REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

GALILEO ASIA, LLC-PHILIPPINE BRANCH,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8419

Members:

BAUTISTA, Chairperson;
FABON-VICTORINO, and
RINGPIS-LIBAN, ***JJ.***

Promulgated:

JUN 10 2015
4:20 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

STATEMENT OF THE CASE

This is a Petition for Review filed by Galileo Asia, LLC-Philippine Branch on January 30, 2012 to seek the refund or issuance of tax credit certificate in the amount of Ten Million Four Hundred Fifty-Four Thousand One Hundred Three Pesos and 25/100 (₱10,454,103.25), allegedly representing excess and unutilized input value-added tax (VAT) on its domestic purchases of goods and services attributable to its zero-rated sales of services for the period covering August 1, 2009 to April 30, 2011.

STATEMENT OF FACTS

Petitioner Galileo Asia, LLC-Philippine Branch is a limited liability company organized and existing under the laws of the State of Delaware, United States of America[1] and is licensed to do business and is actually doing business in the Philippines, as evidenced by its amended Securities and Exchange Commission (SEC) License No. AFO94-000080[2] dated April 26, 2002. It was established as a branch office in the Philippines to provide travel reservations, products and services to travel agencies and foreign and domestic airlines in the Philippines, using a Global Computerized Reservation System.[3] Petitioner is also registered as a VAT taxpayer with the Bureau of Internal Revenue (BIR), with Taxpayer Identification No. 004-460-118-V.[4]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue empowered to perform the duties of said office, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes, as provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Pursuant to a Service Agreement[5] with its foreign affiliate, Galileo Nederland B.V., which is now known as Travelport Global Distribution Services B.V., petitioner was appointed to promote and market the latter's Global Computerized Reservation System services in the Asian market region. In consideration for its services to the foreign affiliate, petitioner would receive a fee, in the form of a market incentive payment, payable in US Dollars.[6]

For the period of August 1, 2009 to April 30, 2011, petitioner allegedly rendered services in the Philippines to its foreign affiliate, which is engaged in business outside the Philippines. For the said period, petitioner's accumulated sales amounted to ₱139,521,623.34, broken down as follows:[7]

Total VATable Sales	₱ 223,290.86
Total Zero-Rated Sales	139,297,632.48
Total Exempt Sales	700.00
Total Sales (August 2009-April 2011)	₱139,521,623.34

Petitioner purportedly incurred a total accumulated input VAT of ₱10,849,577.45 from its domestic purchases of non-capital goods and services, and out of the said amount, only the amount of ₱10,832,159.32 was attributable to its zero-rated sales of services for the period of August 1, 2009 to April 30, 2011.[8]

[1] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Simplification of Issues (JSFSI), docket, p. 178.
[2] Exhibit "B-2".
[3] Par. 5, Stipulation of Facts, JSFI, docket, pp. 179-180.
[4] Par. 6, Stipulation of Facts, JSFI, docket, p. 180.
[5] Exhibit "W".
[6] Par. 7, Stipulation of Facts, JSFI, docket, p. 180.
[7] Petition for Review, docket, p. 11.
[8] Pars. 17 and 18, Petition for Review, docket, p. 12.

Petitioner further contends that the input VAT derived from domestic purchases of non-capital goods and services amounting to ₱10,822,782.51 for the same period remained unutilized for the subsequent taxable quarters and out of the said amount, the amount of ₱10,454,103.25 are duly supported and covered either by VAT invoices and/or official receipts issued by VAT-registered suppliers, in accordance with Sections 110 and 113 of the National Internal Revenue Code (NIRC) of 1997, as amended.[9]

For the period of August 1, 2009 to April 30, 2011, petitioner filed with the BIR its original Monthly and Quarterly VAT Returns[10] on the following dates:

MONTHLY VAT RETURN	QUARTERLY VAT RETURN	DATE FILED
August 2009		September 22, 2009
	3rd Quarter-2009	**October 26, 2009**
October 2009		November 20, 2009
November 2009		December 21, 2009
	4th Quarter-2009	**January 25, 2010**
January 2010		February 22, 2010
February 2010		March 22, 2010
	1st Quarter-2010	**April 26, 2010**
April 2010		May 20, 2010
May 2010		June 21, 2010
	2nd Quarter-2010	**July 26, 2010**
July 2010		August 20, 2010
August 2010		September 20, 2010
	3rd Quarter-2010	**October 26, 2010**
October 2010		November 22, 2010
November 2010		December 20, 2010
	4th Quarter-2010	**January 25, 2010**
January 2011		February 21, 2011
February 2011		March 21, 2011
	1st Quarter-2011	**April 25, 2011**
April 2011		May 20, 2011

Petitioner filed on August 31, 2011 with the BIR Revenue District Office No. 49 an administrative claim[11] for refund or tax credit of its unutilized input VAT on domestic purchases of goods and services attributable to its zero-rated sales of services for the period covering August 1, 2009 to April 30, 2011 in the amount of ₱10,454,103.25. In support of the said claim, petitioner submitted the documentary requirements[12] on the same date.

[9] Par. 20, Petition for Review, docket, p. 13.
[10] Exhibits "E" to "M".
[11] Exhibit "D".
[12] Exhibit "KKK".

Respondent failed to act on petitioner's administrative claim for refund or issuance of tax credit certificate, prompting petitioner to file the present Petition for Review[13] on January 30, 2012.

In her Answer[14] filed within the extended time granted by the Court,[15] respondent interposed the following Special and Affirmative Defenses, that petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue (BIR); that petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected; that it is incumbent upon the petitioner to show that it has complied with the provision of Section 204(C) in relation to Section 229 of the 1997 Tax Code, as amended; that petitioner's claim for refund or issuance of tax credit certificate in the amount of Php10,454,103.25 as alleged and unutilized input VAT paid on purchases of goods and services attributable to its zero-rated sales for the period August 1, 2009 to April 30, 2011 was not fully substantiated by proper documents, such as sales invoices, official receipts and others.

The case was set for pre-trial conference on April 26, 2012[16], and the parties filed their respective Pre-Trial Briefs on April 23, 2012.[17] In a Resolution[18] dated May 8, 2012, the Court ordered the parties to file their Joint Stipulation of Facts and Issues.

Accordingly, the parties filed their Joint Stipulation of Facts and Simplification of Issues[19] on May 15, 2012. Thereafter, the Court issued a Pre-Trial Order[20] on June 6, 2012, terminating the pre-trial and ordering the parties to proceed with the trial on the merits.

Petitioner filed its Formal Offer of Evidence and Manifestation[21] on February 28, 2013 and its pieces of documentary evidence were admitted by the Court in its Resolutions dated April 23, 2013[22], January 13, 2014[23], February 11, 2014[24], and May 5, 2014[25].

During trial, petitioner presented its witnesses, Ms. Sheiryll Soldevilla – Office and Sales Administrator of petitioner, and Mr. Jerome Antonio B. Constantino – the Court-commissioned Independent Certified Public Accountant for the case.[26]

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[13] Petition for Review, docket, pp. 6-18.
[14] Docket, pp. 147-149.
[15] Resolution, docket, p. 146.
[16] Docket, p. 150.
[17] Docket, pp. 151-153 and 156-172.
[18] Docket, p. 177.
[19] Docket, pp. 178-182.
[20] Docket, pp. 189-194.
[21] Docket, pp. 703-729.
[22] Docket, pp. 734-735.
[23] Docket, pp. 828-829.
[24] Docket, pp. 831-834.
[25] Docket, p. 851.
[26] Docket, p. 213.

When it was respondent's time to present evidence, she manifested that there is no investigation submitted by the Revenue Examiner; hence, she will no longer present any evidence.

Petitioner filed its Memorandum[27] on June 20, 2014; while respondent filed her Memorandum[28] via registered mail on June 20, 2014, which was received by the Court on June 23, 2014. After the filing of the parties' respective Memoranda, the case was submitted for decision on July 22, 2014.[29]

STATEMENT OF ISSUES

The parties submitted the following issues[30] for this Court's consideration:

1. Whether during the period August 1, 2009 to April 30, 2011, petitioner rendered services in the Philippines to person/s engaged in business outside the Philippines, the payments for which were received in acceptable foreign currency and accounted for in accordance with the rules of the Bangko Sentral ng Pilipinas.

2. Whether petitioner's sale of services in the Philippines to person/s engaged in business conducted outside the Philippines is subject to VAT at zero-percent.

3. Whether petitioner has incurred and accumulated excess and unutilized input VAT in the amount of Philippine Pesos: Ten Million Four Hundred Fifty-Four Thousand One Hundred Three and 25/100 (Php10,454,103.25) for the period August 1, 2009 to April 30, 2011.

4. Whether petitioner's accumulated and incurred excess input VAT in the amount of Php10,454,103.25 are attributable to its VAT zero-rated sale of services for the period of August 1, 2009 to April 30, 2011.

5. Whether petitioner's unused/unutilized input VAT in the amount of Php10,454,103.25 remains unutilized for the subsequent quarters.

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[27] Docket, pp. 861-907.
[28] Docket, pp. 908-914.
[29] Docket, p. 918.
[30] Stipulated Issues, Pre-Trial Order, docket, pp. 190-191.

6. Whether petitioner's claim for refund or tax credit of its unused/unutilized input VAT for the period of August 1, 2009 to April 30, 2011 is duly substantiated by supporting documents.

7. Whether petitioner has complied with the requirements for refunds or tax credits of input VAT pursuant to Section 112 of Tax Reform Act of 1997 and Section 4.112-1 of Revenue Regulations (RR) 16-2005.

8. Whether petitioner is entitled to claim for a refund or tax credit in the amount of Php10,454,103.25 for unutilized input VAT arising from its VAT zero-rated sale of services for the period August 1, 2009 to April 30, 2011.

9. Whether petitioner's claim for refund or tax credit of its unutilized input VAT for the period August 1, 2009 to April 30, 2011 has not yet prescribed.

DISCUSSION/RULING

This Court shall resolve first the issue regarding the timeliness of the filing of the claim for refund. The relevant provisions are Sections 112(A) and 112(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 non-zero-rated sales.

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, **the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.**" *(Emphasis supplied)*

In addition, Section 4.112-1 of Revenue Regulations No. 16-2005 states that:

"SECTION 4.112-1. *Claims for Refund/Tax Credit Certificate of Input Tax.* –

(a) *Zero-rated and Effectively Zero-rated Sales of Goods, Properties or Services*

A VAT-registered person whose sales of goods, properties or services are zero-rated or effectively zero-rated may apply for the issuance of a tax credit certificate/refund of input tax attributable to such sales. The input tax that may be subject of the claim shall exclude the portion of input tax that has been applied against the output tax. **The application should be filed within two (2) years after the close of the taxable quarter when such sales were made.**

In case of zero-rated sales under Secs. 106(A)(2)(a)(1) and (2), and Sec. 106(A)(2)(b) and Sec. 108(B)(1) and (2) of the Tax Code, the payments for the sales must have been made in acceptable foreign currency duly accounted for in accordance with the BSP rules and regulations." *(Emphasis supplied)*

Based on the above-mentioned provisions, a VAT-registered taxpayer whose sale is 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 issuance of tax credit certificate or a refund of its creditable input tax due or paid attributable to such sales.

In *Commissioner of Internal Revenue vs. San Roque Power Corporation, et al.*[31], the Supreme Court reiterated that the reckoning point of the two-year prescriptive period for filing an administrative claim for refund or tax credit of unutilized input VAT shall be the close of the taxable quarter when the sales were made.

Applying the said provisions and the guidelines set forth by the Supreme Court in *Commissioner of Internal Revenue vs. San Roque Power Corporation, et al.*[32], petitioner's last day for filing of its administrative claim shall be as follows:

PERIOD COVERED	LAST DAY OF THE TWO-YEAR PERIOD
July to September 2009	September 30, 2011
October to December 2009	December 31, 2011
January to March 2010	March 31, 2012
April to June 2010	June 30, 2012
July to September 2010	September 30, 2012
October to December 2010	December 31, 2012
January to March 2011	March 31, 2013
April to June 2011	June 30, 2013

Records reveal that petitioner filed an administrative claim for refund or tax credit with the supporting documents with respondent on August 31, 2011, well within the two-year period required by the rules.

From the date of submission of petitioner's supporting documents or from August 31, 2011, respondent had a period of one hundred twenty (120) days or up to December 29, 2011 to act on petitioner's claim. After the lapse of the 120-day period, petitioner had thirty (30) days or up to January 28, 2012[33] within which to file a judicial claim before this Court.

Petitioner filed its Petition for Review on January 30, 2012, also within the period required by the rules. Therefore, both the administrative and the judicial claims were filed on time.

[31] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[32] *Supra.*
[33] January 28, 2012 was a Saturday.

This Court shall now determine whether petitioner is entitled to a refund or tax credit in the amount of ₱10,454,103.25, representing alleged excess and unutilized input VAT on its domestic purchases of goods and services attributable to its zero-rated sales of services for the period covering August 1, 2009 to April 30, 2011.

Petitioner anchors its claim for tax refund in Sections 110(B) and 112(A) of the NIRC of 1997, as amended, to wit:

> "SEC. 110. *Tax Credits.* –
>
> xxx xxx xxx
>
> (B) *Excess Output or Input Tax.* – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided*, That the input tax inclusive of input VAT carried over from the previous quarter that maybe credited in every quarter shall not exceed seventy percent (70%) of the output VAT: *Provided, however*, That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.
>
> xxx xxx xxx
>
> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the

transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."

Pursuant to Section 112(A), and as enumerated by the Supreme Court in the case of *San Roque Power Corporation vs. Commissioner of Internal Revenue*[34], in order to be entitled to a refund or issuance of tax credit certificate of input VAT paid, petitioner must prove the following:

1. the taxpayer is VAT-registered;
2. the taxpayer is engaged in zero-rated or effectively zero-rated sales;
3. the input taxes are due or paid;
4. the input taxes are not transitional input taxes;
5. the input taxes have not been applied against output taxes during and in the succeeding quarters;
6. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
7. 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 BSP rules and regulations;
8. 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 attributed to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and
9. the claim is filed within two years after the close of the taxable quarter when such sales were made.

Since this Court already resolved the last requisite, the Court will now determine whether petitioner has satisfied the remaining requirements to be entitled to a refund.

The taxpayer is a VAT-registered entity

It is apparent from the records of the case that petitioner is a VAT-registered entity, as evidenced by its Certificate of Registration dated December 12, 1994.[35]

[34] G.R. No. 180345, November 25, 2009.
[35] Exhibit "C".

The taxpayer is engaged in zero-rated or effectively zero-rated sales

Petitioner argues that the services it rendered to its foreign affiliate for the period covering August 1, 2009 to April 30, 2011, satisfied the requirements stated in Section 108(B) of the NIRC of 1997, as amended, which reads:

> "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 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);**" *(Emphasis supplied)*

A close scrutiny of the above provision shows that a taxpayer must establish the following requirements in order for the supply of services to be considered as VAT zero-rated:

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

Petitioner is a VAT-registered person that rendered services to its foreign affiliate for the promotion and marketing of its Global Computerized Registration System in the Philippines. Clearly, the service it renders in the Philippines is not in the same category as "processing, manufacturing or repacking of goods"; hence, satisfying the first requisite.

This Court in the case of *Deutsche Knowledge Services, Pte Ltd. vs. Commissioner of Internal Revenue*[36] explained the documentary requirements to establish that the recipients of services are indeed doing business outside the Philippines, to wit:

> "To prove that its clients are non-resident foreign corporations doing business outside the Philippines, petitioner presented the following documents:
>
> 1. SEC Certifications of Non-Registration of Company;
> 2. Certifications from different government agencies in the country of origin of petitioner's clients, all duly authenticated by the nearest consulate of the Philippines;
> 3. Intragroup Service Agreements; and
> 4. Duetsche Bank List of Shareholdings 2008.
>
> However, the Court finds that **the aforesaid documents *per se* do not constitute sufficient proof that petitioner's clients are non-resident foreign corporations doing business outside the Philippines.**
>
> While the SEC Certificates of Non-Registration show that the named entities therein are not registered corporations/partnerships in the Philippines, the same do not prove that such entities are non-resident foreign corporations doing business outside the Philippines. Likewise, the Intra-Group Service Agreements only show the names of petitioner's customers to whom it rendered services but the same do not establish that such customers are non-resident foreign corporations doing business outside the Philippines. Moreover, the Articles of Association and Certificates of Registration/Incorporation of Foreign Company only prove that the named entities therein were incorporated/organized abroad. However, they also do not establish that such entities are not doing business in the Philippines.
>
> **To be considered as non-resident foreign corporation doing business outside the Philippines, each entity must be**

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[36] CTA Case No. 7808, December 16, 2014.

> **supported, at the very least, <u>by both</u> SEC certificate of non-registration of corporation/partnership and certificate/articles of foreign incorporation/association/registration.** xxx" *(Emphasis supplied)*

Petitioner offered as evidence the Certificates of Non-Registration[37] of its foreign affiliate duly issued by the Securities and Exchange Commission, the Consularized Informal Translation of the Articles of Association of Travelport Global Distribution System B.V.[38], and the Consularized Amendment to Articles of Association of Travelport Global Distribution System B.V.[39], indicating that the said entity is established in Amstelveen, Netherlands.

Corollary thereto, petitioner must likewise prove its compliance with the substantiation requirements under Section 113 of the NIRC of 1997, as amended, which partly provides:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
>
> (A) *Invoicing Requirements.* – A VAT-registered person shall issue:
>
> xxx xxx xxx
>
> (2) A **VAT official receipt** for every lease of goods or properties, and **for every sale, barter or exchange of services**.
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* – The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:
>
> xxx xxx xxx

[37] Exhibits "Y" and "Z".
[38] Exhibit "XX".
[39] Exhibit "YY".

(c) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;"

Respondent avers in her Memorandum[40] that petitioner's sale of services to its non-resident client must be supported by official receipts and not invoices, pursuant to the afore-quoted provision.

Petitioner, for its part, submitted the following invoices and inward remittances to further prove its sale of services to its foreign affiliates:

Invoice No.	Exhibit No.	US Dollar Amount	Per Inward Remittance *(Exhibit "X")*	Date	Peso Equivalent *(Exhibit "EEE")*
GALPHTBV/Aug-09	**PP-2**	₱ 210,478.00	₱ 95,200.00	10/13/2009	₱ 4,531,520.00
GALPHTBV/Sep-09	**PP-3**	156,119.00	201,300.00	11/23/2009	9,551,685.00
GALPHTBV/Oct-09	**PP-4**	223,217.00	68,388.00	1/11/2010	3,180,042.00
GALPHTBV/Nov-09	**PP-5**	311,714.00	108,800.00	3/8/2010	5,012,960.00
GALPHTBV/Dec-09	**PP-6**	190,458.00	89,000.00	3/22/2010	4,100,675.00
GALPHTBV/Dec-09	**PP-7**	(153,994.00)			
GALPHTBV/Jan-10	**PP-8**	253,434.00	285,606.00	5/11/2010	12,716,607.15
			77,100.00	5/24/2010	3,432,877.50
			47,700.00	6/7/2010	2,203,501.50
GALPHTBV/Feb-10	**PP-9**	172,787.00	84,500.00	6/21/2010	3,903,477.50
			55,200.00	7/26/2010	2,563,488.00
GALPHTBV/Mar-10	**PP-10**	285,606.00	119,300.00	7/12/2010	5,540,292.00
GALPHTBV/Apr-10	**PP-11**	203,281.00	62,400.00	8/23/2010	2,841,072.00
GALPHTBV/May-10	**PP-12**	174,957.00	158,800.00	8/10/2010	7,230,164.00
GALPHTBV/Jun-10	**PP-13**	216,926.00	125,600.00	9/20/2010	5,693,448.00
GALPHTBV/Jul-10	**PP-14**	180,885.00	166,200.00	9/7/2010	7,533,846.00
GALPHTBV/Aug-10	**PP-15**	258,226.00	15,000.00	10/5/2010	657,375.00
GALPHTBV/Sep-10	**PP-16**	136,824.00	66,000.00	10/18/2010	2,892,450.00
GALPHTBV/Oct-10	**PP-17**	232,689.00	19,600.00	11/15/2010	840,840.00
GALPHTBV/Nov-10	**PP-18**	183,341.00	148,300.00	11/30/2010	6,362,070.00
GALPHTBV/Dec-10	**PP-19**	225,952.00	206,300.00	11/2/2010	8,850,270.00
GALPHTBV/Dec-10	**PP-20**	(81,425.00)	29,900.00	3/8/2011	1,303,341.00
GALPHTBV/Jan-11	**PP-21**	239,311.00	11,300.00	3/14/2011	492,567.00
GALPHTBV/Feb-11	**PP-22**	174,766.00	170,500.00	12/13/2010	7,513,082.50
GALPHTBV/Mar-11	**PP-23**	256,133.00	146,700.00	1/24/2011	6,402,721.50
			111,600.00	2/22/2011	4,942,206.00
			73,900.00	2/8/2011	3,272,661.50
			160,600.00	4/5/2011	6,970,040.00
			72,200.00	4/18/2011	3,133,480.00
GALPHTBV/Apr-11	**PP-24**	244,589.00	146,400.00	12/21/2010	6,451,116.00
TOTAL		**₱4,296,274.00**	**₱3,123,394.00**		**₱140,119,876.15**

[40] Docket, pp. 908-914.

This Court finds respondent's averments meritorious. Indeed, petitioner, being engaged in the sale or exchange of services in the Philippines, is VATable on its gross receipts pursuant to Section 108 of the NIRC, thus must be supported by VAT official receipts. Under the law, a *VAT invoice* is necessary for every sale, barter or exchange of goods or properties, while a *VAT official receipt* properly pertains to every lease of goods or properties, and for every sale, barter or exchange of services. In *Commissioner of Internal Revenue vs. Manila Mining Corporation*[41], the High Court distinguished an invoice from a receipt, thus:

> "A 'sales or commercial invoice' is a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services.
>
> A 'receipt' on the other hand is a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer.
>
> In other words, the VAT invoice is the seller's best proof of the sale of the goods or services to the buyer while the VAT receipt is the buyer's best evidence of the payment of goods or services received from the seller. Even though VAT invoices and receipts are normally issued by the supplier/seller alone, the said invoices and receipts, taken collectively, are necessary to substantiate the actual amount or quantity of goods sold and their selling price *(proof of transaction)*, and the best means to prove the input VAT payments *(proof of payment)*. Hence, VAT invoice and VAT receipt should not be confused as referring to one and the same thing. Certainly, neither does the law intend the two to be used alternatively."

Perusal of the records reveals that petitioner was not able to show to this Court that it has valid VAT official receipts issued to Travelport Global Distribution System B.V. for the period of claim pursuant to Sections 108 and 113 of the NIRC of 1997. Petitioner merely presented sales invoices and not VAT official receipts as required by the law.

Moreover, even the Court-commissioned Independent CPA indicated in his report that petitioner has no zero-rated VAT official receipts.[42] The inward remittances, though acceptable proof of cash receipts, are, however, insufficient

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[41] 505 Phil. 650, 665 (2005).
[42] Exhibit "WW", page 7.

proofs that the same are from zero-rated sales to warrant the refund or issuance of tax credit certificate on unutilized input VAT.

Without proper VAT zero-rated official receipts, petitioner's reported sales of services for the period of August 1, 2009 to April 30, 2011 cannot qualify for VAT zero-rating under Section 108(B)(2) in relation to Section 113(A)(2) and (B)(2)(c) of the NIRC of 1997, as amended. Consequently, the input VAT of ₱10,454,103.25 allegedly attributable thereto cannot be refunded.

Even though it is true that the Court of Tax Appeals is not strictly governed by technical rules of evidence,[43] the invoicing and substantiation requirements must be strictly followed because it is the only way to determine the veracity of petitioner's claim for refund. Moreover, well-settled in this jurisdiction is the fact that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[44]

In view of the conclusion thus reached, the Court finds it unnecessary to discuss petitioner's compliance with the other requisites for refund of unutilized input VAT.

WHEREFORE, premises considered, petitioner's claim for refund or issuance of tax credit certificate is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[43] Section 8, Republic Act No. 1125, An Act Creating the Court of Tax Appeals, as amended.

[44] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 159490, February 18, 2008.

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it 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