REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1437** (CTA Case No. 8701)
-versus-	Present: ***Del Rosario, P.J., Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban,*** *and* ***Manahan, JJ.***
MANULIFE DATA SERVICES, INC., *Respondent.*	Promulgated: JUN 07 2017 4:15 p.m.

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DECISION

BAUTISTA, J:

This is a Petition for Review[1] under *Section 3(b)*[2], *Rule 8, Revised Rules of the Court of Tax Appeals ("RRCTA")*[3] seeking for the Court *En Banc* to review the Decision[4] promulgated on October 28, 2015 and

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[1] *Rollo, CTA EB No. 1437, Petition for Review ("PFR"),* pp. 6-75, with annexes.

[2] SECTION 3. *Who May Appeal; Period to File Petition.* — xxx

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(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

[3] A.M. No. 05-11-07-CTA, November 22, 2005.

[4] *Records, CTA Case No. 8701, Vol. 2, Decision,* pp. 925-969; penned by Associate Justice Caesar A. Casanova, with Associate Justice Juanito C. Castañeda, Jr. concurring.

the Resolution[5] promulgated on February 22, 2016 both rendered by the Second Division of the Court of Tax Appeals ("CTA") ("Court in Division"), by completely denying respondent's claim for refund or for the issuance of a tax credit certificate ("TCC"), on the ground that the sales made by respondent to The Manufacturer's Life Insurance Company ("MLIC") cannot qualify for value-added tax ("VAT") zero-rating pursuant to *Section 108(B)(2)*[6] *of the 1997 National Internal Revenue Code*[7], *as amended ("1997 NIRC")*, and that respondent failed to substantiate its claim for refund of its alleged excess or unutilized input VAT for the 1st to the 4th quarters of taxable year ("TY") 2011.[8]

The Parties[9]

Petitioner Commissioner of Internal Revenue ("CIR")[10] is vested with the power to decide tax cases, including claims for refund and/or tax credits pursuant to *Section 4 of the 1997 NIRC*. He holds office at the 5th Floor, Bureau of Internal Revenue ("BIR") National Office Building, Agham Road, Diliman, Quezon City.

Respondent Manulife Data Services, Inc. ("MDSI") is a foreign corporation duly registered with and authorized by the Securities and Exchange Commission ("SEC") to operate as a Regional Operating Headquarters ("ROHQ"), with principal office address at Manulife Building, UP North Science and Technology Park, Commonwealth Avenue, Diliman, Quezon City.

MDSI, as an ROHQ, is engaged in performing qualifying services to its affiliates and related parties in the Asia-Pacific Region

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[5] *Records, Vol. 2, Resolution*, pp. 994-1001; penned by Associate Justice Caesar A. Casanova, with Associate Justices Juanito C. Castañeda, Jr. and Amelia R. Cotangco-Manalastas concurring.

[6] SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. -

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(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:

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(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);

[7] Republic Act No. 8424, January 1, 1998.

[8] *Rollo, PFR*, p. 16.

[9] *Records, Vol. 2, Decision*, pp. 925-926.

[10] Formerly her Honorable CIR Kim S. Jacinto-Henares, now his Honorable CIR Ceasar R. Dulay.

and other foreign markets. It is a VAT-registered entity, as evidenced by its Certificates of Registration (BIR Form No. 2303) OCN 3RC0000330824 and OCN 3RC0000421626 both dated March 9, 2006, issued by the BIR, Revenue Region ("RR") No. 007, Revenue District Office ("RDO") No. 039, and RR No. 007, RDO No. 038, respectively.

The Facts

As stated in the Decision[11] promulgated on October 28, 2015, the factual antecedents of this case are as follows:

> For the 1st to the 4th quarter[s] of [TY] 2011, [MDSI] generated the following VAT-able sales and zero-rated sales which were directly attributable to services rendered to its affiliates doing business outside the Philippines, *viz[.]*:

[TY] 2011	VAT-able Sales	Zero-rated Sales
1st Quarter	[Php] 123,879.72	[Php] 325,131,825.82
2nd Quarter	1,972,899.62	322,609,555.60
3rd Quarter	255,132.50	331,372,504.80
4th Quarter	1,070,390.25	456,579,564.39

> [MDSI] accumulated input VAT for [TY] 2011 from its domestic purchases of supplies and services as well as from purchase of capital goods which remained unutilized and is now the subject of the instant claim. [MDSI]'s input VAT for 2011 is herein below summarized, to wit:

Consolidated for [TY] 2011	Purchases	Input VAT
Purchase of capital goods not exceeding [Php]1M	[Php] 17,916,693.81	[Php] 2,150,003.26
Domestic purchase of goods other than capital goods	7,117,654.20	7,610,074.36
Domestic purchase of services	158,783,956.18	1,003,315.98
Current portion of Input Tax on purchases of capital goods exceeding [Php1M]	26,845,196.13	19,054,074.75
Less: Output VAT		(410,927.13)
Total Current Purchases	[Php] 210,663,500.32	[Php] 29,406,541.23

> [MDSI] filed its VAT and Income Tax Returns, which w[ere] duly received by [the CIR] on the following dates:

	Date Filed
Quarterly VAT Return, 1st Quarter of 2011	25 April 2011
Quarterly VAT Return, 2nd Quarter of 2011	25 July 2011
Amended Quarterly VAT Return, 2nd Quarter of 2011	22 August 2011
Quarterly VAT Return, 3rd Quarter of 2011	25 October 2011
Quarterly VAT Return, 4th Quarter of 2011	25 January 2012

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11 *Records, Vol. 2, Decision*, pp. 926-930.

Amended Quarterly VAT Return, 4th Quarter of 2011	13 April 2012
Quarterly VAT Return, 1st Quarter of 2012	25 April 2012
Amended Quarterly VAT Return, 2nd Quarter of 2012	10 September 2012
Quarterly VAT Return, 3rd Quarter of 2012	25 October 2012
Quarterly VAT Return, 4th Quarter of 2012	25 January 2013
Amended Monthly VAT Declaration for the month of February 2013	26 March 2013
Income Tax Return for 2011 with attached Audited Financial Statement	15 April 2013

On March 27, 2013, [MDSI] filed with [the CIR], through [RDO No. 38], its administrative application for refund or issuance of [a TCC] for its excess/unutilized input [VAT] for the 1st to 4th quarters of [TY] 2011.

Since no action has been taken by [the CIR] on [MDSI's] administrative claim for refund/issuance of [a TCC], [MDSI] filed [a] Petition for Review [with the Court in Division].

On September 17, 2013, [CIR] filed h[is] Answer and interposed the following Special and Affirmative Defenses, to wit:

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On December 27, 2013, [MDSI] filed a Motion To Commission an Independent Certified Public Accountant [("ICPA")] which motion was granted by the Court in the hearing on January 29, 2014.

The parties filed their Joint Stipulation of Facts and Issue [("JSFI")] on January 10, 2014 and the same was subsequently approved and adopted by the Court in its Pre-Trial Order dated January 23, 2014.

After presentation of its evidence, [MDSI] filed its Formal Offer of Exhibits thr[ough] registered mail on May 23, 2014, without [the CIR]'s comment thereon. In a Resolution promulgated on July 24, 2014, th[e] Court resolved to admit [MDSI]'s exhibits, except for the following which were denied admission, *viz[.]*:

(a) Exhibits "P-2, P-57, P-58, P-60 and P-2206 to P-2217" for failure of [MDSI] to submit the originals for comparison;

(b) Exhibits "P-32, P-33, P-34, P-2327, P-1200b, P-1211b, P-1219b, P-1482b, P-1504b, P-1512b, P-1783b, P-1797b, P-1803b, P-2093b, P-2096b and P-2115b to P-

2122b" for not being found in the records of the case; and

(c) Exhibits "P-2249 to P-2276" for not being identified during trial and for failure of [MDSI] to submit the originals for comparison.

In the hearing on September 10, 2014, [the CIR]'s counsel manifested that she has no witness to present in th[e] case, and, upon motion, the parties were granted thirty (30) days from September 10, 2014 or until October 10, 2014 to file their memoranda, after which the case shall be considered submitted for decision.

On September 26, 2014, [the CIR] filed h[is] Respondent's Memorandum[;] while [MDSI], after an extension of fifteen (15) days granted by the Court, filed its Memorandum For Petitioner on October 23, 2014.

The case was considered submitted for decision per Resolution promulgated on October 28, 2014.

The dispositive portion[12] of the Decision reads as follows:

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, [the CIR] is hereby **ORDERED TO REFUND** or **TO ISSUE A [TCC]** in favour of [MDSI] in the reduced amount of **SIX MILLION TWO HUNDRED FORTY THREE THOUSAND TWO HUNDRED TWENTY and 30/100 PESOS ([Php]6,243,220.30)**, representing [MDSI's] unutilized excess input VAT attributable to its zero-rated sales/receipts for the four (4) taxable quarters of [TY] 2011.

SO ORDERED.[13]

Not satisfied with the Decision, MDSI filed its Motion for Partial Reconsideration (Re: Decision of 28 October 2015)[14] on November 10, 2015, without comment from the CIR. The CIR likewise filed his Motion for Partial Reconsideration[15] on November 11, 2015, to which MDSI filed its Comment (To Respondent's Motion

[12] *Records, Vol. 2, Decision, Dispositive Portion,* p. 968.
[13] Emphases retained.
[14] *Records, Vol. 2, Motion for Partial Reconsideration (Re: Decision of 28 October 2015),* pp. 970-980.
[15] *Id., Motion for Partial Reconsideration,* pp. 983-990.

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for Partial Reconsideration Dated 28 October 2015)[16] on December 11, 2015.

On February 22, 2016, the Court in Division resolved[17] the Motions for Partial Reconsideration in the following manner:

> **WHEREFORE**, premises considered, [MDSI's] Motion for Partial Reconsideration (Re: Decision of 28 October 2015), and [the CIR's] Motion for Partial Reconsideration are **BOTH** hereby **DENIED** for lack of merit.
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> **SO ORDERED.**[18]

After being granted an extension,[19] the CIR raised the instant case to the Court *En Banc* when he filed a Petition for Review[20] on March 29, 2016, to which MDSI filed its Comment/Opposition (Re: Petition for Review dated 29 March 2016)[21] on May 10, 2016.

On May 24, 2016 the Court *En Banc* gave due course to the CIR's Petition for Review, and required the parties to submit their respective memoranda within thirty (30) days from notice.[22]

On June 29, 2016, MDSI filed its Memorandum[23]; and after granting extension,[24] the CIR also filed his Memorandum[25] on July 28, 2016.

On August 15, 2016, the Court *En Banc* promulgated a Resolution[26] submitting the case for decision; hence, this Decision.

The Issue[27]

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[16] *Records, Vol. 2, Comment (To Respondent's Motion for Partial Reconsideration Dated 28 October 2015),* pp. 985-989.
[17] *Id., Resolution, Dispositive Portion,* p. 1000.
[18] Emphases retained.
[19] *Rollo,* pp. 1-5.
[20] *Id., PFR,* pp. 6-75, with annexes.
[21] *Id., Comment/Opposition (Re: Petition for Review dated 29 March 2016),* pp. 80-86.
[22] *Id.* at 88-89.
[23] *Id., respondent's Memorandum,* pp. 90-95.
[24] *Id.* at 96-100-A.
[25] *Rollo, petitioner's Memorandum,* pp. 101-106.
[26] *Id.* at 108-109.
[27] *Id., PFR, The Ground,* p. 8.

WHETHER THE COURT IN DIVISION ERRED IN RULING THAT MDSI WAS ABLE TO SUBSTANTIATE ITS CLAIM FOR REFUND OR FOR ISSUANCE OF A TCC FOR ITS ALLEGED UNUTILIZED INPUT TAXES FOR THE 1ST TO THE 4TH QUARTERS OF TY 2011.

The CIR's Arguments[28]

The CIR avers that the Court in Division failed to distinctly and clearly provide in its Decision the factual and legal bases for the award of the refund or a TCC, as required under *Section 14, Article III of the 1987 Philippine Constitution*; that in arriving at the valid input VAT in the amount of Php6,243,220.30, the Court in Division initially removed five (5) out of nine (9) companies with whom MDSI rendered its services, ratiocinating that MDSI was unable to show that these five (5) client-affiliates are actually doing business outside the Philippines when it failed to present the SEC Certificate of Non-Registration of company and proof of incorporation or registration in a foreign country; that after removing the unsubstantiated input VAT claim on domestic purchases of goods other than capital goods, domestic purchases of services and capital goods not exceeding Php1 Million, the Court in Division immediately concluded, without citing any documentary evidence presented by MDSI as basis for the grant of the claim for refund in the amount of Php6,243,220.30; that it is a well-established rule that tax refunds/tax credits are construed strictly against the taxpayer as they partake the nature of tax exemptions.

MDSI's Counter-Arguments[29]

MDSI counters that the Petition for Review presents no new arguments, and that the same has been thoroughly evaluated and ruled upon by the Court in Division in its Decision dated October 28, 2015; that the Court in Division already threshed out the proper amount of MDSI's input VAT attributable to its validly substantiated VAT zero-rated sales and looked at every single piece of evidence MDSI presented, including the ICPA Report and the very receipts that supported the input VAT that MDSI incurred; and that as to the VAT zero-rating of MDSI's sales, the Court in Division based its Decision on the VAT zero-rated official receipts, VAT zero-rated sales

[28] *Rollo, petitioner's Memorandum,* pp. 101-106.
[29] *Id., respondent's Memorandum,* pp. 90-92.

invoices, Schedule of Zero-Rated Sales, Summary of Bank Certifications of Inward Remittances for Payments Received from Foreign Clients, bank statements and bank credit advices from Citibank, as well as the report of the court-commissioned ICPA.

MDSI likewise avers that the Court in Division also verified if MDSI's zero-rated sales were based on valid service agreements and were made to entities that were actually non-resident foreign companies doing business outside the Philippines; that as to MLIC, the issue on whether it may qualify for VAT zero-rating has been thoroughly passed upon by the Court in Division in its Resolution dated February 22, 2016 when it denied MDSI's Motion for Partial Reconsideration (Re: Decision of 28 October 2015); that it is an elementary rule that a motion of reconsideration, which only rehashes issues, does not deserve the Court *En Banc*'s consideration; that as to the exhibits which MDSI allegedly failed to present the original copies for comparison or failed to present in evidence, the same have already been denied by the Court in Division on MDSI's Formal Offer of Evidence; and that in fact, in denying MDSI's Motion for Partial Reconsideration (Re: Decision of 28 October 2015), the Court in Division ruled that the CIR's arguments therein have been rendered moot and academic.

The Ruling of the Court En Banc

In the Decision of the Court in Division, it found that both administrative and judicial claims for refund were timely filed. The Court in Division noted that MDSI seasonably filed its administrative claim for refund when it filed the same on March 27, 2013. As for the judicial claim, the CIR had only until July 25, 2013 to act on the refund, which it failed to do. Hence, MDSI had thirty (30) days from the expiration of the one hundred and twenty (120) days or until August 24, 2013 to file its judicial claim with the Court in Division. Having filed the Petition for Review on August 23, 2013, the same was clearly filed within the prescriptive period.

After finding that the Petition for Review was filed within the period to appeal, the Court in Division went on to determine MDSI's compliance with the requirements laid down by law and jurisprudence to be entitled to a refund or a tax credit of input VAT attributable to zero-rated sales, to wit: *(1)* it is duly registered with the BIR as a VAT taxpayer and the services it renders through its

ROHQ are not in the same category as "processing, manufacturing or repacking of goods;" *(2)* in order to be considered as a non-resident foreign corporation doing business outside the Philippines, each client-affiliate must be supported, at the very least by both SEC Certificate of Non-Registration of company, and proof of incorporation or registration in a foreign country; *(3)* the foreign currency remittances must not only be paid for in United States Dollars ("USD") duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas ("BSP"), it must likewise be supported by VAT zero-rated official receipts which must contain the information required under *Section 113(A)(2), (B)(1), (2)(c) and (3) of the 1997 NIRC,* as implemented by *Sections 4.113-1(A)(2), (B)(1) and (2)(c) of Revenue Regulations ("RR") No. 16-2005, as amended.*

The Court in Division went on to say that while MDSI presented its client-affiliates' SEC Certifications of Non-Registration of Corporation/Partnership, Service Agreements, Certificate/Articles of Incorporation and other documents, only four (4) out of nine (9) client-affiliates were duly supported by both SEC Certificate of Non-Registration and proof of incorporation or registration in a foreign country. Accordingly, only the sales of services in the amount of Php502,373,742.26 shall be subject to VAT zero-rating pursuant to *Section 108(B)(2) of the 1997 NIRC.*

However, only Php417,401,599.28 was allowed by the Court in Division as valid zero-rated sales/receipts considering that certain official receipts are not properly supported by VAT zero-rated official receipts; or those submitted are different from the marked exhibits; or are not issued in the name of the client-affiliate; or are not supported by inward remittances. Thereafter, the Court in Division computed the rate of valid zero-rated receipts, and then determined the amount of input VAT attributable to MDSI's valid zero-rated sales.

Upon review of the ICPA Report and documents submitted by MDSI, the Court in Division found that only Php19,093,175.88 input VAT on domestic purchases of goods other than capital goods, domestic purchases of services, and capital goods not exceeding Php1 Million was duly supported by valid VAT invoices or official receipts; or within the period of claim.

On the other hand, the Php18,266,771.74 representing input tax on capital goods exceeding Php1 Million from the previous quarter

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was disallowed by the Court in Division for failure of MDSI to present supporting invoices and/or official receipts, for not being found in the records of the case, and for failure of MDSI to submit the originals for comparison.

As regards the Php3,221,423.55 amount of input tax on capital goods exceeding Php1 Million purchased during TY 2011, the Court in Division found that only Php2,932,626.79 was properly substantiated by VAT invoices and official receipts considering that, as found by the Court-commissioned ICPA, Php156,719.38 is outside the period of claim, and Php132,077.38 is supported by a VAT REG TIN invoice with a comment "not a valid source of input tax." However, pursuant to *Section 110(A)(2) of the 1997 NIRC*, the amount of Php2,932,626.79 shall still be amortized over a period of time, depending on the aggregate acquisition cost of the capital goods in the calendar month. Hence, only Php378,848.60 input tax on capital goods exceeding Php1 Million purchased during TY 2011 was found by the Court in Division as creditable for TY 2011. Consequently, the total amount of properly substantiated input VAT for TY 2011 is Php19,472,024.50.

Lastly, the Court in Division applied the Php19,472,024.50 substantiated input VAT against MDSI's reported output VAT liability of Php410,927.13, leading to a difference of Php19,061,097.37 input VAT which can be attributed to entire zero-rated receipts declared by MDSI in the amount of Php1,345,543,506.35. However, since the Court in Division found that MDSI's valid zero-rated sales is only Php417,401,599.28, the input VAT attributable thereto is only Php6,243,220.30.

In the assailed Resolution[30], the Court in Division reiterated that in order to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both SEC Certificate of Non-Registration of company, and proof of incorporation or registration in a foreign country. While MDSI was able to present proof of incorporation or registration of MLIC in Canada, it was not able to submit the SEC Certificate of Non-Registration because the latter has a branch in the Philippines. Since MDSI failed to meet one of the requisites for a foreign corporation to be considered as a non-resident foreign corporation doing business outside the Philippines, MDSI's

[30] *Records, Vol. 2, Resolution,* pp. 994-1001.

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sales of services to MLIC cannot qualify for VAT zero-rating. As to the CIR's Motion for Partial Reconsideration, the Court in Division noted that in its Resolution dated July 24, 2014, all the documents/exhibits enumerated by the CIR in his Motion were denied admission. Accordingly, the arguments raised regarding these documents are rendered moot and academic. As to all the other issues, the Court in Division noted that these were already thoroughly evaluated, discussed and resolved by the Court in Division in its Decision.

The Court *En Banc* finds no merit in the instant Petition for Review.

It must be noted that the CIR failed to raise new matters which have not been considered and passed upon by the Court in Division in the assailed Decision and Resolution; and that the arguments raised in the instant Petition for Review are mere reiterations, if not repetitions, of the very same arguments the CIR already raised in his Motion for Partial Reconsideration filed on November 11, 2015, which the Court in Division denied for lack of merit.

Section 110(B) in relation to *Section 112(A) of the 1997 NIRC* governs the rules in a claim for refund or TCC of unutilized input VAT attributable to zero-rated sales, to wit:

> SEC. 110. *Tax Credits.* - xxx
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> (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, 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.
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> SEC. 112. *Refunds or Tax Credits of Input Tax.* —
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> (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 or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

Based on the foregoing, in order to be entitled to a refund or to a tax credit of input VAT attributable to zero-rated sales, the following requisites must be complied with:

1. the taxpayer must be VAT-registered;

2. the taxpayer must be engaged in sales, which are zero-rated or effectively zero-rated;

3. the claim must be filed within two (2) years after the close of the taxable quarter when such sales were made; and

4. the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.[31]

In the case of MDSI, the foregoing requirements are all met, although the input VAT subject of the claim for refund or tax credit is in the reduced amount.

The first requisite is not disputed. MDSI is a VAT registered taxpayer, as evidenced by its BIR Certificates of Registration.

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[31] *Silicon Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 172378, January 17, 2011, 639 SCRA 536.

As regards the second requisite, for sale of services to qualify as VAT zero-rated under *Section 108(B)(2)*[32] *of the 1997 NIRC*, it is required: *(1)* that the services be other than "processing, manufacturing or repacking of goods;" *(2)* that the payment for such services be in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP; and *(3)* that the recipient of such services is doing business outside the Philippines.[33]

In order to be considered as a non-resident foreign corporation "doing business outside the Philippines," the entity must be supported, at the very least, by both SEC Certificate of Non-Registration of Corporation/Partnership, and proof of incorporation or registration in a foreign country, *e.g.*, Certificate of Incorporation, Memorandum and Articles of Association, Certificate of Registration.[34]

Based on the findings of the Court in Division, which the Court *En Banc* agrees with after re-evaluation of the evidence, MDSI was able to prove only four (4) out of nine (9) client-affiliates to be doing business outside the Philippines. However, only the amount of Php417,401,599.28 representing MDSI's sales to these four (4) client affiliates is substantiated by valid zero-rated official receipts.

In order to be entitled to a claim for refund or tax credit of input taxes attributable to zero-rated sales, taxpayers must not only prove the existence of zero-rated sales, but must also prove that said zero-rated sales were issued valid official receipts pursuant to *Sections 113(A), (B), and 237 of the 1997 NIRC*, in relation to *Section 4.113-1(B) of RR No. 16-2005*.[35]

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[32] SEC. 8. *Value-added Tax on Sale of Services and Use or Lease of Properties.* – xxx

(B) *Transactions Subject to Zero Percent (0%) Rate.* –

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(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);

[33] *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007, 512 SCRA 124.

[34] *Nokia (Philippines), Inc. v. Commissioner of Internal Revenue*, CTA *EB* Case No. 1313 (CTA Case No. 8405), September 22, 2016.

[35] *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013, 704 SCRA 94, 99; *Microsoft Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 180173, April 6, 2011, 647 SCRA 398.

Thus, in the case of *Microsoft Philippines, Inc. v. Commissioner of Internal Revenue*[36], the Supreme Court denied the claim for refund of input taxes of Microsoft Philippines, Inc., for failure of the latter to indicate the word "zero-rated" on its official receipts. The Supreme Court explained in the following manner:

> The invoicing requirements for a VAT-registered taxpayer as provided in the NIRC and revenue regulations are clear. A VAT-registered taxpayer is required to comply with all the VAT invoicing requirements to be able to file a claim for input taxes on domestic purchases for goods or services attributable to zero-rated sales. A "VAT invoice" is an invoice that meets the requirements of Section 4.108-1 of RR 7-95. Contrary to Microsoft's claim, RR 7-95 expressly states that "[A]ll purchases covered by invoices other than a VAT invoice shall not give rise to any input tax." Microsoft's invoice, lacking the word "zero-rated," is not a "VAT invoice," and thus cannot give rise to any input tax.[37]

This is consistent with *Revenue Memorandum Circular ("RMC") No. 42-2003*[38], where the BIR made some clarifications, *viz.*:

> Q-13: Should penalty be imposed on TCC application for failure of claimant to comply with certain invoicing requirements, (e.g., sales invoices must bear the TIN of the seller)?
>
> A-13: Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.
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> If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g. failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to

[36] G.R. No. 180173, April 6, 2011, 647 SCRA 398.
[37] Underscoring ours.
[38] Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters, July 15, 2003.

> the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer.[39]

In the case of MDSI, the Court in Division noted that MDSI had certain sales of services wherein the official receipts were not issued in the name of its client-affiliates, thus, a clear violation of *Section 237*[40] *of the 1997 NIRC* which requires that "where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client." Accordingly, the same should be disallowed.

Moreover, the Court in Division noted that sales amounting to Php53,176,980.28 have no corresponding certificates of inward remittance, thus, should be disallowed. The Court *En Banc* agrees. The certification of inward remittances attests to the fact of payment "in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the BSP."[41] It is, therefore, a necessary requirement in a valid claim for refund of unutilized input VAT from zero-rated sales under *Section 108(B)(2) of the 1997 NIRC.*

With regard to the CIR's claim that MDSI was unable to prove that its sales to MLIC qualify for VAT zero-rating under *Section 108(B)(2) of the 1997 NIRC,* the Court *En Banc* wishes to emphasize that this issue had long been resolved by the Court in Division in the assailed Resolution when it denied MDSI's request for reconsideration of the assailed Decision.

As to the timeliness of the claim, the CIR avers that for failure of MDSI to present the original documents of its administrative

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[39] Underscoring ours.

[40] SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* - All persons subject to an internal revenue tax shall, for each sale and transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sale or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however,* That where the receipt is issued to cover payment made as rentals, commissions, compensation or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client.

[41] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 166732, April 27, 2007, 522 SCRA 657.

application for refund before the CIR, it failed to establish its right to claim for tax refund or TCC. The Court *En Banc* finds no cogent reason to reverse the finding of the Court in Division.

In the JSFI[42] filed by both parties on January 10, 2014, the CIR admitted that MDSI filed with BIR RDO No. 38 its administrative application for refund or issuance of TCC for its excess/unutilized input VAT for the 1st to the 4th quarters of TY 2011 on March 27, 2013[43]. The same was subsequently approved and adopted by the Court in Division in its Pre-Trial Order[44] dated January 23, 2014. This stipulation of fact by the CIR amounts to an admission and, having been made by the parties in a stipulation of facts at pre-trial, is treated as a judicial admission.[45]

Section 4, Rule 128 of the Rules of Court[46] is explicit:

> Rule 129
>
> WHAT NEED NOT TO BE PROVED
>
> SEC. 4. *Judicial admissions.* — An admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.[47]

A judicial admission binds the person who makes the same, and absent any showing that this was made through palpable mistake, no amount of rationalization can offset it.[48]

Thus, in *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*[49], the Supreme Court ruled, to wit:

> More importantly, the arguments of the CIR that Toshiba was VAT-exempt and the latter's export sales were

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[42] *Records, Vol. 2, JSFI,* pp. 713-717.
[43] March 27, 2014 *per* JSFI.
[44] *Records, Vol. 2, Pre-Trial Order,* pp. 727-732.
[45] *Commissioner of Internal Revenue v. Petron Corp.,* G.R. No. 185568, March 21, 2012, 668 SCRA 735.
[46] 1997 Rules of Court, July 1, 1997.
[47] Underscoring ours.
[48] *Commissioner of Internal Revenue v. Manila Electric Co.,* G.R. No. 181459, June 9, 2014, 725 SCRA 384.
[49] G.R. No. 157594, March 9, 2010, 614 SCRA 526.

> VAT-exempt transactions are inconsistent with the explicit admissions of the CIR in the Joint Stipulation of Facts and Issues (Joint Stipulation) that Toshiba was a registered VAT entity and that it was subject to zero percent (0%) VAT on its export sales.
>
> The Joint Stipulation was executed and submitted by Toshiba and the CIR upon being advised to do so by the CTA at the end of the pre-trial conference held on June 23, 1999. The approval of the Joint Stipulation by the CTA, in its Resolution dated July 12, 1999, marked the culmination of the pre-trial process in CTA Case No. 5762.
>
> xxx xxx xxx
>
> The admission having been made in a stipulation of facts at pre-trial by the parties, it must be treated as a judicial admission. Under Section 4, Rule 129 of the Rules of Court, a judicial admission requires no proof. The admission may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made. The Court cannot lightly set aside a judicial admission especially when the opposing party relied upon the same and accordingly dispensed with further proof of the fact already admitted. An admission made by a party in the course of the proceedings does not require proof.[50]

Considering that the CIR expressly admitted that "[o]n 27 March 201[3], [MDSI] filed with [the CIR] through the [RDO No. 38], its administrative application for refund or issuance of [TCC] for its excess/unutilized input VAT for the 1st to 4th Quarters of [TY] 2011," he is now bound by his admission. Absent showing palpable mistake, the CIR cannot now be allowed to change its stand and renege on that admission.[51]

Lastly, a careful perusal of all relevant supporting documents submitted by MDSI reveals that it has creditable input VAT attributable to its VAT zero-rated sales pursuant to the invoicing requirements prescribed under *Sections 110(A), 113(A), (B), and 237 of the 1997 NIRC*, in relation to *Sections 4.110-1, 4.110-8 and 4.113-1 of RR No. 16-2005*, although in a reduced amount.

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[50] Underscoring ours.
[51] *Commissioner of Internal Revenue v. Petron Corp.*, G.R. No. 185568, March 21, 2012, 668 SCRA 735.

Sections 110(A), 113(A), (B), and 237 of the 1997 NIRC provides the following:

> SEC. 110. *Tax Credits.* -
>
> (A) *Creditable Input Tax.* -
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> xxx xxx xxx
>
> SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* -
>
> (A) *Invoicing Requirements.* - A VAT-registered person shall issue:
>
> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
>
> (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> (B) *Information contained in the VAT Invoice or VAT Official Receipt.* - The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (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:
>
> (a) The amount of the tax shall be shown as a separate item in the invoice or receipt;
>
> xxx xxx xxx
>
> (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;

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xxx xxx xxx

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

xxx xxx xxx

SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale and transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sale or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however,* That where the receipt is issued to cover payment made as rentals, commissions, compensation or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious cases, exempt any person subject to an internal revenue tax from compliance with the provisions of this Section.

Corollary thereto, *Sections 4.110-1, 4.110-8 and 4.113-1 of RR No. 16-2005* provide:

SECTION 4.110-1. *Credits For Input Tax.* — "Input tax" means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the Tax Code.

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It includes input taxes which can be directly attributed to transactions subject to the VAT plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.

Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Secs. 113 and 237 of the Tax Code shall be creditable against the output tax:

xxx xxx xxx

SECTION 4.110-8. *Substantiation of Input Tax Credits.* —

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

xxx xxx xxx

(2) For the domestic purchase of goods and properties — invoice showing the information required under Secs. 113 and 237 of the Tax Code.

xxx xxx xxx

(4) For the purchase of services — official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

xxx xxx xxx

SEC. 4.113-1. *Invoicing Requirements.* -

(A) *A VAT-registered person shall issue:* - xxx

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or official receipts. Said documents shall be considered as a "VAT Invoice" or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) *Information contained in 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 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 VAT; *Provided, That:*

xxx xxx xxx

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

The Court *En Banc* cannot agree more with the findings of the Court in Division. It notes that: *(1)* VAT invoices/official receipts of certain purchases are either *(a)* without date indicated; or *(b)* the amount of VAT therein is not shown separately in the invoice; or *(c)* dated outside the period of claim; or *(d)* with a notation that it is "not valid as source of input tax;" or *(e)* with an indication of "VAT exempt sale;" *(2)* certain purchases are not supported by VAT invoices/official receipts, or no documents are presented by MDSI to support the purchase; and *(3)* while certain purchases were supported by VAT invoices/official receipts, the same were denied admission by the Court in Division for failure of MDSI to present the originals for comparison. Thus, the input taxes corresponding to these purchases were properly disallowed.

The pronouncement of the Supreme Court in the case of *Western Mindanao Power Corp. v. Commissioner of Internal Revenue*[52] is instructive, to wit:

[52] G.R. No. 181136, June 13, 2012, 672 SCRA 350.

> In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law. It must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit. Hence, the mere fact that petitioner's application for zero-rating has been approved by the CIR does not, by itself, justify the grant of a refund or tax credit. The taxpayer claiming the refund must further comply with the invoicing and accounting requirements mandated by the NIRC, as well as by revenue regulations implementing them.
>
> Under the NIRC, a creditable input tax should be evidenced by a VAT invoice or official receipt, which may only be considered as such when it complies with the requirements of RR 7-95, particularly Section 4.108-1 [now *Section 4.113-1 of RR No. 16-2005]*. This section requires, among others, that "(i)f 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."[53]

Accordingly, the Court in Division properly disallowed input taxes which are not supported by valid VAT invoices/official receipts.

Clearly, MDSI was able to prove its entitlement to the claim for refund or for issuance of a TCC representing its unutilized input VAT for the four (4) quarters of TY 2011, but only in the reduced amount.

The Court *En Banc* will not disturb the Court in Division's finding of MDSI's partial entitlement to the claim for refund of unutilized input VAT absent any compelling evidence to the contrary.

As to CIR's other arguments in his Petition for Review, the Court *En Banc* finds no new and/or compelling averment for being a mere rehash of previously discredited arguments or were sufficiently acted upon in the assailed Decision and Resolution. Therefore, the Court *En Banc* finds it unnecessary to discuss the other remaining issues.

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[53] Underscoring ours.

Accordingly, the Court *En Banc* finds that no cogent reason to disturb and reverse the assailed Decision and the assailed Resolution.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision dated October 28, 2015, and the Resolution dated February 22, 2016, both promulgated by the Second Division of the Court of Tax Appeals, are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution,* 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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

MANULIFE DATA SERVICES, INC.,
Respondent.

CTA EB NO. 1437
(CTA Case No. 8701)

Present:

DEL ROSARIO, *P.J.,*
CASTANEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:
JUN 07 2017 4:15p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the result so proficiently expounded in the *ponencia*, particularly in affirming the Court in Division's Decision dated October 28, 2015 and Resolution dated February 22, 2016 which partially granted respondent's claim for refund of excess and unutilized input VAT in the amount of ₱6,243,220.30 attributable to respondent's zero-rated sales for the four (4) quarters of calendar year 2011.

I am, however, unprepared to give my assent to the Court in Division's pronouncement that in order to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both Securities and Exchange Commission (SEC) Certification of Non-Registration of Company **and** proof of incorporation or registration in a foreign country. For certain client-affiliates of respondent, the submission of their SEC Certification of Non-Registration of Company and their

Service Agreements (with respondent) was not considered by the Court in Division as sufficient to establish that the client-affiliates are non-resident foreign corporations doing business outside the Philippines for zero-rating purposes.

At this juncture, I wish to re-state my view that that the client-affiliates' **SEC Certification of Non-Registration of Company** **and** their **Service Agreements** with respondent are competent proof to establish that they are non-resident foreign corporations doing business outside of the Philippines. Apt is my **Concurring and Dissenting Opinion** in *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*[1] which I quote below:

> "It was the conclusion of the Court in Division that in order to be considered as non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by **both** SEC certificate of non-registration of corporation/partnership and certificate/articles of foreign incorporation/association/registration. The ponencia agrees with the Court in Division in holding that it cannot be determined if the alleged non-resident foreign clients are existing, operating and registered in a foreign country without proof of their incorporation, association or registration in a foreign country, **notwithstanding the presence of SEC Certifications of Non-Registration of Company, and Intra-Group Service Agreements which were presented by petitioner to prove that its clients are nonresident foreign corporation.**
>
> With due respect, while it is indispensable to present the SEC certificate of non-registration of corporation/partnership, the other evidence presented by petitioner, that is -- the Intra-Group Service Agreements, should appropriately be given probative value in lieu of the certificate/articles of foreign incorporation/association/registration required by the Court. **The Intra-Group Service Agreements do not only show the names of petitioner's customers to whom it rendered service. More importantly, these documents confirm that the entities mentioned therein are doing business outside the Philippines as they specify the nature of services that petitioner renders in support of its customers' business process.**" (*Boldfacing supplied*)
>
> Thus, aside from those clients of petitioner already considered by the Court in Division in the assailed Decision as nonresident foreign corporations, certain clients of petitioner whose identities are supported with the corresponding SEC Certificates of Non-Registration **and** Intra-Group Service Agreements may still be

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[1] *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.; Deutsche Knowledge Services Pte. Ltd. vs. Commissioner of Internal Revenue*, CTA EB Nos. 1244 and 1345, March 30, 2017.

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> considered as non-resident foreign corporation for zero-rating purpose."

The foregoing stance notwithstanding, I concur with the *ponencia* in sustaining the grant of respondent's claim for refund in the **reduced** amount of ₱6,243,220.30. In view of respondent's failure to appeal the assailed Decision and Resolution of the Court in Division, the Court *En Banc* cannot grant any affirmative relief to respondent other than the relief granted in the Court in Division's Decision. On this point, *Estrellita G. Salazar vs. Philippine Duplicators, Inc.*[2] is instructive:

> "As a general rule, 'a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision.'
>
> **The reason for this rule is that since parties did not appeal from the decision or resolution, they are presumed to be satisfied with the adjudication**. Furthermore, Rule 141 on Legal Fees provides that if the fee is not paid, then 'the court may refuse to proceed with the action until they are paid and may dismiss the appeal or the action or proceeding.' The case or appeal is deemed filed only upon payment of the docket or appeal fee considering that jurisdiction is acquired by the court over the case or the appeal only upon full payment of the prescribed fee. **Thus, the court has no jurisdiction or authority to grant affirmative relief to the party who did not appeal as there is no obligation to pay any fee. Furthermore, in the interest of fairness, it would not be proper and just to award affirmative relief to the appellees since they did not comply with the requirements of appeal**. xxx xxx xxx." (Boldfacing supplied)

All told, I vote to **DENY** the Petition for Review filed by the Commissioner of Internal Revenue and **AFFIRM** the assailed Decision and Resolution of the Court in Division.

ROMAN G. DEL ROSARIO
Presiding Justice

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[2] G.R. No. 154628, December 6, 2006.