REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

ABOITIZ LOGISTICS, INC. (Formerly Jardine Aboitiz Logistics, Inc.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NOS. 6594 & 6902

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
SEP 18 2007

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DECISION

UY, *J*.:

In these consolidated petitions for review, petitioner Aboitiz Logistics Inc. (formerly Jardine Aboitiz Logistics, Inc.) seeks a refund or issuance of a tax credit certificate from respondent Commissioner of Internal Revenue, allegedly representing unutilized input taxes paid on its domestic purchases of goods and services attributable to its zero-rated sales for the following taxable periods: the fourth quarter of 2000 up to the fourth quarter of taxable year 2001 amounting to Nine Million Three Hundred Eighty Six Thousand Two Hundred Fifty Five Pesos & 68/100 Centavos (P9,386,255.68) **in C.T.A. Case**

No. 6594; and, the first quarter up to the fourth quarter of taxable year 2002, amounting to Four Million Thirty Seven Thousand Two Hundred Forty One Pesos and 83/100 Centavos (P4,037,241.83) **in C.T.A. Case No. 6902**, or in the total amount of **Thirteen Million Four Hundred Twenty Three Thousand Four Hundred Ninety Seven Pesos and 51/100 Centavos (P13,423,497.51)** for both cases.

THE FACTS

Culled from the parties' Joint Stipulation of Facts and Issues[1] and the records of these consolidated cases, the facts are as follows:

Petitioner is a corporation organized and existing under the laws of the Philippines with office address at the 4th Floor, Batungbacal Building, De La Rosa Street corner Chino Roces Avenue, Makati City. It is engaged in the business of cargo forwarding (via air, sea or overland mode of transportation) and customs brokerage, and registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer under TIN/VAT Registration No. 000-311-023-000 effective September 16, 1996. Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue who holds office at the BIR National Office Building located at Agham Road, Diliman, Quezon City.[2]

Petitioner was originally registered with the Securities and Exchange Commission (SEC) as "Aboitiz International Forwarders, Inc." on March 29, 1985 under SEC Reg. No. CEO0370. Subsequently, it changed its corporate name to "Jardine Aboitiz International Forwarders, Inc." effective July 25, 1997. Petitioner again changed its corporate name to "Jardine Aboitiz

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[1] Joint Stipulation of Facts and Issues (JSFI) dated December 28, 2004, Records, pp.159-166.
[2] Ibid, paragraphs 1, 2, 3, and 8.

Logistics, Inc." effective March 30, 2001. Petitioner further changed its corporate name to "Aboitiz Logistics, Inc." effective March 19, 2003.[3]

For the period from October 1, 2000 to December 31, 2001 (fourth quarter of 2000 to the fourth quarter of 2001), petitioner filed with the BIR its Quarterly VAT Returns[4] on the following dates:

Period Covered	***Date Filed***
4th Quarter 2000	January 25, 2001
1st Quarter 2001	April 25, 2001
2nd Quarter 2001	July 24, 2001
3rd Quarter 2001	October 25, 2001
4th Quarter 2001	January 25, 2002

On January 8, 2003, petitioner amended its Quarterly VAT Returns for the fourth quarter of 2000 up to the fourth quarter of 2001.[5] As appearing in the aforesaid Amended Quarterly VAT Returns, petitioner declared as follows:

Period	Zero-Rated Sales	Taxable Sales	Output Tax (a)	Input Tax Carried Over (b)	Input Tax for the Qtr. (c)	Total Available Input Tax (d)=b+c	VAT Refund/ TCC Claimed (e)	Net Creditable Input Tax (f)=d-e	Excess Input Tax a-f
4th Q 2000	54,725,750.02	9,576,323.00	957,632.30	5,537,285.95	2,065,652.49	7,602,938.44	1,758,020.80	5,844,917.64	(4,887,285.34)
1st Q 2001	48,898,327.08	7,547,274.20	754,727.42	4,887,285.34	2,009,783.25	6,897,068.59	1,741,057.52	5,156,011.07	(4,401,283.65)
2nd Q 2001	59,320,750.43	4,590,460.70	459,046.07	4,401,283.65	1,530,895.61	5,932,179.26	1,420,938.12	4,511,241.14	(4,052,195.07)
3rd Q 2001	66,963,281.79	13,294,145.37	1,208,558.67	4,052,195.07	2,492,740.06	6,544,935.13	2,079,833.12	4,465,102.01	(3,256,543.34)
4th Q 2001	66,282,112.66	14,497,327.59	1,317,938.87	3,256,543.34	2,908,364.60	6,164,907.94	2,386,406.11	3,778,501.83	(2,460,562.96)
TOTAL SUPPLIED	**296,190,221.98**	**49,505,530.86**	**4,697,903.33**		**11,007,436.01**				

The input taxes attributable to petitioner's alleged zero-rated transactions were reflected in the column "Any VAT Refund/TCC Claimed".[6]

For the period from January 1 to December 31, 2002, petitioner filed with the BIR its Quarterly VAT Returns[7] on the following dates:

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[3] Ibid, paragraphs 4, 5, 6, and 7.
[4] Ibid, paragraph 12.
[5] Ibid, paragraph 13; Exhibits "A", "B", "C", "D" and "E", Records, pp.245-249.
[6] Ibid, paragraph 14.
[7] Ibid, paragraph 15.

Period Covered	***Date Filed***
1st Quarter	April 9, 2002
2nd Quarter	July 10, 2002
3rd Quarter	October 22, 2002
4th Quarter	January 24, 2003

On January 8, 2003, petitioner filed its amended Quarterly VAT Returns for the first and second quarters of 2002. On January 24, 2003, petitioner further amended its Quarterly VAT Return for the second quarter of 2002 and filed its amended Quarterly VAT Return for the third quarter of 2002.[8]

Petitioner made the following declarations in its Amended Quarterly VAT Returns for the first, second, third quarters of 2002, and its Quarterly VAT Return for the fourth quarter of 2002[9]:

Period	Zero-Rated Sales	Taxable Sales	Output Tax (a)	Input Tax Carried Over (b)	Input Tax for the Qtr. (c)	Total Available Input Tax (d)=b+c	VAT Refund/ TCC Claimed (e)	Net Creditable Input Tax (f)=d-e	Excess Input Tax a-f
1st Q 2002	57,552,076.87	5,495,734.09	499,612.19	2,460,562.96	1,805,756.32	4,266,319.28	1,648,352.65	2,617,966.63	(2,118,354.44)
2nd Q 2002	69,443,867.98	2,817,194.49	256,108.59	2,118,354.44	958,733.79	3,077,088.23	921,356.27	2,155,731.96	(1,899,623.37)
3rd Q 2002	85,153,173.87	4,072,200.00	370,200.00	1,899,623.37	866,343.08	2,765,966.45	826,803.63	1,939,162.82	(1,568,962.82)
4th Q 2002	89,968,090.74	4,334,184.20	433,418.42	1,568,962.82	671,596.21	2,240,559.03	640,729.28	1,599,829.75	(1,166,411.33)
TOTAL SUPPLIED	**302,117,209.46**	**16,719,312.78**	**1,559,339.20**		**4,302,429.40**				

On December 27, 2002, petitioner filed a formal claim for refund or issuance of a tax credit certificate with the Revenue District Office (RDO) No. 48 of the BIR seeking the refund or tax credit in the amount of P9,386,255.68, representing allegedly unutilized input VAT arising from petitioner's domestic purchases of goods and services which are attributable to its zero-rated transactions for the periods covering the fourth quarter of 2000 to the fourth

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[8] Ibid, paragraphs 16, 17 and 18.
[9] Ibid, paragraph 19; Exhibits "F", "N", "O" and "P".

quarter of 2001[10] (subject claim in CTA Case No. 6594). The computation of the claim, jointly stipulated by the parties,[11] is reproduced hereunder:

	Taxable Sales (A)	Zero-Rated Sales (B)	Total Sales (C)=(A)+(B)	Input Tax for the Qtr. (D)	**Input Tax Allocated to Taxable Sales (A)/(C)x(D)**	**Input Tax Allocated to Zero-Rated Sales (B)/(C)x (D)**
4th Q 2000	9,576,323.00	54,725,750.02	64,302,073.02	2,065,652.49	307,631.69	1,758,020.80
1st Q 2001	7,547,274.20	48,898,327.08	56,445,601.28	2,009,783.25	268,725.73	1,741,057.52
2nd Q 2001	4,590,460.70	59,320,750.43	63,911,211.13	1,530,895.61	109,957.49	1,420,938.12
3rd Q 2001	13,294,145.37	66,963,281.79	80,257,427.16	2,492,740.06	412,906.94	2,079,833.12
4th Q 2001	14,497,327.57	66,282,112.66	80,779,440.23	2,908,364.60	521,958.49	2,386,406.11
TOTAL	49,505,530.84	296,190,221.98	345,695,752.82	11,007,436.01	**1,621,180.33**	**9,386,255.68**

On February 13, 2003, petitioner likewise filed a formal claim for refund or issuance of a tax credit certificate with RDO No. 48 of the BIR seeking the refund or tax credit in the amount of P4,037,241.83, representing unutilized input VAT arising from petitioner's domestic purchases of goods and services attributable to its zero-rated transactions for the four (4) quarters of taxable year 2002[12] (subject claim in CTA Case No. 6902). The computation of the claim, jointly stipulated by the parties,[13] is likewise reproduced hereunder:

	Taxable Sales (A)	Zero-Rated Sales (B)	Total Sales (C)=(A)+(B)	Input Tax for the Qtr. (D)	**Input Tax Allocated to Taxable Sales (A)/(C)x(D)**	**Input Tax Allocated to Zero-Rated Sales (B)/(C)x (D)**
1st Qtr.	5,495,734.09	57,552,076.87	63,047,810.96	1,805,756.32	157,403.67	1,648,352.65
2nd Qtr.	2,817,194.49	69,443,867.98	72,261,062.47	958,733.79	37,377.52	921,356.27
3rd Qtr.	4,072,200.00	85,153,173.87	89,225,373.87	866,343.08	39,539.45	826,803.63
4th Qtr.	4,767,602.62	98,964,899.81	103,732,502.43	671,596.21	30,866.93	640,729.28
TOTAL	17,152,731.20	311,114,018.53	328,266,749.73	4,302,429.40	**265,187.57**	**4,037,241.83**

[10] Ibid, paragraph 9.
[11] Ibid, paragraph 13 (*Emphasis supplied).*
[12] Ibid, paragraph 10.
[13] Ibid, paragraph 19 (*Emphasis supplied).*

Claiming that respondent has yet to act upon its claims for refund or issuance of tax credit certificate, petitioner filed two (2) Petitions for Review with this Court, to wit:

a) **CTA Case No. 6594** filed on January 24, 2003 seeking the refund of its unutilized input tax of P9,386,255.68 for the period covering the taxable 4th quarter of 2000 to 4th quarter of 2001[14] ; and

b) **CTA Case No. 6902** filed on March 25, 2004, seeking the refund of its unutilized input tax of P4,037,241.83 for the four (4) taxable quarters of 2002.

In the Resolution dated July 26, 2004, the Court granted petitioner's motion for the consolidation of these two subject cases. As stipulated by the parties, both the administrative and judicial claims for refund or issuance of a tax credit certificate in the total amount of P13,423,497.51, allegedly representing unutilized input tax paid on petitioner's domestic purchases of goods and services attributable to its zero-rated transactions for the period covering the fourth quarter of 2000 to the fourth quarter of 2002, were seasonably filed within the two-year prescriptive period pursuant to Section 229 of the National Internal Revenue Code (NIRC) of 1997.[15]

During trial, only petitioner presented its evidence, while respondent's counsel manifested that he is not presenting any witness and is submitting these consolidated cases for decision based on the pleadings filed. Thus, both parties' counsel were given thirty (30) days from October 23, 2006 within

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[14] Ibid, paragraph 21.
[15] Ibid, paragraph 11.

which to file their respective Memorandum.[16] Only petitioner filed its Memorandum on November 22, 2006[17], while respondent failed to file the same within the given period. Thereafter, these cases were considered submitted for decision in the Resolution dated December 18, 2006.[18]

Hence, this Decision.

THE ISSUES

The stipulated issues by the parties are as follows:

1. Whether or not petitioner's cargo forwarding and customs brokerage services rendered to entities registered with the Philippine Economic Zone Authority (PEZA) are subject to 0% VAT;

2. Whether or not petitioner's cargo forwarding and customs brokerage services rendered to its nonresident clients are subject to 0% VAT;

3. Whether or not petitioner's unutilized input VAT for the period from the 4th quarter of taxable year 2000 up to the 4th quarter of taxable year 2002 in the total amount of P13,423,497.51 are substantiated by documentary evidence; and

4. Whether or not petitioner is entitled to a refund or tax credit of its unutilized input VAT arising from purchases of goods and services attributable to zero-rated sales for the period from the 4th quarter of taxable year 2000 up to the 4th quarter of taxable year 2002 in the total amount of P13,423,497.51.

The first and second issues are inter-related legal issues, while the third and fourth issues are factual and likewise inter-related. Thus, the first

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[16] Minutes of the hearing held on October 23, 2006, Records, p.557.
[17] Memorandum for Petitioner, Records, pp.558-589.
[18] Resolution dated December 18, 2006, Records, p.590.

and second issues will be discussed jointly. Likewise, with the third and fourth issues.

THE COURT'S RULING

Sales of services to PEZA-registered enterprises and to non-resident clients are subject to VAT at zero percent (0%) rate.

Section 108(B) of the NIRC of 1997 provides:

> "**Section 108.** *Value-added Tax on Sale of Services and Use or Lease of Properties.* —
>
> x x x
>
> (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);
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> (2) **Services other than those mentioned in the preceding paragraph, 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)**;
>
> (3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory effectively **subjects the supply of such services to zero percent (0%) rate**;" *(Emphasis and underscoring Ours)*

Enterprises registered with the Philippine Economic Zone Authority (PEZA), also called ECOZONE enterprises, are entities exempt from all taxes, including VAT under a special law, specifically, Republic Act (R.A.) No. 7916, as amended, otherwise known as the Special Economic Zone Act of 1995. This was affirmed by the Supreme Court in the case of ***Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.***,[19] which ruled:

> "This Court agrees, however, that PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory."

Thus, services rendered to a PEZA-registered enterprise effectively subjects the supply of such services to VAT at zero percent (0%) as further explained and ruled by the Supreme Court in the same case, as follows:

> "Sales of goods, properties and services by a VAT-registered supplier from the Customs Territory to an ECOZONE enterprise shall be treated as export sales. If such sales are made by a VAT-registered supplier, they shall be subject to VAT at zero percent (0%). In zero-rated transactions, the VAT-registered supplier shall not pass on any output VAT to the ECOZONE enterprise, and at the same time, shall be entitled to claim tax credit/refund of its input VAT attributable to such sales. Zero-rating of export sales primarily intends to benefit the exporter (i.e., the supplier from the Customs Territory), who is directly and legally liable for the VAT, making it internationally competitive by allowing it to credit/refund the input VAT attributable to its export sales."

In the case of ***Marubeni Philippines Corporation vs. Commissioner of Internal Revenue***,[20] this Court had occasion to explicitly rule that sales of services to PEZA-registered entities by a VAT-registered entity are subject to

[19] 466 SCRA 211 (2005).
[20] CTA Case No. 6297, July 11, 2006, as affirmed in C.T.A. EB No. 197, May 23, 2007.

zero percent (0%) VAT based on Section 108(B)(3) of the NIRC of 1997, as clarified under Revenue Memorandum Circular (RMC) No. 74-99.

Therefore, petitioner's cargo forwarding and customs brokerage services rendered to PEZA-registered enterprises are subject to zero-percent (0%) VAT.

With respect to the sales of cargo forwarding and customs brokerage services by petitioner to its non-resident foreign clients paid for in acceptable foreign currency, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas, the Supreme Court, in the case of ***Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)***,[21] discussed this circumstance in this light:

> "As a general rule, the VAT system uses the destination principle as a basis for the jurisdictional reach of the tax. Goods and services are taxed only in the country where they are consumed. Thus, exports are zero-rated, while imports are taxed.
>
> x x x
>
> However, the law clearly provides for an exception to the destination principle; that is, for a zero percent VAT rate for services that are *performed in the Philippines*, 'paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the (BSP).' Thus, for the supply of service to be zero-rated as an exception, the law merely requires that *first*, the service be performed in the Philippines; *second*, the service fall under any of the categories in Section 102(b) of the Tax Code [now Section 108 (B) of the 1997 NIRC]; and, *third*, it be paid in acceptable foreign currency accounted for in accordance with BSP rules and regulations." *(Citations omitted)*

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[21] 462 SCRA 197 (2005).

Additionally, in the case of ***Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.***,[22] the Supreme Court interpreted Section 102(b)(2) [now Section 108 (B)(2) of the NIRC of 1997), as follows:

> "The Court recognizes the rule that the VAT system generally follows the 'destination principle' (exports are zero-rated whereas imports are taxed). However, as the Court stated in *American Express,* there is an exception to this rule. This exception refers to the 0% VAT on services enumerated in Section 102 and performed in the Philippines. For services covered by Section 102(b)(1) and (2), the recipient of the services must be a person doing business outside the Philippines. Thus, to be exempt from the destination principle under Section 102(b)(1) and (2), the services must be (a) performed in the Philippines; (b) for a person doing business outside the Philippines; and (c) paid in acceptable foreign currency accounted for in accordance with BSP rules."

Considering that petitioner rendered cargo forwarding and customs brokerage services in the Philippines to various non-residents for the benefit of its Philippine clients, and the payments for the rendition of these services were accounted for in accordance with the rules and regulations of the BSP, these transactions are therefore subject to zero percent (0%) VAT.

Compliance with legal requirements for claiming refund of input tax.

In claiming a refund of input tax directly attributable to zero-rated or effectively zero-rated sales, the following provisions of the NIRC of 1997 and Revenue Regulation No. 07-95 must be observed:

National Internal Revenue Code of 1997

> **"Section 112.** *Refunds or Tax Credits of Input Tax. –*

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[22] 512 SCRA 124 (2007).

(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."

Revenue Regulations No. 07-95

"**Section 4.106-1.** ***Refunds or tax credits of input tax.*** — (a) *Zero-rated sales of goods or properties or services* — Only a VAT-registered person may be given a tax credit certificate or refund of VAT paid corresponding to the zero-rated sales of goods, properties or services, excluding the presumptive input tax and to the extent that such input tax has not been applied against the output tax. The application should be made within two (2) years after the close of the taxable quarter when the sales were made."

and;

"**Section 4.104-5.** ***Substantiation of claims for input tax credit.*** — (a) **Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Section 108 (a) and 238 of the Code.** Input tax on purchases of real property should be supported by a copy of the public instrument, *i.e.* deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with the VAT receipt issued by the seller." *(Emphasis Ours)*

Based on the above-cited provisions, petitioner must comply with the following requisites to be entitled to the refund of input VAT directly attributable to effectively zero-rated sales:

1. Both administrative and judicial claims for refund must be filed within two (2) years after the close of the taxable quarter when the sales were made;

2. The claimed input VAT payments must be directly attributable to zero-rated sales;

3. The claimed input VAT payments must be duly supported by VAT invoices or official receipts; and

4. The claimed input VAT payments must not be applied against any output tax carried over to the succeeding month(s).

1) Administrative and judicial claims for refund must be filed within the two (2) year period.

We find that petitioner was able to file its administrative and judicial claims for refund within the two (2)-year prescriptive period based on the following significant dates:

Period of Claim	*Date Filed*	*Administrative Claim Filed*	*Judicial Claim Filed*	*End of Prescriptive Period*
4^{th} Q 2000-4^{th} Q 2001	January 25, 2001	December 27, 2002	January 24, 2003	January 25, 2003
1^{st} Q 2002-4^{th} Q 2002	April 9, 2002	February 13, 2003	March 25, 2004	April 9, 2004

As can be seen from the table above and as jointly admitted by the parties under paragraph 11 of the Joint Stipulation of Facts and Issues, petitioner was able to file its administrative and judicial claims for each period of claim within the respective two (2)-year periods.

2. Input tax payments must be directly attributable to zero-rated sales

Considering that petitioner is engaged in zero-rated and taxable sales and its input tax cannot be directly or entirely attributed to either transactions, We shall allocate its input tax proportionately to its zero-rated sales on the basis of its volume of sales, as follows:

Period of Claim	Taxable Sales (A)	Zero-Rated Sales (B)	Total Sales (C)=(A)+(B)	Input Tax for the Period of Claim (D)	Input Tax Allocated to Taxable Sales (A)/(C)x(D)	Input Tax Allocated to Zero-Rated Sales (B)/(C)x(D
4th Q 2000 to 4th Q 2001	49,505,530.86	296,190,221.98	345,695,752.84	11,007,436.01	1,576,325.31	9,431,110.70
1st Q 2002 to 4th Q 2002	16,719,312.78	302,117,209.46	318,836,522.24	4,302,429.40	225,613.00	4,076,816.40
	66,224,843.64	598,307,431.44	664,532,275.08	15,309,865.41	1,801,938.30	13,507,927.11

Now that petitioner's sales to PEZA-registered enterprises and non-resident foreign clients are zero-rated, We shall determine the existence of such alleged sales, as well as, whether or not the related foreign exchange proceeds of petitioner's sales to non-resident clients were inwardly remitted and duly accounted for in accordance with the rules and regulations of the BSP.

To prove that it actually generated a total amount of P598,307,431.44 in zero-rated sales during the covered period of claim, and that the related foreign exchange proceeds on sales to non-resident clients were duly accounted for in accordance with the BSP rules and regulations, petitioner presented its Summary of Zero-Rated Sales;[23] Certificates of Registration

[23] Exhibits "S-1" to "S-239" and "KK-1" to "KK-227".

issued by PEZA to petitioner's customers;[24] Official Receipts, Invoices and Bank Inward Remittances.[25]

These documentary evidence were examined and verified by the court commissioned Independent CPA, Mary Ann C. Capuchino. In her Report dated May 19, 2005,[26] she made the following findings:

1.	There are zero-rated sales supported by VAT ORs stamped "Zero-Rated Sales", VAT Invoices and PEZA certification issued within the taxable quarter and taxable year.	P119,744,733.49
2.	There are zero-rated sales supported by VAT ORs stamped "Zero-Rated Sales", VAT Invoices and PEZA certification issued not within the taxable quarter but within the taxable year.	70,185,555.92
3.	There are zero-rated sales supported with VAT ORs stamped "Zero-Rated Sales", VAT Invoices and PEZA Certification that are not dated within the taxable quarter and the taxable year but within the period of claim.	25,307,470.43
4.	There are zero-rated sales supported with VAT ORs stamped "Zero-Rated Sales", VAT Invoices and PEZA Certification that are not dated within the taxable quarter & the taxable year and not within the period of claim.	15,974,416.38
5.	There are zero-rated sales supported with VAT ORs stamped "Zero-Rated Sales" & PEZA Certification but without VAT Invoices and are dated within the taxable quarter and taxable year.	2,760,903.40
6.	There are zero-rated sales supported with VAT ORs stamped "Zero-Rated Sales" & PEZA Certification but without VAT Invoices and are not dated Within the taxable quarter but within the taxable year.	2,213,798.81
7.	There are zero-rated sales supported with VAT ORs stamped "Zero-Rated Sales" & PEZA Certification that are not dated within the taxable quarter & the taxable year but within the period of claim.	1,440,149.99

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[24] Exhibits "U-1" to "U-15".
[25] Exhibits "V-1" to "V-2252"; "W-1" to "W-2524"; "X-1" to "X-1920"; "Y-1" to "Y-2329"; "Z-1" to "Z-2438"; "MM-1" to "MM-1819"; "NN-1" to "NN-1835"; "OO-1" to "OO-2688" and "PP-1" to "PP-2622".
[26] Exhibit "EE".

8.	There are zero-rated sales supported with VAT ORs stamped "Zero-Rated Sales" & PEZA Certification that are not dated within the taxable quarter & the taxable year & not within the period of claim.	915,319.91
9.	There are zero-rated sales supported by VAT ORs stamped "Zero-Rated Sales", VAT invoices but without PEZA certification.	87,804,433.24
10.	There are zero-rated sales supported by VAT ORs stamped "Zero-Rated Sales" but without PEZA certification and VAT invoices.	4,437,669.63
11.	There are zero-rated sales supported by VAT ORs not stamped "Zero-Rated Sales" and PEZA certification.	12,476,574.42
12	There are zero rated sales supported by VAT ORs not stamped "Zero-Rated Sales".	20,300,647.26
13.	There are zero-rated sales supported by VAT invoices and PEZA certification.	283,671.54
14.	There are zero-rated sales supported by VAT invoices.	825,510.57
15.	There are zero-rated sales supported with Bank Inward Remittances and Invoices stamped "Zero Rated Sales".	6,405,610.95
16.	There are zero-rated sales supported with Invoices stamped "Zero-Rated Sales" but without Bank Inward Remittances.	1,317,679.46
17.	There are zero-rated sales, which are not supported by related documents.	165,302,700.21
TOTAL		**P537,696,845.61**

After careful scrutiny of the Report of the court commissioned independent CPA, We agree with the foregoing findings. From the total amount of P598,307,431.44 in zero-rated sales, the independent CPA was only able to examine zero-rated sales amounting to P537,696,845.61 as found in the Summary of Zero-Rated Sales. And based therefrom, only the amount of **P221,652,612.04** *(sum of items 1, 2, 3, 5, 6 and 7 of the findings)* in zero-rated sales was duly supported by the required evidence; thus, qualifying for zero-rating. The remaining amount of P376,654,819.40 *(P598,307,431.44 less P221,652,612.04)* cannot qualify for zero-rating for the following reasons:

a) The P16,889,736.29 *(sum of items 4 and 8)* in zero-rated sales are supported by official receipts dated outside the period of claim;

b) The P92,242,102.87 *(sum of items 9 and 10)* in zero-rated sales are not supported by PEZA Certification. Without the said certification, We cannot ascertain whether petitioner really made a sale to a PEZA-registered enterprise;

c) The P32,777,221.68 *(sum of items 11 and 12)* in zero-rated sales are supported by official receipts which are not imprinted or stamped with the word "zero-rated" in violation of the invoicing requirements under Section 4.108-1 of Revenue Regulations No. 7-95;

d) The P8,832,472.52 *(sum of items 13, 14, 15 and 16)* in zero-rated sales are not supported by official receipts in violation of substantiation requirements with respect to sale of services. In Our decision in the case of ***American Express International Inc. vs. Commissioner of Internal Revenue***,[27] We held that an official receipt is an essential requirement in proving the existence of sale and receipt of income. And without VAT official receipts proving the existence of the reported sales, the claimed input VAT allegedly attributable thereto cannot be refunded; and

e) The P165,302,700.21 *(item 17)* and P60,610,585.83 *(difference between P598,307,431.44 and P537,696,845.61)* in zero-rated sales are not

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[27] CTA Case No. 6468, February 9, 2006, as affirmed in C.T.A. EB No. 197 dated May 23, 2007.

supported by the related documents. Without the required supporting documents, the Court cannot ascertain the existence of such sales.

Considering that petitioner failed to substantiate all its zero-rated sales with the required documentary evidence, only the allowable input tax pertaining to the duly substantiated zero-rated sales *(P221,652,612.04)* appears to be the proper subject of a claim for refund. The rate to be applied will be based on the total volume of declared zero-rated sales, computed as follows:

Substantiated zero-rated sales	P 221,652,612.04
Total zero-rated sales	598,307,431.44
Rate of substantiated zero-rated sales	37.05%

Thus, only 37.05% of the allowable input tax may be the proper subject of a claim for refund.

3. Unutilized input tax must be substantiated

After finding that petitioner was only able to substantiate zero-rated sales in the amount of P221,652,612.04, We now determine whether or not petitioner's unutilized input tax for the period from the fourth quarter of 2000 to the fourth quarter of 2002, in the total amount of P13,423,497.51, was duly substantiated by documentary evidence.

To prove that it actually paid input tax in the total amount of P13,423,497.51 on its purchases of goods and services during the covered period of claim, petitioner presented its Summary of Input Taxes,[28] pertinent official receipts and invoices.[29]

Upon examination and verification of these documentary evidence, the commissioned independent CPA made the following findings in her Report:

1. There are input taxes claimed on purchases of services which Are properly supported by VAT ORs issued in the name of the Company and dated within the taxable quarter and taxable year.	3,260,406.67
2. There are input taxes claimed on purchases of services supported by the following:	
a. VAT ORs issued in the Company's former name (JAIFI) and dated within the taxable quarter and taxable year.	3,016,597.89
b. VAT ORs indicating the Company's incomplete name and dated within the taxable quarter and taxable year.	2,880,617.72
c. VAT ORs issued in the Company's name not dated within the taxable quarter but within the taxable year	754,639.88
d. VAT ORs issued in the Company's name not dated within the taxable quarter and taxable year but within the period of claim.	185,065.74
3. There are input taxes claimed on purchases of goods which are properly supported by VAT invoices issued in the name of the Company and dated within the taxable quarter and taxable year.	3,659.11
4. There are input taxes claimed on purchases of goods supported by the following:	
a. VAT invoices issued in the Company's former name (JAIFI) and dated within the taxable quarter and taxable year.	4,136.51
b. VAT invoices indicating the Company's incomplete name and dated within the taxable quarter and taxable year.	48,559.03
c. VAT invoices not dated within the taxable quarter but within the	

[28] Exhibits "H-1" to "H-163" and "FF-1" to "FF-34".
[29] Exhibits "I-1" to "I-393"; "J-1" to "J-549"; "K-1" to "K-423"; "L-1" to "L-630"; "M-1" to "M-540"; "GG-1" to "GG-354"; "HH-1" to "HH-203"; "II-1" to "II-198"; and "JJ-1" to "JJ-254".

	taxable year	381.82
5.	There are input taxes claimed on purchases of services without VAT ORs but supported by:	
	a. Other documents showing that VAT was passed on (e.g. VAT Invoices, VAT Statements of Accounts, etc.)	375,293.21
	b. Other documents other than VAT ORs (e.g., deposit slips, progress billings, etc.)	259,772.50
6.	There are input taxes claimed on purchases of services supported by NON-VAT ORs	30,276.80
7.	There are input taxes claimed on purchases of services supported by ORs without the supplier's Tax Identification Number (TINs)	1,860.80
8.	There are input taxes claimed on purchases of services supported by VAT ORs where the amount of claimed input tax is in excess of the amount claimable as independently computed	874,909.05
9	There are input taxes claimed on purchases of goods supported by VAT invoices where the amount of claimed input tax is in excess of the amount claimable as independently computed	113.07
10.	There are input taxes claimed on purchases of services supported by VAT ORs NOT in the Company's name	20,754.78
11.	There are input taxes claimed on purchase of goods supported by VAT invoices NOT in the Company's name.	2,134.30
12.	There are input taxes claimed on purchases of services supported by VAT ORs not dated within the taxable quarter and taxable year but within the period of claim.	640,989.96
13	There are input taxes claimed on purchases of goods supported by VAT invoices not dated within the taxable quarter and taxable year but within the period of claim.	1,445.45
14	There are input taxes claimed on purchases of services supported by VAT Provisional Receipts.	1,436.26
15.	There are input taxes claimed on purchases of goods supported by	

	VAT ORs and VAT cash slips.	65,941.95
16.	There are input taxes claimed on purchases of goods and services which are not supported by related documents.	412,250.52
TOTAL		**12,841,243.02**

We find the report of the independent CPA to be in order.

Out of the total amount of P13,423,497.51 in input taxes claimed by petitioner, the commissioned independent CPA only considered the amount of P12,841,243.02 mentioned in the Summary of Input Taxes. Further study of the abovequoted findings shows that only the amount of **P10,796,499.78** *(sum of items 1, 2a, 2b, 2c, 2d, 3, 4a, 4b, 4c, 12 and 13 of the findings)* in input taxes are duly supported by the required evidence, while the remaining input taxes should be disallowed for the following reasons:

a) The amount of P635,065.71 *(sum of items 5a and 5b)* in input tax on purchases of services are not supported by VAT official receipts; while the amount of P65,941.95 *(item 15)* in input tax on purchases of goods are not supported by VAT invoices. In this regard, this Court has ruled in a long line of cases that the input VAT on domestic purchases of goods or properties shall be allowed as tax credit to the purchaser upon consummation of sale, which means upon issuance by the seller of the VAT sales invoices evidencing the sale of goods/properties.

On the other hand, the input VAT on purchases of services shall be available as tax credit to the purchaser only upon payment of the compensation or fee, *i.e.*, upon issuance by the seller of the VAT official receipt evidencing receipt of the payment for services performed or yet to be performed. Furthermore, in order that a tax credit or refund may be allowed, the input tax on purchase of goods or properties must be supported by a VAT invoice; while the input tax on purchase of services must be supported by a VAT official receipt;

b) The amount of P30,276.80 *(item 6)* in input tax on purchases of services are supported by non-VAT official receipts in violation of Section 113(A) of the NIRC of 1997, as amended, which explicitly provides:

> "**Section 113.** *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
>
> (A) *Invoicing Requirements.* – A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
>
> (1) **A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN)**; and
>
> (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." *(Emphasis Ours)*

Reinforcing the abovequoted provision, Section 4.108-1 of Revenue Regulations No. 7-95 provides that "only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoices or receipts and this shall be considered as a 'VAT invoice'". The same provision further provides that all purchases covered by invoices other than "VAT invoice" shall not give rise to any input tax;

c) The amount of P1,860.80 *(item 7)* in input tax on purchases of services are supported by official receipts without the required supplier's TIN in violation of Section 4.108-1 of Revenue Regulations No. 7-95;

d) The amount of P875,022.12 *(sum of items 8 and 9)* in input tax is over-claimed. Petitioner is only entitled to the amount of VAT actually paid for on its purchases of goods and services;

e) The amount of P20,754.78 *(item 10)* in input tax on purchases of services are supported by official receipts which are not issued in the name of the petitioner while the amount of P2,134.30 *(item 11)* in input tax on purchases of goods are also supported by invoices which are not issued in name of the petitioner, both in violation of Section 4.108-1 of Revenue Regulations No. 7-95 which provides that the duly registered VAT invoices or official receipts issued for every sale of goods or services must show, among others, the name of the VAT-registered purchaser, customer or client;

f) The amount of P1,436.26 *(item 14)* in input taxes on purchases of service are supported by provisional receipts. Being supported by mere provisional receipts, it violates the VAT invoicing requirement provided under Section 113 of the NIRC of 1997; and

g) The amount of P994,505.01 *(item 16)* in input taxes on purchases of goods and services and the amount of P582,254.49 *(difference between P13,423,497.51 and P12,841,243.02)* are not supported by documents prescribed by law and therefore have no evidentiary value.

4. Input tax claimed must not be utilized against output tax.

Our findings show that the claim for input tax per quarter was already deducted from the "Total Available Input Tax" as "Any VAT Refund/TCC Claimed" for each quarter and was not carried over to the succeeding quarters.[30] Thus, We conclude that petitioner did not utilize its claim for input tax in the total amount of P13,423,497.51 against its output tax during the covered period of claim and in the succeeding quarters.

Finally, We shall determine the refundable amount of input tax. For easy reference, We recapitulate as follows:

Period of Claim	*Input Tax Allocated to Taxable Sales (A)*	*Input Tax Allocated to Zero-Rated Sales (B)*	*Input Tax (A+B)*	*Output Tax (C)*
4th Q 2000 to 4th Q 2001	1,621,180.33	9,386,255.68	11,007,436.01	4,697,903.33
1st Q 2002 to 4th Q 2002	265,187.57	4,037,241.83	4,302,429.40	1,559,339.20
	1,886,367.90	13,423,497.51	15,309,865.41	6,257,242.53

Considering that petitioner's input tax allocated to taxable sales *(P1,886,367.90)* will not entirely cover its output tax liability *(P6,257,242.53)*, petitioner will still have to pay output tax in the amount of P4,370,874.63. However, the output tax payable cannot be offset against its input tax carry-over in the amount of P5,537,285.95 declared in its Quarterly VAT Return for the fourth quarter of 2000[31] because it did not present VAT invoices or official receipts to prove the existence of that amount. Therefore, its output tax payable must be applied against its substantiated claimed input tax *(P10,796,499.78)* resulting in an input tax of P6,425,625.15 attributable to zero-rated sales.

Thus, as petitioner was not able to substantiate all of its zero-rated sales, it is entitled only to be refunded the reduced amount of **P2,380,476.20** representing its substantiated input tax attributable to its substantiated zero-

[30] Exhibits "A", "B", "C", "D", "E", "F", "N", "O", "P" and "Q".
[31] Exhibit "A".

rated sales. [32] For easy understanding, the refundable amount of P2,380,476.20 is computed as follows:

Substantiated input tax	P	10,796,499.78
Less: Understated input tax attributable to taxable sales		4,370,874.63
Substantiated input tax attributable to zero-rated sales	P	6,425,625.15
Multiply: rate of substantiated zero-rated sales		37.05%
Refundable input tax attributable to the substantiated zero-rated sales	**P**	**2,380,476.20**

WHEREFORE, premises considered, these consolidated petitions for review are **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the reduced amount of **TWO MILLION THREE HUNDRED EIGHTY THOUSAND FOUR HUNDRED SEVENTY SIX PESOS and 20/100 (P2,380,476.20)** representing excess/unutilized input taxes on its domestic purchases of goods and services attributable to its zero-rated sales for the taxable periods covering the fourth quarter of taxable year 2000 to the fourth quarter of taxable year 2002.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

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

OLGA PALANCA-ENRIQUEZ
Associate Justice

[32] Kepco Philippines Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 6679, October 26, 2005.

ATTESTATION

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

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

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.

ERNESTO D. ACOSTA
Presiding Justice