REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

**FIRST DIVISION**

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| MSCI HONG KONG LIMITED, Petitioner, | CTA CASE NO. 9661 |
| | Members: |
| -versus- | DEL ROSARIO, *P.J., Chairperson* FABON-VICTORINO, *and* MANAHAN, *JJ.* |
| COMMISSIONER OF INTERNAL REVENUE, Respondent. | Promulgated: OCT 14 2019 : 3:00 pm |

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# DECISION

***Fabon-Victorino, J.*:**

In this Petition for Review[1] filed on August 24, 2017, petitioner MSCI Hong Kong Limited prays for the refund or issuance of tax credit certificate (TCC) in the amount of ₱7,958,036.61, representing its alleged excess and unutilized input value-added tax (VAT) on its purchases of goods and services attributable to its zero-rated sales for the four (4) quarters of calendar year (CY) 2015.

The facts as established during the trial are as follows:

Petitioner is the Philippine Branch of MSCI Hong Kong Limited, a multinational company, organized and existing under the laws of Hong Kong.[2] It is licensed by the Securities and Exchange Commission (SEC) to transact business in the Philippines as a regional operating

[1] Vol. I docket, pp. 10-19.
[2] Exhibit "P-2-1".

headquarters (ROHQ) under SEC Registration No. FS201404144[3] dated March 3, 2014.

Petitioner, with office address at the 29th Floor Zuellig Building, Makati Avenue corner Paseo de Roxas, Makati City[4], is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer under Certificate of Registration No. 9RC0000442793[5] and with Taxpayer Identification No. (TIN) 008-724-942.[6]

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR) with the authority to, *inter alia,* act upon and approve claims for refund or tax credit, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws.

For the four (4) quarters of CY 2015, petitioner filed with the BIR, through Electronic BIR Forms (eBIR) and its Electronic Filing and Payment System (eFPS), its original and amended quarterly VAT returns as follows:

| VAT Quarter | VAT Return | Date of Filing |
|---|---|---|
| First (1st) | Original VAT Return[7] | April 27, 2015 |
| | Amended VAT Return[8] | July 31, 2015 |
| Second (2nd) | Original VAT Return[9] | July 24, 2015 |
| | Amended VAT Return[10] | February 22, 2017 |
| Third (3rd) | Original VAT Return[11] | October 24, 2015 |
| | Amended VAT Return[12] | February 22, 2017 |
| Fourth (4th) | Original VAT Return[13] | January 20, 2016 |
| | 1st Amended VAT Return[14] | March 31, 2016 |
| | 2nd Amended VAT Return[15] | February 22, 2017 |

[3] Exhibit "P-1".
[4] Paragraph 1, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), vol II. docket, p. 493.
[5] Exhibit "P-3".
[6] Par. 2, Stipulated Facts, JSFI, vol. II docket, p. 493.
[7] Exhibit "P-12".
[8] Exhibit "P-13".
[9] Exhibit "P-14".
[10] Exhibit "P-15".
[11] Exhibit "P-16".
[12] Exhibit "P-17".
[13] Exhibit "P-18".
[14] Exhibit "P-19".
[15] Exhibit "P-20".

During the same period, petitioner claimed to have paid and incurred excess input taxes amounting to ₱7,958,036.61 on its purchases of goods and services, broken down as follows:[16]

| | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter | TOTAL |
|---|---|---|---|---|---|
| Purchase of capital goods not exceeding ₱1 Million | ₱116,287.78 | | | | ₱116,287.78 |
| Amortization of input tax on capital goods exceeding ₱1 Million | 223,018.75 | ₱228,643.73 | ₱237,759.80 | ₱221,606.89 | 911,029.17 |
| Domestic purchases of goods Other than capital goods | 78,517.09 | 40,594.41 | 30,366.99 | 9,626.30 | 159,104.79 |
| Domestic purchase of services | 1,762,132.16 | 1,662,923.25 | 1,733,977.26 | 1,612,582.20 | 6,771,614.87 |
| **TOTAL** | **₱2,179,955.78** | **1,932,161.39** | **2,002,104.05** | **1,843,815.39** | **₱7,958,036.61** |

On March 27, 2017, petitioner simultaneously filed with BIR Revenue District Office (RDO) No. 50 - South Makati City a letter re: administrative claim for refund[17] dated March 7, 2017 and an Application for Tax Credits/Refunds (BIR Form No. 1914),[18] for its alleged unutilized input VAT for the four (4) quarters of CY 2015 in the total amount of ₱7,958,036.63, with complete supporting documents as listed in the Checklist of Requirements under Revenue Memorandum Circular (RMC) No. 54-2014.

On April 18, 2017, petitioner received Letter of Authority (LOA) No. AUDMO3/011083/2017[19] dated April 3, 2017 from Regional Director Glen A. Geraldino of BIR Revenue Region No. 8 informing it that revenue officer (RO) Raymond Pasco/ group supervisor (GS) Tadjudin Guiling of RDO No. 50 - South Makati City, were authorized to examine its books of accounts and other accounting records for VAT for the period of January 1, 2015 to December 31, 2015.

[16] Exhibit "P-33" (ICPA Report).
[17] Exhibit "P-21".
[18] Exhibit "P-22".
[19] Exhibit "P-23".

On July 27, 2017, petitioner received a letter[20] dated July 6, 2017 from BIR Assistant Commissioner Erlinda A. Simple, Assessment Service partially granting its administrative claim for refund/TCC in the reduced amount of ₱6,678.80.

On August 24, 2017, filed the instant Petition for Review before the Court.

In his Answer[21] filed on October 23, 2017, respondent, praying for the dismissal of the case invokes the presumption in his favor that taxes paid and collected are in accordance with law, hence, not refundable. Moreover, petitioner has the burden of proving its right to refund and failure to adduce sufficient proof is fatal to its cause. It is therefore incumbent upon petitioner to show compliance with Section 204(C), in relation to Section 229 of the NIRC of 1997, as amended.

Further, petitioner's claim for tax refund/TCC in the amount of ₱7,958,036.63, was not fully substantiated by proper documents, *i.e.*, sales invoices and official receipts, as mandated under Revenue Regulations (RR) No. 7-95, in relation to Sections 113 and 237 of the NIRC of 1997, as amended.

After the pre-trial conference on November 23, 2017, the parties filed their Joint Stipulation of Facts and Issues,[22] on the basis of which a Pre-Trial Order[23] was issued on January 9, 2018.

To substantiate its allegations, petitioner presented as witnesses, its Senior Associate for Finance, Nerissa Tolentino and the Court-commissioned Independent Certified Public Accountant (ICPA), Katherine O. Constantino.

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[20] Exhibit "P-24".
[21] Vol. I docket, pp. 199-201.
[22] Vol, II docket, pp. 493-504.
[23] *Ibid.*, pp. 291-295.

**Nerissa Tolentino** testified[24] that she is petitioner's Senior Associate for Finance since May 2014. As such, she reviews and safekeeps petitioner's corporate and financial documents, including its tax returns and financial statements, ensures petitioner's compliance with BIR requirements, and coordinates and consults with petitioner's external auditors and counsel regarding tax matters, including assessment protests and claims for refund.

She also alleged that petitioner is the Philippine branch of a multinational company organized and existing under the laws of Hong Kong.[25] It has been issued Registration No. FS201404144[26] by the SEC authorizing it to transact business in the Philippines as a ROHQ, performing index bench marketing, portfolio risk and performance analytics, and research support services.

In CY 2015, petitioner rendered services to two entities namely, MSCI, Inc., a corporation established and doing business under the laws of Delaware, United States of America (USA)[27] and Investment Property Databank Limited (IPD UK), a corporation established and doing business under the laws of United Kingdom.[28] Per its Service Agreements with MSCI, Inc. dated April 1, 2014[29] and with IPD UK dated January 1, 2015,[30] petitioner's services include administration, sales support and marketing analytics, management and index research, and production.

For services rendered, MSCI, Inc. and IPD UK paid petitioner service fees equivalent to the amount of actual costs and expenses it incurred plus a ten percent (10%) mark-up. Petitioner billed MSCI, Inc. and IPD UK in US Dollars (USD) and was paid service fees denominated in the same currency inwardly remitted in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP).

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[24] Exhibits "P-31" and "P-31-a", Sworn Statement of Ms. Nerissa Tolentino dated November16, 2017; and, Exhibits "P-32" and "P-32-a", Supplemental Sworn Statement of Ms. Nerissa Tolentino dated January 24, 2018.
[25] Exhibits "P-2" and "P-2-a".
[26] Exhibit "P-1".
[27] Exhibits "P-6' to "P-8".
[28] Exhibit "P-9".
[29] Exhibit "P-4".
[30] Exhibit "P-5".

For the 1st to 4th quarters of CY 2015, petitioner generated sales amounting to ₱302,856,610.91. As a consequence, it incurred excess and unutilized input taxes during the four (4) quarters of CY 2015 for its services rendered in the Philippines to the two foreign entities, MSCI, Inc. and IPD UK. During the same period, petitioner paid and incurred excess input taxes on its purchases of goods and services amounting to ₱7,958,036.61.

The witness further testified that the said excess and unutilized input taxes was incurred since per petitioner's Quarterly VAT Returns (BIR Form No. 2550Q)[31], it did not have any sales subject to twelve percent (12%) VAT, as well as any exempt sales, during the 1st to 4th quarters of CY 2015. Thus, petitioner could not have applied its excess input taxes from CY 2015 against any output taxes in CY 2015. Petitioner likewise removed the said input taxes when it filed its Amended Quarterly VAT Return for the 1st quarter of CY 2016.[32] Further, the amount of ₱7,958,036.61 was reported in Line 23D of petitioner's Amended Quarterly VAT Return for the 1st Quarter of CY 2016 as "VT Refund/TCC Claimed."

On March 27, 2017, petitioner filed with the BIR-RDO No. 50 a letter and Application for Tax Credits/Refund (BIR Form No. 1914)[33] together with complete supporting documents for its unutilized input VAT for the 1st to 4th quarters of CY 2015 in the total amount of ₱7,958,036.61.

On April 13, 2017, petitioner received from the BIR LOA AUDM03/011083/2017 (eLA201500047989) dated April 3, 2017[34] authorizing the named revenue examiners to examine its books of accounts and other accounting records for VAT for the period of January 1, 2015 to December 31, 2015.

On July 27, 2017, petitioner received a Letter dated July 6, 2017 signed by Revenue District Officer of BIR-RDO No. 50,[35] Rosita U. Meniano, partially granting its

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31 Exhibits "P-12" to "P-20".
32 Exhibit "P-25-a".
33 Exhibits "P-21" and "P-22".
34 Exhibit "P-23".
35 Exhibit "P-24".

administrative claim for refund of excess input taxes for the 4 quarters of CY 2015 but only in the amount of ₱6,678.80, hence, the instant Petition for Review filed on August 24, 2017.

The Court-commissioned ICPA **Katherine O. Constantino** declared[36] that she audited and evaluated petitioner's documents and record pertinent to its claim for tax refund/TCC in the amount of ₱7,958,036.61, representing its alleged excess and unutilized input VAT for the 1st to 4th quarters of CY 2015.

As stated in her ICPA Report dated February 28, 2018[37] submitted after examination and verification of petitioner's supporting documents, petitioner is entitled to its claim for excess and unutilized input VAT refund in the reduced amount of ₱6,295,591.43.

After its Formal Offer of Evidence[38], petitioner rested as shown in the Resolution dated July 4, 2018.[39]

Respondent, on the other hand, manifested[40] that it would not to present any evidence in support of his defense. In view thereof and as prayed for, the parties were granted a period of thirty (30) days, within which to submit their respective memoranda.[41]

On August 22, 2018, respondent filed his Memorandum[42] through registered mail, while petitioner filed its own[43] on September 12, 2018. Accordingly, the instant case was deemed submitted for decision on October 16, 2018.[44]

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[36] Exhibits "P-448" and "P-448-a"; Sworn Statement of Ms. Katherine O. Constantino dated March 15, 2018.
[37] Exhibits "P-33" and P-33-a.
[38] Formal Offer of Evidence (with Omnibus Motion), vol. II docket, pp. 593-622; Supplemental Formal Offer of Evidence, vol. II docket, pp. 878-881.
[39] Vol. II docket, pp. 925-926.
[40] *Ibid.*, pp. 929-930.
[41] Resolution dated July 19, 2018, Vol. II docket, p. 932.
[42] Vol. II docket, pp. 937-940.
[43] *Ibid.*, pp. 944-971.
[44] *Ibid.*, p. 975.

## THE ISSUE

Whether petitioner is entitled to the refund of or the issuance of a TCC for its excess and unutilized input VAT attributable to its zero-rated sales of service for the four (4) quarters of CY 2015 in the amount of ₱7,958,036.61.[45]

The parties also submitted the following sub-issues,[46] to wit:

(a) Whether petitioner paid and incurred input taxes on its purchases of goods and services attributable to zero-rated sales of services in CY 2015.

(b) Whether the excess input taxes paid and incurred by petitioner in CY 2015 is duly supported by VAT invoices and official receipts.

(c) Whether the input taxes paid and incurred by petitioner in CY 2015 amounting to ₱7,958,036.61 were applied against any output taxes or carried over to succeeding taxable periods.

(d) Whether Petitioner's administrative and judicial claims for refund or issuance of TCC for its excess and unutilized input taxes were filed within the period prescribed by law.

## THE COURT'S RULING

Petitioner claims that it is entitled to the tax refund/TCC in the amount of ₱7,958,036.61, representing its alleged excess and unutilized input VAT on its purchases of

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[45] Par. 4, Issue, JSFI, vol. II docket, p. 494.
[46] Par. 5, *ibid.*

goods and services attributable to its zero-rated sales for four (4) quarters of CY 2015.

Paragraphs (A) and (C) of Section 112 of the National Internal Revenue Code of 1997, as amended, pertinently provide as follows:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> xxx xxx xxx

> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Thus, to be entitled to refund/TCC of unutilized/excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be satisfied, to wit:

1. the taxpayer is VAT-registered;
2. the claim for refund was filed within the prescriptive period;
3. there must be zero-rated or effectively zero-rated sales;
4. input taxes were incurred or paid;
5. such input taxes are attributable to zero-rated or effectively zero-rated sales; and
6. the input taxes were not applied against any output VAT liability.

***Petitioner is a VAT-registered taxpayer.***

Undeniably, petitioner is a VAT-registered taxpayer as shown in the Certificate of Registration No.

9RC0000442793[47] dated March 13, 2014 and TIN 008-724-942[48] issued in its favor by the BIR.

***Petitioner's administrative and judicial claims were both seasonably filed.***

The second requisite was likewise satisfied. Per Section 112(A) of the NIRC of 1997, as amended, petitioner had two (2) years to file a claim for tax refund/TCC of its unutilized and excess input VAT attributable to its zero-rated or effectively zero-rated sales reckoned from the close of the taxable quarter when the relevant sales were made. The table below indicates the dates of the last day of the two-year period for petitioner to file its administrative claim for the 1st to 4th quarters of CY 2015:

| Taxable quarters for CY 2015 | Close of taxable quarter when sales were made | End of the 2-year prescriptive period for refund | Date of filing of the administrative claim |
|---|---|---|---|
| 1st | March 31, 2015 | March 31, 2017 | March 27, 2017 |
| 2nd | June 30, 2015 | June 30, 2017 | |
| 3rd | September 30, 2015 | September 30, 2017 | |
| 4th | December 31, 2015 | December 31, 2017 | |

Evidently, petitioner's administrative claim for refund was timely filed on March 27, 2017.

As to the timeliness of petitioner's judicial claim for refund/TCC, Section 112(C) of the NIRC of 1997, as amended, speaks of two periods for filing judicial claim for refund, to wit: (1) the period of 120 days for respondent to act on the administrative claim for refund/TCC; and (2) the 30-day period from notice of respondent's adverse ruling or the lapse of the 120 period without any action from respondent within which to file a judicial claim with the Court of Tax Appeals.[49]

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[47] Exhibit "P-3"
[48] *Ibid.*
[49] *ROHM Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

In the landmark case of *Commissioner of Internal Revenue v. San Roque Power Corporation*[50], the Supreme Court held that the taxpayer can seek judicial review of its claim for refund/TCC in either of the following ways: (1) file the judicial claim within 30 days after the respondent denies the claim within the 120-day waiting period, or (2) file the judicial claim within 30 days from the expiration of the 120-day period if respondent does not act within that period.[51]

Relative to the foregoing, it must be emphasized that pursuant to Section 112(C) of the NIRC of 1997, as amended, the 120-day period begins to run from the date of submission of complete documents supporting the administrative claim.[52] As to when the supporting documents are "deemed complete", the same has long been settled in the case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue,*[53] in which the Supreme Court ruled, thus:

> "It bears mentioning at this point that the foregoing summation of the rules *should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014*, such as the claim at bench. As it now stands, RMC 54-2014 dated June 11, 2014 mandates that:
>
>> The application for VAT refund/tax credit must be accompanied by complete supporting documents as enumerated in Annex 'A' hereof. In addition, the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents (Annex B). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (i.e., at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.

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[50] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[51] *Supra*, Note 49.
[52] *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016.
[53] G.R. No. 207112 December 8, 2015.

> Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant.

> **Thus, under the current rule, the reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54-2014, since it requires him at the time he files his claim to complete his supporting documents and attest that he will no longer submit any other document to prove his claim. Further, the taxpayer is barred from submitting additional documents after he has filed his administrative claim.**" *(Emphasis supplied)*

Further, in the recent case of *Team Energy Corp. v. Commissioner of Internal Revenue,*[54] the Final Arbiter ruled that "resort with the CTA should be made within 30 days either from receipt of the decision denying the claim or the expiration of the 120-day period given to the CIR to decide the claim."

As earlier stated, petitioner's administrative claim was timely filed on March 27, 2017. Following Section 112(C) of the NIRC of 1997, as amended, respondent had 120 days from March 27, 2017, or until July 25, 2017, within which to act on the said claim. Given that petitioner received the letter[55] dated July 6, 2017 from respondent through BIR Assistant Commissioner Erlinda A. Simple on July 27, 2017, partially granting its administrative claim for refund/TCC but only in the amount of ₱6,678.80, petitioner had thirty (30) days or until August 26, 2017, within which to seek judicial

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[54] G.R. Nos. 197663 and 197770, March 14, 2018.
[55] Exhibit "P-24".

intervention with this Court. In fine, the Petition for Review was as well timely instituted on August 24, 2017. Consequently, the Court validly acquired jurisdiction over the present case.

***Petitioner is engaged in zero-rated sales of services to non-resident foreign entities.***

Petitioner claims that during the four (4) quarters of CY 2015, it rendered services to MSCI, Inc.,[56] and IPD UK, [57] a US and UK corporations, respectively. The services rendered to MSCI, Inc. and IPD UK were paid in acceptable foreign currencies and duly accounted for in accordance with the rules and regulations of the BSP, hence, are subject to VAT at zero percent (0%), pursuant to Section 108(B)(2) of the NIRC of 1997, as amended, which provides as follows:

> **SEC. 108.** ***Value-added Tax on Sale of Services and Use or Lease of Properties.*** **–**
>
> (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:
>
> xxxx
>
> (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);

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[56] Exhibit "P-4".
[57] Exhibit "P-5".

Further, in the case of *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[58], the Supreme Court laid down the parameters for VAT-zero rating of services performed in the Philippines to foreign entities pursuant to Section 108(B)(2) of the NIRC of 1997, as amended, as follows:

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.

Anent the first requisite, evidence show that petitioner is a Philippine branch of a multinational company organized and existing under the laws of Hong Kong. It was licensed to transact business in the Philippines as an ROHQ as indicated in SEC Registration No. FS201404144[59] dated March 3, 2014. As ROHQ, it was authorized to perform index benchmarking, portfolio risk and performance analytics, and research support services. Evidently, the services rendered by petitioner to MSCI, Inc. and IPD UK were not in the same category as "processing, manufacturing or repacking of goods" contemplated in the cited provision.

We proceed with the third requisite. The Court consistently held that 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** a Certificate of Non-Registration of Corporation/Partnership issued by the SEC **and** proof of Incorporation/ Association/Business Registration in a foreign country and that there is no other indication that the recipient of the services is doing business in the Philippines.[60]

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[58] G.R. No. 153205, January 22, 2007.
[59] Exhibit "P-1".
[60] *Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue*, CTA EB Nos. 1244 and 1345 (CTA Case No. 8443), March 30, 2017.

To prove that MSCI, Inc. and IPD UK are non-resident foreign corporations doing business outside the Philippines, petitioner adduced the following documents, *viz.*:

*i.* Third Amended and Restated Certificate of Incorporation of MSCI, Inc.;[61]

*ii.* Amended and Restated By-laws of MSCI, Inc.;[62]

*iii.* Certification of the US Internal Revenue Services (IRS) dated February 22, 2016 certifying that MSCI, Inc. is a US Corporation and a US resident for purposes of taxation;[63]

*iv.* Certification of Non-registration issued by the SEC stating that MSCI, Inc. is not registered as a corporation in the Philippines;[64]

*v.* Articles of Association of IPD UK dated September 26, 2017;[65] and

*vi.* Certification of Non-registration issued by the SEC stating that IPD UK is not registered as a corporation in the Philippines.[66]

A scrutiny of the above-cited documents reveals that petitioner's clients were non-resident foreign clients doing business outside the Philippines, thereby complying with the third requisite.

As regards the second requisite, Sections 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(2), B(1) and (2)(c) of Revenue Regulations (RR) No. 16-2005,[67] as amended,

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[61] Exhibit "P-6".
[62] Exhibit "P-7".
[63] Exhibit "P-8".
[64] Exhibit "P-10".
[65] Exhibit "P-9".
[66] Exhibit "P-11".
[67] Consolidated Value-Added Tax Regulations of 2005.

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provide that a VAT taxpayer, 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, thus:

> ***SEC. 113. Invoicing and Accounting Requirements for VAT-registered Persons. —***
>
> (A) *Invoicing Requirements.* — A VAT-registered person shall issue:
>
> xxxx
>
> (2) A <u>VAT official receipt</u> 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:
>
> xxxx
>
> (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;
>
> xxxx
>
> (3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and xxxx

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

(A) A VAT-registered person shall issue: —

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(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:

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(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;

Per the foregoing provisions, the foreign currency remittances referred to under Section 108(B)(2) of the NIRC of 1997, as amended, must be further supported by VAT zero-rated official receipts.

In the present case, petitioner declared zero-rated sales in the aggregate amount of ₱302,856,610.91 for the four (4) quarters of 2015, broken down as follows:

| Exhibit | Period Covered | Zero-rated Sales |
|---|---|---|
| P-13 | 1st Quarter | ₱ 70,685,344.17 |
| P-15 | 2nd Quarter | 76,696,041.77 |
| P-17 | 3rd Quarter | 76,631,465.19 |
| P-20 | 4th Quarter | 78,843,759.78 |
| **Total** | | **₱302,856,610.91** |

To prove that the subject services were paid in acceptable foreign currency in accordance with the rules and regulations of the BSP, petitioner submitted zero-rated official receipts (ORs),[68] invoices,[69] Schedule of Bank Credit Memos,[70] Certificate of Bank Inward Remittance[71] and Transaction Credit Advices from Bank of America,[72] showing payment in favor or petitioner in US dollars for the 4 quarters of CY 2015 in the amount of US$6,669,765.96[73] (equivalent to ₱302,856,610.91).

As ascertained and verified by the ICPA, the said zero-rated sales of US$6,669,765.96 were backed-up by sufficient documents. However, as per Transaction Credit Advices from Bank of America, only the amount of US$6,654,911.13[74] was inwardly remitted.

In explaining the difference of US$14,854.83, petitioner posits that the same pertains to travel expenses payable to MSCI, Inc. However, nothing in the record supports petitioner's claim. Thus, the Court finds that the

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[68] Exhibits "P-69" to "P-87".
[69] Exhibits "P-46" to "P-68".
[70] Exhibit "P-89".
[71] Exhibit "P-90".
[72] Exhibits "P-91" to "P-109".
[73] Exhibit "P-33", ICPA Report, Annex 2.
[74] Exhibit "P-33", ICPA Report, p. 14.

unsupported difference of US$14,854.83, with peso equivalent of ₱664,493.69,[75] should be disallowed as zero-rated sales.

Hence, out of the reported zero-rated sales of ₱302,856,610.91 for the four (4) quarters of CY 2015, only the amount of ₱302,192,117.22 actually qualifies for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended, computed below:

| | |
|---|---|
| Total Zero-rated sales for CY 2005 | ₱ 302,856,610.91 |
| Less: Invalid portion | 664,493.69 |
| **Valid Zero-rated Sales** | **₱302,192,117.22** |

***Petitioner incurred input taxes that are attributable to its zero-rated sales.***

In its Quarterly VAT Returns for CY 2015, petitioner reported a total input VAT of ₱7,958,036.61[76] consisting of the ₱7,047,007.44 - coming from input VAT arising from current domestic purchases of capital goods not exceeding ₱1million, and domestic purchases of goods other than capital goods and domestic purchase of services; and ₱911,029.17 - arising from input VAT amortization from domestic purchase of capital goods exceeding ₱1million. Thus:

| | *Exhibit "P-13"* | *Exhibit "P-15"* | *Exhibit "P-17"* | *Exhibit "P-20"* | |
|---|---|---|---|---|---|
| **Input tax on:** | **1st Quarter** | **2nd Quarter** | **3rd Quarter** | **4th Quarter** | **Total** |
| Domestic purchases of capital goods not exceeding P1million | ₱ 116,287.78 | ₱ - | ₱ - | ₱ - | ₱ 116,287.78 |
| Domestic purchases of goods other than capital goods | 78,517.09 | 40,594.41 | 30,366.99 | 9,626.30 | 159,104.79 |
| Domestic purchase of services | 1,762,132.16 | 1,662,923.25 | 1,733,977.26 | 1,612,582.20 | 6,771,614.87 |
| ***Total current input VAT*** | ***₱1,956,937.03*** | ***₱1,703,517.66*** | ***₱1,764,344.25*** | ***₱1,622,208.50*** | ***₱7,047,007.44*** |
| | | | | | |
| Domestic purchase of capital goods exceeding P1million | ₱ - | ₱ 135,000.00 | ₱ - | ₱ - | ₱ 135,000.00 |

[75] ₱44.733 conversion rate on January 21, 2015. Exhibit "P-33", ICPA Report, Annex 2. ₱19,682,968.93 divided by US$440,014.95 equals ₱44.732500407 or ₱44.733 multiplied with US$14,854.83.
[76] Amount prayed for is lower by ₱0.30.

| | | | | | |
|---|---|---|---|---|---|
| Add: Input tax deferred on capital goods exceeding P1million from previous quarters | 2,616,516.77 | 2,393,498.00 | 2,299,854.24 | 2,062,094.41 | 9,371,963.42 |
| Less: Input tax deferred on capital goods exceeding P1million deferred for the succeeding period | 2,393,498.02 | 2,299,854.27 | 2,062,094.44 | 1,840,487.52 | 8,595,934.25 |
| *Amortized input tax on capital goods exceeding P1million* | *₱ 223,018.75* | *₱ 228,643.73* | *₱ 237,759.80* | *₱ 221,606.89* | *₱ 911,029.17* |
| **Total available input tax** | **₱2,179,955.78** | **₱1,932,161.39** | **₱2,002,104.05** | **₱1,843,815.39** | **₱7,958,036.61** |

For the amount of ₱7,047,007.44, representing input VAT on its current domestic purchases of capital goods not exceeding ₱1million, domestic purchases of goods other than capital goods and domestic purchase of services, petitioner presented various suppliers' invoices and official receipts[77] to prove the same. Correspondingly, the ICPA in her Report summarized her findings as follows, *viz.*:[78]

| | | **Annex (ICPA Report)** | **1st Quarter** | **2nd Quarter** | **3rd Quarter** | **4th Quarter** | **Total** |
|---|---|---|---|---|---|---|---|
| ***Properly Supported by VAT Invoices/Official Receipts*** | | | | | | | |
| 1 | Domestic purchase of goods other than capital goods properly supported by VAT REG TIN invoices | Annex 5-1Q-a Annex 5-2Q-a Annex 5-3Q-a Annex 5-4Q-a | ₱ 48,784.25 | ₱ 37,558.51 | ₱ 19,779.54 | ₱ 4,651.26 | ₱ 110,773.56 |
| 2 | Domestic purchase of services properly supported by VAT REG TIN official receipts (OR) | Annex 5-1Q-b Annex 5-2Q-b Annex 5-3Q-b Annex 5-4Q-b | 1,677,543.71 | 1,642,921.64 | 726,554.87 | 1,527,546.57 | 5,574,566.79 |
| 3 | Domestic purchase of capital goods not exceeding P1 million properly supported by VAT REG TIN invoices | Annex 5-1Q-c | 60,707.42 | | | | 60,707.42 |
| ***TOTAL - PROPERLY SUPPORTED*** | | | **₱1,787,035.38** | **₱1,680,480.15** | **₱746,334.41** | **₱1,532,197.83** | **₱5,746,047.77** |
| **Other Findings** | | | | | | | |
| ***Purchase of Goods Other Than Capital Goods*** | | | | | | | |

[77] Exhibits "P-116" to "P-391".
[78] Exhibit "P-33" (ICPA Report), pp. 20-25.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1 | Domestic purchase of goods other than capital goods supported by VAT REG TIN invoices with alteration on Petitioner's name | Annex 5-3Q-c | ₱ | ₱ | ₱ 5,995.42 | ₱ | ₱ 5,995.42 |
| 2 | Domestic purchase of goods other than capital goods supported by VAT REG TIN invoices with alteration on Petitioner's address | Annex 5-1Q-d | 69.43 | | | | 69.43 |
| 3 | Domestic purchase of goods other than capital goods supported by VAT REG TIN invoices with alteration of date | Annex 5-2Q-c Annex 5-3Q-d | | 3,035.90 | 2,528.03 | | 5,563.93 |
| 4 | Domestic purchase of goods other than capital goods supported by VAT REG TIN invoices with inserted petitioner's TIN | Annex 5-1Q-e | 216.54 | | | | 216.54 |
| 5 | Domestic purchase of goods other than capital goods supported by VAT REG TIN invoices with inserted petitioner's name, TIN and address | Annex 5-1Q-f Annex 5-4Q-d | 3,279.91 | | | 1,643.54 | 4,923.45 |
| 6 | Domestic purchase of goods other than capital goods supported by VAT REG TIN invoices with alteration of petitioner's TIN | Annex 5-1Q-g | 25,217.14 | | | | 25,217.14 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 7 | Domestic purchase of goods other than capital goods supported by VAT REG TIN invoices with inserted petitioner's TIN and inserted abbreviated address | Annex 5-1Q-h | 949.82 | | | | 949.82 |
| 8 | Domestic purchase of goods other than capital goods supported by VAT REG TIN invoices with inserted petitioner's name and inserted abbreviated address | Annex 5-4Q-c | | | | 152.79 | 152.79 |
| 9 | Domestic purchase of goods other than capital goods supported by VAT REG TIN invoices with date written on a computer printed invoice, inserted petitioner's name, TIN and address | Annex 5-3Q-f | | | 680.97 | | 680.97 |
| 10 | Domestic purchase of goods other than capital goods supported by VAT REG TIN invoices without date indicated, inserted petitioner's name, TIN and address | Annex 5-3Q-g | | | 1,383.03 | | 1,383.03 |
| 11 | Domestic purchase of goods other than capital goods supported invoices without TIN in the supporting document | Annex 5-4Q-e | | | | 3,178.71 | 3,178.71 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| ***SUBTOTAL*** | | | **₱ 29,732.84** | **₱ 3,035.90** | **₱ 10,587.45** | **₱ 4,975.04** | **₱ 48,331.23** |
| ***Purchase of Services*** | | | | | | | |
| 1 | Domestic purchase of services supported by VAT REG TIN OR with incomplete/ abbreviated petitioner's address | Annex 5-3Q-i | ₱ | ₱ | ₱ 2,475.00 | | ₱ 2,475.00 |
| 2 | Domestic purchase of services supported by VAT REG TIN OR with inserted petitioner's address | Annex 5-3Q-k Annex 5-4Q-i | | | 38,630.58 | 5,202.94 | 43,833.52 |
| 3 | Domestic purchase of services supported by VAT REG TIN OR with alteration on VAT breakdown | Annex 5-1Q-j Annex 5-3Q-n | 19,248.55 | | 26,442.30 | | 45,690.85 |
| 4 | Domestic purchase of services supported by VAT REG TIN OR with inserted petitioner's address and alteration on VAT breakdown | Annex 5-2Q-f Annex 5 -3Q-m | | 10,913.86 | 32,629.32 | | 43,543.18 |
| 5 | Domestic purchase of services supported by VAT REG TIN OR with incomplete petitioner's address and with alteration on VAT breakdown | Annex 5-4Q-h | | | | 61,292.69 | 61,292.69 |
| 6 | Domestic purchase of services supported by VAT REGN TIN OR with alteration on petitioner's TIN | Annex 5-1Q-q Annex 5-3Q-j | 4,724.85 | | 432.00 | | 5,156.85 |

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| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 7 | Domestic purchase of services supported by VAT REG TIN OR with alteration on petitioner's TIN and incomplete address | Annex 5-3Q-l | | | 3,816.62 | | 3,816.62 |
| 8 | Domestic purchase of services supported by VAT REG TIN OR with alteration on petitioner's name | Annex 5-1Q-k Annex 5-3Q-h | 3,990.37 | | 895,796.57 | | 899,786.94 |
| 9 | Domestic purchase of services supported by VAT REG TIN OR with alteration on abbreviated petitioner's name | Annex 5-1Q-l | 14,209.50 | | | | 14,209.50 |
| 10 | Domestic purchase of services supported by VAT REG TIN OR with alteration on petitioner's name and address | Annex 5-1Q-m | 6,225.00 | | | | 6,225.00 |
| 11 | Domestic purchase of services supported by VAT REG TIN OR with incomplete petitioner's name and alteration of VAT breakdown | Annex 5-1Q-n | 25,034.07 | | | | 25,034.07 |
| 12 | Domestic purchase of services supported by VAT REG TIN OR with alteration of date, petitioner's address and VAT breakdown | Annex 5-2Q-e | | 900.00 | | | 900.00 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 13 | Domestic purchase of services supported by VAT REG TIN OR with abbreviated petitioner's name and alteration on petitioner's TIN | Annex 5-1Q-o | 103.46 | | | | 103.46 |
| 14 | Domestic purchase of services supported by VAT REG TIN OR with wrong petitioner's TIN | Annex 5-1Q-p | 2,833.56 | | | | 2,833.56 |
| 15 | Domestic purchase of services supported by VAT REG TIN OR with alteration on petitioner's TIN and abbreviated petitioner's address | Annex 5-4Q-f | | | | 17,640.00 | 17,640.00 |
| 16 | Domestic purchase of services supported by VAT REG TIN OR with inserted petitioner's TIN and address and VAT amount per support is less than the schedule | Annex 5-1Q-r | 31.34 | | | | 31.34 |
| 17 | Domestic purchase of services supported by VAT REG TIN OR with no petitioner's address indicated and VAT breakdown not shown | Annex 5-4Q-g | | | | 900.00 | 900.00 |
| 18 | Domestic purchase of services supported by VAT TIN No. OR | Annex 5-1Q-s Annex 5-2Q-d | 8,187.75 | 8,187.75 | | | 16,375.50 |
| 19 | Domestic purchase of services supported by VAT invoice | Annex 5-3Q-e | | | 7,200.00 | | 7,200.00 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | only | | | | | | |
| ***SUBTOTAL*** | | | **₱ 84,588.45** | **₱ 20,001.61** | **₱1,007,422.39** | **₱ 85,035.63** | **₱1,197,048.08** |
| ***Purchase of Capital Goods Not Exceeding P1 million*** | | | | | | | |
| 1 | Domestic purchase of capital goods not exceeding P1 million supported by VAT REG TIN invoices with alteration on petitioner's TIN | Annex 5-1Q-i | ₱ 55,580.36 | ₱ | ₱ | ₱ | ₱ 55,580.36 |
| ***SUBTOTAL*** | | | **₱ 55,580.36** | **₱** | **₱** | **₱** | **₱ 55,580.36** |
| ***TOTAL - OTHER FINDINGS*** | | | **₱169,901.65** | **₱ 23,037.51** | **₱1,018,009.84** | **₱ 90,010.67** | **₱1,300,959.67** |
| **GRAND TOTAL** | | | **₱1,956,937.03** | **₱1,703,517.66** | **₱1,764,344.25** | **₱1,622,208.50** | **₱7,047,007.44** |

Upon further verification of the supporting documents, the Court finds the ICPA Report to be in order. However, out of the ₱1,300,959.67 input VAT excluded by the ICPA under Other Findings, the amount of ₱16,375.50,[79] representing petitioner's domestic purchase of service supported by "VAT TIN No." official receipt should be allowed. Accordingly, only the remaining input VAT of ₱1,284,584.17[80] shall be disallowed for petitioner's failure to meet the substantiation requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, and Sections 4.110-2, 4.110-8 and 4.113-1 of RR No. 16-2005, as amended.

With regard to the ₱911,029.17 input VAT amortization from domestic purchases of capital goods exceeding ₱1million, the ICPA examined petitioner's sales invoices and official receipts[81] and summarized her findings as follows:[82]

A. Current Year Domestic Purchases of Capital Goods Exceeding ₱1 million

| | **Annex Reference** | **Allowable Input VAT for CY 2015** | | | | **TOTAL Allowable Input VAT** |
|---|---|---|---|---|---|---|
| | | **1st Quarter** | **2nd Quarter** | **3rd Quarter** | **4th Quarter** | |
| ***Properly Supported Input tax*** | | | | | | |

[79] Purchase of Services No. 18 (Domestic purchase of services supported by VAT TIN No. OR).
[80] ₱1,300,959.67 less ₱16,375.50
[81] Exhibits "P-392" to "P-448".
[82] Exhibit "P-33" (ICPA Report), pp. 32-34.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1 | Domestic purchase of capital goods exceeding P1 million properly supported by VAT REG TIN invoice | Annex 8-A-a | | ₱ 5,625.00 | ₱16,875.00 | ₱16,875.00 | ₱39,375.00 |
| **TOTAL - Properly supported** | | | **-** | **5,625.00** | **16,875.00** | **16,875.00** | **39,375.00** |

## B. Previous Year Domestic Purchases of Capital Goods Exceeding P1 million

| | | Annex Reference | Allowable Input VAT for CY 2015 | | | | TOTAL Allowable Input VAT |
|---|---|---|---|---|---|---|---|
| | | | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter | |
| ***Properly Supported by VAT Invoices*** | | | | | | | |
| 1 | Domestic purchase of capital goods exceeding P1 million properly supported by VAT REG TIN invoice | Annex 8-B-1Q-a Annex 8-B-2Q-a Annex 8-B-3Q-a Annex 8-B-4Q-a | ₱106,052.76 | ₱106,052.76 | ₱106,052.76 | ₱106,052.76 | ₱424,211.02 |
| 2 | Domestic purchase of capital goods (services) exceeding P1 million supported by VAT REG TIN OR | Annex 8-B-1Q-b Annex 8-B-4Q-b | 21,489.41 | 21,489.41 | 21,489.41 | 21,489.41 | 85,957.64 |
| **TOTAL – Properly supported** | | | **127,542.17** | **127,542.17** | **127,542.17** | **127,542.17** | **510,168.66** |
| ***Other Findings*** | | | | | | | |
| 1 | Domestic purchase of capital goods exceeding P1 million supported by VAT REG TIN invoice with altered name and TIN of Petitioner | Annex 8-B-1Q-c | 25,178.57 | 25,178.57 | 25,178.57 | 25,178.57 | 100,714.29 |
| 2 | Domestic purchase of capital goods exceeding P1 million supported by VAT REG TIN invoice with altered name of Petitioner | Annex 8-B-3Q-b | 1,072.00 | 1,072.00 | 1,072.00 | 1,072.00 | 4,288.00 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 3 | Domestic purchase of capital goods exceeding P1 million supported by VAT REG TIN invoice with altered TIN of Petitioner | Annex 8-B-4Q-c | 4,148.21 | 4,148.21 | 4,148.21 | 4,148.21 | 16,592.86 |
| 4 | Domestic purchase of capital goods exceeding P1 million supported by VAT REG TIN invoice without Petitioner's TIN | Annex 8-B-1Q-d Annex 8-B-2Q-b | 14,948.21 | 14,948.21 | 14,948.21 | 14,948.21 | 59,792.84 |
| 5 | Domestic purchase of capital goods exceeding P1 million supported by VAT REG TIN invoice without Petitioner's TIN and incomplete address | Annex 8-B-4Q-d | 491.42 | 491.42 | 491.42 | 491.42 | 1,965.66 |
| 6 | Domestic purchase of capital goods exceeding P1 million supported by VAT REG TIN invoice with wrong Petitioner's TIN | Annex 8-B-1Q-e | 12,504.46 | 12,504.46 | 12,504.46 | 12,504.46 | 50,017.86 |
| 7 | Domestic purchase of capital goods (services) exceeding P1 million with supporting documents other than invoice (goods) / OR (services) | Annex 8-B-1Q-f Annex 8-B-4Q-e | 37,133.72 | 37,133.72 | 34,999.79 | 18,846.81 | 128,114.05 |
| **Total - Other findings** | | | **95,476.60** | **95,476.60** | **93,342.67** | **77,189.68** | **361,485.55** |
| **GRAND TOTAL (in ₱)** | | | **223,018.77** | **223,018.77** | **220,884.83** | **204,731.85** | **871,654.22** |

In addition, the input VAT of ₱424,211.02[83] pertaining to petitioner's domestic purchases of capital goods exceeding ₱1million for the previous year, which was found by the ICPA to be properly supported by VAT invoices, must

[83] Exhibit "P-33" (ICPA Report), p. 33.

be reduced by ₱638.64[84] (which represents the input VAT on petitioner's purchase from Function Smith Sales and Services) on the ground that the supporting VAT invoice does not contain petitioner's TIN, in violation of Section 113(B)(4) of the NIRC of 1997, as amended, and implemented by Section 4.113-1(B)(3) of RR No. 16-05, as amended.

Hence, out of petitioner's claimed unutilized input VAT of ₱7,958,036.31, only the amount of ₱6,311,327.95 represents petitioner's valid input VAT for the four quarters of CY 2015, as computed below, to wit:

| | | |
|---|---|---|
| Input VAT claimed for refund | | ₱ 7,958,036.31 |
| Less: Disallowances | | |
| 1) Exceptions noted per ICPA Report: | | |
| Input VAT on current purchases other than capital goods | ₱1,284,584.17 | |
| Amortized input VAT on capital goods exceeding ₱1M | 361,485.55 | 1,646,069.72 |
| 2) Exceptions noted per Court: | | |
| Input VAT amortization of an improperly supported purchase of capital goods exceeding ₱1M | ₱ 638.64 | 638.64 |
| **Valid Input VAT** | | **₱6,311,327.95** |

***Petitioner's input taxes were not applied to any output tax liability.***

Since petitioner reported 100% zero-rated sales for CY 2015, the substantiated input VAT in the amount of ₱6,311,327.95 is wholly attributable thereto. However, only the amount of ₱6,297,480.35 can be attributed to the valid zero-rated sales in the amount of ₱302,192,117.22, computed as follows:

| | |
|---|---|
| Substantiated Input VAT | ₱ 6,311,327.95 |
| Divide by total reported zero-rated sales | 302,856,610.91 |
| Multiply by substantiated zero-rated sales | 302,192,117.22 |
| **Input VAT allowable for refund/ issuance of Tax Credit Certificate** | **₱6,297,480.35** |

[84] Exhibit "P-423"; Exhibit "P-33" (ICPA Report), Annex 8-B-3Q-a.

As to the issue of applying input taxes against output tax liabilities in the succeeding periods, the Court finds that although the claimed input VAT was carried-over by petitioner to its amended quarterly VAT return for the 1st Quarter[85] of CY 2016, it remained unutilized since petitioner had no output tax liability for the period, and that it was eventually deducted from total available input tax under Line 23D as a "VAT Refund/TCC Claimed."[86] Consequently, the subject claim no longer formed part of the excess input VAT of ₱2,127,740.88[87] as of the end of the 1st Quarter of CY 2016 which can be carried over or applied to the succeeding quarters. Therefore, it eliminates the possibility that the present claim will be applied to future output VAT liability.

All stated, petitioner has sufficiently established that it is entitled to a refund or issuance of TCC corresponding to its excess input VAT attributable to its zero-rated sales for the four (4) quarters of CY 2015 but in the reduced the amount of ₱6,297,480.35.

**WHEREFORE**, the instant Petition for Review filed by petitioner MSCI Hong Kong Limited, is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **DIRECTED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner MSCI Hong Kong Limited in the reduced amount of ₱6,297,480.35, representing its unutilized and excess input VAT attributable to its zero-rated sales for the four (4) quarters of calendar year 2015.

**SO ORDERED.**

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[85] Exhibit "P-25-a".
[86] *Ibid.*
[87] *Ibid.*, Line 29.

We concur:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

## CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice