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

**THIRD DIVISION**

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| **DEUTSCHE KNOWLEDGE SERVICES PTE., LTD.,** Petitioner, | **CTA Case No. 9154** |
| | ***Members:*** |
| **- versus -** | **UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | ***Promulgated:*** OCT 04 2019 10:30 a.m. |

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# DECISION

**UY, J.:**

Before this Court is a *Petition for Review* filed by Deutsche Knowledge Services Pte., Ltd. on September 30, 2015, seeking the refund or issuance of a tax credit certificate (TCC) in the amount of ₱28,938,050.29, allegedly representing excess and unutilized input value-added tax (VAT) attributable to zero-rated sales for the 3rd quarter of calendar year (CY) 2013.

## THE FACTS

Petitioner Deutsche Knowledge Services, Pte., Ltd. is a Philippine branch of a multinational company organized and existing under and by virtue of the laws of Singapore, with registered address at One Raffles Quay, #17-10 South Tower, Singapore 048583.[1]

It is licensed to do business as a regional operating headquarters in the Philippines by the Securities and Exchange

[1] Par. 2, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket – Vol. 4, p. 1873.

Commission on April 25, 2005, pursuant to the Omnibus Investment Code of 1987, as amended by the Republic Act (RA) No. 8756,[2] and its implementing rules and regulations, to engage in general administration and planning, business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services, marketing control and sales promotion; training and personal management; logistic services, research and development services and product development; technical support and maintenance; data processing and communication and business development.[3]

Petitioner was registered with the Bureau of Internal Revenue (BIR) on June 16, 2005 as a VAT registered taxpayer with Taxpayer Identification No. (TIN) 238-763-115-000.[4]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, empowered to perform the duties of his office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law.[5]

On October 18, 2013, petitioner filed its Quarterly VAT Return for the 3rd quarter of CY 2013 with the BIR, through the electronic filing and payment system.[6]

Thereafter, on June 1, 2015, petitioner filed with the BIR-Large Taxpayers Regular Audit Division III (LTRAD III) an *Application for Tax Credits/Refunds* (BIR Form No. 1914) of its excess and unutilized input VAT for the 3rd quarter of CY 2013 in the amount of ₱28,938,050.29.[7]

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[2] AN ACT PROVIDING FOR THE TERMS, CONDITIONS AND LICENSING REQUIREMENT OF REGIONAL OR AREA HEADQUARTERS, REGIONAL OPERATING HEADQUARTERS, AND REGIONAL WAREHOUSES OF MULTINATIONAL COMPANIES, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF EXECUTIVE ORDER NO. 226, OTHERWISE KNOWN AS THE OMNIBUS INVESTMENTS CODE OF 1987.

[3] Par. 3, Admitted Facts, JSFI, Docket – Vol. 4, pp. 1873 to 1874; Exhibit "P-1", Docket – Vol. 5, pp. 2343 to 2360.

[4] Par. 4, Admitted Facts, JSFI, Docket – Vol. 4, p. 1874; Exhibit "P-2", Docket – Vol. 5, p. 2361.

[5] Par. 1, Admitted Facts, JSFI, Docket – Vol. 4, p. 1873.

[6] Par. 5, Admitted Facts, JSFI, Docket – Vol. 4, p. 1874; Exhibit "P-3", Docket – Vol. 5, pp. 2362 to 2363; Exhibit "P-3", Docket – Vol. 5, pp. 2362 to 2363.

[7] Par. 6, Admitted Facts, JSFI, Docket – Vol. 4, p. 1874.

Due to the alleged inaction of respondent, petitioner filed the instant *Petition for Review* before this Court on September 30, 2015.[8]

Respondent filed his *Answer* on October 27, 2015,[9] interposing certain special and affirmative defenses, to wit: (1) petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau; (2) the amount of ₱28,938,050.29 was not properly documented; (3) in an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit; (4) petitioner must show that it has complied with the provisions of Section 229 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit; (5) there is no record of petitioner ever submitting complete documents to substantiate its administrative claim for refund; and (6) claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation and such, they are looked upon with disfavor.

The Pre-Trial Conference was set on February 16, 2016.[10] However, on February 9, 2016, petitioner filed an *Urgent Motion to Reset Pre-Trial Conference*,[11] which was granted by the Court in the Resolution dated February 15, 2016.[12] The Pre-Trial Conference was then reset to May 3, 2016.

Thereafter, the parties' *Joint Stipulation of Facts and Issues* was filed on June 2, 2016.[13] Subsequently, the Court issued a Pre-Trial Order on July 12, 2016.[14]

During trial, petitioner presented its witnesses, namely, Rachel Concepcion, Katherine O. Constantino,[15] the Court-commissioned Independent Certified Public Accountant (ICPA),[16] and Maricel Tio-

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[8] Par. 8, Petition for Review, Docket – Vol. 1, p. 13; Refer also to Par. 7, Admitted Facts, JSFI, Docket – Vol. 4, p. 1874.
[9] Docket – Vol. 1, pp. 51 to 58.
[10] Notice of Pre-Trial Conference dated October 28, 2015, Docket – Vol. 1, pp. 61 to 62.
[11] Docket – Vol. 1, pp. 73 to 76.
[12] Docket – Vol. 1, p. 79.
[13] Docket – Vol. 4, pp. 1873 to 1881.
[14] Docket – Vol. 4, pp. 1893 to 1899.
[15] Minutes of the hearing held on, and Order dated, October 17, 2016, *supra*; Exhibit "P-12" (marked as Exhibit "P-13"), Docket – Vol. 5, pp. 2269 to 2279.
[16] Minutes of the hearing held on, and Order dated, August 8, 2016, and Oath of Commission, Docket – Vol. 4, pp. 1969 to 1972.

Balagtas.[17]

Petitioner filed its *Formal Offer of Evidence* on December 22, 2016,[18] and *Supplemental Formal Offer of Evidence* on March 20, 2018.[19] In the Resolutions dated May 16, 2017[20] and May 4, 2018,[21] this Court admitted petitioner's evidence, ***except*** for: (1) Exhibits "P-3.8", "P-3.12", "P-3.17", "P-6.19", P-107", "P-128", P-196", "P-8.9", "P-8.10", "P-8.43" "P-8.48" and "P-6.39", for failure to present the originals for comparison; (2) Exhibits "P-5-49", "P-6.34", "P-6.40", "P-6.43", "P-6.53" and "P-9" for not being found in the records; and (3) Exhibit P-9.57, for failure of the exhibit formally offered and actually marked to correspond with the document identified.

On the part of respondent, the latter's counsel manifested that respondent will not present any evidence in this case, since there is no report of investigation from the BIR investigating officer.[22]

As directed by the Court, respondent filed his *Memorandum* on September 7, 2018;[23] while petitioner filed its *Memorandum* on October 15, 2018.[24] Thereafter, the instant case was deemed submitted for decision per this Court's Resolution dated October 19, 2018.[25]

Hence, this Decision.

## THE ISSUES

The sole issue stipulated by the parties for resolution of this Court is as follows:

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[17] Minutes of the hearing held on, and Order dated, March 5, 2018, Docket – Vol. 8, pp. 3758 to 3760; Exhibit "P-755", Docket – Vol. 8, pp. 3744 to 3748. Maricel Tio-Balagtas substituted by Rachel M. Concepcion as petitioner's witness, due to the resignation of the latter effective October 2017.
[18] Docket – Vol. 5, pp. 2304 to 2342.
[19] Docket – Vol. 8, pp. 3761 to 3767.
[20] Docket – Vol. 8, pp. 3683 to 3688.
[21] Docket – Vol. 8, pp. 3900 to 3904.
[22] Minutes of the hearing held on, and Order dated, August 14, 2018, Docket – Vol. 8, pp. 3906 to 3907.
[23] Docket – Vol. 8, pp. 3908 to 3917.
[24] Docket – Vol. 8, pp. 3923 to 3945.
[25] Docket – Vol. 8, p. 3947.

> "WHETHER OR NOT PETITIONER IS ENTITLED TO THE CLAIM FOR REFUND OF OR ISSUANCE OF TCC FOR EXCESS OR UNUTILIZED INPUT VAT IN THE AMOUNT OF PHP28,938,050.29 FOR THE 3rd QUARTER OF CY 2013."[26]

***Petitioner's arguments:***

Petitioner argues that it has sufficiently complied with the requirements for the filing of a claim for refund and/or issuance of a TCC of input VAT.

According to petitioner, it has adequately proven that it is a VAT-registered taxpayer under Certificate of Registration No. OCN 9RC0000270209 dated June 16, 2005; that it had zero-rated export sales of services in the 3rd quarter of CY 2013 under Section 102(b)(2) [now Section 108(B)(2)], of the Tax Code. Allegedly, petitioner provided services other than processing, manufacturing or repacking of goods to its non-resident foreign affiliates doing business outside the Philippines and payment of such services were made in acceptable foreign currency accounted for in accordance with the BSP rules and regulations.

Moreover, petitioner stresses that the input VAT in the amount of ₱28,938,050.29 for the 3rd quarter of CY 2013 is properly substantiated and attributable to its zero-rated sales; and that the same allegedly remains unutilized and unapplied against output VAT.

Lastly, petitioner emphasizes that the subject claim was seasonably filed within the two-year prescriptive period.

***Respondent's counter-arguments:***

According to respondent, the law requires that only "creditable input taxes" that are "directly attributable" may be refunded. Input taxes on purchase of goods must be a factor in the chain of production of the finished product to be "creditable". Respondent avers that no evidence was presented by the petitioner to prove that the excess input VAT was derived from its purchases of goods and services attributable to zero-rated sales of services.

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[26] Stipulated Issue, JSFI, Docket – Vol. 4, p. 1874.

no

Furthermore, respondent points out that petitioner failed to prove that all of its clients are non-resident foreign corporations doing business outside the Philippines. Respondent cited that 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 Certificates/Articles of Foreign Incorporation/Association/Registration and that there is no other indication that the recipient of the services is doing business in the Philippines.

Finally, respondent stresses that the claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund; and that tax refunds, like tax exemptions, are construed strictly against the taxpayer.

## THE COURT'S RULING

After careful and thorough evaluation of the applicable laws, rules and regulations in the instant case, and the evidence presented by petitioner, the Court finds that the instant *Petition for Review* must be denied.

***Requisites for the grant of the refund or issuance of a TCC under the law.***

Section 112 of the NIRC of 1997, as amended by RA No. 9337,[27] provides:

> "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

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[27] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> 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: xxx.
>
> 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 a 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."

In line with the foregoing legal provisions, the Supreme Court jurisprudentially established certain requisites which must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT, and these are categorized as follows:

<u>Timeliness of the filing of the administrative and judicial claims</u>:

1. the refund claim must be filed with the BIR within two years after the close of the taxable quarter when the

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sales were made;[28]

2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 120 days, the judicial claim must be filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[29]

Taxpayer's registration with the BIR:

3. the taxpayer is VAT registered;[30]

Taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[31]

5. for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[32]

Taxpayer's refund claim for input VAT:

6. the input taxes are due or paid;[33]

7. the input taxes are not transitional input taxes;[34]

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be

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[28] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc.*, G.R. No. 182364, August 3, 2010.

[29] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

[30] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[35] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[36]

The Court shall now make a determination of petitioner's compliance with the foregoing requisites.

***Petitioner timely filed its administrative and judicial claims.***

The *first* requisite pertains to the timeliness of the filing of the refund claim for tax credit or refund of input VAT before the BIR.

The claim in this case covers the 3rd quarter of CY 2013, which closed on September 30, 2013. Counting two years from the said date, petitioner had until September 30, 2015, within which to file its administrative claim for refund. Thus, petitioner's administrative claim filed on June 1, 2015,[37] was timely filed.

As already stated, the *second* requisite is taken from the above-quoted Section 112(C) of the NIRC of 1997, as amended by RA No. 9337, and enunciates the 120+30 mandatory and jurisdictional periods. Counting from the filing of petitioner's administrative claim on June 1, 2015, the 120-day period ended on September 29, 2015. Considering that the instant *Petition for Review* was filed on September 30, 2015 before this Court, the same was well within the 30-day period to appeal after the expiration of the said 120-day period.

Thus, petitioner has complied with the *first* and *second* requisites.

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[35] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.
[36] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.
[37] Par. 6, Admitted Facts, JSFI, Docket – Vol. 4, p. 1874.

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***Petitioner is VAT registered.***

As stipulated by both parties' counsels, petitioner is a VAT-registered taxpayer.[38] Thus, the *third* requisite has also been complied with. Furthermore, it is noted that petitioner presented its Certificate of Registration issued by BIR with TIN 238-763-115-000, indicating that it is liable for VAT.[39]

***Petitioner has not established that it was engaged in zero-rated or effectively zero-rated sales.***

Petitioner claims that it had zero-rated export sales of services in the 3rd quarter of CY 2013, under Section 108(B)(2) of the Tax Code.

The Court however finds that petitioner failed to establish that it was engaged in zero-rated or effectively zero-rated sales for the subject period under the said provision of law.

Section 108(B)(1) and (2) of the NIRC of 1997, as amended by RA 9337, provides as follows:

> "SEC. 108. *Value-added Tax on Sale of Services and Use of Lease of Properties.* –
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services **performed in the Philippines** by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

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[38] Par. 4, Admitted Facts, JSFI, Docket – Vol. 4, p. 1874
[39] Exhibit "P-2", Docket – Vol. 5, p. 2361.

> (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)**;" *(Emphases supplied)*

The foregoing provision is instructive as to when the rendition of services is subject to the zero percent (0%) VAT, or considered as zero-rated or effectively zero-rated sales.

Interpreting the above-quoted Section 108(B)(2), the Supreme Court, in *Accenture, Inc. vs. Commissioner of Internal Revenue*,[40] 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 *"nonresident foreign corporation"*, *i.e.*, a foreign corporation not engaged in trade or business within the Philippines.

Moreover, in *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.* (*Burmeister* case),[41] declared that the service-recipient must also be not doing business in the Philippines. Otherwise, the transaction will be subject to the VAT at the then rate of 10%,[42] and not at the 0% VAT rate.

Thus, to be considered as a non-resident foreign corporation doing business outside the Philippines, each service-recipient must be supported, **at the very least**, by **both** a certificate of non-registration of corporation / partnership issued by the Philippine Securities and Exchange Commission (SEC) **and** certificate / articles of foreign incorporation / association. As a corollary, notwithstanding the presentation of the said documents, there must be no indication that any of the recipient of petitioner's services is doing business in the Philippines, consistent with the said ruling in the *Burmeister* case.

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[40] G.R. No. 190102, July 11, 2012.
[41] G.R. No. 153205, January 22, 2007.
[42] Now the VAT rate is 12%. Refer to Revenue Memorandum Circular No. 7-2006 dated January 31, 2006.

*[initials]*

The said basic documents are necessary. This is so because the Philippine SEC's negative certification establishes that the recipient of the service has no registered business in the Philippines and that the service-recipient is not engaged in trade or business within the Philippines. As for the said certificate / articles of incorporation / association, this will prove that the said recipient of the service is indeed foreign, and is determinative of whether the same service-recipient is in engaged in business at all.

Of petitioner's *List of Zero Rated Customers*,[43] only the following alleged service-recipients complied with the above-stated two (2) basic documents, to wit:

| Name of Service-Recipient | SEC Certificate of Non Registration (Exhibits) | Certificate of Registration/ Incorporation/ Association (Exhibits) |
|---|---|---|
| DB Consortium S. Cons. A.R.L. in Liquidazione | "P-5.2" | "P-8.1" |
| DB Energy Trading LLC | "P-5.3" | "P-8.2" |
| DB International Asia Limited | "P-5.4" | "P-8.3" |
| DB Investment Partners Inc. | "P-5.5" | "P-8.4" |
| DB Services New Jersey, Inc. | "P-5.6" | "P-8.5" |
| DBOI Global Services UK Limited | "P-5.8" | "P-8.7" |
| Deutsche Asia Pacific Holdings Pte Ltd | "P-5.9" | "P-7", "P-8.8" |
| Deutsche Asset Wealth Management (Korea) Company Limited | "P-5.13" | "P-8.12" |
| Deutsche Bank Aktiengesellschaft Filiale Amsterdam | "P-5.15" | "P-8.13" |
| Deutsche Bank Aktiengesellschaft Filiale Bangkok | "P-5.16" | "P-8.14" |
| Deutsche Bank Aktiengesellschaft Filiale Brussels | "P-5.17" | "P-8.15" |
| Deutsche Bank Aktiengesellschaft Filiale Ho Chi Minh City | "P-5.19" | "P-8.17" |
| Deutsche Bank Aktiengesellschaft Filiale Hongkong | "P-5.20" | "P-7.3", "P-8.18" |
| Deutsche Bank Aktiengesellschaft Filiale Jakarta | "P-5.21" | "P-8.19" |
| Deutsche Bank Aktiengesellschaft Inlandsbank Filiale Johannesburg | "P-5.22" | "P-8.20" |
| Deutsche Bank Aktiengesellschaft Filiale Labuan | "P-5.23" | "P-8.21" |
| Deutsche Bank Aktiengesellschaft Filiale London | "P-5.24" | "P-7.11", "P-8.22" |
| Deutsche Bank Aktiengesellschaft Filiale Mumbai | "P-5.25" | "P-8.23" |
| Deutsche Bank Aktiengesellschaft Filiale New York | "P-5.26" | "P-7.4", "P-8.24" |
| Deutsche Bank Aktiengesellschaft Filiale Paris | "P-5.27" | "P-8.25" |
| Deutsche Bank Aktiengesellschaft Filiale Prague | "P-5.28" | "P-8.26" |
| Deutsche Bank Aktiengesellschaft Filiale Seoul | "P-5.29" | "P-7.5", "P-8.27" |
| Deutsche Bank Aktiengesellschaft Filiale Singapur | "P-5.30" | "P-7.6", "P-8.28" |
| Deutsche Bank Aktiengesellschaft Filiale Taipei | "P-5.31" | "P-8.29" |
| Deutsche Bank Aktiengesellschaft Filiale Tokyo | "P-5.32" | "P-8.30" |
| Deutsche Bank Aktiengesellschaft Filiale Wien | "P-5.33" | "P-8.31" |
| Deutsche Bank Aktiengesellschaft Filiale Zurich | "P-5.34" | "P-8.32" |
| Deutsche Bank Aktiengesellschaft Filiale Inlandsbank | "P-5.35" | "P-7.7" |

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[43] Annex 3, ICPA Report, Docket – Vol. 5, pp. 2021 to 2023.

| | | |
|---|---|---|
| Deutsche Bank Luxembourg S.A. | "P-5.37" | "P-8.33" |
| Deutsche Bank (Malaysia) Berhad | "P-5.38" | "P-7.1" |
| Deutsche Bank Netherlands N.V. | "P-5.39" | "P-8.34" |
| Deutsche Bank Privat-und Geschaftskunden Aktieng/ Deutsche Bank Pgk Ag | "P-5.41" | "P-8.35" |
| Deutsche Bank Securities Inc. | "P-5.42" | "P-7.8", "P-8.36" |
| Deutsche Bank, Sociedad Anonima Espanola | "P-5.43" | "P-8.37" |
| Deutsche Bank, Societa per Azioni | "P-5.44" | "P-8.38" |
| Deutsche Bank Suisse SA | "P-5.45" | "P-8.39" |
| Deutsche Bank Trust Corporation | "P-5.47" | "P-8.40" |
| Deutsche Group Services Pty Limited | "P-5.48" | "P-8.41" |
| Deutsche New Zealand Limited | "P-5.51" | "P-8.44" |
| Deutsche Securities Inc. | "P-5.52" | "P-7.10" |
| Deutsche Securities Korea Co. | "P-5.53" | "P-8.45" |
| Deutsche Trustees Malaysia Berhad | "P-5.54" | "P-8.46" |
| DWS Holdings & Service GmbH | "P-5.55" | "P-8.47" |
| OOO Deutsche Bank | "P-5.58" | "P-8.50" |
| RREEF Management L.L.C. | "P-5.61" | "P-8.53" |

With regard to *Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office*, petitioner presented in evidence, Exhibit "P-7.2", purporting to be an *"Authenticated Company Registration of Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office"*, with an attached Certification that it *"is a segment of Deutsche Bank AG and is not a separate entity."* In other words, *Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office* is merely a part or section of, and has no personality distinct from, *Deutsche Bank AG*. Such being the case, We cannot treat *Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office* as a non-resident foreign corporation doing business outside the Philippines. This is simply because certain SEC negative certifications state that *Deutsche Bank AG* is a registered entity in the Philippines with SEC Registration No. F-1228.[44] Thus, *Deutsche Bank AG* is considered as a resident foreign corporation or foreign corporation engaged in trade or business in the Philippines. Correspondingly, since *Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office* is "a segment" of *Deutsche Bank AG*, the latter's status as a resident foreign corporation, applies with equal force to the former.

Additionally, after identifying which of the alleged service-recipients are considered non-resident foreign corporations, the Court shall further determine whether the sales of services to the said service-recipients qualify for zero-rating.

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[44] Exhibits "P-5.15", "P-5.37", "P-5.39", "P-5.42", "P-5.43", "P-5.44", "P-5.45", and "P-5.58", Docket – Vol. 5, pp. 2418, 2440, 2442, 2445, 2446, 2447, 2448, and 2459, respectively.

As a general rule, the VAT system uses the destination principle. However, Our VAT law itself provides for a clear exception, under which the supply of service shall be zero-rated when the following requirements are met: (1) the service is performed in the Philippines; (2) the service falls under any of the categories provided in the aforequoted Section 108(B) of the NIRC of 1997, as amended; and (3) it is paid for in acceptable foreign currency that is accounted for in accordance with the regulations of the *Bangko Sentral ng Pilipinas.*[45]

Relative to the said *third requirement*, petitioner presented a Certificate of Inward Remittances issued by Deutsche Bank for the 3rd quarter ending September 30, 2013,[46] purportedly showing the remittances of the service-recipients to it. Considering that the certification of inward remittances attests to the fact of payment *"in acceptable foreign currency ...and accounted for in accordance with the rules and regulations of the BSP"*,[47] petitioner is considered to have complied with the above-stated *third requirement.*

Anent petitioner's compliance with the *second requirement, i.e.,* the service falls under any of the categories provided in the Section 108(B) of the NIRC of 1997, as amended, there is no showing that petitioner's services for its clients/customers, who are considered as non-resident foreign corporations as above identified, falls under the category of services *"other than those mentioned in the preceding paragraph"* [under Section 108(A), which are processing, manufacturing or repacking of goods], except for the sale of service to *DB International Asia Limited.*[48]

In petitioner's *IntraGroup Service Agreement* with *DB International Asia Limited,*[49] it was stated that the meaning of "Services" to be provided by petitioner are specified in Schedule 1 of the said *Agreement,*[50] which reads as follows:

> SCHEDULE 1a – DETAILED FUNCTIONAL AND BUSINESS SCOPE

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[45] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.
[46] Exhibit "P-231".
[47] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.
[48] Exhibit P-6.2, Docket – Vol. 5, p. 2475.
[49] Exhibit P-6.2, Docket – Vol. 5, pp. 2472 to 2483.
[50] Exhibit P-6.2, Docket – Vol. 5, at p. 2475.

1) Services referred to in the Service Agreement refer to functional support in the following areas (see Appendix A for further detail):

| Function | Process |
|---|---|
| <u>Head Office reporting</u>: Deliver financial statements | Financial Statements analysis and review<br>• Prepare financial and management accounting reports<br>• Reconcile key inter-company differences<br>• Deliver monthly and quarterly reporting |
| <u>Transparency reports</u>: Generate data integrity and validation and control transparency reports | • Deliver report on data feed receipt, data consistency, unmapped items, and errors<br>• Deliver report on consistency of outputs |
| <u>Country specific regulatory and local tax compliance reporting</u> | • Deliver of daily, weekly, monthly, quarterly, and semestral financial reporting packages, statistical returns, monthly tax schedule |

Clearly, the foregoing services fall under the category of services other than processing, manufacturing or repacking of goods, pursuant to Section 108(B)(2), in relation to Section 108(B)(1), both of the NIRC of 1997, as amended.

Unlike in the case of *DB International Asia Limited*, however, the following service recipients, who are non-resident foreign corporations, were not covered by any *IntraGroup Service Agreement*, to wit:

1) *DB Energy Trading LLC*;
2) *DB Investments Partners Inc.*;
3) *DBOI Global Services UK Limited*;
4) *Deutsche Bank Privat-und Geschaftskunden Aktieng/ Deutsche Bank Pgk Ag*;
5) *Deutsche Bank Securities Inc.*;
6) *Deutsche Bank Trust Corporation*; and
7) *RREEF Management L.L.C.*

Thus, there is no way for this Court to determine with certainty which type of services were rendered by petitioner to the foregoing entities.

As for the remaining service recipients, who are likewise identified as non-resident foreign corporations, while they may have been respectively covered by an *IntraGroup Service Agreement*, petitioner failed to present the attaching respective Service Schedule thereto.[51] Such being the case, this Court cannot likewise determine whether the services performed by petitioner to the said service-recipients fall under the category of services other than processing, manufacturing or repacking of goods.

More importantly, even granting that the services to the said clients/customers, who are earlier identified as non-resident foreign corporations, may be considered as falling under the categories under Section 108(B), there still no showing that the same services were performed in the Philippines, in compliance with the *first requirement.*

To establish that the subject services were performed by petitioner in the Philippines, petitioner's witness, namely, Rachel Concepcion, testified as follows:

> "Q31: What is the relevance of Exhibits "P-6" to "P-6.53"?
>
> A: **These documents show that Petitioner, with office address in the Philippines, rendered services within the Philippines to foreign clients operating outside the Philippines.** In turn, the Petitioner's foreign clients paid Petitioner for the services rendered in the Philippines."[52]

However, a careful examination of the admitted *IntraGroup Service Agreements* reveals that these documents lack any indication that the services were performed in the Philippines.

In cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[53]

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[51] Refer to Exhibits "P-6.1", "P-6.4", "P-6.7", "P-6.6", "P-6.8", "P-6.9", "P-6.10", "P-6.12", "P-6.13", "P-6.14", "P-6.15", "P-6.16", "P-6.17", "P-6.18", "P-6", "P-6.20", "P-6.21", "P-6.22", "P-6.23", "P-6.24", "P-6.25", "P-6.26", "P-6.27", "P-6.28", "P-6.30", "P-6.31", "P-6.32", "P-6.36", "P-6.37", "P-6.38", "P-6.41", "P-6.44", "P-6.35", "P-6.46", "P-6.47", "P-6.48", "P-6.50", and "P-6.52".

[52] Exhibit "P-11", Docket – Vol. 1, p. 117.

[53] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944,

Thus, since it was never established that the place of performance of the subject services was in the Philippines, petitioner's sales of services to its clients/customers, who are identified as non-resident foreign corporations, cannot qualify as subject to the zero percent (0%) VAT under Section 108(B) of the NIRC of 1997, as amended. Such being the case, the subject refund claim on petitioner's alleged excess and unutilized input VAT must perforce fail.

Correspondingly, it is no longer necessary to determine whether petitioner fulfilled the remaining requisites for granting a credit/refund of input VAT for the 3rd quarter of CY 2013.

Statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to the VAT are in the nature of such exemptions.[54] It is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[55]

**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for failure of petitioner to show that its sales of services for the 3rd quarter of 2013 qualify for VAT zero-rating.

**SO ORDERED.**

**ERLINDA P. UY**
*Associate Justice*

WE CONCUR:

**MA. BELEN M. RINGPIS-LIBAN**
*Associate Justice*

**MARIA ROWENA MODESTO-SAN PEDRO**
*Associate Justice*

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April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.

[54] *Panasonic Communication Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010.

[55] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

## 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.

**ERLINDA P. UY**
*Associate Justice*
Chairperson, 3rd Division

## 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.

**ROMAN G. DEL ROSARIO**
*Presiding Justice*