REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

KURIMOTO (PHILIPPINES) CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9211

Members:

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

Promulgated:
FEB 06 2019
11:10 a.m.

x- x

DECISION

MANAHAN, *J.*:

This involves the Petition for Review[1] filed by Kurimoto (Philippines) Corporation pursuant to Rule 4, Section 3(a)(2)[2] of the Revised Rules of Tax Appeals (RRCTA). Petitioner is appealing the inaction of the Commissioner of Internal Revenue (CIR) on petitioner's claim for refund and/or issuance of tax credit certificate for its unutilized input value-added tax (VAT) covering January 1, 2013 to June 30, 2013 in the amount of Php9,390,402.45.

FACTS

Petitioner Kurimoto (Philippines) Corporation is registered with the Bureau of Internal Revenue as a VAT taxpayer with Tax

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[1] Docket, CTA Case No. 9211, Vol. I, pp. 10-25.

[2] Rule 4 Jurisdiction of the Court

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Sec. 3. Cases within the jurisdiction of the Court in Division. – The Court in Division shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

xxx xxx xxx

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action; xxx xxx xxx (*Underscoring supplied*)

Identification Number 007-889-234-000. Petitioner may be served with summons, pleadings, notices and other processes of this Honorable Court through its counsel at 1005, 88 Corporate Center, Sedeño corner Valero Streets, Salcedo Village, Makati City.[3]

Respondent Bureau of Internal Revenue (BIR), through the CIR, is the agency of the government tasked with the enforcement of revenue laws and the collection of taxes and duties. Respondent is being represented in this case by the legal officers of the Legal Division, Revenue Region 8, Makati City, with office address at the 2/F Legal Division, BIR Bldg., No. 313 Sen. Gil Puyat Ave., Makati City, where summons, pleadings, notices and other processes of this Honorable Court may be served.[4]

On April 16, 2013, petitioner filed its first quarter VAT return for taxable year 2013 with the BIR-Revenue District Office No. 49 (BIR-RDO No. 49). On May 16, 2013, petitioner filed its amended first quarter VAT return for taxable year 2013 with BIR-RDO No. 49.[5]

On July 18, 2013, petitioner filed its second quarter VAT return for taxable year 2013 with BIR-RDO No. 49. On December 19, 2013, petitioner filed its amended second quarter VAT return for taxable year 2013 with BIR-RDO No. 49.[6]

On June 30, 2015, petitioner filed an application for tax credits/refund[7] with the BIR-RDO No. 49 in the amount of Php9,390,402.45 representing petitioner's input VAT for the first quarter and second quarter of the year 2013.[8] Petitioner also submitted the complete requirements for a claim for VAT credit/refund.[9]

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[3] Docket, Vol. I, Joint Stipulation of Facts and Issues (JSFI), p. 168.
[4] Docket, Vol. I, JSFI, p. 168.
[5] Docket, Vol. I, JSFI, p. 169.
[6] Docket, Vol. I, JSFI, p. 169.
[7] Docket, Vol. I, Exhibit "P-1", p. 408.
[8] Docket, Vol. I, Petition for Review (PFR), p. 14.
[9] Docket, Vol. I, PFR, p. 14.

Respondent issued Letter of Authority No. (LOA) eLA201200034426[10] dated August 15, 2015, and received by petitioner on August 20, 2015.[11]

On November 12, 2015, the BIR issued a letter denying the claim for refund.[12]

On November 27, 2015, petitioner, alleging the CIR's inaction on its claim for refund, filed the instant Petition for Review.

After summons[13] and within the extension granted,[14] respondent filed his Answer[15], through registered mail on January 27, 2016, opposing the claim for refund.

The Court conducted pre-trial, with the parties submitting their respective pre-trial briefs,[16] and their Joint Stipulation of Facts and Issues (JSFI).[17] The Court issued its Pre-Trial Order[18] on April 20, 2016 approving and adopting the Joint Stipulation of Facts and Issues.

On April 27, 2016, the Court granted petitioner's motion to commission Atty. Ma. Cecilia C. Katigbak as independent certified public accountant (ICPA).[19] On the same date, petitioner presented its first witness, Ms. Miel O. Golla.[20]

On November 23, 2016, petitioner presented ICPA Ma. Cecilia C. Katigbak,[21] and terminated the presentation of its evidence.

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[10] BIR Records, Exhibit "R-2", p. 5.
[11] Docket, Vol. I, JSFI, p. 169.
[12] BIR Records, Exhibit "R-8", p. 194.
[13] Docket, Vol. I, p. 74.
[14] Docket, Vol. I, p. 79.
[15] Docket, Vol. I, pp. 80-84.
[16] Docket, Vol. I, respondent's Pre-Trial Brief, pp. 88-91; petitioner's Pre-Trial Brief, pp. 92-98.
[17] Docket, Vol. I, pp. 168-175.
[18] Docket, Vol. I, pp. 179-182.
[19] Docket, Vol. I, Minutes of Hearing on April 27, 2016, p. 184.
[20] Docket, Vol. I, Judicial Affidavit of Miel O. Golla, pp. 101-113; Minutes of Hearing on April 27, 2016, p. 184.
[21] Docket, Vol. I, Amended Judicial Affidavit (Atty. Ma. Cecilia C. Katigbak, CPA), pp. 370-381; Minutes of Hearing on November 23, 2016, p. 391.

Petitioner filed its Formal Offer of Exhibits,[22] through registered mail on December 5, 2016 and received by the Court on December 9, 2016. On May 19, 2016, the parties filed their Joint Manifestation with Motion to Admit Exhibit "P-11" as evidence for petitioner.[23] On September 20, 2017, the Court issued its Resolution[24] admitting petitioner's exhibits.

Respondent presented his sole witness, Revenue Officer Amiruzzaman M. Alauya.[25] On November 10, 2017, the Court received respondent's Formal Offer of Evidence,[26] which was filed through registered mail on November 3, 2017. The Court resolved respondent's formal offer of evidence through a Resolution[27] dated November 23, 2017, admitting respondent's exhibits, and requiring the parties to submit their respective memoranda within 30 days from notice.

On January 19, 2018, the Court received petitioner's Memorandum,[28] which was filed through registered mail on January 15, 2018. Respondent failed to file his memorandum.[29] Thus, the case was considered submitted for decision on February 8, 2018.[30]

ISSUES[31]

The parties submit the following issues:

1. Whether petitioner is entitled to its claim for VAT refund and/or issuance of tax credit certificate in the amount of Php9,390,402.45 representing its unutilized input VAT attributable to its zero-rated sales, for taxable period covering January 1, 2013 to

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[22] Docket, Vol. I, Formal Offer of Exhibits (With Motion to be Allowed to Use Secondary Evidence; or in the alternative, To Order the BIR to Stipulate on the Authenticity and Genuineness of Exhibit "P-11"; or in the alternative, To Order the BIR to submit the BIR Records and the Setting of a Commissioner's Hearing for Purposes of Marking of Documentary Exhibit), pp. 393-407.
[23] Docket, Vol. II, pp. 538-541.
[24] Docket, Vol. II, pp. 543-546.
[25] Docket, Vol. II, Exhibit "R-9" Judicial Affidavit of Revenue Officer Amiruzzaman M. Alauya, pp.549-554; Minutes of Hearing on October 18, 2017, p. 562.
[26] Docket, Vol. II, pp. 566-571.
[27] Docket, Vol. II, pp. 575-576.
[28] Docket, Vol. II, pp. 593-622.
[29] Docket, Vol. II, Records Verification dated January 31, 2018, p. 624.
[30] Docket, Vol. II, Resolution dated February 8, 2018, p. 625.
[31] Docket, Vol. I, JSFI, pp. 169-170.

June 30, 2013 pursuant to existing laws and jurisprudence;

2. Whether petitioner's alleged sales of services are zero-rated for VAT purposes under Section 108(B)(2)(3) of the 1997 National Internal Revenue Code, as amended (NIRC);

3. Whether petitioner has carried over to the succeeding taxable quarters/years the alleged input VAT attributable to its zero-rated sales for taxable period covering January 1, 2013 to June 30, 2013 and applied the same amount in full to its output VAT for the said period, if any;

4. Whether the amount Php9,390,402.45, being claimed by petitioner as alleged unutilized input VAT, for taxable period covering January 1, 2013 to June 30, 2013, pertains in full to its zero-rated sales of services;

5. Whether petitioner has complied with the substantiation requirements prescribed under Sections 113 and 237 of the NIRC, in relation to Revenue Regulations No. 16-2005; and

6. Whether petitioner's claim for input VAT covering the 1st quarter of taxable year 2013 has already prescribed, for failure to comply with the mandatory requirements under Section 112(A) of the NIRC, and thus divests the Honorable Court of its jurisdiction to entertain the issue.

Petitioner's Arguments

Petitioner argues that it is entitled to the refund considering that it submitted all the necessary requirements under Revenue Memorandum Circular No. 54-14.[32] Petitioner states that it is a VAT-registered taxpayer, that the input taxes subject of the instant claim were duly incurred and paid; that its sales of services to Taganito HPAL Nickel Corporation, a PEZA-registered entity, are subject to zero percent (0%) VAT;

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[32] Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, as amended, June 11, 2014.

that its sales to Kurimoto, Ltd. Japan and Fujiken Engineering Co., Ltd., both non-resident foreign corporations, are also subject to zero percent (0%) VAT; that the subject input taxes were not applied against any output VAT liability nor applied to the succeeding quarters; and, that the claim for VAT refund was filed within two years after the close of the taxable quarter when the zero-rated sales were made.

Respondent's Counter-Arguments

Respondent argues that petitioner failed to comply with the substantiation requirements for the claim for refund. Respondent also states that petitioner's claim for input VAT refund for the 1st quarter of taxable year 2013 has already prescribed since petitioner admittedly filed its claim for input VAT refund with the BIR only on June 30, 2015, which is more than two years after the close of the 1st quarter of taxable year 2013 on March 31, 2013. Respondent also alleged that petitioner's sales of services do not qualify as zero-rated VAT; and that the subject claim for input VAT refund does not pertain in full to its input VAT attributable to zero-rated sales of services. Respondent further stresses that claims for refund are construed strictly against the petitioner for it partakes the nature of exemption from taxation.

RULING OF THE COURT

Section 112(A) and (C) of the NIRC provide for the mechanism of refunds or tax credits of input tax. The provision states:

> SEC. 112. Refunds or Tax Credits of Input Tax. –
>
> (A) Zero-rated or effectively Zero-rates 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: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> xxx xxx xxx
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> (C) Period within which Refund or Tax Credit of Input Taxes shall be Made. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
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> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

Pursuant to the above-quoted provisions and as laid down by the Supreme Court in a number of cases,[33] a taxpayer engaged in zero-rated or effectively zero-rated sales is entitled to claim for refund or tax credit of excess input tax attributable to such sales upon compliance with the following requisites:

1. The taxpayer-claimant must be VAT-registered;
2. There must be zero-rated or effectively zero-rated sales;

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[33] Commissioner of Internal Revenue vs. Toledo Power Company, G.R. Nos. 195175 and 199645, August 10, 2015; Luzon Hydro Corporation vs. Commissioner of Internal Revenue, G.R. No. 188260, November 13, 2013, Southern Philippines Power Corporation vs. Commissioner of Internal Revenue, G.R. No. 179632, October 19, 2011; Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue, G.R. No. 172378, January 17, 2011; AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 182364, August 3, 2010; San Roque Power Corporation vs. Commissioner of Internal Revenue, G.R. No. 180345, November 25, 2009; Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 166732, April 27, 2007.

3. That input taxes were incurred or paid;
4. That such input taxes are attributable to zero-rated or effectively zero-rated sales;
5. That the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and
6. The claim for refund was filed within the prescriptive period both in the administrative and judicial levels.

The Court will now look into petitioner's compliance with the foregoing requisites.

6th requisite: Timeliness of the administrative and judicial claims

Based on Section 112(C) of the NIRC, as quoted above, the administrative claim must be filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made.

The instant claim involves the application for tax credit of input taxes attributable to zero-rated sales for the period January 1, 2013 to June 30, 2013. Thus, the end of the two-year period to file the administrative claim are as follows:

Close of taxable quarter	End of two-year period to file administrative claim
March 31, 2013	March 31, 2015
June 30, 2013	June 30, 2015

Considering that petitioner filed its administrative claim on June 15, 2015, it is clear that only the claim for the 2nd quarter was timely filed. The claim for the 1st quarter has prescribed.

Thus, for having been filed out of time in the administrative level, petitioner's input VAT claim for the 1st quarter of calendar year 2013 in the amount of Php5,063,052.58[34] shall be denied outright.

As to the filing of the judicial claim, the taxpayer must await the decision on its administrative claim rendered within

[34] Docket, Vol. I, Exhibit "P-5-1", line 21J, p. 454.

the 120-day period, whether full or partial, or the expiration of the 120-day period from the submission of complete documents in support of such claim. Once the taxpayer receives the decision, or upon the expiration of the 120-day period, the taxpayer should file its petition for review with this Court within thirty (30) days.

As stated above, petitioner filed its administrative claim on June 30, 2015, together with the complete documents. Counting 120 days from June 30, 2015, respondent had until October 28, 2015 within which to act on petitioner's claim. By failing to act on the claim before or on the 120th day, petitioner had 30 days from the expiration of the 120-day period within which to file its appeal to the Court. In the instant case, the 120-day period expired on October 28, 2015, thus, petitioner timely filed its appeal within the 30-day period on November 27, 2015.

It also appears from the records that the administrative claim was denied through a letter[35] dated and received on November 12, 2015. At this point, the "deemed a denial" due to inaction had already been triggered as early as October 29, 2015 (the day after the expiration of the 120-day period), despite the issuance of the denial on November 12, 2015. However, even counting from the date of receipt of the said denial on November 12, 2015, petitioner's appeal is still timely filed, having been filed within thirty days from receipt of the said denial.

In summary, the administrative claim was timely filed for the 2nd quarter of taxable year 2013, however, the administrative claim for the 1st quarter has prescribed. Thus, only the 2nd quarter claim, in the amount of Php4,327,349.87[36] is covered by the judicial appeal which was timely filed on November 27, 2015.

1st requisite: Petitioner must be VAT-registered

Petitioner is a VAT-registered entity as evidenced by its BIR Certificate of Registration (BIR Form No. 2303) No.

[35] BIR Records, Exhibit "R-8", p. 194.
[36] Docket, Vol. I, Exhibit "P-6-1", line 210, p. 469.

OCN9RC0000300713,[37] which clearly shows VAT[38] as one of its registered tax types.

2nd requisite: Petitioner must have zero-rated or effectively zero-rated sales

In its Amended Quarterly VAT Return for the 2nd Quarter of calendar year 2013, petitioner reflected an amount of Php36,253,923.27 zero-rated sales/receipts,[39] broken down as follows:[40]

Customer Name	OR No.	OR Date	Amount
Kurimoto Ltd.	0503	06/28/2013	P 15,644,571.01
Kurimoto Ltd.	0504	06/28/2013	3,592,322.70
Taganito HPAL Nickel Corporation	0502	06/28/2013	16,892,000.00
Fujiken Engineering Co. Ltd	0507	06/28/2013	125,029.56
Total Zero-Rated Sales			**P36,253,923.27**

Petitioner submits that its sales transactions for the 2nd quarter of calendar year 2013 are 100% zero-rated sales of services to Taganito HPAL Nickel Corporation (THPAL), a PEZA-registered entity; Kurimoto Ltd.; and, Fujiken Engineering Co. Ltd., both non-resident foreign corporations not engaged in business in the Philippines.

Sales of services to non-resident foreign corporations not engaged in business within the Philippines

With reference to the VAT zero-rating of its sales of services to Kurimoto Ltd., Japan and Fujiken Engineering Co. Ltd., petitioner relies on Section 108(B)(2) of the NIRC, which states:

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

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[37] Docket, Vol. I, Exhibit "P-3", p. 437.
[38] Docket, Vol. I, Exhibit "P-3-1", p. 437.
[39] Docket, Vol. I, Exhibit "P-6-1", line 17, p. 469.
[40] ICPA's Amended Final Report, Exhibit "P-22".

> (B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> (2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

In the case of *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*,[41] the Supreme Court held that in order for the supply of services to be VAT zero-rated under Section 108(B)(2) of the NIRC, the following requisites must be met:

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

Petitioner complied with the first requisite. Records show that petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, principally involved in rendering services related to construction, installation works, electric works, piping works, repairs & maintenance and staff service of various kinds of plants.[42] These services clearly fall within the scope of "services other than processing, manufacturing or repacking of goods" contemplated by the afore-mentioned provision.

In relation to the second requisite, Sections 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC, as implemented by Sections 4.113-1(A)(2), B(1), and (2)(c) of Revenue Regulations No. (RR)

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[41] G.R. No. 153205, January 22, 2007.
[42] Docket, Vol. I, Exhibit "P-2", pp. 409 and 411.

16-05 provide that a VAT taxpayer, like herein petitioner, shall for every lease of goods or properties and for every sale, barter or exchange of services, issue a VAT official receipt which must contain the following information:

> SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* –
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> (A) *Invoicing Requirements.* – A VAT-registered person shall issue:
>
> xxx xxx xxx
>
> (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services
>
> (B) *Information contained in the VAT Invoice or VAT Official Receipt.* – The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> (2) The total amount which the purchases pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: Provided, That:
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> 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;
>
> (3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and xxx (*Underlining supplied*)
>
> ***** ***** *****
>
> SEC. 4.113-1. *Invoicing Requirements.* –
>
> (A) A VAT-registered person shall issue: –
>
> xxx xxx xxx
>
> (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

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 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. (*Underlining supplied*)

Pursuant to the foregoing provisions, the foreign currency remittances referred to under Section 108(B)(2) of the NRIC, must not only be duly accounted for in accordance with the rules and regulations of the BSP but must also be supported by VAT zero-rated official receipts.

In the instant claim, petitioner submitted VAT zero-rated sales invoices and official receipts proving that for services rendered to Kurimoto Ltd. and Fujiken Engineering Co., Ltd., for the second quarter of 2013, petitioner was paid for in US Dollars except for the reported sales of Php15,644,571.01, as shown below:[43]

Customer Name	Exh.	Inv. No.	OR No.	OR Date	Amount of Gross Sales (In US Dollars)	Exchange Rate	Amount of Gross Sales (PHP)
Kurimoto Ltd.	P-22-1	0019	0503	06/28/2013			P 15,644,571.01
Kurimoto Ltd.	P-22-3	0020	0504	06/28/2013	82,424.71	43.58308	3,592,322.70

[43] ICPA's Amended Final Report, Exhibit "P-22".

Fujiken Engineering Co. Ltd	P-22-4		0507	06/28/2013	2,897.66	43.14846	125,029.56
Total					**85,322.37**		**P 19,361,923.27**

However, aside from not being able to prove that the reported sales of Php15,644,571.01 were paid for in acceptable foreign currency, petitioner was unable to establish that the US Dollar payments of 82,424.71 and 2,897.66 with Philippine peso equivalent of 3,592,322.70 and 125,029.56, respectively, were duly accounted for in accordance with the rules and regulations of the BSP. Thus, petitioner failed to satisfy the second requisite to prove the existence of zero-rated sales.

Likewise, petitioner failed to comply with the third requisite to prove the existence of zero-rated sales.

In *Accenture, Inc. v. Commissioner of Internal Revenue,*[44] the Supreme Court ruled that it is not enough that the recipient of the service be shown to be a foreign corporation, it must likewise be established that the said recipient is a "non-resident foreign corporation". Moreover, there must not be any indication that the recipient of the services is doing business in the Philippines, consistent with the ruling in *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*.[45]

Hence, 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** proof of incorporation, association or registration in a foreign country (e.g., Certificate or Articles of Incorporation, Certificate of Registration of a Foreign Company, printed screenshots of United States Securities and Exchange Commission (or the official regulatory body of a particular jurisdiction) website showing the state/province/country where the entity was organized or any other equivalent document).[46]

To prove that its customers are non-resident foreign corporations doing business outside the Philippines, petitioner presented the authenticated and consularized Articles of

[44] G.R. No. 190102. July 11, 2012.
[45] G.R. No. 153205, January 22, 2007.
[46] *Commissioner of Internal Revenue v. Chevron Holdings, Inc.*, CTA EB No. 1509, March 21, 2018.

Incorporation of Kurimoto Ltd.;[47] and SEC Certification of Non-Registration of Fujiken Engineering Co. Ltd.[48] However, these documents are insufficient without the SEC Certification of Non-Registration of Kurimoto Ltd., and proof of incorporation, association or registration in a foreign country of Fujiken Engineering Co., Ltd.

In sum, petitioner's reported sales of services to Kurimoto Ltd. and Fujiken Engineering Co. Ltd. for the second quarter of year 2013 in the total amount of Php19,361,923.27 shall be denied VAT zero-rating.

Sales of services to a PEZA-registered entity

Petitioner claims that its customer, Taganito HPAL Nickel Corporation (THPAL), is a PEZA-registered entity; hence, its sales thereto amounting to Php16,892,000.00 are subject to zero percent (0%) VAT pursuant to Section 108(B)(3) of the NIRC, to wit:

> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> (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 supplied*)

Indeed, sales of services by a VAT-registered taxpayer, such as herein petitioner, to a PEZA-registered entity are subject to zero percent (0%) VAT. The special law specific to this case is Republic Act No. (RA) 7916, as amended, otherwise known as "The Special Economic Zone Act of 1995". Section 8

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[47] ICPA's Amended Final Report, Exhibit "P-24".
[48] ICPA's Amended Final Report, Exhibit "P-25".

of said law mandates that the PEZA shall manage and operate the ecozones as a separate customs territory, thus:

> SECTION 8. *ECOZONE to be Operated and Managed as Separate Customs Territory.* – The ECOZONES shall be managed and operated by the PEZA as separate customs territory.
>
> The PEZA is hereby vested with the authority to issue certificates of origin for products manufactured or processed in each ECOZONE in accordance with the prevailing rules of origin, and the pertinent regulations of the Department of Trade and Industry and/or the Department of Finance.

Since the ecozone is viewed as a foreign territory by legal fiction, sales of goods and services made by a VAT-registered person in the Philippine customs territory to an entity registered and operating within the ecozone are considered exports to a foreign country subject to zero percent (0%) VAT. This was elucidated by the Supreme Court in the case of *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.*,[49] as follows:

> 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**.
>
> xxx An ECOZONE or a Special Economic Zone has been described as –
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> > ...[S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.

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[49] G.R. No. 150154, August 9, 2005.

> The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.
>
> Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.
>
> Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?
>
> **The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of** goods and **services from the Philippines to a foreign country must be free of VAT**; while, those destined for use or consumption within the Philippines shall be imposed ten percent (10%) VAT[50]. (*Emphasis supplied*)

It was established that THPAL is a PEZA-registered entity for the subject period of claim as evidenced by the Certification[51] issued by PEZA on February 19, 2013. Accordingly, petitioner's reported sales to THPAL for the second quarter of year 2013 amounting to Php16,892,000.00 which are duly covered by VAT zero-rated sales invoice and official receipt qualify for VAT zero-rating under Section 108(B)(3) of the NIRC.

3rd requisite: Petitioner incurred or paid input taxes

In its Amended Quarterly VAT Return[52] for the second quarter of year 2013, petitioner reflected a total amount of

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[50] Now 12%.
[51] Docket, Vol. I, Exhibit "P-8", p. 471.
[52] Docket, Vol. I, Exhibit "P-6-1", p. 469.

Php4,327,349.87 input VAT arising from its domestic purchases of goods (other than capital goods) and services.

As aptly found by the Court-commissioned ICPA, out of the Php4,327,349.87 input VAT claim, the amount of Php56,891.81,[53] broken down below, should be disallowed for not being properly substantiated by VAT invoices or receipts as prescribed under Sections 110(A), 113(A) and (B), 237, and 238 of the NIRC, and as implemented by Sections 4.110-1, 4.110-2, 4.110-8, and 4.113-1 of RR 16-05, as amended.

VAT not separately shown[54]	P 24,319.87
Name, TIN and Address not indicated[55]	27,813.03
Invalid supporting documents[56]	1,200.00
No supporting documents[57]	3,558.91
Total	**P 56,891.81**

In addition, the Court finds that the following input VAT amounting to Php25,437.27 should likewise be disallowed for failure to meet the substantiation requirements laid down under the aforementioned VAT law and regulations. The amount of Php25,437.27 is computed as follows:

Supplier's Name	Exhibit (Inv/OR)	Inv/OR Date	Gross Amount	VATable Amount	Input VAT
			Exhibits P-19-3 to P-19-5		
For the month of April 2013					
Petitioner's complete address not indicated and VAT not separately shown in VAT OR					
DHL Express Philippines Corp	P-27-30	04/04/2013	P 905.33	P 808.33	P 97.00
DHL Express Philippines Corp	P-27-31	04/15/2013	1,453.95	1,298.17	155.78
Petitioner's complete address not indicated in VAT OR					
Pacific Star Bldg Condominium Corporation	P-27-77	04/04/2013	23,956.73	21,389.94	2,566.79
Pacific Star Bldg Condominium Corporation	P-27-78	04/23/2013	3,592.60	3,207.68	384.92
Petitioner's address and TIN not indicated in VAT OR					
Balgos Gumaru And Jalandoni	P-27-9	04/22/2013	11,200.00	10,000.00	1,200.00
Purchases of services supported by documents other than VAT ORs					
Dusit Thani	P-27-33	01/31/2013	5,936.00	5,300.00	636.00
Dusit Thani	P-27-33	01/31/2013	5,936.00	5,300.00	636.00
Dusit Thani	P-27-34	04/17/2013	5,936.00	5,300.00	636.00
Dusit Thani	P-27-35	04/10/2013	9,072.00	8,100.00	972.00
Dusit Thani	P-27-36	03/23/2013	5,936.00	5,300.00	636.00
Dusit Thani	P-27-37	03/30/2013	5,936.00	5,300.00	636.00

[53] ICPA's Amended Final Report, Annex 4.
[54] ICPA's Amended Final Report, Annex 4-1.
[55] ICPA's Amended Final Report, Annex 4-2.
[56] ICPA's Amended Final Report, Annex 4-3.
[57] ICPA's Amended Final Report, Annex 4-4.

PLDT	P-27-79 to P-27-83	04/10/2013	24,565.80	21,933.75	2,632.05
Skycable		03/21/2013	3,025.00	2,700.89	324.11
VAT not separately indicated in VAT OR					
DHL Express Philippines Corp	P-27-32	04/23/2013	914.67	816.67	98.00
Subtotal – April 2013			**₱108,366.08**	**₱96,755.43**	**₱11,610.65**
For the month of May 2013					
Petitioner's TIN not indicated in VAT OR					
LBC	P-27-160	05/15/2013	₱ 165.00	₱ 147.32	₱ 17.68
LBC	P-27-161	05/06/2013	165.00	147.32	17.68
LBC	P-27-162	05/23/2013	245.00	218.75	26.25
LBC	P-27-163	04/22/2013	170.00	151.79	18.21
Purchases of services supported by documents other than VAT ORs					
Dusit Thani	P-27-134; P-27-135	04/28/2013	11,872.00	10,600.00	1,272.00
Dusit Thani	P-27-136; P-27-137	05/09/2013	11,872.00	10,600.00	1,272.00
Dusit Thani	P-27-138; P-27-139	05/18/2013	5,936.00	5,300.00	636.00
Dusit Thani	P-27-140; P-27-141	05/09/2013	11,872.00	10,600.00	1,272.00
PLDT	P-27-180; P-27-181	05/09/2013	29,927.15	26,720.67	3,206.48
Subtotal - May 2013			**₱72,224.15**	**₱64,485.85**	**₱7,738.30**
For the month of June 2013					
VAT invoice was issued under the name of "KPC"					
K3 Centerpoint	P-27-258	05/07/2013	₱ 1,690.00	₱ 1,508.93	₱ 181.07
Petitioner's address and TIN not indicated in VAT OR					
Balgos Gumaru And Jalandoni	P-27-204	06/24/2013	11,200.00	10,000.00	1,200.00
Petitioner's TIN not indicated in VAT OR					
LBC	P-27-268	06/11/2013	545.00	486.61	58.39
LBC	P-27-269	04/26/2013	170.00	151.79	18.21
LBC	P-27-270	05/04/2013	170.00	151.79	18.21
LBC	P-27-271	05/22/2013	170.00	151.79	18.21
LBC	P-27-272	05/16/2013	170.00	151.79	18.21
LBC	P-27-273	05/17/2013	100.00	89.29	10.71
LBC	P-27-274	05/13/2013	170.00	151.79	18.21
Purchases of services supported by documents other than VAT ORs					
Dusit Thani	P-27-228 to P-27-230	06/02/2013	17,808.00	15,900.00	1,908.00
PLDT	P-27-302; P-27-303	05/17/2013	24,631.60	21,992.50	2,639.10
Subtotal - June 2013			**₱ 56,824.60**	**₱ 50,736.25**	**₱ 6,088.32**
Total – 2nd Quarter of 2013			**₱237,414.83**	**₱211,977.53**	**₱25,437.27**

Therefore, out of Php4,327,349.87 input VAT claim for the second quarter of year 2013, only the amount of Php4,245,020.79 represents petitioner's valid input VAT, summarized below:

Amount of Input VAT Claim - 2nd Qtr of CY 2013	P4,327,349.87
Less: Disallowances	
Per ICPA's Amended Final Report	56,891.81
Per the Court's further verification	25,437.27
Total Disallowances	82,329.08
Valid Input VAT - 2nd Qtr of CY 2013	**P4,245,020.79**

4th and 5th requisite: Petitioner's input taxes were attributable to its zero-rated sales and were not applied against any output VAT during and in the succeeding quarters

Since petitioner's reported sales for the second quarter of year 2013 were purely zero-rated sales, the input VAT paid/incurred by petitioner in the amount of Php4,245,020.79 is entirely attributable thereto. Moreover, petitioner had no output tax liability against which the said input VAT may be applied or credited. Likewise, the said input VAT was not carried-over by petitioner in its Third Quarterly VAT Return for year 2013, thus, preventing the carry-over or application of the claimed input VAT in the next taxable periods.[58]

However, as discussed earlier, petitioner was able to properly substantiate only the amount of Php16,892,000.00 out of its total declared zero-rated sales/receipts of Php36,253,923.27 for the second quarter of year 2013. Thus, the input VAT attributable to petitioner's valid zero-rated sales/receipts of Php16,892,000.00 for the same quarter amounts only to Php1,977,907.07, computed below:

Excess Input VAT Attributable to Declared Zero-Rated Sales/Receipts	P 4,245,020.79
Divided by Declared Zero-Rated Sales/Receipts	÷ 36,253,923.27
Multiplied by Valid Zero-Rated Sales/Receipts	× 16,892,000.00
Excess Input VAT Attributable to Valid Zero-Rated Sales/Receipts	**P1,977, 907.07**

[58] Docket, Vol. I, Exhibit "P-9", line 20A, p. 472.

In sum, petitioner has sufficiently proven its entitlement to a refund in the reduced amount of Php1,977,907.07, representing unutilized excess input VAT attributable to its zero-rated sales to a PEZA-registered entity for the second quarter of year 2013.

WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** in favor of petitioner the amount of **ONE MILLION NINE HUNDRED SEVENTY-SEVEN THOUSAND NINE HUNDRED SEVEN PESOS AND SEVEN CENTAVOS (Php1,977,907.07)** representing unutilized excess input VAT attributable to its zero-rated sales for the second quarter of calendar year 2013.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

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

ATTESTATION

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

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

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice