REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

AIG SHARED SERVICES CORPORATION (PHILIPPINES) (FORMERLY CHARTIS TECHNOLOGY AND OPERATIONS MANAGEMENT CORPORATION (PHILIPPINES),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 8615 & 8647

Members:

CASTAÑEDA, JR., *Chairperson,*
and
MANAHAN, *JJ.*

Promulgated:
OCT 04 2018
2:10 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

STATEMENT OF THE CASE

Before this Court are the Petitions for Review filed by petitioner AIG Shared Services Corporation (Philippines) ("Petitioner") on February 28, 2013,[1] docketed as CTA Case No. 8615 (CTA Second Division), and on April 26, 2013,[2] docketed as CTA Case No. 8647 (CTA

[1] CTA Case No. 8615, Docket Vol. I, p. 6.
[2] Docket, CTA Case No. 8647, p. 6.

Third Division). CTA Case No. 8647 was consolidated with CTA Case No. 8615, the case bearing the lower docket number.[3]

The instant consolidated cases are judicial claims for refund or issuance of a tax credit certificate in the aggregate amount of ₱69,441,211.76 allegedly representing excess and unutilized input VAT, which are allegedly attributable to zero-rated transactions, for the period covering the fiscal year (FY) 01 December 2010 to November 30, 2011, broken down as follows:

CTA Case No.	Period Covered	Amount of Claim
8615	Dec. 1, 2010 to Feb. 28, 2011	₱ 16,626,536.73
8647	Mar. 1, 2011 to Nov. 30, 2011	52,814,675.03
	TOTAL	**₱ 69,441,211.76**

THE FACTS

Petitioner is a foreign corporation duly registered with and authorized by the Securities and Exchange Commission ("SEC") to operate as a Regional Operating Headquarters ("ROHQ") in the Philippines under Amended SEC License No. 152 issued on 25 November 2008.[4] Petitioner's principal office address is at the 46th Floor PBCom Tower, 6795 Ayala Avenue corner Rufino Street, Makati City.[5]

Petitioner's change of name from "Chartis Technology and Operations Management Corporation (Philippines)" to its present name, "AIG Shared Services Corporation (Philippines)", was approved by the SEC through Amended License No. FM00000152 issued on 31 January 2013.[6]

Petitioner is an entity registered for Value-Added Tax ("VAT"), as indicated in Bureau of Internal Revenue ("BIR") Certificate of Registration numbered OCN 9RC0000355401 dated 13 September 1977.[7]

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[3] Docket, CTA Case No. 8647, June 25, 2013 Resolution of the CTA Third Division; Docket, CTA Case No. 8615, Vol. 1, p. 106, July 3, 2013 Resolution,
[4] Stipulation of Facts, par. 1.1, Consolidated Joint Stipulation of Facts and Issues ("CJSFI"), Docket, CTA Case No. 8615, Vol. I, p.175.
[5] Stipulation of Facts, par. 1.3, CJSFI, *Id.*, p. 176.
[6] Stipulation of Facts, par. 1.2, CJSFI, *Id.*, p. 175.
[7] Stipulation of Facts, par. 1.5, CJSFI, *Id.*, p. 176.

As ROHQ, petitioner is engaged in the business of providing qualifying services to its affiliates and related parties in the Asia-Pacific Region and in other foreign markets.[8]

Respondent is the Commissioner of Internal Revenue, who holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[9] Respondent is vested with the power to decide tax cases, including claims for refund and/or tax credits pursuant to Section 4 of the 1997 National Internal Revenue Code, as amended.[10]

On February 28, 2013, petitioner filed its judicial claim for refund/tax credit of its alleged excess and unutilized input VAT for the 1st Quarter of fiscal year 2011 (01 December 2010 to 28 February 2011), docketed as CTA Case No. 8615.

On April 26, 2013, petitioner filed its judicial claim for refund/tax credit of its alleged excess and unutilized input VAT for the 2nd to 4th Quarters of fiscal year 2011 (01 March 2011 to 30 November 2011), docketed as CTA Case No. 8647.

On April 26, 2013,[11] within the period of extension granted,[12] respondent filed an Answer in CTA Case No. 8615, with the following Special and Affirmative Defenses:

> xxx xxx xxx
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> 6. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative investigation/examination by the respondent's Bureau.
>
> 7. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.
>
> 8. Petitioner's claim for refund or issuance of tax credit certificate in the amount of P16,626,536.73 representing alleged excess and unutilized input VAT paid for the period of December 01, 2010 to February 28, 2011 or the 1st Quarter of fiscal year 2011, were not fully

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[8] Stipulation of Facts, par. 1.4, CJSFI, CTA Case No. 8615, Docket Vol. I, p. 176.
[9] Stipulation of Facts, par. 1.6, CJSFI, *Id.*
[10] Stipulation of Facts, par. 1.8, CJSFI, *Id.*
[11] CTA Case No. 8615, Docket Vol. I, p. 90.
[12] Order dated April 4, 2013, *Id.*, p. 86.

substantiated by proper documents, such as sales invoices and official receipts, pursuant to Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code.

9. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to claimed refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit.

10. It is incumbent upon the latter to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

11. Claims for refund are construed strictly against herein petitioner since the same partakes the nature of exemption from taxation (***Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95***) and as such, they are looked with disfavor (***Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211***).

On June 3, 2013,[13] within the period of extension granted,[14] respondent filed an Answer in CTA Case No. 8647, with the following Special and Affirmative Defenses:

xxx xxx xxx

4. Petitioner's alleged claim for issuance of tax credit certificate/refund is still subject to administrative routinary investigation/examination by the respondent's Bureau;

5. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.

6. Petitioner's claim for refund or issuance of tax credit certificate in the amount of **Php52,814,675.03,** as alleged excess and unutilized input VAT paid for the 2[nd], 3[rd] and 4[th] Quarters of Fiscal Year 2011 were not fully substantiated by proper documents, such as sales invoices, official receipts and other pertinent documents.

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[13] CTA Case No. 8647, Docket, p. 79.
[14] *Id.*, p. 60.

7. In an action for refund/credit, the burden of proof is upon petitioner to establish its right to the claimed refund and failure to adduce sufficient proof is fatal to its claim.

8. Petitioner's sales of services to various alleged non-resident foreign affiliates and other related parties do not qualify as zero-rate VAT.

9. The amount subject of the claim for refund of petitioner does not pertain in full to its input VAT attributable to its zero-rated sales for the 2nd, 3rd and 4th Quarters of Fiscal Year 2011.

10. Petitioner failed to comply with the substantiation requirements under Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code.

11. Petitioner failed to comply with the conditions/requirements under Section 112 (A) (B) (C) (D) of the 1997 Tax Code.

12. Claims for refund are construed strictly against herein petitioner for the same partakes the nature of exemption from taxation ***(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and as such, they are looked upon with disfavor ***(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)***.

On May 9, 2013, the Court set the pre-trial conference in CTA Case No. 8615 on June 6, 2013.[15] However, the pre-trial conference was cancelled and reset on July 18, 2013, when the Court granted petitioner's "Urgent Motion *(To Postpone Pre-Trial Conference)*.[16] The Court received Respondent's Pre-Trial Brief on May 30, 2013.[17]

On May 30, 2013, petitioner filed its Motion for Consolidation.[18]

[15] CTA Case No. 8615, Docket Vol. 1, p. 91.
[16] *Id.*, p. 101.
[17] *Id.*, p. 92.
[18] CTA Case No. 8647, Docket, p. 61.

On June 17, 2013, the CTA Third Division set the pre-trial conference for CTA Case No. 8647 on August 1, 2013.

On June 25, 2013, there being no objection on the part of respondent, the CTA Third Division granted petitioner's Motion to Consolidate CTA Case No. 8647 with CTA Case No. 8615, which bears a lower docket number and pending before the CTA Second Division.[19]

On July 3, 2013, the CTA Second Division had no objection to the June 25, 2013 Resolution of the CTA Third Division. The cases were set for consolidated pre-trial on July 18, 2013.[20]

On July 10, 2013, the Court issued an Order granting petitioner's "Urgent Motion (To Postpone Pre-Trial Conference)." As prayed for, the consolidated pre-trial conference was cancelled and reset to August 29, 2013.[21]

On August 13, 2013, the Court received Consolidated Pre-Trial Brief (for the Respondent), which was filed *via* registered mail on August 7, 2013.[22]

On August 28, 2013, petitioner filed its Consolidated Pre-Trial Brief for the Petitioner (With Manifestation).[23]

On August 29, 2013, both parties submitted their respective Special Power of Attorney (SPA) in open court. Petitioner requested for a resetting, and respondent interposed no objection, thus, Pre-Trial Conference was reset on November 7, 2013.[24]

On October 25, 2013, petitioner filed an Urgent Motion (To Postpone Pre-Trial Conference).[25] The Court granted said motion, thus, the pre-trial conference was reset to December 5, 2013.[26]

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[19] CTA Case No. 8615, Docket Vol. I, pp. 103-104.
[20] *Id.*, pp. 106-107.
[21] *Id.*, p. 113.
[22] *Id.*, pp. 117-121.
[23] *Id.*, pp. 122-152.
[24] *Id.*, p. 159.
[25] *Id.,* pp. 160-163.
[26] *Id.*, p. 167.

On December 2, 2013, petitioner filed an Urgent Motion (To Postpone Pre-Trial Conference). The Court proceeded with the Pre-Trial of the instant case on December 5, 2013.[27]

On January 10, 2014, petitioner and respondent filed their Consolidated Joint Stipulation of Facts and Issues.[28]

On January 21, 2014, the Court granted petitioner's "Urgent Motion to Reset Hearing" filed on January 16, 2014. As prayed for, the initial presentation of the evidence for the petitioner was rest to February 24, 2014.[29]

On January 24, 2014, the Court issued the Pre-Trial Order.[30]

On February 24, 2014 Hearing, there being no objection on the part of respondent's counsel, the Court granted petitioner's "Motion to Amend Pre-Trial Order to Reflect Correct List and Pre-Marking of Petitioner's Documentary Evidence." The Court also noted petitioner's "Manifestation *(Re: Sworn Witness Statement of Mary Cris Barayuga in lieu of direct testimony).*"[31]

On the same Hearing date, petitioner's witness, Ms. Mary Cris Barayuga, was called to the witness stand and testified on direct testimony, by way of her Sworn Statement filed on February 21, 2014.[32] Ms. Barayuga is the current Senior Manager for Finance and Accounting of petitioner.[33] She previously worked as petitioner's Accounting Manager for Business Processing Outsourcing (BPO) Operations from 2010 to 2012 until her promotion as Senior Manager in 2012.[34] Counsel for the respondent conducted a cross examination of the said witness.[35] The Court granted the request of petitioner's counsel for the cancellation of the scheduled hearing on March 12, 2014, without objection from respondent.[36] The continuation of petitioner's evidence was set on April 2, 2014.[37]

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[27] CTA Case No. 8615, Docket Vol. I, p. 174.
[28] *Id.*, pp. 175-178.
[29] *Id.*, p. 185.
[30] *Id.*, pp. 187-198.
[31] *Id.*, p. 632.
[32] *Id.*
[33] *Id.*, pp. 208-209.
[34] *Id.*, p.209.
[35] *Id.*, p. 632.
[36] *Id.*
[37] *Id.*

On April 2, 2014, there being no objection from respondent, the Court granted petitioner's Motion to Reset Hearing filed on April 1, 2014, subject to the payment of fine.[38]

On April 16, 2014, petitioner filed a Manifestation *(Re: Sworn Statement of Pradeep Bhanotha in lieu of direct testimony)*[39] and the Sworn Statement of Pradeep Bhanotha in Lieu of Direct Testimony.[40] Mr. Bhanotha is the current Chief Executive Officer (CEO) of petitioner. On April 21, 2014, Petitioner's witness, Pradeep Bhanotha, testified on direct, cross and redirect examinations. No re-cross examination was conducted. Upon motion of the counsel for petitioner, petitioner was allowed to recall witness Bhanotha in the next hearing.[41]

On April 28, 2014, petitioner filed a Motion to Commission an Independent Certified Public Accountant (ICPA),[42] which was granted by the Court on May 21, 2014.[43]

On May 16, 2014, petitioner filed a Manifestation *(Re: Supplemental Sworn Statement of Pradeep Bhanotha in lieu of direct testimony)*[44] and the Supplemental Sworn Statement of Pradeep Bhanotha in Lieu of Direct Testimony.[45] On May 21, 2014, witness Bhanotha was recalled to the witness stand and testified on direct examination, by way of a Supplemental Sworn Statement filed on May 16, 2014.[46]The witness testified again as to the remaining Master Service Agreements or MSAs that he said were available at his office but not yet made available to petitioner's counsel or to the Court.[47]

On July 17, 2014, petitioner filed a Manifestation (*Re:Sworn Witness Statement of Mary Ann C. Capuchino in lieu of direct testimony)*[48] and the Sworn Statement of Mary Ann C. Capuchino in Lieu of Direct Testimony.[49] On July 21, 2014, petitioner's witness, Ms.

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[38] Docket Vol. II, p. 639.
[39] *Id.*, pp. 640-641.
[40] *Id.*, pp. 642-659.
[41] *Id.*, p. 831.
[42] *Id.*, pp. 832-834.
[43] Docket Vol. IV, p. 1474.
[44] Docket Vol. III, pp. 844-845.
[45] *Id.*, pp. 846-896.
[46] Docket Vol. IV, p. 1474.
[47] Docket Vol. III, p. 847; No. 3 Q &A in the Supplemental Sworn Statement of Pradeep Bhanotha in Lieu of Direct Testimony, p. 2.
[48] Docket Vol. IV, pp. 1476-1478.
[49] *Id.*, pp. 1481-1489.

Capuchino as the ICPA, testified on direct. Counsel for respondent did not conduct cross-examination on the witness.[50]

On August 15, 2014, petitioner filed a Manifestation (Re: Supplemental Judicial Affidavit of Mary Cris Barayuga in lieu of direct testimony)[51] and the Supplemental Judicial Affidavit of Mary Cris Barayuga in Lieu of Direct Testimony.[52]

On August 20, 2014, petitioner's last witness Barayuga testified[53] and a Commissioner's Hearing before the Executive Clerk of Court III of this Court was set on September 1, 2014 for the comparison of petitioner's exhibits. The Court granted petitioner until September 21, 2014 to file its Formal Offer of Evidence (FOE). Respondent was given ten (10) days from receipt thereof to file Comment. Respondent's counsel manifested that this case has no case report of investigation and that he has no witness to present in this case.[54]

On October 14, 2014, in the interest of justice, petitioner's "Motion to Admit (Petitioner's Formal Offer of Evidence dated 07 October 2014)" filed on October 8, 2014 was granted and the attached Formal Offer of Exhibits was admitted.[55] Respondent filed Comment to Petitioner's Formal Offer of Evidence on October 23, 2014.[56]

On November 28, 2014, the Court admitted Exhibits "P-2", "P-3", "P-163", "P-164", "P-181", "P-181-a", "P-200", "P-241", "P-242", "P-289", "P-291" to "P-317" and "P-389", subject to this Court's final evaluation and/or appreciation of their purposes, materiality, relevancy and probative value to the issues involved in this case.[57] The Court likewise admitted the following judicial affidavits of petitioner's witnesses: 1. Supplemental Sworn Statement of Pradeep Bhanotha dated April 14, 2014; Supplemental Sworn Statement of Pradeep Bhanotha dated May 15, 2014 (Offered as Exhibit "P-200"); and Supplemental Sworn Statement of Mary Ann C. Capuchino dated July 15, 2014.[58] On the other hand, the admission of the following exhibits were DENIED: 1.)Exhibits "P-1", "P-4" to "P-8", "P-9" to "P-9-b", "P-

[50] Docket Vol. IV, p. 1490.
[51] *Id.*, pp. 1491-1493.
[52] *Id.*, pp. 1495-1508.
[53] *Id.*, p. 1912.
[54] *Id.*
[55] *Id.*, p. 1996.
[56] *Id.*
[57] *Id.*, pp. 2002-2003.
[58] *Id.*, p. 2003.

10", "P-10-a", "P-11", "P-11-a", "P-12" to "P-12-b", "P-13", "P-13-a", "P-14", "P-14-a", "P-15" to "P-15-b", "P-16", "P-16-a", "P-17", "P-17-a", "P-18" to "P-18-b", "P-19", "P-19-a", "P-20", "P-20-a", "P-21", "P-21-a", "P-22", "P-22-a", "P-23", "P-23-a", "P-24" to "P-24-b", "P-25", "P-25-a", "P-26" to "P-33", "P-34-a", "P-34-b", "P-35-a", "P-35-b", "P-36-a", "P-36-b", "P-37-a" to "P-37-f", "P-38" to"P-50", "P-52" to "P-88", "P-91" to "P-96","P-167" to "P-179", "P-180" to "P-180-b", "P-182" to "P-189", "P-191" to "P-198", "P-201" to "P-215", "P-217" to "P-225", "P-227" to "P-230", "P-232" to "P-234", "P-318", "P-318-a", "P-319", "P-319-a", "P-320" to "P-323", "P-324", "P-324-a", "P-324-c" to "P-324-n',"P-325", "P-326", "P-326-a", "P-327" to "P-332", "P-334" to "P-336-a", "P-337" to "P-379", "P-381" to "P-383" , and "P-385" to "P-388", for failure of petitioner to submit the originals for comparison; 2.) Exhibits "P-90","P-190", "P-199", "P-216", "P-226","P-231", "P-324-b", "P-333", "P-380", and "P-384" for failure of petitioner to submit the originals for comparison and for failure of the said documents to correspond with the exhibits formally offered; and 3.) Exhibits "P-243" to "P-250", "P-251", "P-251.1", "P-252" to "P-288" and "P-336-o", for not being found in the records.[59]

On December 24, 2014, petitioner filed its Motion for Reconsideration (And to Reopen Trial for Reception of Additional Evidence).[60] Respondent failed to file comment on petitioner's Motion for Reconsideration (And to Reopen Trial for Reception of Additional Evidence).[61]

On March 10, 2015, in the interest of justice, the Motion to Reopen Trial for Reception of Additional Evidence was granted.[62] This case was set for a commissioner's hearing on April 15, 2015 for the presentation and submission of the originals of Exhibits "P-9" to "P-19-a", "P-24" to "P-24-b", "P-26" to "P-29", "P-30" to "P-33", "P-34-a" to "P-37-f", "P-38" to "P96", "P-167" to "P-170", "P-180", "P-182" to "P-199", "P-201" to "P-234", "P-243" to "P-250", "P-251", "P-251.1", "P-252" to "P-288" and "P-324" to "P-324-o", and for the comparison with the originals of petitioner's documentary exhibits.[63] Likewise, this case was set for the presentation of petitioner's witnesses, Mr. Pradeep Bhanotha and Ms. Mary Cris Barayuga, on May 4, 2015 to establish the existence, execution, loss or unavailability, and contents of the documentary exhibits presented by petitioner as secondary evidence.[64]

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[59] Docket Vol. IV, pp. 2003-2006.
[60] *Id.*, pp. 2014- 2028.
[61] *Id.*, p. 2033.
[62] *Id.*, p. 2040.
[63] *Id.*
[64] *Id.*, p. 2041.

In the meantime, Resolution of petitioner's "Motion for Reconsideration" was held in abeyance.[65]

On April 14, 2015, the Court granted petitioner's "Motion to Schedule Commissioner's Hearings" filed on April 10, 2015. Commissioner's hearings were set on April 22, 27 & 29, 2015.[66] The Commissioner's hearing set on April 27, 2015 was cancelled.[67]

On April 22, 2015, the Court granted petitioner's "Motion to Reset the Presentation of Witnesses Scheduled on 4 May 2015" filed on April 17, 2015.[68] The presentation of petitioner's witnesses, Mr. Bhanotha and Ms. Barayuga, was reset to May 25, 2015.[69]

On May 19, 2015, petitioner filed its Manifestation *(Re: Supplemental Sworn Statement of Pradeep Bhanotha in lieu of direct testimony)*[70] and the Supplemental Judicial Affidavit of Pradeep Bhanotha in lieu of Direct Testimony.[71] On May 25, 2015, petitioner recalled witness Bhanotha who testified on direct examination without any cross-examination, thus, his testimony was deemed complete and terminated.[72] Upon motion, Commissioner's hearing was set on June 29, 2015 and continuation of petitioner's presentation of evidence for the recall of Ms. Barayuga was set on July 20, 2015.[73]

On July 14, 2015, petitioner filed its Manifestation (Re: Supplemental Sworn Statement of Mary Cris Barayuga in lieu of direct testimony)[74] with the attached Supplemental Judicial Affidavit of Mary Cris Barayuga in Lieu of Direct Testimony.[75] On July 20, 2015, petitioner recalled its witness, Ms. Barayuga who testified on direct examination by way of her Supplemental Judicial Affidavit, without cross-examination conducted by the respondent.[76] During the hearing, witness Barayuga manifested that the documents referred in her judicial affidavit are documents submitted by petitioner's foreign affiliates, and that despite several request, the latter failed to provide

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[65] Docket Vol. IV, p. 2041.
[66] Docket Vol. V, p. 2046.
[67] *Id.*, p. 2073
[68] *Id.*, p. 2060.
[69] *Id.*
[70] *Id.*, pp. 2080-2081.
[71] *Id.*, pp. pp. 2082-2114.
[72] *Id.*, p. 2121.
[73] *Id.*
[74] *Id.*, pp. 2142-2143.
[75] *Id.*, pp. 2145-2175.
[76] *Id.*, p. 2176.

the latter with consularized copies thereof, and upon oral motion to admit these documents as secondary evidence.[77] Respondent was given five (5) days to Comment.[78]

On October 6, 2015, the Court resolved petitioner's Motion for Reconsideration, filed through registered mail on December 24, 2014 and received by the Court on January 7, 2015, without respondent's comment despite notice; and petitioner's Supplemental Formal Offer of Evidence (FOE), filed through registered mail on July 24, 2015 and received by the Court on July 30, 2015.[79] Acting on petitioner's Supplemental Formal Offer of Evidence (FOE), the Court admitted Exhibits "P-182a", "P-182b", "P-182c", "P-183a" to "P-183c", "P-183d"', "P-183e", "P-183f", "P184a" to "P-184d", "P-185a", "P-186a", "P-187a", "P-187b", "P-189a", "P-189b", "P-190a" to "P-190c", "P-191a", "P-192a", "P-193a" to "P-193c', "P-195a", "P-195b", "P-196a", "P-201a", "P-202a" to "P-202c", "P-203a", "P-204a", "P-205a", "P-206a" to "P-206d", "P-208a", "P-208b", "P-208c", "P-212a", "P-214a", "P-215a", "P-216a", "P-217a", "P-218a", "P-219a', "P-220a", "P-220b", "P-221a" to "P-221c", "P-221d", "P-222a", "P-222b", "P-222c", "P-22d", "P-223a", "P-224a", "P-225a", "P-229a", "P-232a", "P-391b", "P-392a", "P-392b", "P-393a" to "P-393f", "P-394", "P-395", "P-396", "P-397", "P-398", "P-399a" to "P-399g", "P-400", and "P-400o", subject to the Court's final evaluation and/or appreciation of their purposes, materiality, relevancy and probative value to the issues involved in this case. Petitioner's Motion for Reconsideration was partially granted. Exhibits "P-1", "P-4" to "P-8", "P-9" to "P-9-b", "P-10", "P-10-a", "P-11", "P-11-a", "P-12" to "P-12-b", "P-13", "P-13-a", "P-14", "P-14-a", "P-15" to "P-15-b", "P-16", "P-16-a", "P-17", "P-17-a", "P-18" to "P-18-b", "P-19", "P-19-a", "P-20", "P-20-a", "P-21", "P-21-a", "P-22", "P-22-a", "P-23", "P-23-a", "P-24" to "P-24-b", "P-25", "P-25-a", "P-26" to "P-33", "P-34-a", "P-34-b", "P-38" to"P-50", "P-52" to "P-88", "P-90", "P-91" to "P-96" were admitted. However, Exhibits "P-1", "P-4" to "P-8", "P-35-a", "P-35-b", "P-36-a", "P-36-b", "P-37-a" to "P-37-f", ","P-167" to "P-170", "P-180", "P-182" ,"P-183", "P-184", "P-185", "P-186","P-187","P-188", "P-189", "P-190" ,"P-191", "P-192" ,"P-193" , "P-194", "P-195", "P-196", "P-197", "P-198", "P-199", "P-201", "P-202", "P-203", P-204", P-205", "P-206", "P-207", "P-208", "P-209", "P-210", "P-211", "P-212", P-213", "P-214", "P-215", "P-216", "P-217", "P-218", "P-219", "P-220", "P-221", "P-222", "P-223", "P-224", "P-225", "P-226", "P-227", "P-228", "P-229", "P-230", "P-231", "P-232", "P-233" and "P-

[77] Docket Vol. V, p. 2176.
[78] *Id.*
[79] Docket Vol. VI, pp. 2776-2785.

234", "P-243 to "P-250", "P-251", "P-251.1", "P-252 to "P-288" and "P-318" to "P-388" were still denied.

On November 11, 2015, the Court granted petitioner's "Motion for Extension of Time (To File Memorandum of Petitioner)." As prayed for, petitioner was given until December 11, 2015, within which to file its memorandum.

On November 26, 2015, the Court received Memorandum for Respondent.[80]

On December 10, 2015, petitioner filed a Motion to Defer Submission of Memorandum with Prayer to Re-Open the Case for Submission of Additional Documentary and Testimonial Evidence. On December 15, 2015, the Court ordered respondent to file Comment on the said motion. However, respondent failed to file Comment per Records Verification dated January 8, 2016.

On February 9, 2016, the Court granted petitioner's Motion to Defer Submission of Memorandum with Prayer to Re-open the Case for Submission of Additional Documentary and Testimonial Evidence.[81] Thereafter, Commissioner's Hearings were conducted.

On June 17, 2016, petitioner filed its Manifestation (Re: Supplemental Sworn Statement of Mary Cris Barayuga in lieu of direct testimony)[82] with the attached Sworn Statement of Mary Cris Barayuga in Lieu of Direct Testimony.[83] On June 22, 2016, petitioner recalled witness Barayuga.

On July 12, 2016, petitioner filed its Supplemental Formal Offer of Evidence (FOE).[84] Respondent failed to file comment on this Supplemental FOE.[85]

On September 6, 2016, the Court admitted Exhibits "P-182d", "P-183g", "P-183h", "P-183i", "P-184e", "P-185b", "P-185c", "P-185d", "P-187c", "P-188a", "P-189a", "P-190d", "P-190e", "P-190f", "P-191b", "P-

[80] Docket Vol. VI, pp. 2791-2797.
[81] *Id.*, pp. 2981-2983.
[82] *Id.*, pp. 3013-3015.
[83] *Id.*, pp. 3017-3038.
[84] *Id.*, pp. 3040-3057.
[85] *Id.*, p. 3462.

192b", "P-193d", "P-194a", "P-195a", "P-196b", "P-197a", "P-198a", "P-201b", "P-202d", "P-202e", "P-202f", "P-203b", "P-206e", "P-206f", "P-206g", "P-208d", "P-208e", "P-210d", "P-211a", "P-212b", "P-212c", "P-212d", "P-212e", "P-212f", "P-213a", "P-213b", "P-213c", "P-213d", "P-214b", "P-214c", "P-215b", "P-215c", "P-215d", "P-216b", "P-216c", "P-216d", "P-217b", "P-218b", "P-218c", "P-218e", "P-220c", "P-224b", "P-225b", "P-225c", "P-226a", "P-228a", "P-229b", "P-230a", "P-231a", "P-233a", "P-399h", "P-399i", "P-399j", "P-402" and "P-402a", subject to this Court's final evaluation and/or appreciation of their purposes, materiality, relevancy and probative value to the issues involved in this case. The Court denied Exhibits "P-184f", for not being found in the records; "P-190g" and "P-234d", for failure to identify; Exhibits "P-221e" and "P-394a", for failure to submit the originals for comparison; Exhibits "P-207a", "P-210b", "P-210c", "P-222e" and "P-227a", for failure to correspond with the documents actually marked, and Exhibit "P-225d", for failure to correspond with the document actually marked and for failure to properly identify.

On September 28, 2016, petitioner filed a Motion (a) For Partial Reconsideration of the Resolution dated 06 September 2016; and (b) Recall of Witness of Ms. Mary Cris Barayuga.[86]

On October 3, 2016, petitioner filed a Motion to Admit (Re: Sworn Statement of Ms. Mary Cris Barayuga)[87] with attached Sworn Statement of Mary Cris Barayuga in Lieu of Direct Testimony.[88]

On January 25, 2017, the Court granted petitioner's Motion for Recall of Witness Ms. Mary Cris Barayuga.[89] On February 15, 2017, petitioner recalled witness Barayuga.[90]

On March 2, 2017, petitioner filed its Supplemental Formal Offer of Evidence.[91] On March 3, 2017, respondent filed his Comment to Petitioner's Supplemental Formal Offer of Evidence dated March 2, 2017.[92]

On August 7, 2017, the Court granted petitioner's Motion for Partial Reconsideration of the Resolution dated 06 September 2016,

[86] Docket Vol. VII, pp. 3468-3471.
[87] *Id.*, pp. 3473-3475.
[88] *Id.*, pp. 3477-3493.
[89] *Id.*, pp. 3652-3656.
[90] *Id.*, p. 3663.
[91] *Id.*, pp. 3666-3681.
[92] *Id.*, pp. 3683-3684.

and Motion to Admit (Re: Sworn Statement of Ms. Mary Cris Barayuga). Also, the Court acting on petitioner's Supplemental FOE admitted Exhibits "P-184f", "P-190g", "P-192c", "P-192d", "P-192e", "P-192f", "P-193e", "P-194b", "P-197b", "P-207a", "P-210b", "P-210c", "P-221e", "P-222e", "P-225d", "P-226b", "P-227a", "P-230b", "P-231b", "P-233b", "P-234d", "P-234e", "P-394a", "P-394b", "P-402b", and "P-402c", subject to this Court's final evaluation and/or appreciation of their purposes, materiality, relevancy and probative value to the issues involved in this case.

On September 20, 2017, the Court granted petitioner's "Motion (Re: Additional Time to File Memorandum)" filed on September 15, 2017.

On September 25, 2017, petitioner filed its Memorandum.[93]

On October 10, 2017, this case was submitted for decision.

ISSUES[94]

The parties submit the following issues for the resolution by the Court:

1. Whether for FY2011, petitioner actually rendered services to persons engaged in business conducted outside the Philippines, the services were paid for in foreign currency inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas;

2. Whether for FY2011, petitioner actually rendered services to its affiliates, related parties in Asia-Pacific region and in other foreign market which are subject to 12% or 0% VAT;

3. Whether there is an actual excess input VAT for FY2011 in the amount of Php69,441,211.76, as claimed by petitioner;

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[93] Docket Vol. VII, pp. 3696-3713.
[94] Issues, CJSFI, CTA Case No. 8615, Docket Vol. I, pp. 176-177.

4. If so, whether petitioner's alleged input VAT for FY2011 are all directly and actually attributable to its alleged zero-rated sales of services to all its clients;

5. Whether petitioner's alleged input VAT in the amount of Php69,441,211.76 remains unutilized;

6. Whether petitioner's claim for refund or tax credit of alleged input VAT for FY2011 are duly substantiated by documentary evidence;

7. Whether petitioner has complied with the invoicing requirements pursuant to Revenue Regulations (RR) 16-2005, as amended; and

8. Whether petitioner is entitled to claim a refund or tax credit in the amount of Php69,441,211.76 as alleged unutilized input VAT for FY2011.

RULING of the COURT

Petitioner's claim is anchored on Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides:

> "**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."

From the foregoing, in order to be entitled to a refund or tax credit of input tax due or paid attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

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

It has been stipulated that petitioner is an entity registered for Value-Added Tax ("VAT"), as indicated in Bureau of Internal Revenue ("BIR") Certificate of Registration numbered OCN 9RC0000355401 dated 13 September 1977.[95]

Anent the second requisite, petitioner asserts that the services it rendered to foreign corporations/affiliates qualify for VAT zero-rating in accordance with Section 108(B)(2) of the NIRC of 1997, as amended by Republic Act No. 9337, quoted hereunder:

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

[95] Paragraph 1.5, CJSFI, CTA Case No. 8615, Docket Vol. I, p. 176 and Exhibit "P-3".

"(B) *Transactions Subject to Zero Percent (0%) Rate.* - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

xxx xxx xxx

"(2) Services other than those mentioned in the preceding paragraph 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);"

For the four quarters FY2011, petitioner generated alleged zero-rated sales in the total amount of ₱1,548,751,431.89, broken down as follows:

Exhibit	Period	Zero-rated Sales
"P-9"	1st Qtr – Dec. 2010 to Feb. 2011	₱ 390,532,113.32
"P-12"	2nd Qtr – Mar. 2011 to May 2011	398,860,161.02
"P-15"	3rd Qtr – Jun. 2011 to Aug. 2011	403,678,207.68
"P-18"	4th Qtr – Sep. 2011 to Nov. 2011	355,680,949.87
	TOTAL	**₱1,548,751,431.89**

In the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[96] (*Burmeister* for brevity), the Supreme Court held that in order for the supply of services to be VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended, the following requisites must be met:

1) the services must be other than processing, manufacturing or repacking of goods;

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

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

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

To comply with the first requisite, petitioner submitted various service agreements with non-resident foreign clients to prove that it rendered qualifying services[97] to these entities, which are not in the same category as "processing, manufacturing or repacking of goods":[98]

1	AIG Global Services
2	AIG Global Services Malaysia
3	AIG Metropolitana Cia. De Seguros Y Reaseguros S.A.
4	AIU (Mexico)
5	Alico AIG GID
6	American Home Assurance Company, UAE
7	American Home Assurance Japan (AHA Japan)
8	American Home Assurance Korea
9	Arabian American Insurance Company E.C.
10	Chartis Chile Compania Seguros Generales S.A.
11	Chartis China
12	Chartis Claims
13	Chartis Cyprus
14	Chartis Egypt Insurance Co. S.A.E.
15	Chartis Europe SA
16	Chartis Europe SA - Belgium
17	Chartis Europe SA - Czech Republic
18	Chartis Europe SA - Denmark
19	Chartis Europe SA - France
20	Chartis Europe SA - Italy
21	Chartis Europe SA - Netherlands
22	Chartis Europe SA - Spain
23	Chartis Europe SA - Sweden
24	Chartis Europe SA - Georgia Branch
25	Chartis Global Services Company
26	Chartis Insurance Claims
27	Chartis Insurance Ltd., Sri Lanka
28	Chartis Insurance Operations & Systems Finance
29	Chartis Insurance UK Limited
30	Chartis International O&S HO
31	Chartis Memsa Insurance Co. Ltd. Oman Branch
32	Chartis Memsa Insurance Co. Ltd. Qatar Branch
33	Chartis Memsa Insurance Company Limited
34	Chartis New Hampshire Insurance Co. Bahrain
35	Chartis New Hampshire Insurance Co. Pakistan Branch
36	Chartis Seguros Guatemala
37	Chartis Seguros, El Salvador S.A.

[97] Q&A 10 and 35, Judicial Affidavit of Mary Cris Barayuga, CTA Case No. 8615, Docket Vol. I, pp. 210, 215-216.
[98] Q&A 37, Judicial Affidavit of Mary Cris Barayuga, CTA Case No. 8615, Docket Vol. I, pp. 216-217.

38	Chartis South Africa Ltd.
39	Chartis Southeast Asia Limited
40	Chartis Technology & Operation Mgt. (M) Sdn. Bhd
41	Chartis UK Services Ltd.
42	Chartis Ukraine Insurance Company CJSC
43	Chartis US SRV Depts
44	Chartis Uzbekistan
45	Chartis Vietnam Insurance Company Limited
46	CJSC Chartis
47	Direct DME, Inc.
48	Guam Insurance Adjusters Inc.
49	Health Direct, Inc.
50	Intercompany Clearing House NY - Chartis Int'l F&A
51	Lexington
52	Private Client Group
53	Private Client Group (NY)
54	Sourcing and Procurement NY
55	Specialty Workers' Compensation (SWC)
56	Tata AIG Gen. Insurance Co. Ltd - India
57	Venezuela Casai
58	National Union Fire Insurance Company
59	Chartis Global Services
60	Chartis US Domestic A&H

However, it should be noted that petitioner's various service agreements with non-resident foreign clients, which were formally offered as evidence marked as Exhibits "P-182" to "P-199" and "P-201" to "P-234", are denied admission by the Court for failure to submit the originals for comparison.[99] Petitioner filed a Motion for Reconsideration (And to Reopen Trial for Reception of Additional Evidence)[100] but the same documents were still denied admission in a resolution dated October 6, 2015.[101]

Anent the second requisite, petitioner avers that for the services rendered for the period December 2010 to November 2011, it received foreign currency payments which were accounted for in accordance with the BSP rules and regulations as evidenced by the Certifications of Inward Remittances issued by the EastWest Bank.[102]

Finally, to prove that its clients are doing business outside the Philippines, petitioner submitted various service agreements with non-

[99] Resolution dated November 28, 2014, Docket Vol. IV, p. 2003.
[100] Docket Vol. IV, pp. 2014-2029.
[101] Docket Vol. VI, p. 2784.
[102] Exhibits "P-34a", "P-34b" (Petitioner's FOE in green folder), "P-391a", "P-391b", "P-392a", "P-392b" and "P-393a" to "P-393f", Docket Vol. V, pp. 2705-2728.

resident foreign clients, incorporation and registration documents in their respective foreign countries[103] and Certifications of Non-Registration of petitioner's clients issued by the Securities and Exchange Commission (SEC).[104]

In view of the foregoing, petitioner's sales of services to non-resident foreign corporations cannot be considered as zero-rated sales as they failed to comply with the first requisite laid down in the *Burmeister* case.

Further, corollary to the requirement that the payments must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations, it is noteworthy that Section 113(A)(2) of the NIRC of 1997, as amended, provides:

> "SEC. 113. **Invoicing and Accounting Requirements for VAT-Registered Persons –**
>
> xxx xxx xxx
>
> "(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." *(Underscoring supplied.)*

Hence, in accordance with the foregoing, the zero-rated sales paid for in foreign currency must likewise be supported by VAT zero-rated official receipts.

The Court commissioned an independent CPA[105] to examine petitioner's voluminous documents pre-marked as Exhibits "P-242" to "P-288", which include the pertinent invoices and official receipts and other supporting documents for petitioner's zero-rated sales and claimed input taxes, among others.

Yet again, the Court denied the admission of the said documents as evidence for being not found in the records of the case.[106] Even the

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[103] Exhibits "P-182a to P-198a", Docket Vol. V, pp. 2207-2509 and Vol. VI, pp. 2811-2879; "P-201a to "P-208c", Docket Vol. V, pp. 2510-2611; "P-208e", Docket Vol. VI, pp. 3261-3268; "P-210d" to "P-233a", Docket Vol. VI, pp. 3271-3435; and "P-394" to "P-400o", Docket Vol. V, pp. 2729-2770.

[104] Exhibits "P-38" to "P-50", "P-52 to P-88", "P-90" to "P-96" (Petitioner's FOE in green folder), "P-289" and "P-291" to "P-317", Docket Vol. IV, pp. 1884-1911.

[105] Ms. Mary Ann C. Capuchino of SyCip Gorres Velayo & Co.

[106] Resolution dated November 28, 2014, Docket Vol. IV, p. 2006.

compact discs (CDs) submitted to the Court do not contain the soft copy of the documents examined. After petitioner's Motion for Reconsideration,[107] the same documents are still denied.[108]

The importance of submitting supporting documents in a claim for refund is emphasized by the Supreme Court, thus:[109]

> "x x x 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 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 and evidentiary requirements for an administrative claim for refund or tax credit**. Second, cases filed in the CTA are litigated *de novo*. Thus, a **petitioner 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. *(Emphasis supplied.)*

Consequently, for failure to substantiate the alleged zero-rated sales, petitioner cannot claim the input taxes attributable thereto. Accordingly, this Court finds it unnecessary to discuss petitioner's compliance to the rest of the requisites pursuant to Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Herein applies the legal principle that a claim for tax refund is in the nature of tax exemption. Laws granting tax exemption are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and he who thus seeks to be privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted. Petitioner has a

[107] Docket Vol. IV, pp. 2014-2029.
[108] Resolution dated October 6, 2015, Docket Vol. VI, p. 2784.
[109] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007.

burden of proof to establish the factual basis of its claim for tax refund, which it failed to do.[110]

Without the supporting documents needed to prove petitioner's alleged zero-rated sales and the input taxes attributable thereto, the Court is constrained to deny the subject petitions for review for lack of merit.

WHEREFORE, premises considered, petitioner's Petitions for Review are **DENIED** for lack of merit.

SO ORDERED.

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

I CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

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[110] *Sea-Land Service, Inc. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 122605, April 30, 2001, 223 SCRA 316.

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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice