Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

CHARTIS TECHNOLOGY & OPERATIONS MANAGEMENT CORPORATION (PHILIPPINES),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case Nos. 8432, 8498 8534 and 8581

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

NOV 06 2015

4:10 p.m.

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DECISION

CASANOVA, *J.*:

This is a consolidation of four (4) Petitions for Review separately filed by petitioner Chartis Technology & Operations Management Corporation (Philippines) against the respondent Commissioner of Internal Revenue (CIR). Herein petitioner seeks the refund or issuance of tax credit certificates of its alleged excess and unutilized Input Value Added Tax (VAT) in the total amount of Fifty Six Million Eight Hundred Fifteen Thousand Three Hundred Ninety Eight and 78/100 Pesos (₱56,815,398.78) for fiscal year (FY) 2010, broken down as follows:

CTA Case No.	Period Covered	Amount of Claim
8432	1st Quarter (December 2009 to February 2010)	₱ 12,622,956.90
8498	2nd Quarter (March to May 2010)	11,481,692.29
8534	3rd Quarter (June to August 2010)	15,082,004.33
8581	4th Quarter (September to November 2010)	17,628,745.26
TOTAL		**P56,815,398.78**

Petitioner is a foreign corporation duly registered with and authorized by the Securities and Exchange Commission (SEC) to operate as a Regional Operating Headquarter (ROHQ) under SEC Certificate of Registration No. FM00000152 issued on 20 November 2009, with principal office address at 46th Floor PBCom Tower, 6795 Ayala Avenue corner Rufino St. Makati City.[1]

As a ROHQ, petitioner is engaged in the business of providing qualifying services to its affiliates and related parties in the Asia-Pacific Region and in other foreign markets.[2]

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with the power to decide tax cases, including claims for refunds or tax credits, with principal office address at 5th Floor, Bureau of Internal Revenue National Office Building, Agham Road, Diliman, Quezon City.

On 31 January 2013, petitioner changed its name from Chartis Technology and Operations Management Corporation (Philippines) to AIG Shared Services Corporation (Philippines) as shown by the Amended SEC License issued on 31 January 2013.[3]

Petitioner is a VAT-registered entity as indicated in its BIR Certificate of Registration Number OCN 9RC0000355401 issued on 13 September 1977 by Revenue District Office No. (RDO) 50 and 9RC0000355702 issued on 24 November 2009.[4]

Petitioner reported sales for the four quarters of FY 2010 in its Schedule of Zero-Rated Sales and reported in its audited financial statements and VAT Returns are as follows[5]:

FY 2010	VATable Sales (Php)	VAT Exempt Sales (Php)	VAT zero-rated sales (Php)	Total Sales (Php)
First Qtr	7,276,101.73	0.00	402,399,346.27	409,675,448.00
Second Qtr	7,153,406.38	0.00	214,520,912.15	221,674,318.53

[1] Paragraphs 1 & 2, Stipulation of Facts, Consolidated Joint Stipulation of Facts and Issue (CJSFI), CTA Case No. 8432, Docket (Vol. III), p. 1754.
[2] Par. 2, Stipulation of Facts, CJSFI, CTA Case No. 8432, Docket (Vol. III), p. 1754.
[3] Par. 3, Stipulation of Facts, CJSFI, CTA Case No. 8432, Docket (Vol. III), p. 1754-1755.
[4] Par. 4, Stipulation of Facts, CJSFI, CTA Case No. 8432, Docket (Vol. III), p. 1755.
[5] Memorandum for the Petitioner, CTA Case No. 8432, Docket (Vol. IV), p. 2296.

Third Qtr	7,548,669.02	0.00	389,793,750.70	397,342,419.72
Fourth Qtr	7,603,379.61	0.00	320,249,228.64	327,852,608.25
TOTAL	**29,305,455.01**	**0.00**	**1,326,963,237.76**	**1,356,544,794.50**

Moreover, petitioner pays VAT passed on by its domestic purchases of supplies and services, thereby incurring VAT pursuant to Section 110 of the National Internal Revenue Code of the Philippines ("the Tax Code") and Revenue Regulations No. 16-2005. For the four quarters of FY 2010, the Input VAT was reported in its VAT returns and Summary Lists of purchases as follows[6]:

FY 2010	Input VAT from domestic purchases of goods* (Php)	Input VAT from domestic purchase of services (Php)	Input VAT from importati on of goods (Php)	Total Input VAT** (Php)
First quarter	1,173,728.41	12,550,606.39	0.00	13,724,334.80
Second quarter	2,166,776.26	10,556,192.89	0.00	12,722,969.15
Third quarter	3,704,984.18	12,574,935.56	0.00	16,279,919.74
Fourth quarter	3,247,470.90	15,712,222.72	0.00	18,959,693.71
TOTAL	**10,292,959.84**	**51,393,957.56**	0.00	**61,686,917.40**
**Including input VAT from capital goods* ***Different amounts from "allowable input VAT" which takes into consideration the amortization of capital goods and carry-over of input VAT from previous quarters*				

Petitioner's VAT zero-rated services were directly attributable to the services it rendered to its foreign affiliates who are all engaged in business conducted outside the Philippines, and which services were paid for in United States Dollars inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

The following Returns of petitioner were filed with and duly received by the BIR on the following dates[7]:

	Date filed
Amended Quarterly VAT Return, 1st Quarter of FY 2010	21 September 2011
Original Quarterly VAT Return, 1st Quarter of FY 2010	25 March 2010
Amended Quarterly VAT Return, 2nd Quarter of FY 2010	18 January 2012

[6] Memorandum for the Petitioner, CTA Case No. 8432, Docket (Vol. IV), p. 2296.
[7] Par. 7, Stipulation of Facts, CJSFI, CTA Case No. 8432, Docket (Vol. III), pp. 1755-1756.

Amended Quarterly VAT Return, 2nd Quarter of FY 2010	28 December 2010
Amended Quarterly VAT Return, 2nd Quarter of FY 2010	20 July 2010
Original Quarterly VAT Return, 2nd Quarter of FY 2010	25 June 2010
Amended Quarterly VAT Return, 3rd Quarter of FY 2010	28 December 2010
Amended Quarterly VAT Return, 3rd Quarter of FY 2010	12 April 2012
Amended Quarterly VAT Return, 4th Quarter of FY 2010	04 July 2012
Original Quarterly VAT Return, 4th Quarter of FY 2010	28 December 2010
Amended Quarterly VAT Return, 1st Quarter of FY 2011	21 September 2012
Amended Quarterly VAT Return, 1st Quarter of FY 2011	26 December 2011
Original Quarterly VAT Return, 1st Quarter of FY 2011	24 March 2011
Amended Quarterly VAT Return, 2nd Quarter of FY 2011	20 November 2012
Original Quarterly VAT Return, 2nd Quarter of FY 2011	27 June 2011
Original Quarterly VAT Return, 3rd Quarter of FY 2011	23 September 2011
Amended Quarterly VAT Return, 3rd Quarter of FY 2011	20 November 2012
Amended Quarterly VAT Return, 3rd Quarter of FY 2011	26 December 2011
Amended Quarterly VAT Return, 1st Quarter of FY 2012	12 April 2012
Original Quarterly VAT Return, 1st Quarter of FY 2012	23 March 2012
Amended Quarterly VAT Return, 2nd Quarter of FY 2012	04 July 2012
Original Monthly VAT Declaration for the month of December 2011	20 January 2012

Subsequently, petitioner filed with the respondent, through the RDO 50, applications for refund or issuance of tax credit certificate for its excess/unutilized input VAT on the following dates, details of which are as follows:

Taxable Period	Date of Filing of Administrative Application	Amount (Php)
1st Quarter of FY 2010 (01 December 2009 to 28 February 2010)	06 October 2011	12,622,956.90
2nd Quarter of FY 2010 (01March to 31 May 2010)	25 January 2012	11,481,692.29
3rd Quarter of FY 2010 (01 June to 30 August 2010)	16 April 2012	15,082,004.33
4th Quarter of FY 2010 (01 September to 30 November 2010	24 July 2012	17,628,745.26
TOTAL		**56,815,398.78**

Respondent has yet to rule on petitioner's applications for refund or issuance tax credit certificate for its excess/unutilized input VAT for the 1st to 4th Quarters of FY 2010.[8] Hence, petitioner filed before this Court the present Petitions for Review on the following dates:

CTA Case No.	Date Filed
8432[9]	February 27, 2012
8498[10]	June 7, 2012
8534[11]	August 23, 2012
8581[12]	November 29, 2012

Respondent filed her Answer with Motion to Dismiss[13] in CTA Case No. 8432 on April 3, 2012, raising the following Special and Affirmative Defenses/Grounds for the Dismissal of the Petition for Review:

> "5. Petitioner's claim of its entitlement for refund or the issuance of a Tax Credit Certificate has no basis either in fact or in law, as we shall elaborate below;
>
> 6. ***First.*** On the procedural aspect. Perusal of the attached Verification and Certification of Non-Forum Shopping executed by one named Jon Paul Jones will

[8] Par. 6, Stipulation of Facts, CTA Case No. 8432, Docket (Vol. III), p. 1755.
[9] CTA Case No. 8432, Docket (Vol. I), pp. 6-21.
[10] CTA Case No. 8498, Docket, pp. 10-25.
[11] CTA Case No. 8534, Docket, pp. 6-20.
[12] CTA Case No. 8581, Docket, pp. 6-19.
[13] CTA Case No. 8432, Docket (Vol. I), pp. 66-77.

reveal that the alleged authority he invokes in filing the instant suit is rooted in a Certificate of Authentication (Annex "A" of the Petition). Furthermore, it will be seen that it was allegedly notarized in the State of New York, United States of America. The question now arises: is the Certificate of Authentication a validly notarized document which satisfies the requirements of our rules of procedure and evidence thus conferring authority to Jon Paul Jones in filing this case? **To this question, we answer in negative.**

7. We look into the applicable law as to the matter at hand, which is Public Act No. 2103, otherwise called the Old Notarial Law or *"An Act providing for the Acknowledgement and Authentication of Instruments and Documents without the Philippine Islands"*, which provides:

> '**Section 2.** An instrument or document acknowledged and authenticated in a foreign country shall be considered authentic if the acknowledgment and authentication are made in accordance with the following requirements:
>
> (a) The acknowledgment shall be made before (1) an ambassador, minister, secretary of legation, *chargé d'affaires*, consul, vice-consul, or consular agent of the United States, acting within the country or place to which he is accredited, or (2) a notary public or officer duly authorized by law of the country to take acknowledgments of instruments or documents in the place where the act is done.
>
> (b) **The person taking the acknowledgment shall certify <u>that the person acknowledging the instrument or document is known to him</u>, and that <u>he is the same person who executed it</u>, and <u>acknowledged that the same is his free act and deed</u>.** The certificate shall be under his official seal, if he is by law required to keep a seal, and if not, his certificate shall so state. In case the acknowledgment is made

> before a notary public or an officer mentioned in subdivision (2) of the preceding paragraph, <u>**the certificate of the notary public or the officer taking the acknowledgment**</u> **shall be authenticated by an ambassador, minister, secretary of legation, *chargé d'affaires*, consul, vice-consul, or consular agent of the United States, acting within the country or place to which he is accredited. The officer making the authentication shall certify under his official seal that the person who took the acknowledgment was at the time duly authorized to act as notary public or that he was duly exercising the functions of the office by virtue of which he assumed to act, and that as such he had authority under the law to take acknowledgment of instruments or documents in the place where the acknowledgment was taken, and that his signature and seal, if any, are genuine.' (Emphases and underlining all provided)**

8. In the Certificate of Authentication (Annex "A" of the Petition), it can be seen that a certain Norman Goodman is mentioned in the same. However, nowhere can it be seen that Norman Goodman is the person who notarized the attached Certificate of Resolution purported to have authorized Jon Paul Jones to institute the instant action. As a matter of fact, **it is a certain Alberta E. Burrows that notarized the same Certificate of Resolution, and not Norman Goodman.** Applying the provisions of the Old Notarial Law, it is the notary public that should be authenticated by the consul. In this situation, **as it is an Alberta E. Burrows who notarized the Certificate of Resolution, then it should also be the same name that must be authenticated by the consul.** Otherwise stated, **it is not Norman Goodman that should be named in the Certificate of Authentication, but Alberta E. Burrows;**

9. To further compound the situation of the petitioner, nowhere can it be seen that the Certificate of Resolution notarized before Alberta E. Burrows was acknowledged by the same person that the affiant/subscriber is the same person who executed the Certificate of Resolution before Alberta E. Burrows, and that the acknowledgement is the affiant/subscriber's free act and deed before Alberta E. Burrows, **all in transgression of the specific provision of the law as above-stated**.

10. Now, we ask: what is the effect if there is no compliance with the positive requirement of the law? The case of ***Angelita Lopez vs. Court of Appeals, et al.*** **(156 SCRA 838)** is illuminating and positively answers the same question to wit:

> **'From the foregoing provision, when the special power of attorney is executed and acknowledged before a notary public or other competent official in a foreign country, <u>it cannot be admitted in evidence</u> unless it is certified as such in accordance with the foregoing provision of the rules by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept of said public document and authenticated by the seal of his office.** A city judge-notary who notarized the document, as in this case, cannot issue such certification.
>
> **<u>Considering that the record of the case does not disclose any compliance with the provisions of Section 25, Rule 132 of the Rules of Court on the part of the petitioner, the special power of attorney in question is not admissible in evidence. As such, Mrs. Priscilla L. Ty cannot lawfully prosecute the case against the private respondents in the name of her principal as her authority through a special power of attorney had not been duly established in evidence. The</u>**

> **litigation was not commenced by the real party-in-interest or by one duly authorized by the said party.**
>
> **This being so, the Metropolitan Trial Court, the Regional Trial Court and the Court of Appeals NEVER acquired jurisdiction over the person of the real party-in-interest — Angelita Lopez. For lack of the requisite jurisdiction, ALL the proceedings in the said courts are NULL AND *VOID AB INITIO.* ALL proceedings therein should be and are hereby SET ASIDE.**
>
> Accordingly, **it is Our considered opinion, and We so hold, that a special power of attorney executed before a city judge-public notary in a foreign country, without the certification or authentication required under Section 25, Rule 132 of the Rules of Court, is NOT admissible in evidence in Philippine courts**.' ***(Emphases and underlining all provided)***

11. It must be stressed, and as even laid down by the Honorable Supreme Court in the case of ***Rodriguez, Jr. vs. Board of Directors of the First Community Cooperative*** **(G.R. No. 153947, December 5, 2002)** that:

> 'Nevertheless, the petition should be denied because the verification and certification of nonforum shopping attached to it are signed and sworn to by Vicente B. Rana, General Manager of FICCO, without any proof of his authority to act on behalf of petitioners FICCO and Antonio I. Rodriguez, Jr.
>
> Under Rule 45, §§ 1 and 4(e) of the 1997 Rules of Civil Procedure, a petition filed in this Court by a petitioner shall be verified and shall contain a sworn certification against forum shopping as provided in the last paragraph of Rule 42, § 2, in relation to Rule 7, §§ 4 and 5. Otherwise, the

> petition would be dismissed. Rule 46, § 3 also requires the petitioner, not any other person, to sign the certification of nonforum shopping. This is because the petitioner is in the best position to certify whether a similar action involving the same issues has previously been commenced in any other court, tribunal or agency. **The requirement makes no distinction whether petitioner is a natural or a juridical person. Thus, if, as in this case, the petitioner is a corporation, <u>a board resolution authorizing a corporate officer to execute the certification against forum shopping is necessary.</u> This requirement means that the certification should be signed 'by a duly authorized director or officer of the corporation.'** ***(Emphases and underlining all provided)***

12. And in the case of ***Sps. Alcantara, et al. vs. Nido*** **(G.R. No. 165133, April 19, 2010)**, the Honorable Supreme Court had the occasion to state that:

> 'Unfortunately, the General Power of Attorney presented as 'Exhibit C' in the RTC cannot also be the basis of respondent's written authority to sell the lot.
>
> Section 25, Rule 132 of the Rules of Court provides:
>
>> Sec. 25. *Proof of public or official record.* — An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of embassy or legation consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the

> Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.
>
> In Teoco v. Metropolitan Bank and Trust Company, quoting Lopez v. Court of Appeals, we explained:
>
>> **From the foregoing provision, when the special power of attorney is executed and acknowledged before a notary public or other competent official in a foreign country, it cannot be admitted in evidence unless it is certified as such in accordance with the foregoing provision of the rules by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept of said public document and authenticated by the seal of his office.** A city judge-notary who notarized the document, as in this case, cannot issue such certification.
>>
>> **Since the General Power of Attorney was executed and acknowledged in the United States of America, it cannot be admitted in evidence unless it is certified as such in accordance with the Rules of Court by an officer in the foreign service of the Philippines stationed in the United States of America. Hence, this document has no probative value.** ***(Emphases and underlining all provided)***

13. As a side note, the law above-mentioned (the Old Notarial Law) is still a good law and is not yet repealed nor stricken out of the laws of our country, as it was even made a basis by the Honorable Supreme Court in disbarring and disqualifying from being a notary public a

certain lawyer in the recent case of ***Lustestica vs. Atty. Bernabe*** **(A.C. No. 6258, August 24, 2010)**, removing any cloud of doubt as to the validity and effectivity of the Old Notarial law;

14. Finally, the Honorable Supreme Court, in the case of ***Bank of the Philippine Islands vs. court of Appeals*** **(G.R. No. 168313 October 6, 2010)** held that:

> 'Under the circumstances, what applies to the present case is the second paragraph of Section 5, Rule 7 of the Rules of Court which states:
>
> > **Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be <u>cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing</u>.'**

15. Considering that the authority conferred upon Jon Paul Jones is not validly conferred for being not validly authenticated in accordance with the law and the rules before the consul, and by force of law and jurisprudence, then the instant action must be dismissed outright and with prejudice by this Honorable Court for lack of jurisdiction over the real party-in-interest or by one duly authorized by the said party.;

16. ***Second.*** As to the substantive matter. It is incumbent upon the petitioner to show that it has complied with the provisions of the Tax Code, for in an action for refund, **the burden is upon the <u>taxpayer</u> to prove that he is entitled thereto, and failure to discharge said burden is fatal to the claim (*Emmanuel & Zenaida Aguilar v. Commissioner*, CA-GR No. Sp. 16432, March 30, 1990, as cited in *Aban, Law of Basic Taxation in the Philippines*, 1st Edition, P. 206)**;

17. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected. It must be stressed that taxes paid and

collected are presumed to have been made in accordance with the laws and regulations, hence, not creditable or refundable;

18. And as the Honorable Supreme Court even held in the case of ***Atlas Consolidated Mining and Development Corporation vs. Commissioner of internal Revenue* (G.R. No. 159471, January 26, 2011)**:

> 'Taxation is a destructive power which interferes with the personal and property rights of the people and takes from them a portion of their property for the support of the government. And, since taxes are what we pay for civilized society, or are the lifeblood of the nation, **the law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. A claim of refund or exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Elsewise stated, taxation is the rule, exemption therefrom is the exception'** (***Emphases and underlining all provided***)

19. Thus, applying the pertinent provisions of the law, rules, and jurisprudence on the matter at hand, **it is crystal clear that the instant petition for review lacks basis and merit, and should be dismissed outright and with prejudice by this Honorable Court.**"

Petitioner filed its Reply (*Re: Answer dated 03 April 2012)*[14] on April 20, 2012 for CTA Case No. 8432 and its Opposition (*Re:* Respondent's Answer with Motion to Dismiss dated 03 April 2012)[15] on May 11, 2012.

[14] CTA Case No. 8432, Docket (Vol. I), pp. 80-91.
[15] CTA Case No. 8432, Docket (Vol. I), pp. 93-105.

The Court denied respondent's Motion to Dismiss incorporated in her Answer in a Resolution[16] dated June 6, 2012. Thus, the case was set for Pre-Trial Conference on July 5, 2012[17].

On July 2, 2012, petitioner filed an Omnibus Motion[18]: A. For Leave of Court for Early Resolution of the Issue of Whether Petitioner's Claim for Refund of Excess and Unutilized Input Taxes as Deemed Granted If Respondent Fails to Act Within the 120-day period under Section 112 of the 1997 NIRC; B. To Allow Petitioner to File Its Formal Offer of Evidence Relative to this Issue; C. Postponement of the Pre-Trial Conference Until Resolution of this Motion.

Thereafter, respondent filed thru registered mail on July 16, 2012 her Comment and Opposition (to Petitioner's Omnibus Motion dated 02 July 2012)[19]. Petitioner then filed thru registered mail its Reply (To Respondent's Comment dated 16 July 2012)[20] on July 30, 2012.

Petitioner's Omnibus Motion was denied by the Court in a Resolution[21] dated September 3, 2012. Petitioner filed thru registered mail on September 19, 2012 its Motion for Reconsideration (Re: Resolution dated 03 September 2012)[22].

On September 26, 2012, petitioner filed an Urgent Motion (To Postpone Pre-Trial Conference)[23] which was granted by the Court on September 27, 2012[24].

Meanwhile, respondent filed thru registered mail on July 12, 2012 a Motion for Extension of Time[25] to file Answer for CTA Case No. 8498 which was granted by the Court in an Order[26] dated July 19, 2012.

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[16] CTA Case No. 8432, Docket (Vol. I), pp. 107-114.
[17] Notice of Pre-Trial Conference, CTA Case No. 8432, Docket (Vol. I), p. 115.
[18] CTA Case No. 8432, Docket (Vol. I), pp. 116-143.
[19] CTA Case No. 8432, Docket (Vol. I), pp. 152-160.
[20] CTA Case No. 8432, Docket (Vol. I), pp. 161-176.
[21] CTA Case No. 8432, Docket (Vol. I), pp. 179-183.
[22] CTA Case No. 8432, Docket (Vol. I), pp. 184-199.
[23] CTA Case No. 8432, Docket (Vol. I), pp. 201-205.
[24] Minutes of the Hearing, CTA Case No. 8432, Docket (Vol. I), p. 207.
[25] CTA Case No. 8498, Docket (Vol. I), pp. 160-161.
[26] CTA Case No. 8498, Docket (Vol. I), p. 163.

Subsequently, respondent filed thru registered mail on August 10, 2012 her Answer[27] for CTA Case No. 8498, raising the following Special and Affirmative Defenses:

> "1. Respondent reiterates and repleads the preceding paragraphs of the answer as part of his Special and Affirmative Defenses;
>
> 2. Petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue;
>
> 3. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;
>
> 4. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable;
>
> 5. It is incumbent upon the Petitioner to show that it has complied with the provision of Section 204(C) in relation to Section 229 of the 1997 Tax Code, as amended;
>
> 6. Petitioner's claim for refund or issuance of tax credit certificate in the amount of Php11,481,692.29, as alleged excess and unutilized input VAT paid on purchases of goods and services attributable to its zero-rated sales for the 2nd Quarter of fiscal year 2010 was not fully substantiated by proper documents, such as sales invoices, official receipts and others.
>
> 7. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim (*Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206*);
>
> 8. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and as such, they are looked upon with

[27] CTA Case No. 8498, Docket (Vol. I), pp. 164-166.

disfavor. (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121*)."

Petitioner filed its Reply (*Re: Answer dated 09 August 2012*)[28] for CTA Case No. 8498 on August 24, 2012. The case was set for Pre-Trial Conference on September 27, 2012[29].

Respondent's Pre-Trial Brief[30] for the same case was filed on September 20, 2012. On the other hand, petitioner filed an Urgent Motion (To Postpone Pre-Trial Conference)[31] on September 26, 2012 and was granted on September 27, 2012.

During the hearing for CTA Case Nos. 8432 and 8498, counsel for petitioner moved that the CTA Case No. 8498 be consolidated with CTA Case No. 8432, considering that the said cases involve the same parties and common questions of law, and/or facts. The same was granted by the Court in the Minutes of the Hearing dated September 27, 2012.[32] Hence, the same were deemed consolidated.

When the consolidated cases were called for Pre-Trial Conference on October 25, 2012, counsel for the petitioner manifested that there is a pending Motion for Reconsideration filed by petitioner in CTA Case No. 8432. Counsel for respondent, on the other hand, manifested that the Pre-Trial has been mandated by the Court since June 2012 and petitioner has not yet filed a Pre-Trial Brief, and moved that the consolidated cases be dismissed pursuant to Section 4, Rule 18 of the Rules of Court. Finding merit in respondent's arguments, the Court denied petitioner's Motion for Reconsideration and granted respondent's Motion to Dismiss the consolidated cases.[33]

Petitioner, thereafter, filed thru registered mail on November 9, 2012 a Motion for Reconsideration (Re: Dismissal of the Case)[34] attaching thereto its Consolidated Pre-Trial Brief. Respondent filed via registered mail on December 6, 2012 her Comment with Opposition [to Petitioner's Motion for Reconsideration (Re: Dismissal of the

[28] CTA Case No. 8498, Docket, pp. 168-179.
[29] Notice of Pre-Trial Conference, CTA Case No. 8498, Docket, p. 180.
[30] CTA Case No. 8498, Docket, pp. 181-183.
[31] CTA Case No. 8498, Docket, pp. 184-188.
[32] CTA Case No. 8432, Docket (Vol. I), p. 207 and CTA Case No. 8498, Docket, p. 192 .
[33] Court Resolution, CTA Case No. 8432, Docket (Vol. I), p. 234.
[34] CTA Case No. 8432, docket, vol. 1, pp. 291-295.

Case)][35]. Petitioner's Motion to Admit (Petitioner's Reply to Comment dated 03 January 2013)[36] was subsequently filed on January 7, 2013.

Finding merit in petitioner's arguments, the Court granted petitioner's Motion for Reconsideration and the Court's previous order given on October 25, 2012, dismissing the case was reconsidered thereby reinstating the consolidated cases.[37]

On August 23, 2012, petitioner filed another Petition for Review[38] which was docketed as CTA Case No. 8534, and was raffled to the CTA First Division.

Respondent then filed her Answer[39] via registered mail on November 7, 2012 for CTA Case No. 8534, raising the following Special and Affirmative Defenses:

> "7. Respondent reproduces and repleads all the foregoing allegations insofar as they are relevant to her defenses which are discussed hereunder and incorporates them herein by way of reference and, in addition thereto, most respectfully avers THAT:
>
> 8. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;
>
> 9. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.
>
> 10. Petitioner's claim for refund or issuance of tax credit certificate in the amount of 15,082,004.33 representing alleged excess and unutilized input VAT paid for the period of June 1, 2010 to August 31, 2010 or the 3rd Quarter of fiscal year 2010, were not fully substantiated by proper documents, such sales invoices, official receipts and others pursuant to Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code.

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[35] CTA Case No. 8432, docket, vol. 1, pp. 344-357.
[36] CTA Case No. 8432, Docket (Vol. I), pp. 364-366.
[37] Resolution dated January 7, 2013, CTA Case No. 8432, Docket (Vol. I), pp. 360-363.
[38] CTA Case No. 8534, Docket, pp. 6-21
[39] CTA Case No. 8534, Docket, p. 121-124.

11. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to claimed refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit.

12. It is incumbent upon the latter to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

13. Claims for refund are construed strictly against herein petitioner since the same partakes the nature of exemption from taxation (***Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and as such, they are looked upon with disfavor (***Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).***"

CTA Case No. 8534 was then set for Pre-Trial Conference on November 27, 2012. Thereafter, petitioner's Pre-Trial Brief[40] was filed on November 26, 2012 while Pre-Trial Brief (for the Respondent)[41] was filed on November 27, 2012.

In the hearing on November 27, 2012, petitioner's counsel was given a period of five (5) days from the said date to file its Amended Petition for Review, considering that there were discrepancies in the allegations contained in petitioner's Pre-Trial Brief and the filed Petition for Review. On the other hand, respondent was given a period of ten (10) days from receipt of the Amended Petition for Review to file an Amended Answer.[42]

Consequently, petitioner's Amended Petition for Review[43] was filed on December 14, 2012. On the other hand, respondent filed her Amended Answer[44] thru registered mail on January 4, 2013, and avers the following Special and Affirmative Defenses:

"6. Respondent reproduces and repleads all the foregoing allegations insofar as they are relevant to her defenses.

[40] CTA Case No. 8534, Docket, pp. 127-153.
[41] CTA Case No. 8534, Docket, pp. 154-156.
[42] Minutes of the Hearing, CTA Case No. 8534, Docket, p. 157.
[43] CTA Case No. 8534, Docket, pp. 176-191.
[44] CTA Case No. 8534, Docket, pp. 284-287.

which are discussed hereunder and incorporates them herein by way of reference and, in addition thereto, most respectfully avers THAT:

7. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;

8. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.

9. Petitioner's claim for refund or issuance of tax credit certificate in the amount of 15,082,004.33 representing alleged excess and unutilized input VAT paid for the period of June 1, 2010 to August 31, 2010 or the 3rd Quarter of fiscal year 2010, were not fully substantiated by proper documents, such sales invoices, official receipts and others pursuant to Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code.

10. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to claimed refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit.

11. It is incumbent upon the latter to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

12. Claims for refund are construed strictly against herein petitioner since the same partakes the nature of exemption from taxation (***Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95***) and as such, they are looked upon with disfavor (***Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211***)."

On January 18, 2013, petitioner filed a Motion for Consolidation[45], praying that CTA Case No. 8534 be consolidated with CTA Case Nos. 8432 and 8498 which are pending before the CTA

[45] CTA Case No. 8534, Docket, pp. 283-293.

Second Division, considering that the said cases involve the same parties, and same questions of law.

On January 21, 2013, petitioner filed an Urgent Motion (To Set Commissioner's Hearing for the Pre-Marking of Evidence)[46]. Subsequently, on January 28, 2013, the Court granted[47] petitioner's Motion for Consolidation.

Meanwhile, for CTA Case No. 8581, respondent's Answer[48] filed on January 22, 2013 was admitted by the Court on February 12, 2013[49]. In the said Answer, respondent posits the following Special and Affirmative Defenses:

> "1. Respondent reiterates and repleads the preceding paragraphs of the answer as part of his Special and Affirmative Defenses;
>
> 2. Petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue;
>
> 3. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;
>
> 4. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable;
>
> 5. It is incumbent upon the Petitioner to show that it has complied with the provision of Section 204 (C) in relation to Section 229 of the 1997 Tax Code, as amended;
>
> 6. Petitioner's claim for refund or issuance of tax credit certificate in the amount of Php17,628,745.26 as alleged excess and unutilized input VAT paid on purchases of goods and services attributable to its zero-rated sales for the 4th Quarter of fiscal year 2010 was not fully substantiated by proper documents, such as sales invoices, official receipts and others.

[46] CTA Case No. 8534, Docket, pp. 294-298.
[47] Resolution, CTA Case No. 8534, Docket, pp. 301-302.
[48] CTA Case No. 8581, Docket, pp. 143-144.
[49] Resolution, CTA Case No. 8581, Docket, pp. 151-152.

7. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim (*Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206*);

8. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and as such, they are looked upon with disfavor. (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121*)."

On April 3, 2013, petitioner filed a Motion for Consolidation[50], praying that CTA Case No. 8581 be consolidated with CTA Case Nos. 8432, 8498, and 8534, considering that the said cases involve the same parties and same questions of law. Petitioner also filed an Urgent Motion (To Postpone Pre-Trial Conference)[51] on April 19, 2013.

On May 7, 2013, the Court granted petitioner's Motion for Consolidation thereby consolidating CTA Case No. 8581 with CTA Case Nos. 8432, 8498 & 8534.[52]

Thereafter, Consolidated Pre-Trial Brief (for the Respondent)[53] and petitioner's Amended Consolidated Pre-Trial Brief (With Manifestation)[54] were both filed on June 17, 2013.

The parties then filed their Consolidated Joint Stipulation of Facts and Issue[55] on October 11, 2013 after the Court granted[56] their Motion for Extension[57] of time to file Consolidated Joint Stipulation of Facts and Issue.

[50] CTA Case No. 8581, Docket, pp. 155-159.
[51] CTA Case No. 8581, Docket, pp. 174-177.
[52] Resolution, CTA Case No. 8432, Docket (Vol. II), pp. 449-450.
[53] CTA Case No. 8432, Docket (Vol. II), pp. 451-456.
[54] CTA Case No. 8432, Docket (Vol. II), pp. 457-487.
[55] CTA Case No. 8432, Docket (Vol. III), pp. 1754-1760.
[56] Resolution dated October 4, 2013, CTA Case No. 8432, Docket (Vol. III), p. 1753.
[57] CTA Case No. 8432, Docket (Vol. III), pp. 1747-1749.

Upon the promulgation of the Pre-Trial Order[58] on November 5, 2013 the pre-trial conference was deemed terminated and the parties were ordered to proceed with the trial on the merits.

On June 4, 2014, petitioner filed its Formal Offer of Exibits[59] with respondent's Comment (To Petitioner's Formal Offer of Evidence)[60] filed thru registered mail on June 4, 2014 and received by the Court on June 10, 2014.

In the Resolution[61] dated July 7, 2014, the Court admitted most of petitioner's Exhibits except for Exhibits **"H-3-b", "H-3-c", "H-4", "H-4-b", "I-4", "J-4-a", "J-4-b", "M-7", "M-8", "M-12", "M-14", "M-24", "M-29", "M-35", "M-47", "P-3-0264 to P-3-0266", "P-3-0603", "P-3-1958", "P-3-2058", "P-3-2520", "P-3-3377", "P-6-0175", "P-6-1034 to P-6-1043"**, and **"J-3-c"**. Due to the denial of the said exhibits, petitioner filed via registered mail on July 25, 2014 a Motion for Partial Reconsideration (Re: Resolution dated 7 July 2014; With prayer for reopening of trial for the reception of original documents into evidence)[62]. The same was denied by the Court in a Resolution[63] dated September 26, 2014.

Moreover, petitioner also presented as its witnesses, Ms. Mary Ann C. Capuchino, the Independent Certified Public Accountant which was commissioned by the Court on September 12, 2013[64], Mr. Jon Paul Jones, the Chief Executive Officer of petitioner from 2009 to January 2013, Ms. Mary Cris Barayuga, the Senior Manager for Finance and Accounting of petitioner, and Mr. Pradeep Bhanotha, the current Chief Executive Officer of petitioner.

On September 29, 2014, respondent manifested that she will no longer present evidence. Thus, respondent was granted a period of thirty (30) days from the said date or until October 29, 2014, to file her Memorandum, while petitioner was granted a period of twenty (20) days from the same date to file its Memorandum.[65]

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[58] CTA Case No. 8432, Docket (Vol. III), pp. 1791-1803.
[59] CTA Case No. 8432, Docket (Vol. IV), pp. 2216-2248.
[60] CTA Case No. 8432, Docket (Vol. IV), pp. 2255-2256.
[61] CTA Case No. 8432, Docket (Vol. IV), pp. 2260-2261.
[62] CTA Case No. 8432, Docket (Vol. IV), pp. 2265-2273.
[63] CTA Case No. 8432, Docket (Vol. IV), pp. 2279-2284.
[64] Minutes of the Hearing, CTA Case No. 8432, Docket (Vol. III), p. 1734.
[65] Minutes of the Hearing, CTA Case No. 8432, Docket (Vol. IV), p. 2285.

On October 17, 2014, petitioner filed an Urgent Motion for Extension (Re: Extension of time to file Petitioner's Memorandum)[66] and was granted[67] by the Court on October 20, 2014. Consequently, petitioner filed its Memorandum[68] on November 21, 2014. Respondent failed to file her Memorandum as per Records Verification[69] dated November 24, 2014.

This Case was submitted for decision on November 26, 2014.[70]

The sole issue to be resolved in this case is whether or not petitioner is entitled to its claim for refund or issuance of a tax credit certificate for its unutilized/excess input VAT payments for the 1st to 4th Quarters of FY 2010.[71]

Petitioner's claim for refund of excess or unutilized input VAT finds legal support in Section 112(A) of the NIRC of 1997, as amended, which states:

> "**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

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[66] CTA Case No. 8432, Docket (Vol. IV), pp. 2288-2291.
[67] Court Order, CTA Case No. 8432, Docket (Vol. IV), p. 2292.
[68] CTA Case No. 8432, Docket (Vol. IV), pp. 2293-2313.
[69] CTA Case No. 8432, Docket (Vol. IV), p. 2314.
[70] Resolution, CTA Case No. 8432, Docket (Vol. IV), p. 2315.
[71] II. Issue, CJSFI, CTA Case No. 8432, Docket (Vol. III), p. 1756.

> 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 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."

Pursuant to the above-mentioned provision and as enunciated by the Supreme Court in the case of *San Roque Power Corporation vs. Commissioner of internal Revenue*[72], in order to be entitled to a refund or issuance of a tax credit certificate of input VAT paid, petitioner must prove the following:

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;

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

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[72] G.R. No. 180345, November 25, 2009, 605 SCRA 536, 555.

9. the claim is filed within two years after the close of the taxable quarter when such sales were made.

This Court shall first resolve the timeliness of the filing of petitioner's claim for refund or issuance of tax credit certificates.

Pursuant to Section 112(A) of the Tax Code, a VAT registered taxpayer whose sale is 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 a refund or the issuance of tax credit certificate of its creditable input tax due or paid attributable to such sales which shall be reckoned from the close of the taxable period when the sales were made[73].

Applying the said provision, petitioner filed its administrative claims for refund together with their supporting documents on the following dates:

Case No.	Taxable Quarter	End of Quarter	End of 2 years	Administrative Claim filed on
8432	1st Quarter (Dec. 1 2009 to Feb. 28, 2010)	February 28, 2010	Feb. 28, 2012	October 06, 2011[74]
8498	2nd Quarter (March 1, 2010 to May 31, 2010)	May 31, 2010	May 31, 2012	January 25, 2012[75]
8534	3rd Quarter (June 1, 2010 to Aug. 31, 2010)	August 31, 2010	Aug. 31, 2012	April 16, 2012[76]
8581	4th Quarter (Sept. 1, 2010 to Nov. 30, 2010)	November 30, 2010	Nov. 30, 2012	July 24, 2012[77]

Evidently, petitioner's administrative claims for refund were seasonably filed. a

[73] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013.
[74] Exhibit "E-1".
[75] Exhibit "E-2".
[76] Exhibit "E-3".
[77] Exhibit "E-4".

As to the timeliness of petitioner's judicial claim for refund, Section 112(C) of the Tax Code provides:

> "**SEC. 112.** *Refunds or Tax Credits of Input Tax.* –
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with Subsections (A) and (B) 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).
>
> xxx xxx xxx

Thus, applying Section 112(C) of the NIRC of 1997, as amended, petitioner's judicial claims for the first, second, third and fourth quarters of FY ending November 30, 2010 were filed on the following dates detailed below:

	Administrative Claim filed on	End of 120-day Period for CIR to Act on Claim	End of 30-day Period to File Appeal	Petition for Review filed on
8432	October 06, 2011	February 03, 2012	March 04, 2012	February 27, 2012
8498	January 25, 2012	May 24, 2012	June 23, 2012	June 07, 2012
8534	April 16, 2012	August 14, 2012	September 13, 2012	August 23, 2012
8581	July 24, 2012	November 21, 2012	December 21, 2012	November 29, 2012

Likewise, petitioner's judicial claims for refund were seasonably filed.

We will now determine whether petitioner has satisfied the remaining requirements to be entitled to a refund.

1st Requisite: *The taxpayer is VAT registered entity*

It is undisputed that petitioner is duly registered with the BIR as a VAT taxpayer[78], thereby satisfying the first requisite.

2nd Requisite: *The taxpayer is engaged in zero-rated or effectively zero-rated sales*

Petitioner avers that its sales of services to its foreign affiliates for FY 2010 were VAT zero-rated, pursuant to Section 108(B)(2) of the NIRC of 1997, as amended, to wit:

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

According to petitioner, as a duly registered ROHQ, it performs "qualifying services to its non-resident foreign affiliates, subsidiaries

[78] Par. 4, I. Stipulation of Facts, CJSFI, CTA Case No. 8432, Docket (Vol. III), p. 1755; Exhibits "B" and "B-1".

and branches in the Asia Pacific Region and in other foreign markets".[79]

For FY 2010, petitioner rendered services, pursuant to Master Service Agreements, to fifty-one (51) non-resident foreign clients which were paid for in foreign currencies inwardly remitted in the Philippines through its account with EastWest Bank, and accounted under the rules of the BSP.[80]

A close scrutiny of Section 108(B)(2) and as laid down by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[81] shows that a taxpayer must establish the following requirements in order for the supply of services to be considered as VAT zero-rated:

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

2. the recipient of such services is doing business outside the Philippines; and

3. payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations.

It is undisputed that petitioner is a ROHQ of Chartis Technology and Operations Management Corporation, (a foreign corporation organized and existing under the laws of the State of New York, U.S.A). Being as such, the activities it performs in the Philippines are limited to acting as supervision, communications and coordination center for its affiliates, subsidiaries or branches in the region[82]. Therefore, by not being in the same category as "processing, manufacturing or repacking of goods", the first requirement is deemed complied with.

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[79] Par. 31, A. VAT zero-rated sales and output VAT, DISCUSSIONS, Petitioner's Memorandum, CTA Case No. 8432, Docket (Vol. IV), p. 2306.
[80] Par. 32, A. VAT zero-rated sales and output VAT, DISCUSSIONS, Petitioner's Memorandum, CTA Case No. 8432, Docket (Vol. IV), p. 2306.
[81] G.R. No. 153205, January 22, 2007.
[82] Note 1 – Corporate Information, Notes to the Audited Financial Statements, Exhibit "D".

As to the second requisite, services must be rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed. This Court has, in the case of *Deutsche Knowledge Services, Pte Ltd. vs. Commissioner of Internal Revenue*[83], explained the documentary requirements needed to establish that the recipients of services are indeed doing business outside the Philippines, to wit:

> "To prove that its clients are non-resident foreign corporations doing business outside the Philippines, petitioner presented the following documents:
>
> 1. SEC Certifications of Non-Registration of Company;
>
> 2. Certifications from different government agencies in the country of origin of petitioner's clients, all duly authenticated by the nearest consulate of the Philippines;
>
> 3. Intragroup Service Agreements; and
>
> 4. Duetsche Bank List of Shareholdings 2008
>
> However, the Court finds that **the aforesaid documents *per se* do not constitute sufficient proof that petitioner's clients are nonresident foreign corporations doing business outside the Philippines.**
>
> While the SEC Certificates of Non-Registration show that the named entities therein are not registered corporations/partnerships in the Philippines, the same do not prove that such entities are nonresident foreign corporations doing business outside the Philippines. Likewise, the Intra-Group Service Agreements only show the names of petitioner's customers to whom it rendered services but the same do not establish that such customers are non-resident foreign corporations doing business outside the Philippines. Moreover, the Articles of Association and Certificates of Registration/Incorporation of Foreign Company only prove that the named entities

[83] CTA Case No. 7808, December 16, 2014.

> therein were incorporated/organized abroad. However, they also do not establish that such entities are not doing business in the Philippines.
>
> **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 certificate/articles of foreign incorporation/association/registration.** x x x "[84] (Emphasis supplied)

To prove that petitioner's clients are non-resident foreign corporations doing business outside the Philippines, it presented the SEC Certifications of Non-Registration of Company[85], Master Agreements for Professional Services[86] and Intercompany Services Agreement[87].

Applying the said ruling made by this Court to the present case, the SEC Certificates of Non-Registration show that the named entities therein are not registered corporations/partnerships in the Philippines, however, the same do not prove that such entities are non-resident foreign corporations doing business outside the Philippines. Likewise, the Master Agreements for Professional Services and Intercompany Service Agreements only show the names and addresses of petitioner's customers to whom it rendered services but the same do not establish that such customers are non-resident foreign corporations doing business outside the Philippines.

Without proof of incorporation, association or registration in a foreign country, the Court cannot sufficiently determine if the alleged non-resident foreign clients are existing, operating and registered in a foreign country in satisfaction of the requisites of a valid zero-rated sale of services as ruled in the *Burmeister* case.

Since petitioner miserably failed in proving that it was able to render VAT zero-rated services for the fiscal year 2010, the claimed input taxes attributable thereto cannot be refunded. It is clear under

[84] Italics in the original.
[85] Exhibits "L-1" to "L-51"
[86] Exhibits "M-2" to "M-58".
[87] Exhibit "M-59".

Section 112(A) of the NIRC of 1997, as amended, that the granting of a claim for issuance of a tax credit certificate or refund of unutilized input VAT is premised on the existence of zero-rated or effectively zero-rated sales.

As taxpayer claimant, petitioner has the burden to prove that it is entitled to the amount claimed for refund because taxes are presumed to have been collected in accordance with law. The burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund[88].

Well-settled in this jurisdiction is the fact that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[89]

In view of the conclusion thus reached, the Court finds it unnecessary to discuss petitioner's compliance with the other requisites for refund of unutilized input VAT.

WHEREFORE, the instant Petition for Review be **DISMISSED** for insufficiency of evidence.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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[88] Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 336.
[89] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue,* G.R. No. 159490, February 18, 2008, 456 SCRA 150, 163.

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice