REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

DEUTSCHE KNOWLEDGE SERVICES, PTE., LTD.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 827
(CTA Case No. 7775)

Present:
Del Rosario, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

Promulgated:

NOV 2 9 2013 Apolinario 9:00 a.m.

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AMENDED DECISION

BAUTISTA, J.:

Before the Court *En Banc* is a "Motion for Reconsideration (Re: Decision dated May 3, 2013)," filed by petitioner on May 30, 2013, praying for the reconsideration of the Court *En Banc's* Decision dated May 3, 2013, and accordingly for the issuance of an Order instructing respondent to refund or issue a tax credit certificate in the amount of Php2,841,935.82, representing its unutilized and excess input VAT for the first quarter of Calendar Year ("CY") 2006; without any Comment/Opposition from respondent despite due notice.

On May 3, 2013, the Court *En Banc* issued a Decision. The dispositive portion of the assailed Decision reads:

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"**WHEREFORE,** in view of the foregoing, the Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED."

In the said "Motion for Reconsideration," petitioner argues that its failure to indicate the amount of zero-rated sales in its VAT returns is not a sufficient ground to deny its claim for input VAT refund, when there are pieces of evidence that supports its claim, such as official receipts on sales of services to non-resident clients, accrual notifications, fund transfer credit advice, Securities and Exchange Commission and Board of Investments (BOI) Certifications, and Audited Financial Statements as of and for the year ended December 31, 2006.[1] Furthermore, respondent even recognizes that even in the absence of zero-rated sales in the VAT returns, there are evidences such as books of accounts, export invoices and other financial records to establish its claim.

A second look on the records of the case and upon consideration, the Court *En Banc* resolves to reconsider petitioner's "Motion for Reconsideration (Re: Decision dated May 3, 2013)."

The Supreme Court in the case of *Southern Philippines Power Corporation vs. Commissioner of Internal Revenue*,[2] has ruled that failure of therein petitioner to indicate in its VAT returns its zero-rated sales is not sufficient reason to deny the claim for tax credit or refund, when there are other documents from which the Court can determine the veracity of such claim, to wit:

> "**One and Two**. The Court reiterated in *San Roque Power Corporation v. Commissioner of Internal Revenue* the following criteria governing claims for refund or tax credit under Section 112(A) of the NIRC:
>
> (1) The taxpayer is VAT-registered;
> (2) The taxpayer is engaged in zero-rated or effectively zero-rated sales;
> (3) The input taxes are due or paid;
> (4) The input taxes are not transitional input taxes;

[1] Exhibits "FF-1" to "FF-19."
[2] G.R. No. 179632, October 19, 2011, 659 SCRA 658.

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(5) The input taxes have not been applied against output taxes during and in the succeeding quarters;
(6) The input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
(7) 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;
(8) Where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and
(9) The claim is filed within two years after the close of the taxable quarter when such sales were made.

While acknowledging that SPP's sale of electricity to NPC is a zero-rated transaction, the CTA *En Banc* ruled that SPP failed to establish that it made zero-rated sales. xxx

xxx xxx xxx

Four. The Court finds that SPP failed to indicate its zero-rated sales in its VAT returns. But this is not sufficient reason to deny it its claim for tax credit or refund when there are other documents from which the CTA can determine the veracity of SPP's claim.

Of course, such failure if partaking of a criminal act under Section 255 of the NIRC could warrant the criminal prosecution of the responsible person or persons. But the omission does not furnish ground for the outright denial of the claim for tax credit or refund if such claim is in fact justified.

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> **Five.** The CTA denied SPP's claim outright for failure to establish the existence of zero-rated sales, disregarding SPP's sales invoices and receipts which evidence them. That court did not delve into the question of SPP's compliance with the other requisites provided under Section 112 of the NIRC.
>
> Consequently, even as the Court holds that SPP's sales invoices and receipts would be sufficient to prove its zero-rated transactions, the case has to be remanded to the CTA for determination of whether or not SPP has complied with the other requisites mentioned. Such matter involves questions of fact and entails the need to examine the records. The Court is not a trier of facts and the competence needed for examining the relevant accounting books or records is undoubtedly with the CTA."

In the instant case, while petitioner was unable to reflect any amount of zero-rated sales in its Quarterly VAT Return for the first quarter of 2006,[3] petitioner has sufficiently proven through the various documents it submitted that it actually generated zero-rated sales for the said period.

However, in order to be entitled to refund or issuance of a Tax Credit Certificate ("TCC") of unutilized input taxes attributable to zero-rated or effectively zero-rated sales, petitioner must prove that it complied with Section 112 of the 1997 National Internal Revenue Code ("NIRC"), as amended, to wit:

> "*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),

[3] Exhibits "EE-2" to "EE-4."

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(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."

Based from the foregoing, the following requisites must be met:

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.

It is worthy to note that the fifth requisite was already discussed by the Court in its Decision dated May 3, 2013.[4] Therefore, the Court deems it no longer necessary to discuss this requisite.

Now we proceed to determine whether petitioner complied with the first requisite.

Relevant to the first requisite is the discussion of Section 108(B)(2) of the 1997 NIRC, as amended, to wit:

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

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(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:

[4] *Rollo*, pp. 164-174.

(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);

(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"

In addition, the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*,[5] is a case in point, where the Supreme Court has held that in order for the supply of services to be VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended [*then Section 102(b)(2) of the NIRC of 1977, as amended*], the following requisites must be complied with:

1) the services by a VAT registered person 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.

Likewise, from the aforesaid ruling, corollary to the second requisite is 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. 16-05,[6] which provide that a VAT taxpayer, like herein petitioner, shall for every lease of goods or properties and for every sale, barter or exchange of services, issue a VAT official receipt which must contain the following information:

[5] G.R. No. 153205, January 22, 2007, 512 SCRA 124.

[6] Prescribes the Consolidated Value-Added Tax Regulations of 2005 superseding RR No. 14-2005, October 19, 2005.

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"SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —

(A) *Invoicing Requirements.* — A VAT-registered person shall issue:

xxx xxx xxx

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided,* That:

xxx xxx xxx

(c) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;

xxx xxx xxx

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and xxx (*underlining supplied*)

xxx xxx xxx

SEC. 4.113-1. Invoicing Requirements. –

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

xxx xxx xxx

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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:

xxx xxx xxx

(c) If the sale is subject to zero percent (0%) VAT, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;" (*underlining supplied*)

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

Evidence on record shows that petitioner complied with the first requisite for VAT zero-rating of sales of services.

Petitioner is duly registered with the BIR as a VAT taxpayer,[7] and the services it performs in the Philippines, through its Regional Operating Headquarters, such as accounting, valuation and information systems maintenance and development services,[8] are not the same category as "processing, manufacturing or repacking of goods."

Furthermore, for the first quarter of 2006, petitioner rendered services to the following entities:

Deutsche Group Services, Pty., Limited
Deutsche Bank AG Frankfurt
Deutsche Bank Aktiengesellschaft Filiale Hongkong
Deutsche Bank Aktiengesellschaft Filiale Indonesia
Deutsche Bank AG London
Deutsche Bank Aktiengesellschaft Asia Pacific Head Office Singapore
Deutsche Bank Aktiengesellschaft Filiale Singapur
Deutsche Bank Aktiengesellschaft Filiale New York
Deutsche Asia Pacific Holdings Pte., Ltd.

These entities are non-resident foreign corporations doing business outside the Philippines as indicated in the Securities and Exchange Commission ("SEC") Certifications of Non-Registration of Corporation/Partnership,[9] and authenticated certifications[10] of foreign registration of the aforesaid entities.

For services rendered for the first quarter of 2006, petitioner received foreign currency payments which were accounted for in accordance with the BSP rules and regulations as evidenced by the accrual notifications,[11] and official receipts,[12] issued by petitioner as well as the fund transfer credit advices from banks.[13] The foreign currency remittances received by petitioner in the year 2007 in the amount of EURO9,079,701.60 represents collections of combined sales in 2005 and 2006 (including the first quarter of 2006).[14]

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[7] Joint Stipulated of Facts and Issues, Admitted Facts, par. 4, CTA Case No. 7775, *Records*, p. 187.
[8] Exhibit "FF-8," Notes to the Financial Statements, No. 1, Reporting Entity.
[9] Exhibits "LL," "MM," "NN," "OO," "QQ," "RR," "SS," and "III."
[10] Exhibits "TT," "UU," "VV," "WW," "YY," "ZZ," "N4," "Q4," "R4," and "T4."
[11] Exhibits "BB-1" to "BB-122."
[12] Exhibit "DD-1."
[13] Exhibits "CC-1"to "CC-11."
[14] Exhibit "II."

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Having determined that petitioner complied with the first requisite that it had VAT zero-rated sales for the first quarter of 2006, we now determine whether petitioner complied with the second, third and fourth requisites of Section 112 of the 1997 NIRC, as amended.

In its amended Quarterly VAT Return[15] for the first quarter of 2006, petitioner reflected the following input VAT:

Nature of Purchases	Input VAT
Domestic Purchases of Goods other than Capital Goods	₱ 413,082.06
Domestic Purchases of Services	2,428,853.76
Total	**₱ 2,841,935.82**

However, upon examination of the various suppliers' invoices and official receipts[16] supporting petitioner's claimed input VAT of ₱2,841,935.82, the Court Commissioned Independent Certified Public Accountant ("ICPA"), noted that the total amount of ₱295,190.42 lack supporting documents:[17]

Exhibit "II"	Nature of Findings	Input VAT
Annex A.1	Purchases of Services Not Supported by Suppliers' Official Receipts	₱250,700.68
Annex A.2	Purchases of Goods Not Supported by Suppliers' Sales Invoices	16,995.42
Annex A.3	Purchases of Services/Goods Outside the Cut-off Period	26,775.88
Annex A.4	Sales Invoices/Official Receipts not in the name of DKS	375.00
Annex A.5	Overstatement in the Recorded and Claimed Input VAT	343.43
	TOTAL	**₱295,190.42**

In addition, as recommended by the ICPA, the following input taxes in the amount of ₱549,146.63 should be denied for not being properly substantiated by VAT invoices or official receipts in accordance with Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended and as implemented by Sections 4.110-8 and 4.113-1 of Revenue Regulations No.16-2005, as amended:

	Exhibit	Supplier	Input VAT
1)	Input VAT on purchases of goods without VAT sales invoices		

[15] Exhibit "EE-4."
[16] Exhibits "AA-1" to "AA-308."
[17] Exhibit "II," Annex A.

	AA-4	Accent Micro Technologies, Inc.	₱ 42,049.09
	AA-5	Accent Micro Technologies, Inc.	38,213.46
	AA-6	Accent Micro Technologies, Inc.	113,097.09
	AA-6	Accent Micro Technologies, Inc.	51,127.27
	AA-171 to AA-173	National Bookstore	2,393.73
	AA-174 to AA-185	National Bookstore	2,263.26
		Subtotal	**₱ 249,143.90**
2)	Input VAT on purchases of services wherein the VAT was not separately shown in the VAT official receipts		
	AA-16	Asia Partnership Philippines, Inc.	₱ 12,600.00
	AA-18	Asia Select, Inc.	706.19
	AA-18	Asia Select, Inc.	827.24
	AA-21	Asia Select, Inc.	633.93
	AA-21	Asia Select, Inc.	9,676.80
	AA-23	Asia Select, Inc.	633.21
	AA-23	Asia Select, Inc.	612.23
	AA-23	Asia Select, Inc.	724.63
	AA-23	Asia Select, Inc.	212.13
	AA-23	Asia Select, Inc.	584.44
	AA-51	Display Logic (Design & Creative Logic, Inc.)	1,389.11
	AA-52	Display Logic (Design & Creative Logic, Inc.)	1,389.11
	AA-54	Display Logic (Design & Creative Logic, Inc.)	1,178.64
	AA-67	DHL Express Phils Corp	34.89
	AA-67	DHL Express Phils Corp	34.89
	AA-67	DHL Express Phils Corp	34.89
	AA-72	Electronic Security Systems Corporation	845.46
	AA-75	Elite Arts & Frames Kingdom	128.57
	AA-77	Exclusive Cars, Inc.	1,731.96
	AA-117	Jones Lang LaSalle	22,311.73
	AA-118	Jones Lang LaSalle	19,230.75
	AA-133	King of Travel, Inc.	450.00
	AA-145	Leaves & Branches Enterprises	604.55
	AA-146	Leaves & Branches Enterprises	604.55
	AA-149	Mapecon Philippines, Inc.	190.91
	AA-186	NFF Enterprises	107.14
	AA-188	Oakwood Premier	1,249.37
	AA-189	Oakwood Premier	3,808.20
	AA-206	Philippine Long Distance Telephone Company	199.50
	AA-206	Philippine Long Distance Telephone Company	136.91
	AA-206	Philippine Long Distance Telephone Company	136.91
	AA-209	Philippine Long Distance Telephone Company	151.97
	AA-209	Philippine Long Distance Telephone Company	2,470.73
	AA-215	Philippine Long Distance Telephone Company	138.16
	AA-215	Philippine Long Distance Telephone Company	136.91
	AA-250	Siemens, Inc.	38,791.82
	AA-251	Siemens, Inc.	23,607.27
	AA-267	Total Ventures, Inc.	148,181.82
	AA-284	Lane Moving & Storage	150.00

		Subtotal	**₱ 296,637.52**
3)	Input VAT on purchases of goods wherein the VAT was not separately shown in the VAT sales invoices		
	AA-33	BS Borja Builders, Inc.	₱ 350.00
	AA-112	JED Philippines, Inc.	1,458.64
	AA-114	JED Philippines, Inc.	374.00
	AA-116	JED Philippines, Inc.	863.64
	AA-223	Power & Telephone Supply	318.93
		Subtotal	**₱ 3,365.21**
		Total	**₱ 549,146.63**

From the foregoing, only the amount of ₱1,997,598.77 represents petitioner's valid input VAT for the first quarter of 2006, as it complied with the second and third requisites of Section 112 of 1997 NIRC, as amended which is computed as follows:

Input VAT Claim	₱ 2,841,935.82
Less: Disallowances	
1) Per ICPA's findings	₱ 295,190.42
2) Per this Court's further verification	549,146.63
Total Disallowances	₱ 844,337.05
Valid Input VAT	₱ 1,997,598.77

Furthermore, anent the fourth requisite, although the claimed input VAT for the first quarter of 2006 amounting to ₱2,841,935.82 was carried-over by petitioner in its succeeding Quarterly VAT Returns,[18] the same remained unutilized until it was deducted as "Any VAT Refund/TCC Claimed"[19] in its Quarterly VAT Return for the second quarter of 2008. Thus, the excess input VAT of ₱157,581,523.28[20] as of the end of the second quarter of 2008 which was to be carried-over to the succeeding third quarter of 2008 no longer included the subject claim.

Thus, petitioner has substantiated the amount of ₱1,997,598.77 representing its unutilized input VAT attributable to its zero-rated sales for the first quarter of 2006 pursuant to Section 112 of the NIRC of 1997, as amended.

[18] Exhibits "D" to "R."
[19] Exhibit "R," line 23D.
[20] Exhibit "R," line 29.

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Hence, petitioner is entitled to refund or issuance of a tax credit certificate in the reduced amount of ₱1,997,598.77 representing its unutilized input VAT attributable to its zero-rated sales for the first quarter of 2006.

WHEREFORE, petitioner's Motion for Reconsideration is hereby **PARTIALLY GRANTED.** Accordingly, the Court *En Banc's* Decision promulgated on May 3, 2013 is hereby **REVERSED** and **SET ASIDE.** Respondent is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the reduced amount of ₱1,997,598.77 representing unutilized input VAT attributable to its zero-rated sales for the first quarter of 2006.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(On Leave)

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice