Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION
****

NOKIA (PHILIPPINES), INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE No. 8481

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

JUL 02 2014 3:10 p.m.

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DECISION

CASTAÑEDA, JR., J.:

Before this Court is a Petition for Review filed by Nokia (Philippines), Inc. on April 27, 2012 to seek the refund or issuance of tax credit certificate in the amount of P57,594,670.73, representing alleged creditable input value-added tax (VAT) attributable to its zero-rated sales during the four quarters of taxable year 2010.

THE FACTS

Petitioner Nokia (Philippines), Inc., was registered with the Securities and Exchange Commission (SEC) on April 5, 1994, primarily to engage in importing, distributing and other related services for telecommunications equipment, electronic products, including, but not limited to, their parts and components, and all kinds of works, machinery, apparatus, conveniences and things capable of being used in connection therewith. Its principal office address is at 40th Floor, Philamlife Tower, 8767 Paseo de Roxas, Makati City.[1]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested under appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including, *inter alia,*

[1] Exhibit "T"

the power to decide disputed assessments, grant tax refunds and issue tax credit certificates, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules and regulations. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On December 2, 2011, petitioner filed before the BIR Large Taxpayer Regular Audit Division 3 an administrative claim for refund/tax credit in the amount of P57,594,670.73.[2]

On April 27, 2012, petitioner filed before the Court of Tax Appeals (CTA) a Petition for Review pursuant to Section 112(A) of the NIRC of 1997, as amended.[3]

On June 29, 2012, respondent filed her Answer[4] and interposed the following defenses:

> "5. Petitioner is not entitled to refund or tax credit in the amount of P57,594,670.73 representing alleged unutilized input tax because it failed to submit all necessary and relevant documents pertaining to the above-mentioned amount with respondent in the administrative claim for refund or tax credit of excess input tax attributable to zero-rated sales.
>
> 6. In an administrative claim for refund or tax credit of input taxes attributable to zero-rated sales, a VAT registered person must submit complete documents to support its application for refund pursuant to Section 112 (D) of the National Internal Revenue Code (NIRC) of 1997. Otherwise, there will be no sufficient compliance with the filing of an administrative claim for refund, which is a condition sine qua non prior to the filing of judicial claim.
>
> 7. To support its claim, it is imperative for petitioner to prove and present the following, viz:
>
> > a. The registration requirements of a value-added taxpayer in compliance with Section 6(a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-a (a) of Revenue Regulations No. 7-95, and Section 236 of the National Internal Revenue Code of 1997 (NIRC of 1997); *jr*

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[2] Exhibit "J", docket (Vol. 2), pp. 534-538
[3] Docket (Vol. 1), pp. 6-18
[4] Docket (Vol. 1), pp. 40-46

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the NIRC of 1997;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98. It is worthy of emphasis that Section 112 (D) of the NIRC of 1997 requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review;

d. That the input taxes of P57,594,670.73 allegedly paid by petitioner on its domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods for the period from January 1, 2010 to December 31, 2010 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

e. That petitioner's administrative claim for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) year after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) of the NIRC of 1997;

f. The judicial claim was filed within the period prescribed in Section 112 (D) of the NIRC of 1997;

h. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase journal, showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the NIRC of 1997, and in pursuance to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (RE: Substantiation of Claims for Input Tax Credit);

i. The requirements as enumerated under Section 4.104-2 of Revenue Regulations 7-95 (Re: Persons who can avail of the Input Tax Credits).

8. The case of Ang Tibay vs. Court of Industrial Relations GR No. L-46496, states the primary rights which must be respected even in an administrative proceeding:

> (1) **The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof.** In the language of Chief Justice Hughes, in *Morgan v. U. S.*, 304 U. S. 1, 58 S. Ct. 773, 999, 82 Law. ed. 1129, 'the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play.
>
> (2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal *must consider* the evidence presented. (Chief Justice Hughes in Morgan v. U. S. 298 U. S. 468, 56 S. Ct 906, 80 Law. ed. 1288.) In the language of this Court in *Edwards vs. McCoy*, 22 Phil, 598, 'the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.'
>
> (3) 'While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support (its decision. A decision with absolutely nothing to support) it is a nullity, a place when directly attached.' (Edwards vs. McCoy, *supra.*) This principle emanates from the more fundamental (principle that the genius of constitutional government) is contrary to the vesting of unlimited power anywhere. Law is both a grant and a limitation upon power.
>
> (4) **Not only must there be some evidence to support a finding or conclusion** (City of Manila vs. Agustin, G. R. No. 45344, promulgated November 29,

1937, XXXVI O.G. 1335), **but the evidence must be 'substantial.'** (Washington, Virginia & Maryland Coach Co. v. National Labor Relations Board, 301 U. S. 142, 147, 57 S. Ct. 648, 650, 81 Law. ed. 965.) It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' (Appalachian Electric Power v. National Labor Relations Board, 4 Cir., 93 F. 2d 985, 989; National Labor Relations Board v. Thompson Products, 6 Cir., 97 F. 2d 13, 15; Ballston-Stillwater Knitting Co. v. National Labor Relations Board, 2 Cir., 98 F. 2d 758, 760.) ... The statute provides that 'the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order. (Interstate Commerce Commission v. Baird, 194 U.S. 25, 44, 24 S. Ct. 563, 568, 48 Law. ed. 860; Interstate Commerce Commission v. Louisville & Nashville R. Co., 227 U. S. 88, 93, 33 S. Ct. 185, 187, 57 Law. ed. 431; United States v. Abilene and Southern Ry. Co., S. Ct. 220, 225, 74 Law. ed. 624.) But this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence. (Consolidated Edison Co. v. National Labor Relations Board, 59 S. Ct. 206, 83 Law. ed. No. 4, Adv. Op., p. 131.)'

(5) **The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.** (Interstate Commerce Commission vs. L. & N. R. Co., 227 U. S. 88, 33 S. Ct. 185, 57 Law. ed. 431.) **Only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them.** It should not, however, detract from their duty actively to see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy. Boards of inquiry may be appointed for the purpose of investigating and determining the facts in any given case, but their report and decision are only advisory. (Section 9,

Commonwealth Act No. 103.) The Court of Industrial Relations may refer any industrial or agricultural dispute or any matter under its consideration or advisement to a local board of inquiry, a provincial fiscal, a justice of the peace or any public official in any part of the Philippines for investigation, report and recommendation, and may delegate to such board or public official such powers and functions as the said Court of Industrial Relations may deem necessary, but such delegation shall not affect the exercise of the Court itself of any of its powers. (Section 10, *ibid.*)

(6) The Court of Industrial Relations or any of its judges, therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision. It may be that the volume of work is such that it is literally (impossible for the titular heads of the Court of Industrial) Relations personally to decide all controversies coming before them. In the United States the difficulty is solved with the enactment of statutory authority authorizing examiners or other subordinates to render final decision, with right to appeal to board or commission, but in our case there is no such statutory authority.

(7) The Court of Industrial Relations should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered. The performance of this duty is inseparable from the authority conferred upon it. (Emphasis supplied)

Petitioner is mandated to present evidence to support its administrative claim and such evidence will be used as basis for the decision of the quasi-judicial body. If there is lack of evidence, then the decision will probably be contrary to petitioner. Only the evidence presented will be reviewed by the quasi-judicial body. An administrative claim is meant to expedite the proceedings where all the relevant evidence is presented.

8. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund

> and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications (**Asiatic Petroleum Co. vs Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v Manila Jockey Club, Inc., 98 Phil. 670**)."

The case was set for pre-trial conference on August 2, 2012.[5] Respondent filed her Pre-Trial Brief on July 16, 2012;[6] while petitioner filed its Pre-Trial Brief on July 26, 2012.[7]

On September 17, 2012, the parties filed their Joint Stipulation of Facts and Issues[8], which was admitted in a Resolution[9] dated September 19, 2012. Thereafter, the Court issued a Pre-Trial Order[10] dated September 25, 2012 that terminated the pre-trial and set the initial presentation of evidence for petitioner on September 24, 2012.

On October 5, 2012, petitioner filed a Motion for the Appointment of an Independent Certified Public Accountant (CPA).[11] During the hearing on November 19, 2012, the Court granted the motion and commissioned Mr. Glenn Ian D. Villanueva as the Independent CPA.[12] On December 14, 2012, the Independent CPA submitted his Report on the Results of the Procedures Performed for the Claim for Refund/TCC of Unutilized Input VAT for the period January 1, 2010 to December 31, 2010[13] in compliance with the Court's Order.

On March 8, 2013, petitioner filed its Formal Offer of Evidence[14] offering Exhibits "A" to "AA-1". Respondent filed her Comment[15] on March 25, 2013, stating that she has no objection to the admission of Exhibits "A" to "AA". The Court then issued a Resolution[16] on May 7, 2013, admitting Exhibits "A" to "J", "L" to "AA-1" 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, while denying the admission of Exhibit "K" for failure of petitioner to identify the same during trial.

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[5] Notice of Pre-Trial Conference issued on July 2, 2012, docket (Vol. 1), p. 48
[6] Docket (Vol. 1), pp. 49-52
[7] Docket (Vol. 1), pp. 55-61
[8] Docket (Vol. 1), pp. 92-94
[9] Docket (Vol. 1), p. 96
[10] Docket (Vol. 1), pp. 110-113
[11] Docket (Vol. 1), pp. 114-116
[12] Docket (Vol. 1), p. 128
[13] Docket (Vol. 1), pp. 132-444
[14] Docket (Vol. 2), pp. 503-516
[15] Docket (Vol. 2), pp. 894-895
[16] Docket (Vol. 2), pp. 899-900

On the other hand, respondent filed her Formal Offer of Documentary Evidence[17] on June 24, 2013, offering Exhibits "1" to "11-A"; which were admitted as per this Court's Resolution[18] dated July 19, 2013.

The case was submitted for decision on October 1, 2013,[19] after petitioner filed its Memorandum[20] on September 20, 2013 and respondent filed her Memorandum[21] on September 25, 2013.

THE ISSUES

The parties jointly stipulated the following issues[22] for this Court's resolution:

> "1. Whether petitioner has exhausted all administrative remedies before filing this petition.
>
> 2. Whether petitioner has complied with the governing rules and regulations with regard to recovery of taxes collected/received within the periods provided in Section 112 of the Tax Code, as amended.
>
> 3. Whether petitioner has complied with the submission of complete documents in support of its administrative claim for refund.
>
> 4. Whether petitioner's claim for refund of input VAT was filed within the period prescribed by law.
>
> 5. Whether petitioner is entitled to a tax refund or tax credit certificate for its alleged input VAT payments allegedly allocated to its zero-rated sales for the 1st, 2nd, 3rd and 4th quarter of taxable year 2010 in the amount of Php57,594,670.73."

The above-enumerated issues can be summarized as follows:

> "Whether or not petitioner is entitled to a tax refund or tax credit certificate for its alleged input VAT payments attributable to its zero-rated sales for the four quarters of taxable year 2010 in the amount of P57,594,670.73."

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[17] Docket (Vol. 2), pp. 935-942
[18] Docket (Vol. 2), pp. 954-955
[19] Docket (Vol. 2), p. 1003
[20] Docket (Vol. 2), pp. 966-978
[21] Docket (Vol. 2), pp. 983-1001
[22] Docket (Vol. 1), p. 93

THE COURT'S RULING

The pertinent provisions to a claim for refund of unutilized input VAT attributable to zero-rated or effectively zero-rated sales are Section 112(A) and (C) of the NIRC of 1997, as amended, which provide:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* -
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and nonzero-rated sales.
>
> xxx xxx xxx
>
> C) *Period within which Refund or Tax Credit of Input Taxes Shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals. *jr*

Based on the above-quoted provision, in order to be entitled to a refund or tax credit of input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be satisfied:

(a) the taxpayer is VAT-registered;
(b) the taxpayer is engaged in zero-rated or effectively zero-rated sales;
(c) the input taxes are due or paid;
(d) the input taxes are not transitional input taxes;
(e) the input taxes have not been applied against output taxes during and in the succeeding quarters;
(f) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
(g) for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas;
(h) where there are both zero-rated or effectively zero rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and
(i) the claim is filed within two years after the close of the taxable quarter when such sales were made.[23]

Timeliness of the claim

A. Administrative claim and exhaustion of administrative remedy

The Court shall discuss first the issue pertaining to the timeliness of the claim and petitioner's compliance with the principle of exhaustion of administrative remedy before the Court examines the substantiation requirements from (a) to (h).

It was settled in the consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue and Philex Mining Corporation vs. Commissioner of Internal Revenue*[24], that the administrative claim for refund of unutilized input VAT attributable to zero-rated sales may be filed within two (2) years after the close of the taxable quarter when the sales were made. The two-year period under Section 112(A) of the NIRC of 1997 refers solely to administrative claims filed with the CIR and not to appeals made to the CTA.[25]

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[23] *Luzon Hydro Corporation vs. Commissioner of Internal Revenue,* G.R. No. 188260, November 13, 2013
[24] G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336, 391, citing *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.,* G.R. No. 184823, October 6, 2010, 632 SCRA 422
[25] G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336, 391

The present claim pertains to all four (4) quarters of taxable year 2010. Petitioner's administrative claim for refund or issuance of tax credit certificate for the four quarters of 2010, filed on December 2, 2011, was filed within the two-year prescriptive period provided by law, as shown below:

PERIOD COVERED	CLOSE OF TAXABLE QUARTER	LAST DAY OF FILING OF ADMINISTRATIVE CLAIM FOR REFUND	DATE OF FILING OF ADMINISTRATIVE CLAIM FOR REFUND
1st Quarter	March 31, 2010	March 31, 2012	
2nd Quarter	June 30, 2010	June 30, 2012	
3rd Quarter	September 30, 2010	September 30, 2012	
4th Quarter	December 31, 2010	December 31, 2012	December 2, 2011

With respect to the question of non-exhaustion of administrative remedy, respondent alleged that petitioner failed to submit the complete documents in support of the latter's administrative claim. Respondent argued that non-compliance with a condition precedent renders the petition dismissible. Respondent alleged that on February 23, 2012, through Revenue Officer Melinda Rugayan, the BIR issued Letter of Authority No. 126-2012-0000001[26] dated February 16, 2012, with Checklist of Requirements for Tax Investigation[27] dated February 20, 2012, authorizing the examination of petitioner's books of accounts.

Furthermore, on April 24, 2012, respondent sent to petitioner the First Notice for the Presentation of Books of Accounts and Other Accounting Records dated April 18, 2012.[28] On June 14, 2012, petitioner received the Second and Final Notice for Presentation of Books of Accounts and Other Accounting Records.[29] In all these instances, respondent claimed that petitioner did not submit the complete supporting documents.

Petitioner disproved these allegations. During the cross-examination of respondent's witness, Revenue Officer Melinda Rugayan, she testified and enumerated the supporting documents submitted by petitioner. In her testimony, Revenue Officer Rugayan confirmed the following:[30]

ATTY. MONTENEGRO:

Q Ms. Witness you mentioned, actually in question number 10, allegedly the Letter Application for refund that there were no attachments, correct?

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[26] Exhibit "1", BIR Records, p. 61
[27] Exhibit "2", BIR Records, pp. 59-60
[28] Exhibit "3", BIR Records, p. 57
[29] Exhibit "4", BIR Records, p. 56
[30] Transcript of Stenographic Notes, June 17, 2013, p. 9

WITNESS:

A There were attachments sir. Can I read?

Q Yes.

Q Like application for tax credits, refund form BIR number 1941, official receipts for services rendered to Nokia, monthly VAT returns from January to December 2010 and then quarterly VAT returns for fourth quarter of 2010. Monthly summary list of importations and the corresponding Import Entry and the corresponding Import Declaration, Official Receipts and Invoices. However there were documents that they were not able to submit.

ATTY. MONTENEGRO:

Q So there were already documents attached to the application?

WITNESS:

A Yes, sir.

With the above testimony, petitioner was able to prove its submission of supporting documents attached to the administrative claim notwithstanding respondent's request for additional documents.[31] Indeed, petitioner exhausted the available administrative remedy when it filed the administrative claim together with the attached supporting documents it perceived to be sufficient and complete.

The term "relevant supporting documents" was explained by the Supreme Court in the case of *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*[32] in the following manner:

> The term "relevant supporting documents" should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.

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[31] Exhibit "J", docket (Vol. 2), pp. 534-537
[32] G.R. Nos. 172045-46, June 16, 2009, 589 SCRA 253, 275

The relevant supporting documents that a taxpayer must submit in support of its administrative claim pertain to documents that the taxpayer deems necessary to sufficiently bolster its claim. Albeit, the Commissioner or her authorized representative is allowed to request the submission of additional documents from the taxpayer, the former cannot dictate upon the latter what documents to submit.

Based on the foregoing, it now becomes petitioner's choice to either (1) elevate its refund claim to the CTA after the lapse of the 120-day period from the submission of what it considered to be complete documents or (2) comply with the BIR's request for additional documents. If petitioner chooses to comply with the BIR's request and submit additional documents prior to the filing of judicial claim, then the counting of the 120-day period shall be reckoned from the time it submitted the additional documents.

In the present case, the reckoning of the 120-day period is on December 2, 2011 when the supporting documents were submitted and attached to the administrative claim.

B. Judicial claim

The judicial claim for refund under Section 112(C) of the NIRC of 1997, in relation to Section 112(A), should be filed within thirty (30) days from receipt of the decision of the BIR Commissioner or upon the expiration of the 120 days in case of inaction of the BIR Commissioner. The observance of these periods is mandatory and non-compliance therewith would result in the denial of the claim.[33]

Petitioner filed its administrative claim for refund together with its supporting documents on December 2, 2011.[34] Since the supporting documents were already attached to the administrative claim, the 120-day period should be counted from the said date. Thus, respondent had 120 days from December 2, 2011 or until March 31, 2012, within which to grant or deny the administrative claim for refund. Considering, however, that respondent failed to act on the said claim within the 120-day period, petitioner had 30 days from the expiration of the 120-day period, or until April 30, 2012, within which to file its appeal before this Court. Here, the instant Petition for Review was filed on April 27, 2012 or within the 30-day period provided by law to appeal.

Petitioner is VAT-registered
and has zero-rated sales

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[33] *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.,* G.R. No. 184823, October 6, 2010, 632 SCRA 422

[34] Exhibit "J", docket (Vol.2), pp. 534-537

Petitioner was able to show that it is a VAT-registered entity as evidenced by its Certificate of Registration OCN 8RC0000019384.[35]

Meanwhile, it alleges that during the four quarters of taxable year 2010, it entered numerous transactions which included, among others, rendering marketing support and other services to its parent company Nokia Corporation (Finland). The services provided to Nokia Corporation (Finland) were paid for in foreign currency and were subjected to zero percent (0%) VAT. Petitioner asserts that its sale of services to its parent company is covered by Section 108(B)(2) of the NIRC of 1997, quoted as follows:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* -
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> (2) **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 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);" *(Emphasis supplied)*

In the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[36], the Supreme Court enumerated the following requisites in order that the sale of service under Section 102(b)(2) [now Section 108(B)(2)] of the NIRC of 1997 can be considered zero-rated sales: *ge*

[35] Exhibit "A", docket (Vol. 2), p. 517
[36] G.R. No. 153205, January 22, 2007, 512 SCRA 124,135-136

1. The service must be other than "processing, manufacturing or repacking of goods;"
2. The payment for such services must be in acceptable foreign currency accounted for in accordance with BSP rules; and
3. The recipient of such service must be doing business *outside* the Philippines.

In petitioner's Audited Financial Statements for the years ended December 31, 2010 and 2009,[37] the bulk of revenues came from the service fees paid by its parent company Nokia Corporation (Finland). It was shown that petitioner rendered marketing support services to Nokia Corporation (Finland) and other affiliates. The service included market research and other support services in handling any specific and general business matter that may arise with respect to Nokia Corporation (Finland)'s business in the Philippines and other territories.[38] These services complied with the first requisite, *viz.*, services other than "processing, manufacturing or repacking of goods."

The services rendered to Nokia Corporation (Finland) were paid for in US dollars through petitioner's dollar account in Bank of America (Singapore Branch) and accounted for in accordance with the BSP rules and regulations as evidenced by Bank Statements[39], Zero-rated VAT official receipts[40], and Zero-rated VAT sales invoices.[41]

For the third requisite, it was explained in the case of *Accenture, Inc. vs. Commissioner of Internal Revenue*[42] that if the recipient of service is a foreign corporation, it must be proven to be a *non-resident* foreign corporation. It was held:

> xxx to come within the purview of Section 108(B)(2), it is not enough that the recipient of the service be proven to be a foreign corporation; rather, it must be specifically proven to be a nonresident foreign corporation.[43]

In order to prove that petitioner's client Nokia Corporation (Finland) is a non-resident foreign corporation not registered to engage in business in the Philippines, the following pieces of evidence were presented:

1. Notarized and certified Extract From Trade Register issued by the National Board of Patents and Registration of Finland showing that *Ja*

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[37] Exhibit "T"
[38] Exhibit "T", Notes to Financial Statements 1 and 12, pp. 8 and 34
[39] Exhibit "R"
[40] Exhibit "Q"
[41] Exhibit "Q-1"
[42] G.R. No. 190102, July 11, 2012, 676 SCRA 325, 345
[43] *Ibid.*

Nokia OYJ is its registered company name and Nokia Corporation is auxiliary company name in English;[44] and its domicile is Helsinki, Finland; and

2. Certificate of Non-Registration of Nokia OYJ (Nokia Corporation Finland) from the Securities and Exchange Commission.[45]

After complying with the above requisites, this Court shall now compute the zero-rated sales for taxable year 2010. Petitioner filed through Electronic Filing and Payment System (eFPS) its Quarterly VAT Returns for the four quarters, showing the following details:

EXHIBIT	QUARTER	DATE FILED	VATABLE SALES (PHP)	ZERO-RATED SALES (PHP)	TOTAL SALES (PHP)
B	1st	22-Apr-10[46]	343,948.00	135,035,055.60	135,379,003.60
C	2nd	21-Jul-10[47]	1,461,429.19	144,240,726.17	145,702,155.36
D	3rd	21-Oct-10[48]	-	195,538,766.28	195,538,766.28
E	4th	22-Mar-11[49]	1,257,689.40	84,534,159.73	85,791,849.13
TOTAL			**3,063,066.59**	**559,348,707.78**	**562,411,774.37**

The total zero-rated sales per VAT official receipts (ORs) and VAT invoices is higher than the total zero-rated sales per Quarterly VAT Returns, as shown below:

Total Zero-rated sales per Quarterly VAT Returns	P559,348,707.78
Total Zero-rated sales per VAT Official Receipts	568,401,350.34
Discrepancy	**(P 9,052,642.56)**

In the case of *Southern Philippines Power Corporation vs. Commissioner of Internal Revenue*[50], the Supreme Court ruled that it is not sufficient to deny a claim for refund simply because the zero-rated sales were not indicated in the VAT returns when there are other documents to support its claim. On this basis, this Court will use the amount reflected per VAT ORs and VAT invoices in computing the total zero-rated sales.

Based on records, the total zero-rated sales per VAT sales invoices and per Netting Statements is higher than the amount per VAT ORs due to the intercompany offsetting transactions between petitioner and Nokia Corporation (Finland). The details are shown below: *Jz*

[44] Exhibit "L", docket (Vol. 2), pp. 541-560
[45] Exhibit "S"
[46] Docket (Vol. 2), pp. 518-519
[47] Docket (Vol. 2), pp. 520-521
[48] Docket (Vol. 2), pp. 522-523
[49] Docket (Vol. 2), pp. 524-525. It should be noted that this was an Amended Quarterly VAT Return.
[50] G.R. No. 179632, October 19, 2011, 659 SCRA 658, 665

	PER VAT SALES INVOICE (ZERO-RATED)			PER VAT ORS (ZERO-RATED)			DIFFERENCE
Exhibit	**Per Netting Statement**			**Exhibit Q**			**In Php**
	Amount	Forex Rate	Amount	VAT OR		Amount	
	In US$		In Php	No.		In Php	
	A		B			C	B-C
P (page 3)	66,922.19	47.05	3,148,689.00	0025			
P (page 3)	122,613.35	47.05	5,768,958.12	0025			
P (page 3)	94,089.00	47.05	4,426,887.45	0025			
P (page 3)	2,268.40	47.05	106,728.22	0025			
P (page 3)	390,081.62	47.05	18,353,340.22	0025			
P (page 3)	857,632.79	47.05	40,351,622.77	0025			
P (page 3)	9,786.40	47.05	460,450.12	0025			
P (page 3)	1,645.42	47.05	77,417.01	0025			
P (page 3)	34,673.99	47.05	1,631,411.23	0025			
P (page 3)	5,308.09	47.05	249,745.63	0025			
P (page 3)	875.70	47.05	41,201.69	0025			
P (page 3)	5,319.46	47.05	250,280.59	0025			
P (page 3)	4,961.31	47.05	233,429.64	0025			
P (page 3)	(113,695.89)	47.05	(5,349,391.62)	0025			
P (page 3)	6,138.00	47.05	288,792.90	0025			
Subtotal	**1,488,619.83**	**47.05**	**70,039,562.97**	**0025**		**69,853,728.68**	**185,834.29**
Exhibit Q-1							
VAT Sales							
Invoice No.							
229000002	1,614.62	45.36	73,239.16	0026			
229000003	219,668.45	45.36	9,964,160.89	0026			
229000004	347,965.86	45.36	15,783,731.41	0026			
229000005	17,375.31	45.36	788,144.06	0026			
229000006	1,504.32	45.36	68,235.96	0026			
229000007	15,247.84	45.36	691,642.02	0026			
229000008	4,582.96	45.36	207,883.07	0026			
229000009	5,359.66	45.36	243,114.18	0026			
229000010	6,450.45	45.36	292,592.41	0026			
229000011	14,878.17	45.36	674,873.79	0026			
229000012	18,758.77	45.36	850,897.81	0026			
229000013	4,484.60	45.36	203,421.46	0026			
Subtotal	**657,891.01**	**45.36**	**29,841,936.22**	**0026**		**29,736,042.39**	**105,893.83**
229000016	564,793.31	44.87	25,342,275.82	0027			
229000017	311,382.67	44.87	13,971,740.40	0027			
229000018	14,588.49	44.87	654,585.55	0027			
229000019	1,552.05	44.87	69,640.48	0027			
229000020	34,802.81	44.87	1,561,602.08	0027			

229000021	4,227.19	44.87	189,674.02	0027			
229000022	3,622.43	44.87	162,538.43	0027			
229000023	4,359.67	44.87	195,618.39	0027			
229000024	10,055.70	44.87	451,199.26	0027			
229000025	21,796.64	44.87	978,015.24	0027			
229000026	5,736.55	44.87	257,399.00	0027			
229000027	1,760.55	44.87	78,995.88	0027			
Subtotal	**978,678.06**	**44.87**	**43,913,284.55**	0027		**43,689,735.93**	223,548.62
229000028	48,026.39	43.42	2,085,306.00	0028			
229000029	62,057.00	43.42	2,694,514.94	0028			
229000032	449,161.62	43.42	19,502,597.54	0028			
229000033	625,565.36	43.42	27,162,047.93	0028			
229000034	7,902.43	43.42	343,123.51	0028			
229000035	1,368.62	43.42	59,425.48	0028			
229000036	28,586.88	43.42	1,241,242.33	0028			
229000037	6,715.19	43.42	291,573.55	0028			
229000038	4,995.41	43.42	216,900.70	0028			
229000039	6,012.07	43.42	261,044.08	0028			
229000040	13,867.03	43.42	602,106.44	0028			
229000041	23,883.09	43.42	1,037,003.77	0028			
229000042	7,752.96	43.42	336,633.52	0028			
229000043	2,445.73	43.42	106,193.60	0028			
Subtotal	**1,288,339.78**	**43.42**	**55,939,713.39**	**0028**		**55,494,068.60**	**445,644.79**
229000044	76,139.34	44.87	3,416,372.00	0029			
229000047	356,353.68	44.87	15,989,589.62	0029			
229000048	581,062.09	44.87	26,072,255.98	0029			
229000049	12,260.95	44.87	550,148.83	0029			
229000050	916.35	44.87	41,116.62	0029			
229000051	21,633.36	44.87	970,688.86	0029			
229000052	5,948.84	44.87	266,924.45	0029			
229000053	5,222.15	44.87	234,317.87	0029			
229000054	6,284.96	44.87	282,006.16	0029			
229000055	14,496.47	44.87	650,456.61	0029			
229000056	17,606.61	44.87	790,008.59	0029			
229000057	4,649.36	44.87	208,616.78	0029			
229000058	1,985.32	44.87	89,081.31	0029			
Subtotal	**1,104,559.48**	**44.87**	**49,561,583.68**	**0029**		**49,379,364.55**	**182,219.13**
229000059	15,527.97	44.87	696,740.00	0030			
229000062	165,337.92	44.87	7,418,712.47	0030			
229000063	317,718.31	44.87	14,256,020.57	0030			
229000064	15,002.12	44.87	673,145.12	0030			
229000065	3,119.39	44.87	139,967.03	0030			
229000066	14,350.05	44.87	643,886.74	0030			
229000067	7,842.24	44.87	351,881.31	0030			

229000068	5,782.34	44.87	259,453.60	0030			
229000069	6,959.17	44.87	312,257.96	0030			
229000070	16,051.52	44.87	720,231.70	0030			
229000071	21,293.44	44.87	955,436.65	0030			
229000072	4,310.21	44.87	193,399.12	0030			
229000073	2,033.39	44.87	91,238.21	0030			
Subtotal	**595,328.07**	**44.87**	**26,712,370.48**	**0030**		**26,648,819.33**	**63,551.15**
229000074	48,892.78	44.87	2,193,819.00	0031			
229000075	2,336.00	44.87	104,816.32	0031			
229000076	63,624.18	44.87	2,854,817.00	0031			
229000078	468,290.11	44.87	21,012,177.24	0031			
229000079	760,903.32	44.87	34,141,731.97	0031			
229000080	12,521.84	44.87	561,854.96	0031			
229000081	(1,355.01)	44.87	(60,799.30)	0031			
229000082	28,115.37	44.87	1,261,536.65	0031			
229000083	7,240.32	44.87	324,873.16	0031			
229000084	5,368.48	44.87	240,883.70	0031			
229000085	6,461.06	44.87	289,907.76	0031			
229000086	14,902.63	44.87	668,681.01	0031			
229000087	21,875.42	44.87	981,550.10	0031			
229000088	7,788.93	44.87	349,489.29	0031			
229000089	2,815.87	44.87	126,348.09	0031			
Subtotal	**1,449,781.30**	**44.87**	**65,051,686.95**	**0031**		**64,791,007.94**	**260,679.01**
229000093	314,632.22	44.87	14,117,547.71	0032			
229000094	331,808.18	44.87	14,888,233.04	0032			
229000095	11,898.74	44.87	533,896.46	0032			
229000096	34,235.93	44.87	1,536,166.18	0032			
229000097	2,461.98	44.87	110,469.04	0032			
229000098	14,065.56	44.87	631,121.68	0032			
229000099	5,127.03	44.87	230,049.84	0032			
229000100	5,967.84	44.87	267,776.98	0032			
229000101	5,723.86	44.87	256,829.60	0032			
229000102	15,994.47	44.87	717,671.87	0032			
229000103	(12,584.06)	44.87	(564,646.77)	0032			
229000104	3,546.62	44.87	159,136.84	0032			
229000105	1,758.87	44.87	78,920.50	0032			
Subtotal	**734,637.24**	**44.87**	**32,963,172.97**	**0032**		**32,721,872.87**	**241,300.10**
Subtotal				**0033**		**177,817.12**	**(177,817.12)**
229000106	24,253.24	44.87	1,088,243.00	0034			
229000108	639,871.67	44.87	28,711,041.83	0034			
229000109	322,807.46	44.87	14,484,370.73	0034			
229000110	11,170.12	44.87	501,203.28	0034			
229000111	1,395,682.02	44.87	62,624,252.24	0034			

229000112	542.35	44.87	24,335.24	0034			
229000113	29,773.67	44.87	1,335,944.57	0034			
229000114	5,201.11	44.87	233,373.81	0034			
229000115	5,693.99	44.87	255,489.33	0034			
229000116	5,461.18	44.87	245,043.15	0034			
229000117	15,260.50	44.87	684,738.64	0034			
229000118	113.38	44.87	5,087.36	0034			
229000119	6,840.13	44.87	306,916.63	0034			
229000120	1,774.14	44.87	79,605.66	0034			
Subtotal	**2,464,444.96**	**44.87**	**110,579,645.47**	**0034**		**110,489,990.16**	**89,655.31**
229000121	41,940.41	44.87	1,881,866.00	0035			
229000122	7,992.00	44.87	358,601.04	0035			
229000123	40,448.67	44.87	1,814,932.00	0035			
229000125	391,467.51	44.87	17,565,147.17	0035			
229000126	481,423.88	44.87	21,601,489.50	0035			
229000127	19,926.76	44.87	894,113.72	0035			
229000128	12,282.19	44.87	551,101.87	0035			
229000129	4,515.64	44.87	202,616.77	0035			
229000130	27,308.45	44.87	1,225,330.15	0035			
229000131	5,522.80	44.87	247,808.04	0035			
229000132	2.28	44.87	102.30	0035			
229000133	5,372.49	44.87	241,063.63	0035			
229000134	5,937.23	44.87	266,403.51	0035			
229000135	5,694.48	44.87	255,511.32	0035			
229000136	15,912.41	44.87	713,989.84	0035			
229000137	(558.72)	44.87	(25,069.77)	0035			
229000138	5,062.84	44.87	227,169.63	0035			
229000139	2,063.02	44.87	92,567.71	0035			
Subtotal	**1,072,314.34**	**44.87**	**48,114,744.43**	**0035**		**47,680,119.71**	**434,624.72**
229000141	262,910.62	44.87	11,796,799.52	0036			
229000142	410,816.71	44.87	18,433,345.78	0036			
229000143	10,708.01	44.87	480,468.41	0036			
229000144	37,522.84	44.87	1,683,649.83	0036			
229000145	567.38	44.87	25,458.34	0036			
229000146	28,264.11	44.87	1,268,210.62	0036			
229000147	6,177.07	44.87	277,165.13	0036			
229000148	5,570.87	44.87	249,964.94	0036			
229000149	6,691.94	44.87	300,267.35	0036			
229000150	6,418.35	44.87	287,991.36	0036			
22900151	17,935.13	44.87	804,749.28	0036			
229000152	2.74	44.87	122.94	0036			
229000153	5,770.77	44.87	258,934.45	0036			
229000154	2,111.70	44.87	94,751.98	0036			
Subtotal	**801,468.24**	**44.87**	**35,961,879.93**	**0036**		**35,961,879.93**	**-**
229000155	47,515.36	44.87	2,132,014.00	0037		1,776,903.15	

							355,110.85
Subtotal	**47,515.36**	**44.87**	**2,132,014.00**	**0037**		**1,776,903.15**	**355,110.85**
TOTAL	**12,683,577.67**		**570,811,595.04**			**568,401,350.36**	**2,410,244.68**

The Court summarized the above items and accounted the discrepancy as follows:

Total Zero-rated sales per VAT Sales Invoices and Billing per Netting Statements	P570,811,595.04
Less: Total Zero-rated sales per VAT Official Receipts	568,401,350.36
Discrepancy	**P 2,410,244.68**
Intercompany Offsetting Transactions	P 2,588,061.80
VAT OR No. 0033 (without an invoice and was issued in the name of Nokia Finance International B.V.)	(177,817.12)

The intercompany offsetting, although billed against Nokia Corporation (Finland), is disallowed for failure to support it by zero-rated VAT ORs. Out of the zero-rated sales per VAT ORs of P568,401,350.36, net of intercompany offsetting, only the amount of P568,223,533.24 will be considered in computing the input VAT attributable to zero-rated sales. The Court excluded VAT OR No. 0033 because it was issued in the name of Nokia Finance International B.V., an entity whose residence status was not proven. Petitioner did not present evidence to show that it is a non-resident foreign corporation not doing business in the Philippines. Therefore, the total allowable zero-rated sales amounts to:

Total Zero-rated sales per VAT official receipts	P 568,401,350.36
Less: VAT OR No. 0033	(177,817.12)
Total Allowed Zero-rated sales	**P 568,223,533.24**

Input VAT attributable to zero-rated sales

Based on petitioner's Quarterly VAT Returns for the four quarters of 2010, petitioner accumulated input VAT in the amount of P57,804,563.29, broken down as follows:

EXHIBIT	QUARTER	INPUT VAT
B	1st	P 13,242,568.94
C	2nd	16,109,238.66
D	3rd	14,419,139.24
E	4th	14,033,616.45
TOTAL		**P 57,804,563.29**

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In support of its input VAT, petitioner presented various VAT ORs and invoices[51], Import Entry Internal Revenue Declaration (IEIRD)[52], Bureau of Customs (BOC) ORs[53], Single Administrative Documents (SADs)[54], Statement of Settlement of Duties and Taxes[55] and Bank Certification[56], which were examined by the Court-commissioned Independent CPA. In the Independent CPA Report[57] dated December 14, 2012, the only input VAT substantiated by supporting documents for all the four quarters of taxable year 2010 amounts to P29,082,413.04, computed as follows:[58]

REFERENCE	NATURE	PURCHASES OF GOODS	PURCHASES OF SERVICES	TOTAL PER ICPA'S REPORT
Annex 1Q-PSS, (pp. 27-28)	Input VAT on domestic purchases of services duly supported by original TIN VAT Official Receipts with BIR registration, dated within January to December 2010, issued in the name of the Company		P 1,490,052.08	P 1,490,052.08
Annex 2Q-PSS, (pp. 66-71)			5,389,302.82	5,389,302.82
Annex 3Q-PSS, (pp. 109-116)			6,874,598.30	6,874,598.30
Annex 4Q-PSS, (pp. 159-162)			5,178,702.20	5,178,702.20
Annex 1Q-PSG, (pp. 29-30)	Input VAT on domestic purchases of goods duly supported by original TIN VAT Invoices with BIR Registration, dated within January to December 2010, issued in the name of the Company	P 230,526.30		P 230,526.30
Annex 2Q-PSG, (pp. 72-73)		650,807.31		650,807.31
Annex 3Q-PSG, (p.117)		159,745.39		159,745.39
Annex 4Q-PSG, (pp. 163-164)		209,632.64		209,632.64
Annex 1Q-PSI, (pp. 197-203)	Input VAT on importation duly supported by original copy of Import Entry and Internal Revenue Declarations (IEIRDs) with machine validation and/or BOC receipt dated within the period January to December 2010, or in case of importations under Electronic to Mobile Customs System (e2m Customs), supported	P 2,706,743.00		P 2,706,743.00
Annex 2Q-PSI, (pp. 217-221)		1,728,924.00		1,728,924.00
Annex 3Q-PSI, (pp. 233-240)		2,278,614.00		2,278,614.00
Annex 4Q-PSI, (pp. 253-260)		2,184,765.00		2,184,765.00

[51] Exhibits "O-1", "O-2", "O-3", and "O-4"
[52] Exhibits "O-5", "O-6", "O-7", and "O-8"
[53] *Ibid.*
[54] *Ibid.*
[55] *Ibid.*
[56] Exhibit "N-8"
[57] Exhibit "N-1"
[58] Exhibit "N-1", docket (Vol. 1), pp. 155-156

	by Single Administrative Documents (SADs), Statement of Settlement of Duties and Taxes (SSDTs) and Certification from Authorized Agent Bank (AAB). Printing of SADs and SSDTs from VASP verified.			
TOTAL INPUT VAT PROPERLY SUBSTANTIATED		**P 10,149,757.64**	**P 18,932,655.40**	**P 29,082,413.04**

According to the Independent CPA's Report, the total input VAT of P29,082,413.04 was properly substantiated. However, upon further verification, the Court noted additional exceptions in the amount of P969,105.06, computed as follows:

	PAGE	PER ICPA REPORT	PER VAT OR/ INVOICE	DISCREPANCY	REASON FOR DISALLOWANCE
Exhibit 0-1 Purchase of Service	9	262,915.09	262,915.04	0.05	Amount in supporting document is lower than the amount of claim.
-do-	13	782.81	776.66	6.15	Amount in supporting document is lower than the amount of claim.
-do-	15	214.29	210.46	3.83	Amount in supporting document is lower than the amount of claim.
-do-	25	2,613.89	1,200.00	1,413.89	Amount in supporting document is lower than the amount of claim.
Exhibit 0-1 Purchase of goods	45	20,008.41	-	20,008.41	The amount of input VAT was not separately shown in the invoice.
Exhibit 0-2 Purchase of Service	46	35,291.50	35,291.50	35,291.50	The official receipt was dated April 21, 2011, outside the claim period.
-do-	53	345.00	338.84	6.16	Amount in supporting document is lower than the amount of claim.
-do-	54	157.14	154.34	2.80	Amount in supporting document is lower than the amount of claim.
Exhibit 0-3 Purchase of Service	45	12.01	10.16	1.85	Amount in supporting document is lower than the amount of claim.
-do-	46	267.42	262.07	5.35	Amount in supporting document is lower than the amount of claim.
-do-	47	406.52	399.60	6.92	Amount in supporting document is lower than the amount of claim.
-do-	48	331.22	325.32	5.90	Amount in supporting document is lower than the

					amount of claim.
-do-	49	30,952.80	-	30,952.80	The amount of input VAT was not separately shown in the invoice.
-do-	50	1,944.00	1,344.00	600.00	Amount in supporting document is lower than the amount of claim.
-do-	51	1,949.18	1,347.58	601.60	Amount in supporting document is lower than the amount of claim.
-do-	54	3,600.00	3,535.72	64.28	Amount in supporting document is lower than the amount of claim.
-do-	74	368,533.88	96,977.91	271,555.97	Amount in supporting document is lower than the amount of claim.
-do-	76	12,960.00	6,600.00	6,360.00	Amount in supporting document is lower than the amount of claim.
Exhibit 0-3 Purchase of goods	8	55,560.00	55,560.00	55,560.00	The address of Nokia Philippines shown in the VAT invoice was different from its registered address.
Exhibit 0-4 Purchase of Services	40	64.29	63.14	1.15	Amount in supporting document is lower than the amount of claim.
-do-	41	37.50	36.80	0.70	Amount in supporting document is lower than the amount of claim.
-do-	42	346.54	315.10	31.44	Amount in supporting document is lower than the amount of claim.
-do-	43	125.88	123.63	2.25	Amount in supporting document is lower than the amount of claim.
-do-	44	302.56	297.51	5.05	Amount in supporting document is lower than the amount of claim.
-do-	45	39.08	37.02	2.06	Amount in supporting document is lower than the amount of claim.
-do-	62	209,474.95	153,600.00	55,874.95	Amount in supporting document is lower than the amount of claim.
-do-	64	36,379.20	1,399.20	34,980.00	Amount in supporting document is lower than the amount of claim.
-do-	66	464,688.00	8,928.00	455,760.00	Amount in supporting document is lower than the amount of claim.
TOTAL DISCREPANCIES/ DISALLOWED INPUT VAT				**969,105.06**	

In addition to the above-noted exceptions, the Court subscribes to the findings and observations of the Independent CPA on the input VAT disallowances amounting to P28,722,150.25 shown below: [59]

REFERENCE	NATURE	TOTAL
Annex 1Q - Bs *(p. 31)*	Input VAT on domestic purchases of services claimed during the period January to December 2010 but the VAT ORs were not dated within the said period	P 22,321.96
Annex 2Q - Bs *(p. 74)*		45,924.00
Annex 3Q - Bs *(p. 118)*		12,275.22
Annex 4Q - Bs *(pp. 165-166)*		536,381.07
Annex 1Q - Bg *(pp. 32-34)*	Input VAT on domestic purchases of goods claimed during the period January to December 2010 but the VAT invoices were not dated within the said period	162,944.37
Annex 3Q - Bg *(p. 119)*		2,297.99
Annex 1Q - Cs *(p. 35)*	Input VAT on domestic purchases of services supported by TIN VAT Official Receipts dated within January to December 2010 issued in the name of the Company but TIN and/or registered address of the Company is not indicated	542.25
Annex 1Q - Cg *(p. 36)*	Input VAT on domestic purchases of goods supported by TIN VAT invoices dated within January to December 2010 issued in the name of the Company but TIN and/or registered address of the Company is not indicated	17,640.00
Annex 2Q - Cg *(pp. 75-76)*		343,698.43
Annex 3Q - Cg *(pp. 120-121)*		447,839.78
Annex 4Q - Cg *(pp. 167-169)*		233,436.14
Annex 1Q - Ds *(p. 37)*	Input VAT on purchases whose supporting documents are not in the name of the Company (i.e., incomplete/misspelled company name)	24,758.25
Annex 3Q - Ds *(p. 122)*		3,340.80
Annex 2Q - Es *(p. 77)*	Input VAT on purchases whose supporting documents dated January to December 2010 are in the name of two Companies (i.e., in the name of the Company and of another company)	162,458.56
Annex 3Q - Es *(p. 123)*		62,995.43
Annex 1Q - Fs *(p. 38)*	Input VAT on domestic purchases of services supported by TIN VAT Official Receipts dated within January to December 2010 with transactions presented as non-VAT on the face of the document	3,300.00
Annex 2Q - Fs *(p. 78)*		630,815.35
Annex 3Q - Fs *(p. 124)*		41,280.00
Annex 4Q - Fs *(p. 170)*		579,059.17
Annex 3Q - Fg *(p. 125)*	Input VAT on domestic purchases of goods supported by TIN VAT invoices dated within January to December 2010 with transactions subject to 12% VAT clearly presented as "VAT Zero Rated" or "NON VAT" on the face of the document	1,163.57
Annex 4Q - Fg *(p. 171)*		380.26
Annex 1Q - Gs *(pp. 39-41)*	Input VAT on domestic purchases of services supported by TIN VAT Official Receipts dated within January to December 2010 issued in the name of the Company but with erroneous TIN and/or registered address of the Company	3,709,413.67
Annex 2Q - Gs *(pp. 79-80)*		27,084.87

[59] Exhibit "N-1", docket (Vol. 1), pp. 156-160

REFERENCE	NATURE	TOTAL
Annex 3Q - Gs *(pp. 126-129)*		321,878.52
Annex 4Q - Gs *(p. 172)*		110,983.78
Annex 2Q - Gg *(p. 81)*	Input VAT on domestic purchases of services supported by TIN VAT invoices dated within January to December 2010 issued in the name of the Company but with erroneous TIN and/or registered address of the Company	78,000.00
Annex 4Q - Gg *(p. 173)*		8,904.00
Annex 1Q - Hs *(pp. 42-50)*	Input VAT on domestic purchases of services supported by TIN VAT Official Receipts dated within January to December 2010 issued in the name of the Company but VAT is not separately indicated	1,547,487.30
Annex 2Q - Hs *(pp. 82-93)*		1,063,536.05
Annex 3Q - Hs *(pp. 130-137)*		544,060.08
Annex 4Q - Hs *(pp. 174-183)*		1,841,404.33
Annex 1Q - Xs *(pp. 51-55)*	Input VAT on domestic purchases of services not duly supported by original TIN VAT Official Receipt	1,065,843.05
Annex 2Q - Xs *(pp. 94-99)*		587,591.52
Annex 3Q - Xs *(pp. 138-144)*		427,801.02
Annex 4Q – Xs *(pp. 184-187)*		196,017.23
Annex 1Q - Xg *(p. 56)*	Input VAT on domestic purchases of goods not duly supported by original TIN VAT invoices	381.86
Annex 2Q - Xg *(p. 100)*		24,381.46
Annex 3Q - Xg *(p. 145)*		10,680.06
Annex 4Q - Xg *(p. 188)*		10,649.98
Annex 1Q - Os *(p. 57)*	Input VAT overclaimed on supported domestic purchase of services	24.64
Annex 2Q - Os *(pp. 101-105)*		72.42
Annex 3Q - Os *(pp. 146-151)*		118.65
Annex 4Q - Os *(pp. 189-190)*		66.89
Annex 1Q - Og *(p. 58)*	Input VAT overclaimed on supported domestic purchase of goods	4,443.00
Annex 3Q - Rg *(p. 152)*	Input VAT on domestic purchases of goods claimed in first quarter of taxable year 2010 but reversed in third quarter	(5,468.03)
Annex 3Q - Rs *(p. 153)*	Input VAT on domestic purchases of services claimed in first quarter of taxable year 2010 but reversed in third quarter	(1,196.12)
Annex 1Q.I – B *(p. 204)*	Input VAT on importation duly supported by original copy of first page of Import Entry and Internal Revenue Declarations (IEIRDs) without machine validation, or Statement of Settlement of Duties and Taxes (SSDT) and/or BOC receipt dated within the period January to December 2010	53,332.00
Annex 2Q.I – B *(p. 222)*		279,335.00
Annex 3Q.I – B *(p. 241)*		142,437.00
Annex 1Q.I - C *(pp. 205-209)*	Input VAT on importation made through a freight forwarder supported only by original BOC Official Receipt with no date but claimed by the Company within the period January to December 2010	100,755.00
Annex 2Q.I - C *(pp. 223-227)*		56,994.00

REFERENCE	NATURE	TOTAL
Annex 3Q.I - C *(pp. 242-244)*		29,234.00
Annex 1Q.I - D *(p. 210)*	Input VAT on importations whose supporting documents are not in the name of the Company (i.e., in the name of another company, incomplete/misspelled company name)	43,245.00
Annex 2Q.I - D *(p. 228)*		5,803.00
Annex 3Q.I - D *(pp. 245-247)*		24,343.00
Annex 4Q.I - D *(pp. 261-263)*		34,812.00
Annex 1Q.I – E *(p. 211)*	Input VAT on importation whose supporting documents dated January to December 2010 are in the name of two Companies (i.e., in the name of the Company and of another company)	15,906.00
Annex 1Q.I - X *(p. 212)*	Input VAT on importation supported by photocopy of Import Entry and Internal Revenue Declarations (IEIRDs) dated within January to December 2010	168,545.00
Annex 2Q.I - X *(p. 229)*		920,785.00
Annex 3Q.I - X *(p. 248)*		1,411,542.00
Annex 4Q.I - X *(p. 264)*		1,074,894.00
Annex 1Q.I - O *(pp. 213-215)*	Input VAT overclaimed on supported importation of goods	187,405.00
Annex 2Q.I - O *(pp. 230-231)*		2,416.00
Annex 3Q.I - O *(pp. 249-251)*		7,180.00
Annex 4Q.I - O *(pp. 265-270)*		17,439.00
Annex 1Q-Z *(pp. 59-65)*	Input VAT on domestic purchases of goods and services not supported by any document (Q1)	1,611,980.21
Annex 2Q-Z *(pp. 106-108)*	Input VAT on domestic purchases of goods and services not supported by any document (Q2)	4,089,160.87
Annex 3Q-Z *(pp. 154-158)*	Input VAT on domestic purchases of goods and services and payments for services rendered by non-residents not supported by any document (Q3)	1,620,699.58
Annex 4Q-Z *(pp. 191-196)*	Input VAT on domestic purchases of goods and services not supported by any document (Q4)	884,624.76
Annex 1Q.I-Z *(p. 216)*	Input VAT on importations not supported by any document (Q1)	74,979.00
Annex 2Q.I-Z *(p. 232)*	Input VAT on importations not supported by any document (Q2)	22,148.00
Annex 3Q.I-Z *(p. 252)*	Input VAT on importations not supported by any document (Q3)	1,679.00
Annex 4Q.I-Z *(p. 271)*	Input VAT on importations not supported by any document (Q4)	931,464.00
Total		**P28,722,150.25**

Based on the Court's examination, these exceptions arose mainly due to non-compliance with the substantiation requirements under Sections 113(A) and (B) and 237 of the NIRC of 1997 in relation to Sections 4.110-1, 4.110-8 and 4.113.1 of

Revenue Regulations No. 16-05. Meanwhile, some disallowances were due to supporting documents dated beyond the period of claim.

Considering the disallowances, the total input VAT properly substantiated is computed as follows:

Total Input VAT per VAT returns	P 57,804,563.29
Less: Disallowances per ICPA's Report which was verified by the Court	28,722,150.25
Additional disallowances noted by the Court	969,105.06
Total Input VAT properly substantiated	**P 28,113,307.98**

A portion of the properly substantiated input VAT of P28,113,307.98 shall be applied against petitioner's reported output VAT of P367,567.99[60]. Hence, for the four taxable quarters of 2010, the total substantiated input VAT net of output VAT amounts to P27,745,739.99.

Inasmuch as only portions of the total zero-rated sales were properly substantiated, the substantiated input VAT net of output VAT shall be further reduced to P27,619,940.71:

Total Allowed Zero-rated sales	P568,223,533.24
Divided by Total Zero-rated sales per VAT sales invoices and Billing per Netting Statements (gross of offsetting and forex transactions)	570,811,595.04
	.99546599644
Multiplied by Substantiated Input VAT (net of output)	P 27,745,739.99
Refundable Input VAT	**P 27,619,940.71**

Using its 2011 Amended Fourth Quarter VAT Return, petitioner was able to prove that the input VAT of P27,619,940.71 was not applied against any output VAT in the succeeding quarters. It was part of the P57,594,670.73 input VAT that remained unutilized and was reported as "VAT Refund/TCC Claimed" in the fourth quarter of 2011.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of P27,619,940.71, representing petitioner's unutilized input VAT for the four quarters of taxable year 2010.

[60] Exhibit"N-3", pp. 2-11

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

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