REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

BW SHIPPING PHILIPPINES, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9448

Members:

DEL ROSARIO, *P.J., Chairperson,*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:

SEP 23 2019 . 9:30a

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DECISION

MANAHAN, *J.:*

This involves a Petition for Review[1] filed by BW Shipping Philippines, Inc. claiming for the refund and/or issuance of tax credit certificates (TCC) of the unutilized input taxes attributable to petitioner's zero-rated sales/receipts for taxable year 2014 in the amount of Php7,346,268.45, pursuant to Sections 112(A) in relation to Sections 110(B) and 108(B) of the National Internal Revenue Code (NIRC) of 1997, as amended.

FACTS

BW Shipping Philippines Inc. is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal address at 5/F Goodland Building, 377 Sen. Gil Puyat Ave., Makati City as evidenced by Securities and Exchange Commission (SEC) Company Registration No. 145414.[2]

Petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer as evidenced by the BIR

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[1] Docket, CTA Case No. 9448, Vol. I, pp. 10-30.
[2] Docket, Vol. I, Joint Stipulation of Facts and Issues (JSFI), p. 459.

Certificate of Registration No. 9RC0000426666 with Taxpayer's Identification Number (TIN) 000-160-779-000.[3]

Respondent Commissioner of Internal Revenue (CIR) is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund or tax credit as provided by law.[4]

As stated in petitioner's Amended Articles of Incorporation, the primary purpose for which petitioner was formed is as follows:

> To engage in overseas shipping business for the carriage of passengers, freight, mail, livestock, goods and lawful merchandise of every kind and description, by oceans, seas, canals, rivers and other waterway, between any and all parts of the world by means of vessels and other modes of transportation used in the business of overseas shipping which may either be owned by the Corporation or by other shipping corporation, and for such purpose, to hire, purchase, charter, owe or otherwise acquire and work ships and vessels of any class, to establish and maintain lines or regular services of ships or other vessels between any part of the world, to engage in manning and crewing of vessels, and generally to carry on the business of shipping.[5]

Pursuant to its primary purpose, petitioner provides manpower services specifically human resources catered to foreign shipping companies.[6]

Petitioner filed its quarterly VAT returns for taxable year 2014.[7]

In taxable year 2014, petitioner rendered manning services to shipping companies located and doing business outside the Philippines. In consideration for such manning services, petitioner was paid manning fees in foreign currency and duly accounted for in accordance with rules and regulations of the Bangko Sentral ng Pilipinas (BSP). These manning fees for the services rendered to shipping companies

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[3] Docket, Vol. I, JSFI, p. 460.
[4] Docket, Vol. I, Petition for Review (PFR), p. 11.
[5] Docket, Vol. I, PFR, p. 11.
[6] Docket, Vol. I, PFR, p. 12.
[7] Docket, Vol. I, PFR, p. 12.

located and doing business outside the Philippines were subjected to zero percent (0%) VAT.[8]

In taxable year 2014, petitioner generated purely zero-rated receipts in the aggregate amount of Php129,866,272.96.[9]

During the same taxable year, petitioner incurred/paid input VAT attributable to the aforesaid zero-rated sales in the total amount of Php7,346,268.45.[10] Since petitioner's sales are purely zero-rated, these input taxes all relate to zero-rated accounts.[11] Further, these input taxes attributable to petitioner's zero-rated sales/receipts were not utilized in the same quarter and were likewise not used against petitioner's output taxes in the subsequent periods.[12]

On March 30, 2016, petitioner filed its application for refund[13] (dated August 30, 2016) of the unutilized input VAT in the total amount of P7,346,268.45, for taxable year 2014, along with all supporting documents, with the BIR.[14]

On August 22, 2016, petitioner received from the BIR a letter of denial of its administrative claim for refund dated August 16, 2016.[15]

On August 26, 2016, petitioner filed the instant Petition for Review.

On October 28, 2016, within the extended period granted,[16] respondent CIR posted his Answer,[17] which was received by the Court on November 16, 2016. Respondent interposes the following special and affirmative defenses:

> 5. Petitioner's alleged claim for refund or issuance of tax credit certificate is still subject to administrative investigation/examination by the BIR.

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[8] Docket, Vol. I, PFR, p. 12.
[9] *Id.*
[10] *Id.*
[11] Docket, Vol. I, PFR, p. 13.
[12] *Id.*
[13] Docket, Vol. 2, Exhibit "P-9", p. 677.
[14] Docket, Vol. I, PFR, p. 13.
[15] *Id.*
[16] Docket, Vol. I, Resolution dated October 14, 2016, p. 75.
[17] Docket, Vol. I, pp. 76-78.

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

7. Petitioner's claim for refund or issuance of tax credit certificate in the amount of P7,346,268.45 representing alleged excess and unutilized input VAT for taxable year 2014 were not fully substantiated by proper documents, such as sales invoices and official receipts, pursuant to Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code.

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

9. 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.

10. 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*).[18]

On March 3, 2017, the Court received Respondent's Pre-Trial Brief,[19] and petitioner's Pre-Trial Brief.[20] The pre-trial conference was held on May 30, 2017.[21]

The parties filed their Joint Stipulation of Facts and Issues (JSFI)[22] on June 9, 2017. The Pre-Trial Order (PTO)[23] was subsequently issued on July 10, 2017.

The case proceeded to trial with petitioner presenting the following witnesses: (1) Ms. Carmencita Escalante;[24] (2) Ms.

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[18] Docket, Vol. I, Answer, pp. 76-77.
[19] Docket, Vol. I, pp. 437-440.
[20] Docket, Vol. I, pp. 443-453.
[21] Docket, Vol I, Minutes of Hearing on May 30, 2017, p. 456; Order, pp. 457-458.
[22] Docket, Vol. I, pp. 459-464.
[23] Docket, Vol. I, pp. 466-471.
[24] Docket, Vol. I, Exhibit "P-50" Judicial Affidavit of Carmencita Escalante, pp. 373-385; Minutes of Hearing on August 29, 2017, p. 486.

Herminia Dela Peña;[25] and (3) Independent Certified Public Accountant (ICPA) Enrico T. Pizarro.[26]

Petitioner filed its Formal Offer of Evidence (FOE)[27] on December 19, 2017. On January 31, 2018, the Court resolved petitioner's FOE, admitting several and denying several of petitioner's exhibits,[28] prompting petitioner to file its Motion for Reconsideration (With Motion to Set Additional Commissioner's Hearing) on February 20, 2018.[29] The Court only partially granted petitioner's Motion for Reconsideration on May 10, 2018,[30] causing petitioner to file its Tender of Excluded Evidence[31] on May 25, 2018.

On July 12, 2018, respondent CIR filed his Manifestation[32] that he will no longer be presenting any evidence or witness, and requesting for a period of thirty (30) days for the parties to file their respective memoranda.

Within the extended period granted,[33] petitioner filed its Memorandum on October 1, 2018. On October 12, 2018, the Court admitted respondent's Memorandum[34] in the interest of justice[35], and the case was deemed submitted for decision.

ISSUE

The parties stipulated the following issue:

> Whether petitioner is entitled to refund in the amount of Seven Million Three Hundred Forty Six Thousand Two Hundred Sixty Eight and 45/100 Pesos (Php7,346,268.45) representing unutilized input taxes related to zero-rated sales/receipts for the taxable year 2014.[36]

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[25] Docket, Vol. I, Exhibit "P-56" Judicial Affidavit of Herminia Dela Pena, pp. 103-112; Vol. 2, Minutes of Hearing on September 26, 2017, p. 513.
[26] Docket, Vol. 2, Exhibit "P-60" Judicial Affidavit of Enrico T. Pizarro, pp. 606-629; Minutes of Hearing on December 4, 2017, p. 633.
[27] Docket, Vol. 2, pp. 636-650.
[28] Docket, Vol. 3, Resolution dated January 31, 2018, pp. 965-968.
[29] Docket, Vol. 3, pp. 969-976.
[30] Docket, Vol. 3, Resolution dated May 10, 2018, pp. 993-995.
[31] Docket, Vol. 3, pp. 997-1001.
[32] Docket, Vol. 3, pp. 1019-1020.
[33] Docket, Vol. 3, Resolution dated September 5, 2018, p. 1028.
[34] Docket, Vol. 3, pp. 1064-1067.
[35] Docket, Vol. 3, Resolution dated October 12, 2018, pp. 1070-1071.
[36] Docket, Vol. 1, JSFI, p. 460.

RULING OF THE COURT

Petitioner's claim for refund/issuance of TCC of excess or unutilized input VAT finds legal support in Section 108(B)(2), in relation to Sections 110(B) and 112(A) and (C) of the NIRC. These provisions state:

> 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.
>
> xxx xxx xxx
>
> (2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conduced 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)*;
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> xxx xxx xxx
>
> SEC. 110. *Tax Credits.* –
>
> xxx xxx xxx
>
> (B) **Excess Output or Input Tax**. – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. *Provided, however,* That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.
>
> xxx xxx xxx
>
> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (A) **Zero-rated or Effectively Zero-rated Sales.** – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made,

> apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero rated sales.
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> 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 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. (*Underscoring ours*)

From the foregoing provisions, in order to be entitled to a refund/TCC of excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1. The taxpayer-claimant must be VAT-registered;
2. There must be zero-rated or effectively zero-rated sales;
3. That input taxes were incurred or paid;

4. That such input taxes are attributable to zero-rated or effectively zero-rated sales;
5. That the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and
6. The claim for refund was filed within the prescriptive period both in the administrative and judicial levels.

The Court will now look into petitioner's compliance with the foregoing requisites.

6th requisite: Timeliness of the administrative and judicial claims

Based on Section 112(C) of the NIRC, as quoted above, the administrative claim must be filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made.

The instant claim involves the application for tax credit of input taxes attributable to zero-rated sales for taxable year 2014. Thus, the end of the two-year period to file the administrative claim are as follows:

Close of taxable quarter	End of two-year period to file administrative claim
March 31, 2014	March 31, 2016
June 30, 2014	June 30, 2016
September 30, 2014	September 30, 2016
December 31, 2014	December 31, 2016

Considering that petitioner filed its administrative claim and submitted its documents on March 30, 2016,[37] said administrative claim is timely filed for all quarters of taxable year 2014.

As to the filing of the judicial claim, the taxpayer must await the decision on its administrative claim rendered within the 120-day period, whether full or partial, or the expiration of the 120-day period from the submission of complete documents in support of such claim. Once the taxpayer receives the decision issued within the 120-day period, or upon the

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[37] Docket, Vol. 2, Exhibits "P-9" and sub-marking "P-9-2", p. 677.

expiration of the 120-day period, the taxpayer should file its petition for review with this Court within thirty (30) days.

In the instant case, petitioner filed its administrative claim on March 30, 2016, together with supporting documents. Counting 120 days from March 30, 2016, respondent had until July 28, 2016 within which to act on petitioner's claim. Due to respondent's failure to act on the claim before or on the 120th day, petitioner had 30 days from the expiration of the 120-day period within which to file its appeal to the Court. Here, the 120-day period expired on July 28, 2016, thus, petitioner had until August 27, 2016 to file its petition for review.

On August 26, 2016, petitioner timely filed the subject Petition for Review.

1st requisite: Petitioner must be VAT-registered

As stipulated by the parties, petitioner is registered with the BIR as a VAT taxpayer as evidenced by the BIR Certificate of Registration No. 9RC0000426666[38] with TIN 000-160-779-000.[39]

2nd requisite: Petitioner must have zero-rated or effectively zero-rated sales

Petitioner submits that it rendered manning and crewing services[40] to foreign shipping companies located and doing business outside the Philippines and was paid for in acceptable foreign currency and duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). Such services are allegedly subject to zero percent (0%) VAT pursuant to Section 108(B)(2) of the NIRC.

In the case of *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.* (*Burmeister*),[41] the Supreme Court held that in order for the

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[38] Docket, Vol. 2, Exhibit "P-2", p. 665.
[39] Docket, Vol. 1, JSFI, p. 460.
[40] Docket, Vol. 2, Exhibits "P-23" and "P-25" to "P-28", pp. 707-721 and 737-790.
[41] G.R. No. 153205, January 22, 2007.

supply of services to be VAT zero-rated under Section 108(B)(2) of the NIRC, the following requisites must be met:

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.

Services must be other than processing, manufacturing or repacking of goods

Per Philippine Securities and Exchange Commission (SEC) Certificate of Filing of Amended Articles of Incorporation, petitioner is primarily engaged in: "overseas shipping business for the carriage of passengers, freight, mail, livestock, goods and lawful merchandise of every kind and description, by oceans, seas, canals, rivers and other waterway, between any and all parts of the world by means of vessels and other modes of transportation used in the business of overseas shipping which may either be owned by the Corporation or by other shipping corporations, and for such purpose, to hire, purchase, charter, owe, or otherwise acquire and work ships and vessels of any class, to establish and maintain lines or regular services of ships or other vessels between any part of the world, to engage in manning and crewing of vessels, and generally to carry on the business of shipping."[42] Clearly then, the nature of services being offered by petitioner to its clients is other than processing, manufacturing or repacking of goods.

Recipients of such services are doing business outside the Philippines

In *Accenture, Inc. v. Commissioner of Internal Revenue,*[43] the Supreme Court ruled that it is not enough that the recipient of the service be shown to be a foreign corporation, it must likewise be established that the said recipient is a "non-resident foreign corporation." Moreover, there must not be any indication

[42] Docket, Vol. 2, Exhibit "P-1", pp. 651-664.
[43] G.R. No. 190102, July 11, 2012.

that the recipient of the services is doing business in the Philippines, consistent with the ruling in *Burmeister*.

Hence, to be considered as a 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** proof of incorporation, association or registration in a foreign country.

Petitioner presented the Certificates of Non-Registration of Company issued by the SEC, Certificates of Registration/Articles of Incorporation issued by the foreign government agencies, screenshots of foreign registration per foreign regulatory websites and Consularized Manning Agreements/Purchasing & Infrastructure Support Agreements,[44] proving that its customers are non-resident foreign corporations doing business outside the Philippines, summarized as follows:

Registered Name	SEC Certificate of Non-Registration	Certificate of Incorporation	Other Supporting Documents
BW Gas Foreign Manning AS	P-29	P-30	P-31 / P-23
BW Maritime PTE Ltd.	P-32	P-33	P-34
Berge Bulk Maritime PTE Ltd.	P-35	P-36	P-37 / P-25
BW Offshore Global Manning PTE Ltd.	P-38	P-39	P-40 / P-26
BW Fleet Management PTE Ltd.	P-41	P-42	P-43 / P-27
BW Fleet Management AS	P-44	P-45	P-46 / P-28

Payment for such services must be in acceptable foreign currency

Sections 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC, as implemented by Sections 4.113-1(A)(2), (B)(1) and (2)(c) of Revenue Regulations (RR) No. 16-05, as amended, provide that a VAT taxpayer, like herein petitioner, shall for every lease of goods or properties and for every sale, barter or exchange of services, issue a VAT official receipt which must contain the following information:

> SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* –

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[44] Docket, Vol. 2, Exhibits "P-23" and "P-25" to "P-46", pp. 707-721 and 737-957.

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

xxx xxx xxx

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

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

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

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

xxx xxx xxx

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

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

xxx xxx xxx

SEC. 4.113-1. *Invoicing Requirements.* –

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

xxx xxx xxx

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

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or official receipts. Said documents shall be considered as a "VAT Invoice" or "VAT Official Receipt". All purchases covered by invoices/ receipts other than VAT Invoice/ VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) Information contained in VAT invoice or VAT official receipt. – The following information shall be indicated in VAT invoice or VAT official receipt:

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

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; xxx

xxx xxx xxx

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

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

In its Quarterly VAT Returns for the taxable year 2014[45], petitioner declared total zero-rated sales of Php129,866,272.86, as follows:

Exhibit No.	Period	Amount
P-4	1st Quarter	₱ 30,324,220.41
P-6	2nd Quarter	31,543,977.45
P-7	3rd Quarter	32,508,376.99
P-8	4th Quarter	35,489,698.11
	Total	**₱129,866,272.96**

To prove that it rendered services to non-resident foreign corporations doing business outside the Philippines and was paid in foreign currency duly accounted for in accordance with the rules and regulations of the BSP for the four quarters of taxable year 2014 in the amount of Php129,866,272.96 (equivalent to $2,935,899.00), petitioner submitted its List of zero-rated sales,[46] Summary of the results of examination of inward remittances,[47] List of official receipts,[48] and the related official receipts,[49] sales invoices,[50] Certificate of Inward

[45] Docket, Vol. 2, Line 17 of Exhibits "P-4", "P-6", "P-7", and "P-8", pp. 667, 671, 673, and 675.
[46] Docket, Vol. 2, Exhibits "P-124" and "P-125", pp. 542-549.
[47] Docket, Vol. 2, Exhibit "P-126", pp. 550-553.
[48] Docket, Vol. 2, Exhibits "P-127", "P-128", and "P-129", pp. 554-558.
[49] Exhibits "P-127.1" to "P-127.92", "P-128.1" to "P-128.9", and "P-129.1.1" to "P-129.1.73".
[50] Exhibits "P-124.1" to "P-124.220".

Remittances dated October 20, 2017 issued by the Bank of the Philippine Islands,[51] and bank credit memos,[52] which were examined by the Court-commissioned Independent Certified Public Accountant (ICPA),[53] summarized as follows:[54]

Particular	Exhibit No	Amount (USD)	Amount (Php)
a. Sales properly supported by sales invoices	P-124	$ 2,935,899.00	₱ 127,763,523.67
b. Sales with no supporting documents	P-125	-	2,102,749.29
Total		**$2,935,899.00**	**₱129,866,272.96**

Upon scrutiny of the documents submitted, together with the ICPA report,[55] it was found that there were sales whose purported official receipts were not available. Thus, the amount of Php12,133,147.02 (equivalent to $276,149.00) recognized during the 4th quarter of taxable year 2014 is disallowed for being unsupported by VAT zero-rated official receipts. The disallowed sales are listed below:

<table>
<tr><th>Sales Invoice No.</th><th>Registered Name</th><th>Amount (USD)</th><th>Amount (Php)</th></tr>
<tr><td>0719</td><td>BW Fleet Management As</td><td rowspan="2">$ 19,888.00</td><td rowspan="2">₱ 875,892.76</td></tr>
<tr><td>0739</td><td>BW Fleet Management As</td></tr>
<tr><td>0779</td><td>BW Offshore Global Manning Pte Ltd</td><td rowspan="3">19,564.00</td><td rowspan="3">859,723.35</td></tr>
<tr><td>0780</td><td>BW Offshore Global Manning Pte Ltd</td></tr>
<tr><td>0781</td><td>BW Offshore Global Manning Pte Ltd</td></tr>
<tr><td>0782</td><td>Berge Bulk Maritime Pte Ltd</td><td rowspan="2">38,020.00</td><td rowspan="2">1,670,756.58</td></tr>
<tr><td>0783</td><td>BW Fleet Management Pte Ltd</td></tr>
<tr><td>0759</td><td>BW Fleet Management As</td><td rowspan="6">17,423.00</td><td rowspan="6">765,293.31</td></tr>
<tr><td>0760</td><td>BW Fleet Management As</td></tr>
<tr><td>0761</td><td>BW Fleet Management As</td></tr>
<tr><td>0784</td><td>BW Fleet Management As</td></tr>
<tr><td>0785</td><td>BW Fleet Management As</td></tr>
<tr><td>0786</td><td>BW Fleet Management As</td></tr>
<tr><td>0762</td><td>BW Fleet Management Pte Ltd</td><td rowspan="7">29,195.00</td><td rowspan="7">1,282,363.46</td></tr>
<tr><td>0763</td><td>BW Fleet Management Pte Ltd</td></tr>
<tr><td>0769</td><td>BW Fleet Management Pte Ltd</td></tr>
<tr><td>0776</td><td>BW Fleet Management Pte Ltd</td></tr>
<tr><td>0787</td><td>BW Fleet Management Pte Ltd</td></tr>
<tr><td>0788</td><td>BW Fleet Management Pte Ltd</td></tr>
<tr><td>0794</td><td>BW Fleet Management As</td></tr>
<tr><td>0775</td><td>BW Fleet Management As</td><td rowspan="2">30,354.00</td><td rowspan="2">1,333,439.38</td></tr>
<tr><td>0790</td><td>BW Fleet Management As</td></tr>
</table>

[51] Exhibit "P-126.1".
[52] Exhibits "P-126.2.1" to "P-126.2.132".
[53] ETP and Associates Co., through its Partner, Mr. Enrico T. Pizarro.
[54] Docket, Vol. 2, Exhibit "P-57", p. 527.
[55] Docket, Vol. 2, Exhibit "P-57", pp. 520-599.

0801	BW Fleet Management As		
0764	BW Fleet Management As	80,769.00	3,547,758.55
0766	BW Fleet Management As		
0770	BW Fleet Management As		
0771	BW Fleet Management As		
0789	BW Fleet Management As		
0791	BW Fleet Management As		
0795	BW Fleet Management As		
0796	BW Fleet Management As		
0768	BW Fleet Management Pte Ltd	8,301.00	364,613.42
0793	BW Fleet Management Pte Ltd		
0767	BW Fleet Management As	12,237.00	537,507.23
0772	BW Fleet Management As		
0792	BW Fleet Management As		
0797	BW Fleet Management As		
0765	BW Fleet Management As	9,075.00	398,434.79
0773	BW Fleet Management Pte Ltd	11,323.00	497,364.19
0774	BW Fleet Management Pte Ltd		
0798	BW Fleet Management Pte Ltd		
0800	BW Fleet Management Pte Ltd		
Total		**$276,149.00**	**₱12,133,147.02**

Consequently, out of the Php129,866,272.96 zero-rated sales declared per Quarterly VAT Returns for taxable year 2014, only the amount of Php115,630,376.65 qualifies for VAT zero-rating under Section 108(B)(2) of the NIRC, computed as follows:

	1st Quarter	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**Total**
Zero-Rated Sales per VAT returns	₱ 30,324,220.41	₱ 31,543,977.45	₱ 32,508,376.99	₱ 35,489,698.11	₱ 129,866,272.96
Less: Disallowed Sales per ICPA (Sales with no supporting documents)	408,275.97	126,518.28	513,768.76	1,054,186.28	2,102,749.29
Sales properly supported by Sales Invoices per ICPA (Exhibit P-124)	**₱29,915,944.44**	**₱31,417,459.17**	**₱31,994,608.23**	**₱34,435,511.83**	**₱127,763,523.67**
Less: Disallowed Sales per Court	-	-	-	12,133,147.02	12,133,147.02
Valid Zero-rated Sales	**₱29,915,944.44**	**₱31,417,459.17**	**₱31,994,608.23**	**₱22,302,364.81**	**₱115,630,376.65**

3rd requisite: Petitioner incurred or paid input taxes

In its Quarterly VAT Returns for the four quarters of taxable year 2014[56], petitioner declared a total amount of Php7,346,268.45 input VAT derived from its domestic purchases of goods other than capital goods and importation of goods other than capital goods, broken down as follows:

Exhibit No	Period	Input VAT
P-4	1st Quarter	₱ 588,737.34
P-6	2nd Quarter	2,089,222.07
P-7	3rd Quarter	2,797,919.14
P-8	4th Quarter	1,870,389.90
	Total	**₱7,346,268.45**

Per ICPA report, petitioner's input VAT claim in the amount of Php1,037,238.72[57] must be disallowed for not being properly substantiated by VAT invoices or official receipts as prescribed under Sections 110(A) and 113(A) and (B) of the NIRC, in relation to Sections 4.110-2, 4.110-3, 4.110-8 and 4.113-1 of RR No. 16-05.

	Exhibit No	2nd Quarter	3rd Quarter	4th Quarter	Total
A. Domestic Purchase of Services					
1. Input VAT on domestic purchase of services with incorrect or no VAT and/or VATable amount indicated	138.1	₱ -	₱ 12.86	₱ -	₱ 12.86
	138.2	11,303.28	-	-	11,303.28
	138.3	90.00	-	-	90.00
	138.4	-	216.00	-	216.00
	138.5	-	38,442.86	-	38,442.86
2. Input VAT on domestic purchase of services not named after the Petitioner	139.1	11,416.59	-	-	11,416.59
3. Excess of claimed input VAT on purchase of services against actual input VAT as per supporting documents	140.1	15.79	-	-	15.79
	140.2	1,170.98	-	-	1,170.98
	140.3	-	462.95	-	462.95
Subtotal		**₱ 23,996.64**	**₱ 39,134.67**	**₱ -**	**₱ 63,131.31**
B. Domestic purchase of goods other than Capital Goods					
1. Input VAT on domestic purchase of goods with incomplete or no petitioner's address and no VATable amount indicated	141.1	₱ -	₱ -	₱ 2,360.96	₱ 2,360.96
2. Input VAT on domestic purchase of goods with noted alterations	142.1	-	2,507.14	-	2,507.14
Subtotal		**₱ -**	**₱ 2,507.14**	**₱ 2,360.96**	**₱ 4,868.10**

[56] Docket, Vol. 2, Line 21F or 21H of Exhibits "P-4", "P-6", "P-7" and "P-8", pp. 667, 671, 673, and 675.
[57] Docket, Vol. 2, Exhibit "P-57", p. 535.

C. Domestic purchase of goods other than Capital goods exceeding 1Million					
1. Deferred Input VAT on domestic purchase of capital goods exceeding 1M to be amortized in subsequent period	136.1	₱ -	₱ -	₱ 427,346.16	₱ 427,346.16
	136.2	-	-	541,893.15	541,893.15
Subtotal		**₱ -**	**₱ -**	**₱ 969,239.31**	**₱ 969,239.31**
Total input VAT with exceptions		**₱ 23,996.64**	**₱ 41,641.81**	**₱ 971,600.27**	**₱1,037,238.72**

Upon the Court's verification, an additional amount of Php467,413.10 shall likewise be disallowed for failure to meet the substantiation requirements, as listed below:

Registered Name	Input VAT Amount per Official Receipts	Exhibit No	Tax Base	Input VAT
I. Input VAT on domestic purchases of services with incorrect or no TIN of the Petitioner.				
1st Quarter				
Falcon Waterfree Phils Inc		134.25	₱ 5,880.00	₱ 705.60
Goodwill Trading Co Inc		134.30	94,194.00	11,303.28
Subtotal-1st Quarter			***₱ 100,074.00***	***₱ 12,008.88***
2nd Quarter				
Tricom Systems Philippines Inc		134.43	₱ 9,776.75	₱ 1,173.21
Tricom Systems Philippines Inc		134.44	9,776.75	1,173.21
Tricom Systems Philippines Inc		134.45	9,776.75	1,173.21
Goodwill Trading Co Inc		134.49	94,194.00	11,303.28
A&C Printers		134.50	82,082.75	9,849.93
Tagaytay Highlands International Golf		134.51	123,598.00	14,831.76
Skycable Corp		134.64	9,497.33	1,139.68
Guthrie Jensens Inc		134.77	53,504.00	6,420.48
Tricom Systems Philippines Inc		134.79	9,776.75	1,173.21
Tricom Systems Philippines Inc		134.81	9,776.75	1,173.21
Subtotal-2nd Quarter			***₱ 411,759.83***	***₱ 49,411.18***
3rd Quarter				
Tricom Systems Philippines Inc		134.99	₱ 9,776.75	₱ 1,173.21
Goodland Company Inc		134.101	462,000.00	55,440.00
Subtotal-3rd Quarter			***₱ 471,776.75***	***₱ 56,613.21***
4th Quarter				
Tricom Systems Philippines Inc		134.137	₱ 714.25	₱ 85.71
Tricom Systems Philippines Inc		134.138	9,776.75	1,173.21
Goodwill Trading Co Inc		134.149	94,194.00	11,303.28
Tricom Systems Philippines Inc		134.163	9,776.75	1,173.21
Tricom Systems Philippines Inc		134.164	9,776.75	1,173.21
Tricom Systems Philippines Inc		134.185	9,776.75	1,173.21
Tricom Systems Philippines Inc		134.190	9,776.75	1,173.21
Bulacan Garden Corporation		134.194	27,045.00	3,245.40
Bulacan Garden Corporation		134.195	14,007.00	1,680.40
Bulacan Garden Corporation		134.196	27,045.00	3,245.40
Beyond Borders Kitchen Inc		134.204	58,035.75	6,964.29
Beyond Borders Kitchen Inc		134.205	77,238.50	9,268.62
One O One Food Corporation		134.210	165,013.42	19,801.61
Tricom Systems Philippines Inc		134.217	39,339.28	4,720.71
One O One Food Corporation		134.218	165,013.33	19,801.60
Manila Electric Company		134.221	173,908.33	20,869.00

Quantum X Inc		134.241	90,000.00	10,800.00
Subtotal-4th Quarter			₱ ***980,437.61***	₱ ***117,652.07***
Total			**₱ 1,964,048.19**	**₱ 235,685.34**
II. Input VAT on domestic purchases of goods other than capital goods with incorrect or no TIN of the Petitioner.				
1st Quarter				
Mabolo Flower Shop		135.1	₱ 4,464.25	₱ 535.70
Phil Vending Corp		135.2	6,577.42	789.29
Phil Vending Corp		135.7	4,953.58	594.43
Phil Vending Corp		135.10	6,577.42	789.29
Subtotal-1st Quarter			₱ ***22,572.67***	₱ ***2,708.71***
2nd Quarter				
Phil Vending Corp		135.15	₱ 4,934.92	₱ 592.19
Phil Vending Corp		135.24	4,972.17	596.66
Phil Vending Corp		135.26	4,091.33	490.96
Phil Vending Corp		135.30	11,531.00	1,383.72
Subtotal-2nd Quarter			₱ ***25,529.42***	₱ ***3,063.53***
3rd Quarter				
Phil Vending Corp		135.41	₱ 11,531.00	₱ 1,383.72
Tricom Systems Philippines Inc		135.47	20,781.25	2,493.75
Phil Vending Corp		135.53	11,531.00	1,383.72
Subtotal-3rd Quarter			₱ ***43,843.25***	₱ ***5,261.19***
4th Quarter				
Tricom Systems Philippines Inc		135.56	₱ 68,647.33	₱ 8,237.68
Tricom Systems Philippines Inc		135.57	8,080.33	969.64
Phil Vending Corp		135.63	11,531.00	1,383.72
Phil Vending Corp		135.69	6,691.42	802.97
Phil Vending Corp		135.78	13,154.83	1,578.58
Phil Vending Corp		135.79	7,694.92	923.39
Subtotal-4th Quarter			₱ ***115,799.83***	₱ ***13,895.98***
Total			**₱ 207,745.17**	**₱ 24,929.41**
III. Input VAT on domestic purchases of services wherein the amounts per schedule are not traceable or different from the official receipts.				
1st Quarter				
Dhl Worldwide Express Phils Corp	3,593.79	134.8	₱ 1,885.71	₱ 226.29
Dhl Worldwide Express Phils Corp	4,410.21	134.27	657.17	78.86
Subtotal-1st Quarter			₱ ***2,542.88***	₱ ***305.15***
2nd Quarter				
Tnt Express Ltd Phils	2,243.84	134.67	₱ 2,431.58	₱ 291.79
Medicard Philippines Inc	200,138.49	134.69	1,481,460.92	177,775.31
Subtotal-2nd Quarter			₱ ***1,483,892.50***	₱ ***178,067.10***
3rd Quarter				
Medicard Philippines Inc	15,278.51	134.110	₱ 111,030.25	₱ 13,323.63
Dhl Worldwide Express Phils Corp	4,413.11	134.116	2,958.92	355.07
Peninsula Manila	3,473.00	134.142	21,000.00	2,520.00
Dhl Worldwide Express Phils Corp	4,001.89	134.144	659.83	79.18
Subtotal-3rd Quarter			₱ ***135,649.00***	₱ ***16,277.88***
4th Quarter				
Dhl Worldwide Express Phils Corp	15,140.14	134.168	1,974.08	236.89
Dhl Worldwide Express Phils Corp	8,579.46	134.211	4,159.83	499.18
Manila Peninsula Hotel	4,383.32	134.213	9,000.00	1,080.00
Bacani & Associates Media Services Company	5,357.15	134.236	31,250.00	3,750.00
Sofitel Philippine Plaza	7,417.60	134.242	54,851.25	6,582.15

Subtotal-4th Quarter			***₱ 101,235.16***	***₱ 12,148.22***
Total			**₱ 1,723,319.54**	**₱ 206,798.35**
Grand Total			**₱ 3,895,112.90**	**₱ 467,413.10**

Thus, out of petitioner's total reported input VAT of Php7,346,268.45 for the four quarters of taxable year 2014, only the amount of Php5,841,616.63 represents its valid input VAT, computed as follows:

	1st Quarter	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**Total**
Input VAT per VAT Returns	₱ 588,737.34	₱ 2,089,222.07	₱ 2,797,919.14	₱1,870,389.90	₱ 7,346,268.45
Less: Disallowed Input VAT					
per ICPA Report	₱ -	₱ 23,996.64	₱ 41,641.81	₱ 971,600.27	₱ 1,037,238.72
per Court					
I. Input VAT on domestic purchases of services with incorrect or no TIN of the Petitioner.	*₱ 12,008.88*	*₱ 49,411.18*	*₱ 56,613.21*	*₱ 117,652.07*	*₱ 235,685.34*
II. Input VAT on domestic purchases of goods other than capital goods with incorrect or no TIN of the Petitioner.	*2,708.71*	*3,063.53*	*5,261.19*	*13,895.98*	*24,929.41*
III. Input VAT on domestic purchases of services wherein the amounts per schedule are not traceable or different from the official receipts.	*305.15*	*178,067.10*	*16,277.88*	*12,148.22*	*206,798.35*
Exceptions per Court	₱ 15,022.74	₱ 230,541.81	₱ 78,152.28	₱ 143,696.27	₱ 467,413.10
Valid Input VAT	**₱573,714.60**	**₱1,834,683.62**	**₱2,678,125.05**	**₱755,093.36**	**₱5,841,616.63**

4th and 5th requisites: Petitioner's input taxes are attributable to zero-rated sales and were not applied against any output VAT during and in the succeeding quarters

Petitioner had no output tax liability[58] for the four quarters of taxable year 2014 against which the subject input VAT claim may be applied or credited. Although the claimed input VAT was carried-over by petitioner in its succeeding Quarterly VAT Returns for taxable year 2015,[59] the same remained unutilized

[58] Docket, Vol. 2, Line 15B of Exhibits "P-4", "P-6", "P-7" and "P-8", pp. 667, 671, 673, and 675.
[59] Docket, Vol. 2, Exhibits "P-11" to "P-17", pp. 683-696. *an*

until it was deducted as "VAT Refund/TCC Claimed" in its Quarterly VAT Return for the 1st Quarter of taxable year 2016[60]; thus, preventing the carry-over or application of the claimed input VAT in the next taxable periods.

Proceeding therefrom, only the remaining input VAT of Php5,841,616.63 can be attributed to the declared zero-rated sales of Php129,866,272.96 and only the input VAT of Php5,503,628.95 is attributable to the valid zero-rated sales of Php115,630,376.65, computed as follows:

	1st Quarter	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**Total**
Valid Input VAT	₱ 573,714.60	₱1,834,683.62	₱ 2,678,125.05	₱ 755,093.36	₱ 5,841,616.63
Divide by: declared Zero-Rated Sales	30,324,220.41	31,543,977.45	32,508,376.99	35,489,698.11	129,866,272.96
Multiply by: Valid Zero-Rated Sales	29,915,944.44	31,417,459.17	31,994,608.23	22,302,364.81	115,630,376.65
Input VAT attributable to Valid Zero-Rated Sales	**₱ 565,990.28**	**₱1,827,324.97**	**₱2,635,799.44**	**₱ 474,514.25**	**₱5,503,628.95**

In sum, petitioner has sufficiently proven its entitlement to refund or issuance of a TCC in the reduced amount of Php5,503,628.95 representing its unutilized input VAT attributable to its zero-rated sales for the four quarters of taxable year 2014.

WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED to REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **Php5,503,628.95** representing unutilized input VAT attributable to zero-rated sales for the four quarters of taxable year 2014.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[60] Docket, Vol. 2, Line 23D of Exhibit "P-18", pp. 697-698.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice