REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

****

MAERSK GLOBAL SERVICES CENTRES (PHILIPPINES) LTD., Petitioner,	**CTA Case No. 9537**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** JUN 30 2020 4:30 p.m.

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DECISION

UY, *J*.:

Before this Court is a Petition for Review filed by petitioner, Maersk Global Services Centres (Philippines), Ltd., on February 21, 2017, against respondent, Commissioner of Internal Revenue, seeking the refund or issuance of tax credit certificates (TCC) in the total amount of ₱48,087,076.37, allegedly representing its unutilized input value-added tax (VAT) on its zero-rated sales for calendar year (CY) 2015.

THE FACTS

Petitioner Maersk Global Services Centres (Philippines) Ltd, formerly known as Maersk Administrative Center Ltd., is a foreign corporation organized and existing under the laws of Hongkong. It is licensed to do business in the Philippines pursuant to its Amended License No. A199809559 issued by the Securities and Exchange Commission (SEC). [1] It is registered with the Bureau of Internal

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[1] Exhibit "P-1", Docket – Vol. 2, p. 598.

Revenue (BIR) as a VAT entity, among others, with Tax Identification No. 005-650-708-000 and Certificates of Registration Nos. 3RC0000466671[2] and No. 3RC0000685349[3] both dated August 24, 1998.

Respondent is the duly appointed Commissioner of Internal Revenue with office address at BIR Building, Diliman, Quezon City.[4]

For taxable year 2015, petitioner filed its quarterly VAT Returns on the following dates, to wit:

Quarterly VAT Return Period	Tax Return	Date Filed
1st Quarter	Amended Quarterly VAT Return	August 18, 2016[5]
2nd Quarter	Amended Quarterly VAT Return	August 17, 2016[6]
3rd Quarter	Amended Quarterly VAT Return	January 23, 2016[7]
4th Quarter	Amended Quarterly VAT Return	August 18, 2016[8]

On September 26, 2016, petitioner filed with the BIR RDO No. 043, an Application for Tax Credits/Refunds (BIR Form No. 1914) of its unutilized and excess creditable input taxes attributable to its zero-rated sales for the 1st to 4th quarters of taxable year 2015 amounting to ₱48,087,076.37.[9] On even date, petitioner likewise submitted supporting documents through a transmittal letter indicating a checklist of documents as part of the requirements of Revenue Memorandum Circular No. 54-2014.[10]

On November 11, 2016, petitioner received a *Letter of Authority* (LOA) No. 43A-2016-00000319, authorizing Revenue Officer Gerard Christopher Tamayo and Group Supervisor Dahlia Nitura of Revenue

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[2] Exhibit "P-13", Docket – Vol. 2, p. 649.
[3] Exhibit "P-14", Docket – Vol. 2, p. 650.
[4] Par. 1.1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket – Vol. 1, p. 207.
[5] Exhibit "P-15", Docket – Vol. 2, pp. 651 to 652.
[6] Exhibit "P-16", Docket – Vol. 2, pp. 653 to 654.
[7] Exhibit "P-17", Docket – Vol. 2, pp. 655 to 656.
[8] Exhibit "P-18", Docket – Vol. 2, pp. 657 to 658.
[9] Exhibit "P-20", Docket-Vol. 2, p. 663.
[10] Exhibit "P-21" and Exhibit "P-22", Docket – Vol. 1, p. 664 to 665.

District Office No. 43A – East Pasig, to examine petitioner's books of accounts and other accounting records for Value Added Tax (VAT) for the period January 1, 2015 to December 31, 2015 pursuant to mandatory audit-claim for VAT credit certificate.[11]

There being no action taken by respondent on petitioner's application for tax credits/refund, petitioner filed the present *Petition for Review* on February 21, 2017.[12]

Respondent filed his *Answer* on April 20, 2017,[13] interposing the following special and affirmative defenses, to wit : (1) petitioner's claim for refund was prematurely filed; (2) petitioner's alleged claim for refund is still under administrative routine investigation/examination by the respondent; (3) in order for petitioner to validly claim for tax credit/refund, it is imperative for the petitioner to prove its compliance under pertinent provisions of the National Internal Revenue Code (NIRC) of 1997; and, (4) petitioner failed to sufficiently prove and demonstrate that the subject tax was erroneously or illegally collected. Hence, not refundable.

The Pre-Trial Conference was conducted on July 11, 2017,[14] and the parties filed their *Joint Stipulation of Facts and Issues* on July 26, 2017.[15] Thereafter, the Court issued a *Pre-Trial Order* on August 15, 2017.[16]

In the meantime, upon the filing of a "*Motion to Commission Independent Certified Public Accountant*" by petitioner on October 5, 2017[17], Edward L. Roguel of Punongbayan & Araullo, was commissioned as the independent certified public accountant (ICPA) for the instant case on October 9, 2017.[18]

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[11] Exhibit "P-23", Docket-Vol. 2, p. 666.
[12] Docket – Vol. 1, pp. 10 to 20.
[13] Docket – Vol. 1, pp. 43 to 48.
[14] Minutes of the hearing dated July 11, 2017, Docket – Vol. 1, p. 191.
[15] Docket – Vol. 1, pp. 207 to 212.
[16] Docket – Vol. 1, pp. 215 to 222.
[17] Docket – Vol. 1, pp. 234 to 235.
[18] Minutes of the hearing and Order dated October 9, 2017, Docket – Vol. 1, pp. 252 and 254.

During trial, petitioner presented two (2) witnesses, Rochelle V. Duclay[19], its Finance Accountant; and ICPA Edward L. Roguel.[20]

Petitioner filed its *Formal Offer of Evidence for Petitioner Maersk Global Services Centres (Philippines)* (FOE), *Ltd* on March 5, 2018.[21] Subsequently however on April 3, 2018, petitioner filed a *"Manifestation, Motion, and Submission"*[22] stating that after the filing of the petitioner's FOE on March 5, 2018, the ICPA discovered that certain exhibits were not contained in the USB drive submitted to the Court. Thus, petitioner moved that the USB drive filed with the Court on November 8, 2017 be replaced with the enclosed USB drive containing the copies of the ICPA exhibits.

In the Resolution dated June 19, 2018, the Court noted and granted petitioner's *Manifestation, Motion and Submission* and admitted petitioner's documentary evidence, except Exhibit *"P-133"* for not being found in the records of the case.[23]

On the part of respondent, no evidence was presented in the instant case. Thus, the parties were given a period of thirty (30) days to submit their respective memoranda.[24] Thereafter, petitioner filed its *Memorandum* within the extension period granted by the Court on April 17, 2019,[25] without respondent's *Memorandum* despite notice.[26] Consequently, this case was submitted for decision on May 14, 2019.[27]

Hence, this Decision.

THE ISSUES

As stipulated by the parties, the sole issue for this Court's resolution is as follows:

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[19] Exhibit "P-28", Docket-Vol. 1, pp. 66 to 88; Exhibit "P-29", Docket –Vol. 2, pp. 710 to 721.
[20] Exhibit "P-30", Vol. – 2, pp. 722 to 730.
[21] Docket – Vol. 2, pp. 583 to 597.
[22] Docket – Vol. 2, pp. 892 to 895.
[23] Resolution dated June 19, 2018, Docket – Vol. 2, pp. 907 to 909.
[24] Minutes of the hearing dated and Order dated March 12, 2019, Docket – Vol. 2, pp. 917 to 918.
[25] Docket-Vol. 2, pp. 927 to 946.
[26] Records Verification Report dated April 30, 2019, Docket –Vol. 2, p. 949.
[27] Resolution dated May 14, 2019, Docket –Vol. 2, p. 951.

> "Whether or not petitioner is entitled to a refund in the total amount of ₱48,087,076.37, representing unutilized and excess input VAT attributable to zero-rated sales for the year 2015."[28]

Petitioner's arguments:

Petitioner argues its export sales of services are entitled to the benefit of zero-rate (0%) pursuant to Sections 108(B)(2) and 108(B)(4) of the Tax Code.

As a VAT-registered taxpayer whose sales are zero-rated, petitioner is allegedly entitled to refund the excess and unutilized input taxes attributable to its zero-rated sales under Section 112 (A) and (C) of the Tax Code as implemented by Section 4.112.1 of the Consolidated VAT Regulations of 2005 or Revenue Regulations No. 16-2005). Hence, petitioner claims that it is entitled to a refund or issuance of a tax credit certificate for unutilized and excess input VAT in the aggregate amount of ₱48,087,076.37.

Respondent's counter-arguments:

Respondent counter-argues that petitioner is not entitled to the benefit of zero-rate (0%) pursuant to Section 108(B)(2) of the Tax Code. According to respondent, A.P. Moller-Maersk A/S, the recipient of the services of petitioner, is an entity doing business in the Philippines. To qualify as a transaction subject to zero percent (0%) rate, Section 108(B)(2), as amended, explicitly requires, among other things, that the services be rendered to a person engaged in business must be conducted outside the Philippines.

Furthermore, petitioner's claim for refund was prematurely filed. Allegedly, petitioner failed to submit the complete documents in support of the application filed and that petitioner's alleged claim for refund is still under administrative routine investigation/examination.

In order to validly claim for tax credit/refund, it is imperative that petitioner prove its compliance to the pertinent provisions of the NIRC of 1997 and its implementing revenue regulations.

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[28] Stipulation of Issue, JSFI, Docket – Vol. 1, pp. 207 to 208.

Lastly, respondent submits that petitioner failed to sufficiently prove and demonstrate that the subject tax was erroneously or illegally collected. Hence, not refundable.

THE COURT'S RULING

Relevant to the instant refund claim are the provisions of Section 112(A) and (C) of the NIRC of 1997, as amended by Republic Act (RA) No. 9337[29], 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), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> xxx xxx xxx

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

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

Based on the foregoing provisions, the following requisites must be satisfied to be entitled to a refund or issuance of tax credit certificate of unutilized input VAT attributable to zero-rated or effectively zero-rated sales, except for transitional input VAT, to wit:

1. The taxpayer is VAT-registered;

2. The claim for refund was filed within the prescriptive periods in the administrative and judicial levels;

3. The taxpayer is engaged in zero-rated or effectively zero-rated sales. In case of zero-rated sales under Section 106(A)(2)(a)(1),(2) and (b), and Section 108(B)(1) and (2), of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the BSP;

4. The said input VAT was incurred or paid;

5. Such input VAT is attributable to zero-rated or effectively zero-rated sales. However, where the taxpayer is engaged in zero-rated or effectively zero-rated sales and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input VAT due or paid cannot be directly or entirely attributed to any of the transactions, it shall be allocated proportionately on the basis of the volume of the sales; and

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6. The input VAT being claimed was not applied against any output VAT liability;

With the foregoing requisites as references, We now look into petitioner's compliance therewith.

Petitioner is a VAT registered entity.

In the instant case, it is undisputed that petitioner is duly registered with the BIR as a VAT taxpayer with TIN 005-650-708-000 as evidenced by its BIR Certificate of Registration Nos. OCN 3RC0000466671[30] and OCN 3RC0000685349[31] with Registration date on August 24, 1998. Hence, the first requisite is satisfied.

Petitioner's administrative and judicial claims were filed within the prescriptive periods.

Pursuant to Section 112(A) of the NIRC of 1997, as amended, the administrative claim for the issuance of a TCC or refund of input VAT must be filed within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The instant claim covers the first to fourth quarters of CY 2015. Thus, petitioner's last day for filing of its administrative claim for the four quarters of CY 2015 fell on the following dates:

Taxable Quarter	Close of Taxable Quarter	Last Day of Filing of Administrative Claim	Administrative Claim Filed
1st Quarter (Jan. to Mar. 2015)	March 31, 2015	March 31, 2017	Sept. 26, 2016
2nd Quarter (Apr. to Jun. 2015)	June 30, 2015	June 30, 2017	Sept. 26, 2016
3rd Quarter (Jul. to Sep. 2015)	Sept. 30, 2015	Sept. 30, 2017	Sept. 26, 2016
4th Quarter (Oct. to Dec. 2015)	Dec. 31, 2015	Dec. 31, 2017	Sept. 26, 2016[32]

[30] Exhibit "P-13", Docket – Vol. 2, p. 649.
[31] Exhibit "P-14", Docket – Vol. 2, p. 650.
[32] Exhibit "P-20", Docket – Vol. 2, p.663. *[initials]*

Evidently, petitioner's *Application for Tax Credits/Refund* (BIR Form No. 1914) of its excess and unutilized input VAT for the 1st to 4th quarters of CY 2015 was timely filed on September 26, 2016.

With regard to the timeliness of petitioner's judicial claim, respondent alleges that petitioner's claim for refund was prematurely filed, and that petitioner failed to submit complete documents in support of its refund application.

We do not agree.

Pursuant to Section 112(C) of the NIRC of 1997, as amended, the CIR has one hundred twenty (120) days from date of submission of the complete documents in support of the application for refund or tax credit certificate within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the Court of Tax Appeals (CTA) within thirty (30) days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to the CTA within thirty (30) days.

It must be noted that the 120-day period begins to run from the filing of the administrative claim for VAT refund/tax credit, which must be accompanied by complete supporting documents, pursuant to Revenue Memorandum Circular (RMC) No. 54-2014[33] issued by the CIR on June 11, 2014, to wit:

> "II. **Filing and Processing of Administrative Claims –**
>
> The application for VAT refund/tax credit **must be accompanied by complete supporting documents** as enumerated in Annex "A" hereof. In addition, the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents (Annex "B"). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. xxx xxx xxx

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[33] Subject: Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, as amended.

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

Based on the foregoing, it is required that when an administrative claim for VAT refund/tax credit is filed, the same must be accompanied by complete supporting documents. Further, the taxpayer-claimant shall attach a statement under oath attesting to the completeness of the submitted documents, and that the said documents are the only documents which the taxpayer will present to support the claim. Thus, the taxpayer-claimant is barred from submitting additional documents after the filing of the administrative claim.[34] In case the taxpayer/claimant fails to submit complete documents, the CIR is authorized to deny the application for tax refund/tax credit.

In the instant case, records show that petitioner filed its administrative claim, together with transmittal of supporting documents[35], on September 26, 2016. Thus, respondent had one hundred twenty (120) days from September 26, 2016, or until January 24, 2017, to act on said claim. Considering that respondent did not act on petitioner's claim on or before January 24, 2017, petitioner had until February 23, 2017, the last day of the 30-day period, within which to file its appeal before this Court. Petitioner filed the instant judicial claim on February 21, 2017. Clearly, petitioner's judicial claim was filed within the period prescribed by law.

Petitioner is engaged in zero-rated sales or effectively zero-rated sales.

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[34] *Pilipinas Total Gas, Inc., vs. Commissioner of Internal Revenue,* G.R. No. 207112, December 8, 2015.
[35] Exhibit "P-21" and Exhibit "P-22", Docket – Vol. 1, p. 664 to 665

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Section 108 (B) of the NIRC of 1997, as amended, specifies the transactions subject to zero percent (0%) rate, which read 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:
>
> (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);
>
> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;
>
> (4) Services rendered to persons engaged in international shipping or International air-transport operations, including leases of property for use thereof;
>
> (5) Services performed by subcontractors and/or contractors in processing, converting, or

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manufacturing goods for an enterprise whose export sales exceed seventy percent (70%) of total annual production.

(6) Transport of passengers and cargo by air or sea vessels from the Philippines to a foreign country; and

(7) Sale of power or fuel generated through renewable sources of energy such, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels."

In the *Petition for Review*, petitioner alleges that it rendered corporate and administrative services for the ocean transportation business of its affiliates, A.O. Moller – Maersk A/S (APMM) and Maersk Line A/S (ML), both non-resident foreign corporations doing business outside the Philippines with address at Denmark, Copenhagen. Allegedly, petitioner's export services includes, among others, processing of import and export documentation, procurement, finance and accounting services and information technology-related services; and that petitioner's billings for services are in foreign currency and the payments are made in US dollars or other acceptable foreign currency, which are remitted inwardly through the banking system and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

Thus, petitioner claims that its export sales of services are subject to VAT at zero-rate (0%) pursuant to Section 108(B)(2) of the Tax Code.

The Court however finds petitioner's reliance on said provision [Section 108(B)(2)] misplaced in view of the allegation stated in paragraph 10 of the instant *Petition for Review, which* states that "*APMM and ML's respective international shipping businesses are primarily conducted outside the Philippines. However, less than one percent of their respective shipping businesses may be considered related to the Philippines because its international vessels ply Philippine ports.*"[36]

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[36] Par. 10, Petition for Review, Docket – Vol. 1, p. 12; Par. 2, Summary of Admitted Facts, JSFI, Docket – Vol. 1, p. 207.

Clearly, the foregoing allegation is an admission from petitioner that the recipients of its services are doing business in the Philippines. Thus, the Court finds that such sales of services to APMM and ML cannot qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

Instead, the Court finds that petitioner's refund claim is anchored under Section 108 (B) (4) of the Tax Code, or specifically, sales of services rendered to persons engaged in international shipping, in conjunction with said Section 108 (B) (4) of the Tax Code, are the provisions of Section 4.108-5(b)(4) of RR No. 16-2005, as amended by RR No. 4-2007,[37] which read as follows:

> ***"SEC. 4.108-5. <u>Zero-Rated Sale of Services</u>. -***
>
> xxx xxx xxx
>
> (b) **Transactions Subject to Zero Percent (0%) VAT Rate. - The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate**:
>
> xxx xxx xxx
>
> (4) **Services rendered to persons engaged in international shipping** or air transport operations, including leases of property for use thereof; *Provided*, however, that the services referred to herein shall not pertain to those made to common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines, the same being subject to twelve percent (12%) VAT under Sec. 108 of the Tax Code starting Feb. 1, 2006;"

In the instant case, petitioner presented in evidence the following documents to prove that its clients, APMM and ML, are engaged in international shipping business: 1) Articles of Association

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[37] Subject: Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005.

of APMM[38]; 2) Authenticated Compiled Summary for APMM[39]; 3) Authenticated Novation Agreement among APMM, ML and petitioner[40]; 4) Testimony of Rochelle V. Duclay by way of Judicial Affidavit[41]; and 5) Service Agreement[42] between APMM and petitioner.

From the foregoing documentary exhibits, it is gathered that APMM is a corporation organized and existing under the laws of Denmark and its main objects are to carry on shipping, chartering and related business, among others, [43] while ML is an entity created pursuant to a Novation Agreement[44] between APMM, ML and petitioner, whereby the international shipping business of APMM was transferred to ML.

In the Judicial Affidavit of Rochelle V. Duclay petitioner's Finance Accountant, the latter testified that in the Novation Agreement, the container shipping activities of APMM were transferred to ML starting February 2015. She added that the international shipping lines of APMM and ML transport and receive cargoes to and from the Philippines.[45]

In addition, the Service Agreement[46] between APMM and petitioner shows that APMM/ML owns container vessels/ containers that operates worldwide through its subsidiaries and is required to handle various back office tasks including the processing of shipping documents on behalf of its clients and APMM contracted petitioner to perform back office tasks including documentation and certain other processes.

Hence, the Court finds that petitioner's sales of services to APMM and ML qualify for VAT zero-rating pursuant to Section 108(B)(4) of the NIRC of 1997, as amended because said services are rendered to persons engaged in international shipping.

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[38] Exhibit "P-5", Docket – Vol. 2, pp. 624 to 635.
[39] Exhibit "P-6", Docket – Vol. 2, pp. 636 to 644.
[40] Exhibit "P-3", Docket – Vol. 2, pp. 605 to 610.
[41] Exhibit "P-28", Docket - Vol. 1, p. 74.
[42] Exhibit "P-4", Docket – Vol. 2, pp. 611 to 623.
[43] Exhibit "P-5" and Exhibit "P-6", Docket – Vol. 2, pp. 624 to 644.
[44] Exhibit "P-3", Docket – Vol. 2, pp. 605 to 610.
[45] Exhibit "P-28", A37 and A38, Docket - Vol. 1, p. 74.
[46] Exhibit "P-4", Docket – Vol. 2, pp. 611 to 623.

Anent petitioner's zero-rated sales, petitioner declared in its Quarterly VAT Returns for the four quarters of taxable year 2015, the total amount of ₱2,151,275,117.97, as shown below:

Period	***Zero-Rated Sales***
1st Quarter[47]	₱ 524,379,479.16
2nd Quarter[48]	569,364,756.91
3rd Quarter[49]	540,955,642.81
4th Quarter[50]	516,575,239.08
TOTAL	₱2,151,275,117.96

Petitioner submitted official receipts ("ORs")[51] in support of its zero-rated sales for taxable year 2015. The same were duly examined by the court-commissioned ICPA and finally verified by the Court.

In relation to said official receipts, petitioner is mandated to comply with Section 113 of the NIRC of 1997, as amended, pertaining to invoicing and accounting requirements, to wit:

> "**SEC. 113.** *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
>
> (A) *Invoicing Requirements.* – A VAT-registered person shall issue:
>
> (1) A VAT invoice for every sale, barter, exchange of goods or properties; and
>
> (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter of 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:

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[47] Line 17, Exhibit "P-15", Docket – Vol. 2, p. 651.
[48] Line 17, Exhibit "P-16", Docket – Vol. 2, p. 653.
[49] Line 17, Exhibit "P-17", Docket – Vol. 2, p. 655.
[50] Line 17, Exhibit "P-18", Docket – Vol. 2, p. 657.
[51] Exhibits "P-31" to "P-31.23", USB.

(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 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; xxx xxx xxx"

Upon verification of the submitted documents, this Court finds that petitioner's sales of services to its clients APMM and ML in the amount of **₱213,635,665.07** (or equivalent to US$4,784,458.20) shall be disallowed for violation of the invoicing requirements prescribed by Section 113 of the NIRC of 1997, as amended. The details are presented below:

OR No.	OR Date	Customer Name	Amount (in USD)	Amount (in Php)	Exhibit
VALID ZERO RATED SALES:					
146	23/01/2015	A.P. MOLLER MAERSK A/S	1,612,534.05	72,428,579.24	P-31.1
148	09/02/2015	MAERSK LINE A/S	1,656,993.29	73,930,069.62	P-31.2
150	20/02/2015	MAERSK LINE A/S	1,718,356.35	76,667,905.27	P-31.3
151	06/03/2015	MAERSK LINE A/S	1,966,005.33	87,717,259.81	P-31.4
159	08/04/2015	MAERSK LINE A/S	2,513,783.10	110,938,275.77	P-31.7
161	23/04/2015	MAERSK LINE A/S	2,294,457.05	101,155,727.96	P-31.8
163	06/05/2015	MAERSK LINE A/S			P-31.9

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			3,001,203.47	133,459,373.27	
164	20/05/2015	MAERSK LINE A/S	1,187,606.04	53,200,000.17	P-31.10
165	05/06/2015	MAERSK LINE A/S	2,103,713.22	93,611,379.87	P-31.11
166	19/06/2015	MAERSK LINE A/S	1,740,112.99	76,999,999.81	P-31.12
168	10/07/2015	MAERSK LINE A/S	1,954,975.85	86,969,765.48	P-31.13
169	22/07/2015	MAERSK LINE A/S	2,299,304.88	102,663,962.89	P-31.14
171	07/08/2015	MAERSK LINE A/S	2,076,144.85	93,472,410.96	P-31.15
172	24/08/2015	MAERSK LINE A/S	1,099,557.52	49,699,999.90	P-31.16
173	10/09/2015	MAERSK LINE A/S	1,619,527.05	73,202,622.66	P-31.17
173	10/09/2015	MAERSK LINE A/S	548,029.29	25,000,000.15	P-31.17
174	18/09/2015	MAERSK LINE A/S	2,410,164.42	109,946,880.51	P-31.18
177	07/10/2015	MAERSK LINE A/S	1,341,557.62	61,199,175.51	P-31.19
177	07/10/2015	MAERSK LINE A/S	117,778.06	5,500,824.29	P-31.19
178	21/10/2015	MAERSK LINE A/S	1,496,380.27	69,888,440.51	P-31.20
181	11/11/2015	MAERSK LINE A/S	2,407,442.41	112,439,575.36	P-31.21
181	11/11/2015	MAERSK LINE A/S	217,655.61	10,213,729.66	P-31.21
179	20/11/2015	MAERSK LINE A/S	1,687,121.93	79,169,883.69	P-31.22
180	04/12/2015	MAERSK LINE A/S	1,745,331.88	81,901,443.80	P-31.23
180	04/12/2015	MAERSK LINE A/S	2,052,935.93	96,262,165.76	P-31.23
		Sub-Total	**42,868,672.46**	**1,937,639,451.92**	
DISALLOWED ZERO RATED SALES:					
144	07/01/2015	A.P. MOLLER MAERSK A/S	3,053,628.94	137,156,797.47	P-31
		(Not indicated as			
		zero-rated sales)			
154	18/03/2015	MAERSK LINE A/S	193,630.31	8,639,203.54	P-31.5
		(Without Supporting OR)			
155	18/03/2015	MAERSK LINE A/S	1,537,198.95	67,839,664.06	P-31.6
		(Zero-rated sales			
		amount not the same)			

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		Sub-Total	**4,784,458.20**	**213,635,665.07**	
		Grand Total	**47,653,130.66**	**2,151,275,116.99**	

Based on the foregoing, out of the reported zero-rated sales of ₱2,151,275,116.99[52], only the amount of **₱1,937,639,451.92**, pertaining to sales to APMM and ML, validly represent petitioner's zero-rated sales for taxable year 2015.

Petitioner incurred unutilized input VAT attributable to its zero-rated sales.

In its Quarterly VAT Return for CY 2015, petitioner declared input VAT of ₱53,793,814.15 on its current purchases of goods and services, of which the amount of ₱48,087,076.37 is the subject of the present claim, as shown below:

	1st Quarter "P-15"	**2nd Quarter "P-16"**	**3rd Quarter "P-17"**	**4th Quarter "P-18"**	**Total**
Input VAT on Cap Goods not Exceeding 1M	-	51,648.00	-	-	51,648.00
Input VAT on Cap Goods					-
Exceeding 1M	8,268,922.07	1,315,537.93	-	-	9,584,460.00
Input VAT on Goods	1,269,063.00	2,209,450.49	1,628,754.27	1,055,986.61	6,163,254.37
Input VAT on Services	8,043,252.90	14,156,633.85	8,599,036.59	7,195,528.44	37,994,451.78
Sub-Total	17,581,237.97	17,733,270.27	10,227,790.86	8,251,515.05	53,793,814.15
Less: Output VAT	42,514.28	9,321.42	-	99,265.71	151,101.41
Total (A)	17,538,723.69	17,723,948.85	10,227,790.86	8,152,249.34	53,642,712.74
Less: Amortization Input VAT on Cap. Goods Deferred to the Succeeding Periods	13,610,323.33	13,953,332.99	12,936,848.02	11,928,802.09	52,429,306.43
Input VAT Deferred on Cap. Goods from Previous Quarter	6,373,165.64	13,610,323.33	13,953,333.07	12,936,848.02	46,873,670.06
Amortization	7,237,157.69	343,009.66	- 1,016,485.05	- 1,008,045.93	5,555,636.37
Input VAT Claimed	**10,301,566.00**	**17,380,939.19**	**11,244,275.91**	**9,160,295.27**	**48,087,076.37**

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[52] 0.97 rounding off difference.

In support of its input VAT claim, petitioner submitted in evidence various sales invoices (SI), ORs, and other related documents,[53] which were examined by the ICPA. Upon verification, the Court agrees with the findings of the ICPA that the input VAT amounting to **₱41,340,185.36** were noted as "No Exceptions", while input VAT in the total amount of **₱6,897,992.85,** shall be disallowed for failure to meet the substantiation requirements under Sections 110(A), 113(A) and (B), 237 and 238 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110,3, 4.110-8, and 4.113-1 of RR No. 16-2005, as amended, the details of which are provided below:

Description	Annex Reference ("P-30-B") ("P-30-D")	Amount
No Exceptions Noted:		
Input VAT on purchases properly supported with sales invoices or official receipts	F	35,716,744.71
Input VAT on purchases of capital goods with no exceptions noted	G	299,654.66
Input VAT on purchases not within the quarter but within the year of claim	H	473,665.58
Excess of input VAT per document over input vat claimed per SLP	I	230,755.82
Input VAT per summary list of purchases is higher than the amount per document	S	2,037,035.91
Input VAT on purchases of capital goods exceeding 1 million from periods prior to 2015	Z	2,102,986.51
From Supplemental Report	"P-1533" to "P-1542"	479,342.17
Total "No Exceptions" Noted		**41,340,185.36**
Less: Output VAT	E	151,101.42

[53] Exhibits "P-42" to "P-1532"

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Total Excess Input with "No Exceptions" Noted		**41,189,083.94**
Exceptions:		
Official receipts and sales invoices that are dated out of period Not within 2015)	J	627,152.63
Official receipts and sales invoices which do not indicate the TIN of the company	K	1,549,228.71
Official receipts and sales invoices which indicate the incorrect TIN of the company	L	218,577.48
With alterations on the TIN, name and address of the company but were not countersigned by the authorized signatory	M	270,067.33
Official receipts and sales invoices which indicate the name of a different company	N	341,991.24
Official receipts and sales invoices which indicate an incorrect address of the company	O	167,938.74
Official receipts and sales invoices which do not indicate the address of the company	P	3,204.26
Purchases of goods and services supported by documents other than sales invoices and official receipts, respectively	Q	374,917.20
Improper presentation of amounts (i.e. vat amount is presented as either vatable, zero-rated, or exempt sales)	R	214,398.52
Input VAT per summary list of purchases is higher than the amount per document (this pertains to the difference of the amount per		

summary list and per document)	S	211,321.93
Official receipts which do not show the VAT amount separately	U	106,954.72
Purchases where only photocopies of supporting documents were examined	T	185,273.99
Input VAT amounts that were claimed twice in the vat returns	V	797,099.15
Input VAT on purchases properly supported with sales invoices or official receipts with no exceptions noted but photocopies of documents not provided	W	561,419.32
Input vat on purchases properly supported with sales invoices or official receipts with exceptions noted and no photocopies of documents provided	X	449,915.45
No documents examined	Y	1,297,587.21
Unaccounted Difference		287.14
From Supplemental Report	"P-1533" to "P-1542"	(479,342.17)
Total "With Exceptions Noted"		**6,897,992.85**

Upon the Court's further examination, in addition to the above disallowances, input VAT in the amount of **₱1,835,095.07** shall further be disallowed for non-compliance with the substantiation requirements under the aforementioned VAT law and regulations, to wit:

Customer	**Amount**	**Exhibit**	**Reason**
Advance Paper Corp	511.07	-	Without Supporting Invoice
Adventure International Tours	7,203.24	"P-115"	Date of the OR not clear
Adventure International Tours	809.52	"P-128"	Incorrect VAT amount
Adventure International Tours	664.08	"P-147"	Date of the OR not clear
Biotech Environmental Services	16,792.75	"P-177"	Incorrect VAT amount
Daja Food Services	2,250.00	"P-214"	VAT not separately indicated
DHL Express	15,634.82	"P-260"	OR with alteration/erasure without authorized counter signature
Flash Media	3,489.83	"P-300"	VAT not separately indicated

Globe Telecom	2,562.76	"P-321"	Incorrect VAT amount
Globe Telecom	9,751.76	"P-331"	Incorrect VAT amount
Globe Telecom	4,103.39	"P-338"	Incorrect VAT amount
Herbon Beverages	2,035.71	"P-366"	Supported by Non-VAT Invoice
Icon Interiors	6,042.86	"P-384"	Document Without Customer's Name
Integrated Computer Systems	1,296.43	"P-390"	Invoice without Authorized Signature
Integrated Computer Systems	9,531.43	"P-392"	Invoice without Authorized Signature
Integrated Computer Systems	31,055.90	"P-397"	VAT not separately indicated
Integrated Computer Systems	32,128.93	"P-412"	VAT not separately indicated
Integrated Computer Systems	20,310.00	"P-416"	VAT not separately indicated
Jeon Software Info. Solutions	4,200.00	"P-439"	OR with alteration/erasure without authorized counter signature
JR Lims Trading	3,522.32	"P-457"	OR without authorized signature
JR Lims Trading	3,522.32	"P-458"	OR without authorized signature
Kishus Plastics	3,653.57	"P-459"	Supported by OR with pre-printed "This Documents is not Valid for Claiming Input Tax"
Newton Integrated Solutions	1,200.00	"P-503"	OR Not Readable
Ortigas and Company	2,965.68	"P-522"	OR Not Readable
Soliman Security Services	7,259.21	"P-705"	Incorrect VAT amount
Soliman Security Services	6,241.91	"P-706"	Incorrect VAT amount
Soliman Security Services	8,736.65	"P-707"	Incorrect VAT amount
Soliman Security Services	8,347.61	"P-708"	Incorrect VAT amount
Soliman Security Services	4,025.32	"P-713"	Incorrect VAT amount
DHL Express	13,497.98	"P-830"	Incorrect VAT amount
Punta De Fabian	41,062.50	"P-864"	Incorrect VAT amount
Ragojos Heritage Construction	1,491,428.57	"P-1026"	Incorrect VAT amount
Ragojos Heritage Construction	41,625.00	"P-1027"	Incorrect VAT amount
Schneider Electric IT Phils.	18,000.00	"P-1028"	Incorrect VAT amount
Discovery Suites	9,631.95	"P-1117"	Incorrect VAT amount
Total	**1,835,095.07**		

In sum, out of the claimed input VAT of ₱48,087,076.37 only the amount of ₱39,353,988.45 represents petitioner's valid input VAT, computed as follows:

Input VAT per Claim		48,087,076.37
Less: Disallowances		
Per ICPA	6,897,992.85	
Per Court	1,835,095.07	8,733,087.92
Excess Valid Input VAT		39,353,988.45

Consequently, only the excess valid input VAT of ₱39,353,988.45 can be attributed to the total zero-rated sales declared by petitioner in the amount of ₱2,151,275,117.96, and only the input VAT of **₱35,445,880.43** is attributable to the valid zero-rated sales of ₱1,937,639,451.92, computed below as follows:

Excess Valid Input VAT	39,353,988.45
Divided by Declared Zero-Rated Sales	2,151,275,117.96
Multiply by Valid Zero-Rated Sales	1,937,639,451.92
Excess Input VAT Attributable	
To valid Zero-rated Sales	**35,445,880.43**

Petitioner's excess input taxes were not applied against any output VAT liability

Anent the requirement that excess input taxes were carried over to the succeeding quarter, the Court finds that petitioner has complied with this requisite. Records show that the excess input taxes amounting to ₱35,445,880.43 is more than enough to cover its output VAT liability of ₱151,101.41.

Notably, although a portion of the claimed input VAT was carried over by petitioner to its quarterly VAT return for the succeeding first quarter of taxable year 2016, only the input VAT amounting to ₱47,087,551.37[54] remained unutilized since it was only the said amount that was deducted as **"VAT Refund/TCC claimed"**[55] in the same quarter. Therefore, the difference of ₱999,525.00 (₱48,087,076.37 less ₱47,087,551.37) require a downward adjustment to petitioner's claim, to wit:

Excess Input VAT Attributable	
To valid Zero-rated Sales	₱ 35,445,880.43
Less:	
Input VAT carried-over the	
succeeding period	999,525.00
Unutilized Input VAT	₱ 34,446,355.43

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[54] Exhibit "P-40.1", Line 23D, USB.
[55] Exhibit "P-40", Line 23D, USB.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the total amount of **₱34,446,355.43**, representing its excess and unutilized input VAT attributable to its zero-rated sales for the four quarters of taxable year 2015.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice