.1 to P-32.5	Php50,024.32
J.2. Out-of-period SIs[54]		P-32.6 to P-32.7	19,200.00

[54] The supporting SI of this purchase of goods being dated outside the period of claim is justified because the same pertains to purchase of goods from prior year (2011), the input VAT of which is to be amortized for the subject period but since the SI is without the BIR's Authority to print (ATP), the same is still disallowed.

J.3. Excess Amortization		P-32.8 to P-32.58	424,416.24
subtotal			***Php493,640.56***
Total Input VAT with exceptions			**Php1,114,954.80**

In addition to the above disallowances, input VAT in the amount of Php225,263.23 shall, likewise, be disallowed for non-compliance with the substantiation requirements under the aforementioned VAT law and regulations, to wit:

Name of Supplier		Exhibit/ Reference	Input VAT Amount
Purchases of services		Annex 8 of ICPA Report	
1.	*Supported by VAT ORs dated outside the period of claim*		
	Energy Specialist Company Inc	P-28.458	Php7,020.00
	Luminaire Printing & Publishing Corp.	P-28.460	9,000.00
	Sehwani Manpower Corporation	P-28.462	4,540.05
	Mainevent and Marketing Corp.	P-470	14,448.98
2.	*Supported by documents other than VAT OR*		
	Paris-Manila Technology Corporation	P-28.484 to P-28.485	133,344.00
	Adventure International Tours, Inc.	P-28.492	12,986.16
3.	*Supported by VAT ORs but the amount of claim is higher than the input VAT amount per OR*		
	J. Rosario Ortigas Food Corp. (3,750 per claim less 2,700.00 per OR)	P-28.650	1,050.00
	Smart Communications, Inc. (164.97 per claim less 3.00 per OR)	P-28.657	161.97
	Smart Communications, Inc. (164.98 per claim less 3.00 per OR)	P-28.659	161.98
	Smart Communications, Inc. (164.98 per claim less 3.00 per OR)	P-28.661	161.98
	Smart Communications, Inc. (7,479.07 per claim less 96.43 per OR)	P-28.738 to P-28.739	7,382.64
	subtotal		***Php190,257.76***
Purchases of goods other than capital goods		Annex 9 of ICPA Report	
1.	*Supported by VAT invoices dated outside the period of claim*		
	Chevron Philippines Inc	P-29.9	Php8,226.08
	Quanta-Concordsky Institutional Corp.	P-29.13	1,350.00
	Quanta-Concordsky Institutional Corp.	P-29.15	11,571.48
	Quanta-Concordsky Institutional Corp.	P-29.17	11,635.77
	FEA Trade Inc	P-29.19	504.64
	FEA Trade Inc	P-29.21	945.00
	FEA Trade Inc	P-29.23	558.21
	Waltermart Supermarket Inc	P-29.25	214.29

	subtotal		***Php35,005.47***
	Total		**Php225,263.23**

In sum, out of the reported input VAT of Php35,130,073.66 only the amount of Php32,747,893.94 represents petitioner's valid input VAT, computed as follows:

Input VAT per Returns		Php 35,130,073.66
Less: Disallowances:		
Unclaimed input VAT	Php 275.99	
Per ICPA findings	1,114,954.80	
Per Court's further verification	225,263.23	1,340,494.02
Properly Substantiated Input VAT		Php 33,789,579.64
Less: Output tax		1,041,685.70
Excess Valid Input VAT		**Php32,747,893.94**

Consequently, only the remaining input VAT of Php32,747,893.94 can be attributed to the total zero-rated sales declared by petitioner in the amount of Php2,153,252,566.67, and only the input VAT of Php32,744,472.01 is attributable to the valid zero-rated sales of Php2,153,027,566.67, computed below as follows:

Excess Valid Input VAT	Php 32,747,893.94
Divide by Declared Zero-Rated Sales	2,153,252,566.67
Multiply by Valid Zero-Rated Sales	2,153,027,566.67
Excess Input VAT Attributable to Valid Zero-Rated Sales	**Php32,744,472.01**

The excess input taxes incurred were not applied against any output VAT liability.

As to the last requisite, this Court finds that petitioner, likewise, complied with the final requisite that the excess input taxes incurred were not applied against any output VAT liability.

Although a portion of the claimed input VAT was carried over by petitioner to its quarterly VAT return for the succeeding first quarter of taxable year 2015[55], the same remained unutilized since it was deducted as "VAT

---

[55] Exhibit "P-35.1", *Line 20A. (Note that only the input VAT of Php34,088,111.36 was carried over to the 1st quarterly VAT return of taxable year 2015.)*

Refund/TCC Claimed"[56] in the same quarter, thereby, preventing the carry-over or application of the claimed input VAT in the succeeding taxable quarters.

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 total amount of **Php32,744,472.01,** representing its excess and unutilized input VAT attributable to its zero-rated sales for the four quarters of taxable year 2014.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ERLINDA P. UY
Associate Justice
Chairperson

---

[56] Exhibit "P-35.2", *Line 23D. (Note that the Php34,088,111.36 reflected as "VAT Refund/TCC Claimed" per the 1st quarterly VAT return for taxable year 2015 is the same with the amount carried over.)*

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