REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

SONY ERICSSON MOBILE COMMUNICATIONS INTERNATIONAL AB,
Petitioner,

\- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7897

Members:

UY, *Chairperson and*
FABON-VICTORINO, JJ.

Promulgated:
JUN 6 2013 3:45 pm

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DECISION

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

This case involves a claim for refund or issuance of a tax credit certificate in the amount of Ten Million Six Hundred Seventy Three Thousand Five Hundred Ninety Eight Pesos and Eleven Centavos (Php10,673,598.11), allegedly representing petitioner's unutilized input value-added tax (VAT) attributable to zero-rated sales for the period covering January 2007 to December 2007.

THE FACTS

Petitioner Sony Ericsson Mobile Communications AB claims that it is a branch office registered with and licensed by the Securities and Exchange Commission (SEC) to transact business in the Philippines, with office address at 7th Floor Octagon Building, San Miguel Avenue, Ortigas Complex, San Antonio, Pasig City.[1] It is a registered VAT

[1] Pars. 1.1 and 1.4, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 87.

taxpayer with Taxpayer Identification Number (TIN) 219-660-821-000 as evidenced by Certificate of Registration No. 0000172137 VAT issued by the Bureau of Internal Revenue (BIR).[2]

Respondent, on the other hand, is the Commissioner of the BIR, who has the power, among others, to decide, approve, and grant claims for refund or tax credit of erroneously or excessively paid taxes. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

During the 1st, 2nd, 3rd, and 4th quarters of taxable year 2007, petitioner allegedly rendered services to its foreign affiliates by organizing promotional events for the local market to launch new products and services under the brand name "Sony Ericsson." As compensation for services rendered, it received fees in foreign currency remitted to its local bank.[3] In relation to the aforementioned marketing services, petitioner incurred/paid input taxes on its purchases of goods and services.

Petitioner further posits that for the four quarters of 2007, it filed Quarterly VAT Returns[4] to which it reported VAT zero-rated sales/receipts in the amount of Php137,277,662.33 and input VAT of Php10,673,598.12, broken down as follows:

Exhibit	Year 2007	Zero-rated Sales/Receipts	Input VAT
F	1st Quarter	P 34,360,383.76	P 2,072,882.37
G	2nd Quarter	30,525,192.08	3,523,168.85
H	3rd Quarter	30,898,017.51	2,667,318.05
I	4th Quarter	41,494,068.98	2,410,228.85
TOTAL		**P137,277,662.33**	**P10,673,598.12**

On March 30, 2009, petitioner filed an application for refund or issuance of tax credit certificate with the BIR

[2] Par. 1.3, Admitted Facts, JSFI, docket, p. 87; Exhibit "A".
[3] Exhibit "P".
[4] Exhibits "F" to "I", docket, pp. 328-331.

Revenue District Office (RDO) No. 43-Pasig of its alleged unutilized input VAT attributable to its zero-rated sales covering the period from January 2007 to December 2007 in the amount of Php10,673,598.11.[5]

The day after or on March 31, 2009, petitioner filed the instant Petition for Review[6] citing respondent's inaction on its administrative claim for refund or tax credit.

On May 15, 2009, respondent filed her Answer [7] interposing the following special and affirmative defenses:

> 7. The claim for refund is still under examination by the respondent's Bureau;
>
> 8. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund or issuance of tax credit certificate;
>
> 9. The grant of claim for refund tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;
>
> 10. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same.

After the Pre-trial Conference, [8] the parties filed their Joint Stipulation of Facts and Issues[9](JSFI), which the Court approved on July 8, 2009.[10]

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[5] Par. 1.5, Admitted Facts, JSFI, docket, p. 88; Exhibit "B".
[6] Docket, pp. 1-8.
[7] Docket, pp. 62-63.
[8] Docket, p. 64.
[9] Docket, pp. 86-91.
[10] Docket, p. 94.

In support of its allegations, petitioner presented three witnesses, namely: 1) Reggie Dela Cruz-Zhang, its Business Controller; 2) Edward L. Roguel, the Court Commissioned Independent Certified Public Accountant (ICPA); and 3) Christian M. Cantera, its Contracts and Tax Manager, all of whom executed a Judicial Affidavit for their respective direct testimonies.

Witness Reggie Dela Cruz-Zhang testified [11] that petitioner is primarily engaged in providing marketing services to its affiliate companies located outside the Philippines by organizing promotional events for the local marker to launch new products and services under the brand name "Sony Ericsson". In providing these marketing services, it imports products and materials from abroad for displays in the promotional blitz. It also hires advertising agencies and other contractors to facilitate the event. As compensation for these services rendered to foreign affiliates, petitioner is paid in foreign currency duly remitted to its local bank.

Further, petitioner's input VAT on the purchases made have not been applied against any output VAT in the same and subsequent taxable periods as all its sales were VAT zero-rated pursuant to Section 108(B)(1) and (2) of the National Internal Revenue Code (NIRC) of 1997, as amended. On March 30, 2009, petitioner filed an application for tax refund with the RDO No. 43 – Pasig, in the amount of Php10,673,598.11 which was deducted from the total available input taxes of petitioner.[12]

ICPA Edward L. Roguel claimed that he verified the original documents supporting petitioner's claim for refund for the period January 1, 2007 to December 31, 2007. As appearing in his Report[13] dated December 7, 2009 and the Supplemental Report[14] dated June 16, 2010, the amount of input VAT that may be subject of refund is Php7,201,432.72.

Atty. Christian M. Cantera, petitioner's Contracts and Tax Manager, testified that petitioner is a VAT registered

[11] Exhibit "P".
[12] Exhibit "N".
[13] Exhibit "BB".
[14] Exhibit "OO".

entity with Certificate of Registration No. OCNSRC0000172137 and Tax Identification Number (TIN) 219-660-821-000 issued by the BIR. It is primarily engaged in providing marketing services to its affiliate companies located outside the Philippines by organizing promotional events for the local market to launch new products and services under the brand name "Sony Ericsson."

Petitioner is a Philippine Branch of Sony Ericsson Mobile Communications International, AB - the Head Office. The services rendered to its Head Office is subject to VAT at zero percent (0%) rate pursuant to Section 108(B)(2) of the NIRC of 1997 since the Head Office is engaged in business conducted outside the Philippines.

On recall Atty. Cantera rectified his previous statement in his affidavit dated April 21, 2010 saying that petitioner renders services not to its Head Office but to Sony Ericsson Mobile Communications, AB, a corporation organized in Sweden (Exhibit "QQ") and not engaged in business in the Philippines.[15]

After petitioner was deemed to have rested its case, counsel for respondent manifested that respondent would no longer present evidence and would submit the case for decision [16] after the parties' filing of their respective memoranda. [17] In any event, only petitioner filed a memorandum.[18]

<u>THE ISSUES</u>

In their JSFI,[19] the parties listed the following issues for the resolution of the Court, to wit:

[15] Exhibit Exhibits "TT" and "SS".
[16] Docket, p. 435.
[17] Docket, p.437.
[18] Docket, p. 476.
[19] Stipulated Issues, JSFI, docket, p. 90.

A. WHETHER OR NOT PETITIONER'S SALES OF SERVICES TO ITS AFFILIATE COMPANIES LOCATED OUTSIDE THE PHILIPPINES ARE ZERO-RATED SALES.

B. WHETHER OR NOT PETITIONER HAS UNUTILIZED INPUT VAT FOR THE FOUR QUARTERS OF TAXABLE YEAR 2007 ATTRIBUTABLE TO ITS SALES OF SERVICES TO ITS AFFILIATE COMPANIES LOCATED OUTSIDE THE PHILIPPINES IN THE TOTAL AMOUNT OF Php10,673,598.11.

C. WHETHER OR NOT THE PETITIONER SEASONABLY FILED ITS ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND.

D. WHETHER OR NOT PETITIONER IS ENTITLED TO A TAX CREDIT/REFUND FOR ITS UNUTILIZED CREDITABLE INPUT VAT FOR THE FOUR QUARTERS OF TAXABLE YEAR 2007 IN THE TOTAL AMOUNT OF Php10,673,598.11.

Clear from the foregoing that the key issue is whether petitioner is entitled to refund or issuance of tax credit certificate in the amount of Php10,673,598.11, representing its alleged unutilized input VAT for the period covering January 1, 2007 to December 31, 2007.

THE COURT'S RULING

Petitioner anchors its claim for refund or tax credit on Section 112 of the NIRC of 1997, as amended, which reads 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 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.

Thus, to be entitled to a refund or tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales, petitioner must prove the following elements:

1. That there must be zero-rated or effectively zero-rated sales;

2. That input taxes were incurred or paid;

3. That such input taxes are attributable to zero-rated or effectively zero-rated sales;

4. That the input taxes were not applied against any output VAT liability; and

5. That the claim for refund was filed within the two-year prescriptive period.

The Court finds it paramount to address first the timeliness of the filing of petitioner's refund claim.

Pursuant to Section 112(A) of the NIRC of 1997, a taxpayer must file an application for refund or tax credit of unutilized or excess creditable input VAT attributable to its zero-rated sales within two (2) years after the close of the taxable quarter when the sales were made.

In the present case, the subject of the claim for refund or issuance of tax credit certificate is petitioner's unutilized creditable input VAT attributable to its alleged zero-rated sales for the four quarters of taxable year 2007. Counting from March 31, 2007, June 30, 2007, September 30, 2007, and December 31, 2007, the close of the first, second, third, and fourth quarters, respectively, petitioner had until March 31, 2009, June 30, 2009, September 30, 2009, and December 31, 2009, respectively, within which to file its administrative claim with respondent. Evidently, petitioner seasonably filed its administrative claim for the period covering January 1, 2007 to December 31, 2007 on March 30, 2009.[20]

This however is not true insofar as petitioner's judicial claim for refund/tax credit is concerned. Section 112(C) of the NIRC of 1997, as amended, provides, thus:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* -
>
> xxx xxx xxx

[20] Par. 1.5, Admitted Facts, JSFI, docket, p. 88; Exhibit "B".

> (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 Subsections (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**. *(Emphasis supplied)*

Thus, respondent had 120 days from the submission of complete documents by petitioner within which to act on the latter's claim for refund/tax credit. In case of full or partial denial of the claim for refund or tax credit, or after the lapse of the allowable 120-day period without any action from respondent, petitioner had 30 days from receipt of the adverse decision or from the lapse of the 120-day period, within which to seek relief from the Court via a Petition for Review.

Since petitioner's administrative claim for refund was filed on March 30, 2009, it had 120-days or until **July 28, 2009,** as enunciated in Section 112(C), to seek judicial relief. In the instant case however, petitioner did not wait for the 120- day period to lapse and prematurely filed its Petition for Review with the Court on **March 31, 2009** which would have otherwise justify a denial of the petition due to premature filing depriving the Court of jurisdiction to hear and determine the same.

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However, in the recent consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue, and Philex Mining Corporation vs. Commissioner of Internal Reveneu,*[21] the Supreme Court *En Banc* provided a window in the application of the prescribed 120-30 day periods in claims for refund of input VAT. The Final Arbiter ruled that the mandatory and jurisdictional nature of the 120+30 day period does not apply on claims for refund filed from December 10, 2003, when BIR Ruling No. DA-489-03 was issued, up to October 6, 2010, when it was reversed by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.* The Supreme Court explained that BIR Ruling No. DA-489-03 which expressly provides that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of a Petition for Review", is a general interpretative rule which can be relied upon by all taxpayers from the time of its issuance on December 10, 2003 up to its reversal by the Supreme Court on October 6, 2010 in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[22] Accordingly, the filing of petitioner's judicial claim on March 31, 2009 should be considered on time.

Proceeding with the other requisites for entitlement to a refund, petitioner submits that its sale of services to its affiliate abroad is zero-rated pursuant to Section 108(B)(2) of the NIRC of 1997, which reads as follows:

> 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:

[21] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[22] G.R. No. 184823, October 6, 2010.

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);

Moreover, in the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc,*[23] the Final Arbiter enumerated the requisites in order that the sales of goods and services may be considered VAT zero-rated, to wit:

1. The services must be other than processing, manufacturing or repacking of goods;

2. Payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and

3. The recipient of such services is doing business outside the Philippines.

The record shows that petitioner complied with the first and third requirements. For the taxable year 2007, petitioner rendered services to Sony Ericsson Mobile Communications, AB, a non-resident foreign corporation engaged in business conducted outside the Philippines, by providing marketing services like organizing promotional

[23] G.R. No. 153205, January 22, 2007.

events to launch new products and services under the brand name "Sony Ericsson" in the local market.[24] To prove that that Sony Ericsson Mobile Communications, AB is a non-resident foreign corporation engaged in business conducted outside the Philippines, petitioner presented a Certification of Non-Registration[25] issued by the Philippine SEC together with the Certificate of Registration of Sony Ericsson Mobile Communications, AB[26] in a foreign country and the Articles of Association[27] of "Sony Ericsson Mobile Communications International AB"[28], petitioner's Head Office.

The second requirement was likewise satisfied. For services rendered in the taxable year 2007, petitioner received foreign currency payments which were accounted for in accordance with the BSP rules and regulations as evidenced by official receipts[29] issued by petitioner, Verification of Foreign Currency Inward Remittance per Bank Statement[30] and Bank Statements.[31]

However, a comparison of the amount of zero-rated sales/receipts declared in the Quarterly VAT Returns[32] against the amount of collections per Cash Receipts Book[33] disclosed a discrepancy of Php993,191.92, detailed as follows:

2007 Zero-Rated Receipts					
Period Covered	**Exhibit**	**Per VAT Returns**	**Exhibit**	**Per Cash Receipts Books**	**Variance**
1st Quarter	F	P 34,360,383.76	X-1 to X-3	P 34,342,094.39	P 18,289.37
2nd Quarter	G	30,525,192.08	X-4 to X-6	30,298,437.46	226,754.62
3rd Quarter	H	30,898,017.51	X-7 to X-9	30,914,030.00	(16,012.49)
4th Quarter	I	41,494,068.98	X-10 to X-12	40,729,908.56	764,160.42
Total		**P137,277,662.33**		**P136,284,470.41**	**P993,191.92**

[24] Judicial Affidavits of Reggie Dela Cruz-Zhang and Christian M. Cantera; Exhibits "P", "RR", "UU", and "VV".
[25] Exhibit "TT".
[26] Exhibit "SS".
[27] Exhibit "DD".
[28] Exhibits "DD" and "DD-1".
[29] Exhibits "Z-1" to "Z-25".
[30] Exhibit "AA".
[31] Exhibits "AA-1" to "AA-18".
[32] Exhibits "F", "G", "H", and "I".
[33] Exhibits "X-1" to "X-12".

ICPA Edward L. Roguel explained that the variance amounting to Php993,191.92 was due to the difference in foreign exchange rate used in converting the dollar amount into peso. For VAT reporting purposes, the collections in dollar were converted into peso using the foreign exchange rates at the time of sale, except for the collections during the month of September, which were reported based on the exchange rate at the time of collection. However, in the cash receipts book, the collections in dollars were converted into peso using the foreign exchange rates at the time of collections. Accordingly, except for the foregoing noted differences, the reported zero-rated sales/gross receipts transactions were recorded in the Company's general ledger and reported in the Audited Financial Statements.[34]

Thus, petitioner's sales of services in the aggregate amount of Php136,284,470.41 to Sony Ericsson Mobile Communications, AB, its sole non-resident foreign client/affiliate, which are properly supported by valid VAT zero-rated official receipts, qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended, to wit:

	Per Official Receipt		**Per Bank Statement**		**Per Cash Receipt Book**	
Date	**Exhibit**	**Amount in USD**	**Exhibit**	**Amount in USD**	**Exhibit**	**Amount in Peso**
01/09/07	Z-1	$ 67,078.39	AA-1	$ 276,265.39	X-1	P 3,279,127.09
01/09/07	Z-2	209,187.00				10,226,106.50
02/02/07	Z-3	75,390.32	AA-2 & AA-3	75,390.32	X-2	3,677,615.20
02/06/07	Z-4	44,180.89	AA-2 & AA-3	44,180.89	X-2	2,152,183.59
03/02/07	Z-5	98,610.34	AA-4	308,971.65	X-3	4,789,602.82
03/02/07	Z-6	24,075.76				1,169,383.74
03/02/07	Z-7	186,285.55				9,048,075.45
04/12/07	Z-8	191,759.77	AA-5	191,759.77	X-4	9,226,713.09
04/27/07	Z-9	70,204.36	AA-6	70,204.36	X-5	3,338,287.52
05/07/07	Z-10	152,520.05	AA-6 & AA-7	152,520.05	X-5	7,271,088.34
06/05/07	Z-11	39,077.50	AA-8	228,845.28		1,786,545.14
06/05/07	Z-12	189,767.78			X-6	8,675,803.37
07/03/07	Z-13	139,763.97	AA-9	178,086.30		6,428,583.56
07/03/07	Z-14	38,322.33			X-7	1,762,673.89
08/06/07	Z-15	128,321.25	AA-10	242,915.83		5,874,546.83
08/06/07	Z-16	114,594.58			X-8	5,246,139.87
09/06/07	Z-17	135,099.22	AA-11	135,099.22	X-9	6,272,251.49
09/10/07	Z-18	114,163.44	AA-12	114,163.44	X-9	5,329,834.36
10/04/07	Z-19	117,671.32	AA-13	117,671.32	X-10	5,295,091.73
10/11/07	Z-20	173,982.24	AA-14	173,982.24	X-10	7,685,317.49
10/23/07	Z-21	80,596.06	AA-15	80,596.06	X-10	3,552,835.52
11/05/07	Z-22	177,080.51	AA-16 & AA-17	177,080.51	X-11	7,782,157.17

[34] Exhibit "BB", pages 5-6, under letter "d".

11/20/07	Z-23	110,612.64	AA-16 & AA-17	110,612.64	X-11	4,798,708.16
12/04/07	Z-24	220,026.66	AA-18	220,026.66	X-12	9,320,769.37
12/14/07	Z-25	55,783.12	AA-18	55,783.12	X-12	2,295,029.12
		$2,954,155.05		**$2,954,155.05**		**P136,284,470.41**

Anent the second requisite for the entitlement to a refund of input VAT, petitioner reported input VAT for the four quarters of taxable year 2007 in the aggregate amount of Php10,673,598.12, details of which are as follows:

Exhibit	Year 2007	PURCHASES OF GOODS OTHER THAN Capital Goods	IMPORTATION OF GOODS OTHER THAN Capital Goods	PURCHASE OF SERVICES	Input VAT
F	1st Quarter	P 157,109.00	P 172,820.40	P 1,742,952.97	P 2,072,882.37
G	2nd Quarter	43,396.06	460,726.00	3,019,046.79	3,523,168.85
H	3rd Quarter	2,260,701.48	4,718.57	401,898.00	2,667,318.05
I	4th Quarter	1,628,030.92	148,635.93	633,562.00	2,410,228.85
					P10,673,598.12

The ICPA presented two separate reports dated December 7, 2009 and June 16, 2010. In his report dated December 7, 2009,[35] he assured that petitioner's claimed input VAT on purchases of goods and services are properly supported by original copies of appropriate VAT invoices (for purchases of goods) and VAT official receipts (for purchases of services), except for the input VAT claim of Php4,212,159.64 summarized in items "A" to "O", as follows:

EXCEPTIONS NOTED	EXHIBIT	INPUT VAT CLAIM
A. Certain local purchases of services were not supported by VAT official receipts	AF-3	P 35,619.00
B. Certain local purchases of goods were not supported by VAT invoices	AF-4	4,060.72
C. Certain invoices and official receipts were dated outside the year of claim	AF-5	758,560.05
D. Certain invoices and official receipts were not named after the Company	AF-6	39,352.72
E. Certain invoices and official receipts did not show the address of the Company	AF-7	1,825.01
F. Certain invoices and/or official receipts were supported by Non-VAT invoice and/or Non-VAT official receipts	AF-8	77,579.12

[35] Exhibit "BB", p. 9.

G. Certain invoices and/or official receipts which had been previously claimed in other quarters were claimed again in another quarter	AF-9	224,904.00
H. Importations supported by Import Entry and Internal Revenue Declaration which are dated outside the year of claim	AF-10	40,145.40
I. Importations supported with photocopied IEIRD or IIDE and Official Receipts	AF-11	2,808.00
J. Importations Supported by BOC Form No. 38A only	AF-12	2,722.00
K. Importations with no supporting documents	AF-13	6,511.00
L. Importations with Import Entry and Internal Declaration which does not show the complete name of the Company	AF-14	36,932.00
M. Importations Supported by BOC Form No. 38A which reflects the incomplete name of the Company and supported by Informal Import Declaration and Entry but containing the incomplete name of the Company	AF-15	19,648.00
N. Local purchases wherein no documents were provided for examination	AF-16	2,926,411.12
O. Excess amount of input VAT claimed based on the comparison between the amount reflected in the schedule against the supporting documents	AF-17	35,081.50
Total Exceptions noted		**P 4,212,159.64**
Amount of Input VAT without exceptions	AF-1 and AF-2	**P 6,461,438.47**

In his subsequent Supplemental Report dated June 16, 2010,[36] the ICPA examined additional invoices and official receipts of petitioner's purchases supporting the input VAT of Php2,926,411.11 previously marked as input VAT from "local purchases wherein no documents were provided for examination"[37] and was included in the disallowed amount of Php4,212,159.64 in his original report of December 7, 2009 and made the following findings:

Total amount of input VAT previously marked "Input VAT from local purchases wherein no documents were provided for examination" in ICPA's report dated December 7, 2009.			P 2,926,411.11
Less: Exceptions noted			
EXCEPTIONS NOTED	**EXHIBIT**	**AMOUNT**	
A. Certain local purchase supported by debit note and the amount of VAT is not separately shown	HH	P107,142.86	
B. Certain official receipts were dated outside the year of claim	II	75,198.84	
C. Certain official receipts which had been previously claimed in other quarters were claimed again in another quarter	JJ	41,244.91	
D. Certain official receipts did not show the address and TIN of the Company	KK	3,118.06	

[36] Exhibit "OO", p. 3.
[37] Exhibit "AF-16".

E. Certain official receipts did not show the TIN of the Company	LL	1,244.81	
F. Local purchases that were still no documents provided for examination	MM	1,958,467.38	**P2,186,416.86**
Amount of Input VAT without exceptions	GG		**P 739,994.25**

Accordingly, the amount of input VAT without exceptions per the ICPA's findings amounted to Php7,201,432.72, detailed as follows:

INPUT VAT WITHOUT EXCEPTIONS PER ICPA'S FINDINGS	**EXHIBIT**	**AMOUNT**
Per Exhibit "BB" (original ICPA report)	AF-1 and AF-2	P 6,461,438.47
Per Exhibit "OO" (supplemental ICPA report)	GG	739,994.25
Total Input VAT without exceptions per ICPA's findings		**P7,201,432.72**

It should be noted that the ICPA findings under "Exceptions noted" were disallowed for failure to meet the substantiation requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, and as implemented by Sections 4.110-1, 4.110-8, and 4.113-1 of Revenue Regulations No. 16-2005. Hence, the total disallowances per ICPA report amounted to Php3,472,165.39[38].

But further evaluation of the official receipts, invoices, Informal Import Declaration and Entry (IIDEs), and Import Entry and Internal Revenue Declaration (IEIRDs)[39] revealed that the following additional input taxes in the amount of Php163,242.37 should be disallowed for reasons as indicated below:

Exhibit	**Supplier**	**OR No.**			**Input Tax**
1. Input VAT on purchases of services wherein the VAT amount was not separately shown in the official receipts.					
AF-1-38-a	Staff Alliance, Inc.	14559			P 4,161.95
AF-1-39-a	Staff Alliance, Inc.	14814			4,605.94
AF-1-40-a	Staff Alliance, Inc.	14222			3,542.22

[38] Php10,673,598.11 less Php7,201,432.72.
[39] Exhibits "AF-1-1" to "AF-1-198" and its submarkings, "AF-2-1" to "AF-2-132" and its submarkings, and "GG-1" to "GG-52".

AF-1-40-a	Staff Alliance, Inc.	14222			2,062.10
AF-1-41-a	Staff Alliance, Inc.	14394			6,794.71
AF-1-42-a	Staff Alliance, Inc.	14670			4,228.59
AF-1-43-a	Digi-Ads, Inc.	5604			648.00
AF-1-44-a	Digi-Ads, Inc.	5605			275.40
AF-1-89-a	Staff Alliance, Inc.	14974			8,120.68
AF-1-90-a	Staff Alliance, Inc.	15179			2,072.62
AF-1-91-a	Staff Alliance, Inc.	15231			5,776.68
AF-1-92-a	Staff Alliance, Inc.	15378			8,417.78
AF-1-93-a	Insights & Ideas Research Consultancy	368			6,000.00
AF-1-94-a	Uyb Printing Corporation	15404			1,566.96
AF-1-152-a	Isla Lipana & Co.	9089			1,545.00
AF-1-153-a	Staff Alliance, Inc.	15696			1,371.96
AF-1-154-a	Minuteman Printers, Inc.	24846			3,000.00
AF-1-155-a	Staff Alliance, Inc.	16075			2,907.21
AF-1-155-a	Staff Alliance, Inc.	16075			1,492.51
AF-1-156-a	Staff Alliance, Inc.	15534			3,796.90
AF-1-157-a	Staff Alliance, Inc.	15842			6,129.90
AF-1-158-a	The Wallace Business Forum, Inc.	1739			19,714.29
AF-1-191-a	Imavision Corporation	1993			195.00
AF-1-192-a	Sightads Corporation	0056			37,500.00
AF-1-193-a	Schenker Phils., Inc.	038776			6,861.77
AF-1-194-a	Rounce Printing Corp.	11692			4,102.71
AF-1-196	Sommelier Selection, Inc.	5654			696.00
	Subtotal				***P147,586.88***
2. Discrepancy between Input VAT per claim and input VAT per supporting documents.					
Exhibit	**Supplier**	**IEIRD/ OR No.**	**per claim**	**per supporting document**	**Input Tax**
AF-1-6	Exel Logistics Mgmt. Phils. Inc.	37062	P 882.95	P 852.00	P 30.95
AF-1-7	Exel Logistics Mgmt. Phils. Inc.	37090	1,290.20	1,224.00	66.20
AF-1-8	Exel Logistics Mgmt. Phils. Inc.	37234	7,089.83	6,393.36	696.47
AF-1-11	Sycip Salazar Hernandez & Gatmaitan Law Offices	5013707	4,296.00	4,096.00	200.00
AF-1-12	Thoughts & Notions, Inc.	0081	1,800.00	1,500.00	300.00
AF-1-83	Y & R Philippines, Inc.	1229	26,639.96	13,553.14	13,086.82
AF-1-128	Asap Industrial Corporation	9683	2,080.71	2,062.14	18.57
AF-1-162-a	Chateau Louise Resources Inc.	1693	78.56	72.12	6.44
AF-2-17-a	Sony Ericsson Mobile Communication AB	SN77852957	1,569.00	1,319.00	250.00
AF-2-115-a	Sony Ericsson Mobile Communication AB	SN84133183	22,343.04	22,343.00	0.04
GG-9	Brand Worx, Inc.	321	6,420.00	5,420.00	1,000.00
	Subtotal				***P 15,655.49***
	Total				**P163,242.37**

Thus, petitioner's substantiated input taxes for the four quarters of taxable year 2007 amounted to Php7,038,190.35, computed as follows:

Input VAT per claim		P 10,673,598.11
Less: Disallowances per ICPA's findings	P3,472,165.39	
Disallowances per this Court's further verification	163,242.37	3,635,407.76
Substantiated input VAT		**P7,038,190.35**

Evidence show that petitioner's claimed input taxes were not applied against any output VAT liability during the period of claim and in the succeeding quarters since there was no output VAT for the period from January 2007 to September 2009[40] from which the input taxes might be credited or applied. Albeit petitioner carried over the said input VAT to the succeeding first quarter of 2008 until the second quarter of 2009, the same remained unutilized until it was fully deducted as "VAT Refund/TCC Claimed" in the second quarter of 2009. In other words, the input tax of Php15,864,398.71[41] as of the end of the second quarter of 2009 carried over to the third quarter of 2009[42] no longer included the claimed input VAT.

All stated, petitioner has sufficiently established that it is entitled to a refund or issuance of tax credit certificate corresponding to its unutilized input VAT for the period covering January 1, 2007 to December 31, 2007, but in a the reduced amount of Php7,038,190.35.

WHEREFORE, the instant Petition for Review 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 Sony Ericsson Mobile Communications International AB in the reduced amount of Php7,038,190.35, representing its unutilized input VAT attributable to its zero-rated sales for the taxable year 2007.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

ERLINDA P. UY
Associate Justice

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[40] Exhibits "F" to "O", and "S-5", integral part of Exhibit "BB".
[41] Exhibit "O".
[42] Exhibit "S-5".

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
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.

ROMAN G. DEL ROSARIO
Presiding Justice