REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

GENERAL MOTORS AUTOMOBILES PHILIPPINES, INC., Petitioner,	**CTA CASE NO. 8976**
	Members:
	CASTAÑEDA, JR., *Chairperson, and* **CASANOVA,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 02 2017 11:00 a.m.

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AMENDED DECISION

CASANOVA, *J.*:

Before this Court is respondent's **Motion for Reconsideration** filed, through registered mail, on December 16, 2016 and received by this Court on January 4, 2017, with petitioner's **Comment/Opposition (On Respondent's Motion for Reconsideration dated 16 December 2016)**, filed on January 30, 2016.

Respondent seeks reconsideration of the Court's Decision dated December 2, 2016, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, this instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** the amount of **₱3,579,874.53** in favor of petitioner, representing the latter's unutilized input VAT attributable to its zero-rated sales for the CY 2012.

SO ORDERED."

In assailing the aforesaid Decision, respondent has presented the following arguments:

1. Input taxes that are not directly attributable to petitioner's zero-rated sales must be excluded;

2. Petitioner failed to prove that its clients/customers are non-resident foreign corporation doing business outside the Philippines;

3. Petitioner fell short of the invoicing requirements under Section 113 of the National Internal Revenue Code of 1997, as amended by Republic Act (R.A.) No. 9337; and

4. Failure to print/imprint the word "zero-rated" on the sales invoices is fatal to a claim for refund of input VAT.

Petitioner has sufficiently established that its clients are non-resident foreign corporations doing business outside the Philippines, and that part of the input taxes claimed are attributable to its zero-rated sales.

Respondent contends that petitioner failed to establish and prove that its sales were directly attributable to the zero-rated sales. Allegedly, the purported zero-rated receipts which petitioner presented do not, in any way, establish that they are directly attributable to zero-rated sales or effectively zero-rated sales. Respondent, likewise, claims that the discrepancy between input Value-Added Tax (VAT) per claim and input VAT per supporting documents only shows that the instant claim for refund must be denied due to inconsistencies.

It is further alleged by respondent that each entity must be supported, at the very least, by both Securities and Exchange Commission (SEC) certificate of registration of corporation/partnership and certificate/articles of foreign incorporation/association/registration to be considered as non-resident foreign corporation doing business outside the Philippines. Respondent posits that the documents presented by petitioner are not sufficient to prove that its clients are non-resident foreign corporations.

Allegedly, except for General Motors Global Service Operations, Inc. and Onstar, LLC. Petitioner failed to present the certificates/articles of foreign incorporation of its clients. Respondent further states that the documents presented as to its clients Chevrolet Sales (Thailand) Ltd., General Motors (Thailand) Limited and General Motors Holdings LLC/General Motors North America/Customer Care and Aftersale merely showed that they are registered in the land of incorporation, but do not prove that they are non-resident foreign corporations doing business outside the Philippines.

On the other hand, petitioner counter-argues that it submitted more than sufficient documents to prove that its clients are non-resident foreign corporations doing business outside the Philippines.

Petitioner also avers that it only made and reported zero-rated sales in calendar year (CY) 2012 which all pertain to sales of consultancy and administrative services to non-resident foreign corporations doing business outside the Philippines. Petitioner alleges that respondent overlooked the fact that the former had no VATable and VAT exempt sales during the said period as it had no domestic sales. Considering that all of petitioner's sales are zero-rated, it is allegedly logical that all of its input VAT should be attributable to the said sales. Petitioner also insists that the Independent Certified Public Accountant (ICPA) confirmed that the input VAT amounting to ₱3,579,874.53 is properly attributable to petitioner's zero-rated sales for CY 2012.

In addition, petitioner claims that the motion for reconsideration is merely a pro-forma motion because respondent failed to provide specific details or to illustrate why the input VAT covered by the claim for refund are not attributable to petitioner's zero-rated sales. Petitioner also alleges that respondent's reliance on the doctrine that tax refunds are in the nature of tax exemptions and must be strictly construed against the claimant is misplaced since the same would not apply in cases where the taxpayer has clearly established its entitlement to a refund based on law and evidence.

The Court finds respondent's arguments bereft of merit.

The Court has enumerated in the assailed Decision the documents presented by petitioner and has already ruled that the same proved that the latter's clients are non-resident foreign corporations doing business outside the Philippines. Contrary to respondent's allegation, petitioner has presented its clients' SEC Certificates of Non-Registration of Company and Certificates of Incorporation/Association/Registration, as follows:

	Documents presented	*Exhibits*
Chevrolet Sales (Thailand) Ltd.	Certification of Non-Registration of Company issued by the Securities and Exchange Commission (SEC), March 16, 2015	Exhibit "P-53-A"
	Consularized Certificate of Residence of Chevrolet Sales (Thailand) Ltd. authenticated by the Philippine Embassy on June 17, 2015	Exhibit "P-52"
	Consularized Certificate of Registration of Chevrolet Sales (Thailand) Ltd. authenticated by the Philippine Embassy on March 30, 2015	Exhibit "P-53"
General Motors (Thailand) Limited	Certification of Non-Registration of Company issued by the SEC, March 17, 2015	Exhibit "P-55-A"
	Consularized Certificate of Residence of General Motors (Thailand) Limited authenticated by the Philippine Embassy on June 17, 2015	Exhibit "P-54"
	Consularized Certificate of Registration of General Motors (Thailand) Limited authenticated by the Philippine Embassy on March 30, 2015	Exhibit "P-55"
General Motors Global Service Operations, Inc.	Certification of Non-Registration of Company issued by the SEC, March 17, 2015	Exhibit "P-57-A"
	Original Certificate of Residence of General Motors Global Service Operations, Inc. issued by the Department of the Treasury Internal Revenue Service in Philadelphia, PA, April 2, 2012	Exhibit "P-56"
	Consularized Certificate of Incorporation of General Motors Global Service Operations, Inc. authenticated by the Philippine Embassy on March 13, 2015	Exhibit "P-57"
Onstar, LLC	Certification of Non-Registration of Company issued by the SEC, March 16, 2015	Exhibit "P-59-A"
	Original Certificate of Residence of Onstar, LLC issued by the Department of the Treasury Internal Revenue Service in Philadelphia, PA, February 27, 2012	Exhibit "P-58"
	Consularized Certificate of Incorporation of Onstar, LLC authenticated by the Philippine Embassy on March 13, 2015	Exhibit "P-59"
General Motors Holdings LLC/General Motors North America/Customer Care and Aftersales	Certification of Non-Registration of Company issued by the SEC, April 14, 2015	Exhibit "P-61-A"
	Certification of Non-Registration of Company issued by the SEC, March 17, 2015	Exhibit "P-61-B"
	Certification of Non-Registration of Company issued by the SEC, April 15, 2015	Exhibit "P-61-C"
	Original Certificate of Residence of General Motors Holdings LLC, Inc. issued by the Department of the Treasury Internal Revenue Service in Philadelphia, PA, April 9, 2012	Exhibit "P-60"
	Consularized Certificate of Formation of General Motors	Exhibit "P-61"

	Holdings LLC authenticated by the Philippine Embassy on May 28, 2015	

Likewise, the Court has considered the testimony of Ms. Modesty N. Alcala showing that the Customer Care and Aftersales is a division of General Motors North America, which is an operating segment of General Motors Holdings LLC, to wit:

> "In the Judicial Affidavit of Ms. Modesty N. Alcala, petitioner's Finance Manager, she manifested that Customer Care and Aftersales is only a division of General Motors North America, an operating segment of General Motors Holdings LLC. All billings to General Motors North America are addressed directly to Customer Care and Aftersales. All receipts for General Motors North America are likewise in the name of Customer Care and Aftersales since it is the Customer Care and Aftersales which directly transacts with petitioner. To prove this, petitioner has submitted Exhibits "P-29" to "P-29-B". Said exhibits are comprised of internal reports such as Forecasts, Variance Budget/Forecast against actual, and IAS Monthly Statement, of Customer Care and Aftersales to petitioner and vice versa for the months of September 2012 and October 2012.
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> The Court notes that even though the internal reports and billing statements pertain to Customer Care & Aftersales, the financial entity indicated in all the reports is GM LLC – GMNA."[1]

Without any convincing evidence to controvert the above ruling, the Court sustains its finding that petitioner complied with the second requisite that the recipient of services is a non-resident foreign corporation doing business outside the Philippines.

As regards the issue on whether the input VAT is attributable to petitioner's zero-rated sales, the Court has ruled in the assailed Decision that only the input VAT of ₱3,579,874.53 can be attributed to petitioner's zero-rated sales, to wit:

> "From the declared input VAT of ₱4,125,644.74, petitioner is claiming the refund of the amount of

[1] Page 12 of the assailed Decision dated December 2, 2016

₱4,125,403.72. In support of the foregoing, petitioner has offered various official receipts and invoices issued by its supplier's *(sic)*, which were examined by the Court-Commissioned Independent CPA (ICPA), Mr. Glenn Ian Villanueva of Reyes Tacandong & Co. In his Report. xxx.

xxx xxx xxx

Apparently, the foregoing findings are in order.

Thus, out of the claimed input VAT of ₱4,125,403.72, petitioner has been able to substantiate only the amount of ₱3,825,492.37, and only the input VAT of ₱3,579,874.53 can be attributed to the zero-rated sales that have been substantiated, computed as follows:

Input VAT claimed for Refund	₱ 4,125,403.72
Less: Disallowances per ICPA Report	299,911.35
Substantiated input VAT	**₱ 3,825,492.37**
Divided by Reported Zero-Rated Sales	₱ 79,207,236.90
Multiply by Substantiated Zero-Rated Sales	₱ 74,121,692.81
Input VAT attributable to Substantiated Zero-Rated Sales	**₱ 3,579,874.53**"[2]

However, as will be discussed, a re-evaluation of the evidence presented by petitioner shows that the amount of substantiated input VAT for the CY 2012 found in the assailed Decision should be reduced, which shall consequently modify the amount of input VAT attributable to the substantiated zero-rated sales.

Additional input taxes should be disallowed as the nature of the services rendered were not indicated in the supporting official receipts.

Respondent avers that petitioner's claimed input taxes on domestic purchases of goods/services must be disallowed on the following grounds: that VAT was not separately indicated in the supporting VAT official receipts/sales invoices; that some of the invoices/receipts do not have the quantity, unit cost, and description of the goods or properties or nature of the service; and, that some of

[2] Pages 12 to 18 of the assailed Decision dated December 2, 2016

the sales invoices/official receipts are without TIN and address of petitioner.

Respondent also claims that failure to print/imprint the word "zero-rated" on the sales invoices is fatal to a claim for refund of input VAT.

Petitioner opposes respondent's arguments stating that the same have no basis and petitioner complied with the invoicing requirements provided in Section 113 of the Tax Code. Petitioner asserts that Mr. Glenn Ian D. Villanueva, the ICPA, examined all the original commercial invoices and official receipts dated January to December of CY 2012. After the said examination, the ICPA allegedly determined that only ₱299,911.35 out of the ₱4,125,403.72 claimed input VAT failed to comply with the invoicing requirements. Petitioner also claims that respondent failed to identify the specific commercial invoices and/or official receipts that do not satisfy the requirements provided in Section 113 of the Tax Code.

Based on the foregoing arguments, the Court finds it proper to revisit and further scrutinize the supporting documents presented by petitioner.

A careful evaluation of the invoices and official receipts supporting petitioner's input VAT reveals that the additional input VAT of ₱3,552,703.74 should be disallowed as the nature of services rendered were not indicated in the supporting official receipts, in violation of Section 113(B)(3) of the NIRC of 1997, as amended, detailed as follows:

Exhibit	Supplier	Invoice/ Official Receipt No.	Disallowed Input VAT
P-65 p. 001	Airfrieght 2100, Inc.	1667528A	₱ 330.53
P-65 p. 002	Airfrieght 2100, Inc.	1686040A	323.48
P-65 p. 003	Airfrieght 2100, Inc.	1678384A	319.35
P-65 p. 004	Angara Abello Concepcion Regala & Cruz	61589	9,000.00
P-65 p. 005	John Clements Consultants, Inc.	111387	6,219.69
P-65 p. 006	John Clements Consultants, Inc.	111599	6,571.22
P-65 p. 007	Manabat Delgado Amper & Co.	14338	52,800.00
P-65 p. 008	North Point Printing Press	11837	407.14
P-65-A p. 037	Business Process Outsourcing International Inc.	51388	1,228.08
P-65-A p. 038	Business Process Outsourcing International Inc.	51773	6,940.08
P-65-A p. 039	CEO Suite Philippine Branch	2839	3,096.00
P-65-A p. 040	Commonwealth Tire Service Center	19445	2,298.21

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P-65-A p. 043	John Clements Consultants, Inc.	111959	7,158.63
P-65-A p. 044	John Clements Consultants, Inc.	112042	7,595.62
P-65-A p. 045	Lane Archive Technologies Corp	37096	5,824.20
P-65-A p. 047	SGV & Co.	96793	144.00
P-65-A p. 048	SGV & Co.	96816	26,400.00
P-65-B p. 150	Adventure International Tours, Inc.	200-00025295	36.00
P-65-B p. 151	Angara Abello Concepcion Regala & Cruz	63929	9,000.00
P-65-B p. 152	Angara Abello Concepcion Regala & Cruz	66050	79,086.10
P-65-B p. 154	BPO Outsourcing International Inc.	53143	2,070.60
P-65-B p. 155	BPO Outsourcing International Inc.	52503	1,642.20
P-65-B p. 156	BPO Outsourcing International Inc.	53521	1,642.20
P-65-B p. 157	BPO Outsourcing International Inc.	54292	1,642.20
P-65-B p. 160	Hewlett-Packard Phils. Corporation	121663	378,453.65
P-65-B p. 161	Hewlett-Packard Phils. Corporation	123209	378,002.97
P-65-B p. 162	Hewlett-Packard Phils. Corporation	123583	374,941.76
P-65-B p. 163	Hewlett-Packard Phils. Corporation	124400	380,812.18
P-65-B p. 164	Hewlett-Packard Phils. Corporation	122412	379,644.53
P-65-B p. 165	John Clements Consultants, Inc.	112548	8,341.56
P-65-B p. 166	John Clements Consultants, Inc.	112295	7,333.85
P-65-B p. 167	John Clements Consultants, Inc.	112741	7,854.95
P-65-B p. 168	John Clements Consultants, Inc.	112989	7,299.96
P-65-B p. 170	Lane Archive Technologies Corp	37095	5,790.60
P-65-B p. 171	Lane Archive Technologies Corp	37097	5,790.60
P-65-B p. 172	Manabat Delgado Amper & Co.	15003	33,600.00
P-65-B p. 174	SGV & Co.	97849	24,569.40
P-65-B p. 175	SGV & Co.	99823	264.00
P-65-C p. 261	Angara Abello Concepcion Regala & Cruz Law Offices	66850	41,760.00
P-65-C p. 262	Angara Abello Concepcion Regala & Cruz Law Offices	68397	23,880.00
P-65-C p. 263	Business Process Outsourcing International Inc.	54810	1,642.20
P-65-C p. 264	Business Process Outsourcing International Inc.	55328	1,642.20
P-65-C p. 265	Business Process Outsourcing International Inc.	54292	1,642.20
P-65-C p. 266	Business Process Outsourcing International Inc.	55909	1,642.20
P-65-C p. 270	Hewlett-Packard Phils. Corp.	125116	374,226.87
P-65-C p. 271	Hewlett-Packard Phils. Corp.	125843	371,789.66
P-65-C p. 272	Hewlett-Packard Phils. Corp.	126389	372,651.90
P-65-C p. 273	John Clements Consultants, Inc.	113242	7,361.89
P-65-C p. 274	John Clements Consultants, Inc.	113478	7,099.20
P-65-C p. 275	John Clements Consultants, Inc.	113756	5,932.25
P-65-C p. 277	Lane Archive Technologies Corp.	35802	5,790.06
P-65-C p. 278	Manabat Delgado Amper & Co.	15281	803.57
P-65-C p. 279	Cebu City Marriott Hotel	169865	1,944.00
P-65-C p. 280	Quaerito Qualitas Inc.	4357	77,280.00
P-65-C p. 281	SGV & Co	102714	31,140.00
TOTAL			**₱ 3,552,703.74**

Thus, petitioner's substantiated input VAT for the CY 2012 as found in the assailed Decision shall be reconsidered and adjusted from ₱3,825,492.37 to ₱272,788.63. Consequently, only the input VAT of ₱255,274.09 can be attributed to the zero-rated sales that have been substantiated, computed as follows:

Input VAT claimed for Refund		₱ 4,125,403.72
Less: Disallowances		
Per ICPA Report	₱ 299,911.35	
Per this Motion for Consideration	3,552,703.74	3,852,615.09
Substantiated input VAT		**₱ 272,788.63**
Divided by Reported Zero-Rated Sales		₱ 79,207,236.90
Multiply by Substantiated Zero-Rated Sales		₱ 74,121,692.81
Input VAT attributable to Substantiated Zero-Rated Sales		**₱ 255,274.09**

WHEREFORE, premises considered, respondent's **Motion for Reconsideration** is **PARTIALLY GRANTED**. Accordingly, the dispositive portion of the Decision of this Court dated December 2, 2016 is hereby amended to read as follows:

> "**WHEREFORE**, premises considered, this instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** the amount of **₱255,274.09** in favor of petitioner, representing the latter's unutilized input VAT attributable to its zero-rated sales for the CY 2012.
>
> **SO ORDERED.**"

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

I CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended 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.
JUANITO C. CASTANEDA, JR
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended 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