Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

DEUTSCHE KNOWLEDGE SERVICES PTE. LTD.,
Petitioner,

CTA CASE NO. 8065

For: Refund or issuance of a Tax Credit Certificate

-versus-

Present:
CASTAÑEDA, JR., Chairperson
CASANOVA, and
MINDARO-GRULLA, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated: SEP 2 0 2017 3:40 p.m.

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed by Deutsche Knowledge Services Pte. Ltd. as petitioner, against the Commissioner of Internal Revenue (CIR) as respondent, for the Court in Division, pursuant to Section 7(a)(2) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3 (a) (2), in relation to Rule 8, Section 4(a), of the Revised Rules of the

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[1] Sec. 7. *Jurisdiction.* – The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;
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Court of Tax Appeals (RRCTA)[2]. It involves a claim for refund or issuance of a tax credit certificate (TCC) in the amount of ₱34,310,264.27, allegedly representing its excess and unutilized input value-added tax (VAT) on purchases of goods and services attributable to its zero-rated sales for the first (1st) quarter of calendar year (CY) 2008.

Petitioner is licensed to do business as a regional operating headquarters (ROHQ) in the Philippines by the Securities and Exchange Commission (SEC) on April 25, 2005, pursuant to the Omnibus Investments Code of 1987, as amended, and its implementing rules and regulations, to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services; research and development services

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2 Rule 4. Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

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(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; P*rovided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further,* that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;

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Rule 8. Sec. 4. *Where to appeal; mode of appeal.* –

(a) An Appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected; the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

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and product development; technical support and maintenance; data processing and communication and business development.[3] Petitioner is a VAT-registered taxpayer under Certificate of Registration No. OCN9RC0000270209 with Taxpayer Identification No. (TIN) 238-763-115-000.[4]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its 1st Quarterly VAT Return for CY 2008 on April 17, 2008,[5] and amended the same on May 19, 2008.[6] Also, petitioner's 2nd, 3rd, and 4th Quarterly VAT Returns for CY 2008 were filed on July 18, 2008[7], October 14, 2008[8], and January 19, 2009[9], respectively.

On March 29, 2010, petitioner submitted with respondent its administrative claim for refund or issuance of a TCC in the amount of ₱34,310,264.27, representing alleged unutilized input VAT attributable to zero-rated sales for the 1st quarter of CY 2008.[10]

Due to the inaction of respondent on petitioner's claim for refund, petitioner filed the instant Petition for Review[11] before this Court on March 31, 2010.

Respondent then submitted his Answer[12] on June 10, 2010.

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[3] Par. 1, Joint Stipulation of Facts and Issues (JSFI), Docket, vol. 1, pp. 96 to 97; Exhibit "A"
[4] Par. 3, JSFI, Docket, vol. 1, p. 97; Exhibit "B"
[5] Exhibit "C"
[6] Exhibit "D"
[7] Exhibit "KKK"
[8] Exhibit "LLL"
[9] Exhibit "MMM"
[10] Exhibits "E" and "F"
[11] Docket, vol. 1, pp. 1 to 7
[12] Docket, vol. 1, pp. 45 to 55

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Petitioner's Pre-Trial Brief[13] and Respondent's Pre-Trial Brief[14] were filed on June 22, 2010 and July 5, 2010, respectively. Thereafter, the parties submitted their Joint Stipulation of Facts and Issues[15] on August 12, 2010, which the Court approved via Resolution[16] dated August 16, 2010. On even date, the pre-trial was terminated.

Upon motion of petitioner,[17] the Court commissioned on December 9, 2010, Mr. Romeo A. De Jesus, Jr. as the Independent Certified Public Accountant (CPA) for the case.[18]

To prove its claim, petitioner presented the testimonies of Mr. George Francisco and Mr. Romeo A. De Jesus, Jr. as its testimonial evidence. Then, petitioner formally offered its documentary exhibits, which the Court admitted except for Exhibits "TTT-980" and "TTT-981".[19]

The documentary exhibits offered by the petitioner are as follows:

Exhibit	Description
A	Certificate of Registration and License of Deutsche Knowledge Services, Pte Ltd. dated April 25, 2005 issued by the Securities and Exchange Commission (SEC)
B	Petitioner's Bureau of Internal Revenue (BIR) Certificate of Registration dated June 16, 2005.
C	Petitioner's Original Quarterly value-added tax (VAT) Return for the 1st Quarter of calendar year (CY) 2008 filed on April 17, 2008
D	Petitioner's Amended Quarterly VAT Return for the 1st Quarter of CY 2008 filed on May 19, 2008
E	Petitioner's letter claim for refund for the 1st Quarter of CY 2008 filed on March 29, 2010
F	Petitioner's Application for Tax Credits/Refunds (BIR Form No. 1914) filed on March 29, 2010
G	SEC Certification of Non-Registration of Corporation/Partnership of Deutsche Bank Aktiengesellschaft, Asia Pacific

[13] Docket, vol. 1, pp. 57 to 65
[14] Docket, vol. 1, pp. 67 to 72
[15] Docket, vol. 1, pp. 96 to 99
[16] Docket, vol. 1, p. 100
[17] Motion for Commissioning of Independent Certified Public Accountant, Docket, vol. 1, pp. 148 to 151
[18] Minutes of the Hearing dated December 9, 2010 and Oath of Commission, Docket, vol. 1, pp. 162 and 161, respectively
[19] Resolutions dated July 15, 2011 and September 8, 2011, Docket, vol. 1, pp. 219 to 220 and pp. 281 to 282, respectively

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Exhibit	Description
H	SEC Certification of Non-Registration of Corporation/Partnership of Deutsche Bank Aktiengesellschaft, Inlandsbank
I	SEC Certification of Non-Registration of Corporation/Partnership of Deutsche Bank Aktiengesellschaft, Filiale New York
J	SEC Certification of Non-Registration of Corporation/Partnership of Deutsche Bank Aktiengesellschaft, Filiale London
K	SEC Certification of Non-Registration of Corporation/Partnership of Deutsche Asia Pacific Holdings, Pte. Ltd.
L	SEC Certification of Non-Registration of Corporation/Partnership of Deutsche Group Services PTY Limited
M	SEC Certification of Non-Registration of Corporation/Partnership of Deutsche Securities Inc.
N	SEC Certification of Non-Registration of Corporation/Partnership of Deutsche Bank Aktiengesellschaft, Filiale Hong Kong
O	SEC Certification of Non-Registration of Corporation/Partnership of Deutsche Bank Aktiengesellschaft, Filiale Jakarta
P	SEC Certification of Non-Registration of Corporation/Partnership of Deutsche Bank Aktiengesellschaft, Filiale Singapur
Q	SEC Certification of Non-Registration of Corporation/Partnership of Deutsche Bank (China) Co., Ltd. Shanghai Branch
R	SEC Certification of Non-Registration of Corporation/Partnership of Deutsche Asset Management (Asia) Limited
S	SEC Certification of Non-Registration of Corporation/Partnership of Deutsche Bank Real Estate (Japan) Y.K.
T	SEC Certification of Non-Registration of Corporation/Partnership of DBOI Global Services Private Limited
U	SEC Certification of Non-Registration of Corporation/Partnership of Deutsche Bank Aktiengesellschaft, Filiale Bangkok
V	SEC Certification of Non-Registration of Corporation/Partnership of Deutsche Bank Aktiengesellschaft, Filiale Mumbai
W	SEC Certification of Non-Registration of Corporation/Partnership of Deutsche Bank Aktiengesellschaft, Filiale Seoul
X	SEC Certification of Non-Registration of Corporation/Partnership of Deutsche Bank Aktiengesellschaft, Filiale Taipei
Y	SEC Certification of Non-Registration of Corporation/Partnership of Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office
Z	SEC Certification of Non-Registration of Corporation/Partnership of DB Finance Inc.
AA	SEC Certification of Non-Registration of Corporation/Partnership of DB Trust Company Limited Japan
BB	Intra-Group Service Agreement with Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office
CC	Intra-Group Service Agreement with Deutsche Bank Aktiengesellschaft, Filiale London
DD	Intra-Group Service Agreement with Deutsche Asia Pacific Holdings Pte Ltd.
EE	Intra-Group Service Agreement with Deutsche Group Services Pty Limited
FF	Intra-Group Service Agreement with Deutsche Securities Inc.
GG	Intra-Group Service Agreement with Deutsche Bank Aktiengesellschaft, Filiale Hongkong
HH	Intra-Group Service Agreement with Deutsche Bank Aktiengesellschaft, Filiale Jakarta

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Exhibit	Description
II	Intra-Group Service Agreement with Deutsche Bank Aktiengesellschaft, Filiale Singapur
JJ	Intra-Group Service Agreement with Deutsche Bank (China) Co., Ltd., Shanghai Branch
KK	Intra-Group Service Agreement with Deutsche Asset Management (Asia) Limited
LL	Intra-Group Service Agreement with Deutsche Bank Real Estate (Japan) Y.K.
MM	Intra-Group Service Agreement with Deutsche Bank Aktiengesellschaft, Filiale Bangkok
NN	Intra-Group Service Agreement with Deutsche Bank Aktiengesellschaft, Filiale Mumbai
OO	Intra-Group Service Agreement with Deutsche Bank Aktiengesellschaft, Filiale Seoul
PP	Intra-Group Service Agreement with Deutsche Bank Aktiengesellschaft, Filiale Taipei
QQ	Intra-Group Service Agreement with Deutsche Bank Aktiengesellschaft, Inlandsbank
RR	Intra-Group Service Agreement with Deutsche Bank Aktiengesellschaft, Filiale New York
SS	Intra-Group Service Agreement with DBOI Global Services Private Limited
TT	Intra-Group Service Agreement with DB Finance Inc.
UU	Intra-Group Service Agreement with DB Trust Company Limited Japan
VV	Authenticated Articles of Association of Deutsche Bank Aktiengesellschaft.
WW	Authenticated Certificate of Registration of Foreign Company of Deutsche Bank Aktiengesellschaft issued by the Acting Registrar of Companies, Singapore.
XX	Authenticated Certificate of Registration of Foreign Company of Deutsche Bank (Asia) Aktiengesellschaft from the Assistant Registrar of the Registrar of Companies and Businesses, Singapore.
YY	Authenticated Certification from Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office in One Raffles Quay, #15-00 South Tower, Singapore that it is a segment of Deutsche Bank AG and that it does not have a separate entity.
ZZ	Authenticated License and Change Location issued by the Banking Department of the State of New York to Deutsche Bank AG, New York Branch.
AAA	Authenticated Certification from the Registrar of Companies for England and Wales that Deutsche Bank Aktiengesellschaft have established a branch and continues to maintain a branch in England and Wales.
BBB	Authenticated Certificate of Incorporation on change of Name of Company of Deutsche Asia Pacific Holdings Pte. Ltd. from the Assistant Registrar of Companies and Businesses, Singapore.
CCC	Authenticated Certificate of Registration of a Foreign Company of Deutsche Group Services Pty Limited.
DDD	Authenticated Certified Copy of All Historical Registered Matters of Deutsche Securities Inc. based in 11-1, Sanno Park Tower, Nagatacho 2-chome, Chiyoda-ku, Tokyo.
EEE	Authenticated Certificate of Registration of Oversea Company of Deutsche Bank Aktiengesellschaft, from the Registrar of companies Hong Kong.

Exhibit	Description
FFF	Authenticated Business Registration (NO.D.15.6.2.30) of Deutsche Bank Aktiengesellschaft, Filiale Jakarta from the Menteri Keuangan, Indonesia.
GGG	Authenticated Certificate of Incorporation on change of Name of Deutsche Asset Management (Asia) Limited issued by the Assistant Registrar of Companies and Businesses, Singapore.
HHH	Authenticated Articles of Incorporation confirming that Deutsche Bank Aktiengesellschaft, Inlandsbank has its domicile in Frankfurt Main, Germany.
III	Authenticated Articles of Incorporation confirming that Deutsche Asia Pacific Holdings Pte. Ltd. is registered in the Registrar of Companies & Business of Singapore.
JJJ	List of Shareholdings 2008 (*Verzeichnis des Anteilsbesitzes 2008*)
KKK	Petitioner's Quarterly VAT Return for the 2nd Quarter of CY 2008 filed on July 18, 2008.
LLL	Petitioner's Quarterly VAT Return for the 3rd Quarter of CY 2008 filed on October 14, 2008.
MMM	Petitioner's Quarterly VAT Return for the 4th Quarter of CY 2008, filed on January 19, 2009.
NNN	Petitioner's Quarterly VAT Return for the 1st Quarter of CY 2009, filed on April 22, 2009.
OOO	Petitioner's Quarterly VAT Return for the 2nd Quarter of CY 2009 filed on July 17, 2009.
PPP	Petitioner's Quarterly VAT Return for the 3rd Quarter of CY 2009, filed on October 19, 2009.
QQQ	Petitioner's Quarterly VAT Return for the 4th Quarter of CY 2009, filed on January 25, 2010.
RRR	Petitioner's Quarterly VAT Return for the 1st Quarter of CY 2010, filed on April 21, 2010.
SSS	Sworn Statement of Mr. George Francisco to Questions propounded by Atty. Marie Francesca Luz O. Dela Cruz dated September 8, 2010.
SSS-1	Signature of Mr. George Francisco
TTT-1 to TTT-758	Suppliers' invoices and suppliers' official receipts for the 1st Quarter of CY 2008.
TTT-759 to TTT-865	Petitioner's service invoice relating to its zero-rated sales for the 1st Quarter of CY 2008.
TTT-866 to TTT-918	Petitioner's fund transfer credit advice and bank statements for the 1st Quarter of CY 2008.
TTT-919 to TTT-973	Petitioner's official receipts relating to its zero-rated sales for the 1st Quarter of CY 2008.
TTT-974 to TTT-979 TTT-982 to TTT- 999	Petitioner's VAT Returns.
TTT-1000 to TTT-1031	Petitioner's audited financial statements as of and for the year ended December 31, 2008.
TTT-1032 to TTT-1033	Certifications issued to petitioner by the SEC and Board of Investments certifying the registered activities of petitioner.
TTT-1034 to TTT-1039	Petitioner's BIR Form 1600 (Monthly Remittance Return of VAT) and other percentage taxes withheld.

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Exhibit	Description
UUU	Sworn Statement of Mr. Romeo A. De Jesus to Questions propounded by Atty. Marie Francesca Luz O. Dela Cruz dated February 2, 2011.
UUU-1	Signature of Mr. Romeo A. De Jesus.
VVV	Petitioner's Independent CPA Report dated January 19, 2011.
VVV-1	Signature of Mr. Romeo A. De Jesus

On the other hand, respondent presented Mr. Gerard Yap as his witness.

On January 26, 2012, respondent moved for the dismissal of the instant case on the ground of lack of jurisdiction.[20]

In the Resolution[21] dated March 26, 2012, the Court, following the ruling of the Supreme Court in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[22], dismissed the instant Petition for Review for lack of jurisdiction. Consequently, petitioner moved for the reconsideration of the said dismissal.[23]

In the Resolution[24] dated June 25, 2012, the Court denied petitioner's motion for reconsideration. Thus, petitioner appealed the said denial of the motion for reconsideration by filing a Petition for Review before the Court of Tax Appeals (CTA) *En Banc* on July 30, 2012.[25] The Petition for Review was docketed as CTA EB No. 918.

On August 30, 2013, the CTA *En Banc* rendered a Decision[26], reversing and setting aside the Resolutions dated March 26, 2012 and June 25, 2012. In the same Decision, the CTA *En Banc* applied the Supreme Court's ruling in the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation; Taganito Mining Corporation vs. Commissioner of Internal Revenue; Philex Mining Corporation vs. Commissioner of Internal Revenue*[27] (*San Roque case*), stating that petitioner may be excused from complying with the 120+30-day periods as its refund claim was filed within the period from

[20] Motion to Dismiss, Docket, vol. 1, pp. 305 to 312
[21] Docket, vol. 1, pp. 342 to 349
[22] G.R. No. 184823, October 6, 2010
[23] Motion for Reconsideration (Re: Resolution dated March 26, 2012), Docket, vol. 1, pp. 355 to 383
[24] Resolution, Docket, vol. 1, pp. 420 to 426
[25] Docket, vol. 1, pp. 439 to 474
[26] Docket, vol. 1, pp. 604 to 617
[27] G.R. Nos. 187485, 196113, and 197156, February 12, 2013

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December 10, 2003 until October 6, 2010, and pursuant to BIR Ruling No. DA-489-03.

The CTA *En Banc* further ruled that the Court in Division has jurisdiction to entertain the Petition for Review filed in the latter. Accordingly, CTA Case No. 8065 was remanded to the Court of origin for further proceedings to determine whether petitioner fully complied with other legal requirements in relation to its claim for refund or issuance of a tax credit certificate of alleged unutilized input VAT for the 1st quarter of CY 2008.

As a result, respondent moved for the reconsideration of the CTA *En Banc's* Decision on September 30, 2013.

On March 17, 2014, the CTA *En Banc* denied respondent's motion for reconsideration for lack of merit.[28] Thus, respondent elevated the said denial before the Supreme Court by filing a Petition for Review on Certiorari, which was docketed as G.R. No. 211767.[29]

In the Resolution dated July 9, 2014[30], the Supreme Court denied respondent's Petition for Review on Certiorari. The High Tribunal likewise denied respondent's motion for reconsideration via Resolution dated December 3, 2014.[31] The Resolution dated July 9, 2014 became final and executory on February 9, 2015 and the same was recorded in the Book of Entries of Judgments.[32]

Accordingly, the Court in Division set the instant case for further presentation of petitioner's evidence.[33]

Petitioner presented Ms. Rachel Concepcion as witness. Petitioner then formally offered its supplemental documentary evidence, which was later admitted in the Resolution dated April 27, 2016.[34]

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[28] Resolution, Docket, vol. 1, pp. 623 to 639
[29] Docket, vol. 2, pp. 644 to 738
[30] Docket, vol. 2, p. 907
[31] Docket, vol. 2, p. 908
[32] Entry of Judgment dated June 4, 2015, Docket, vol. 2, pp. 910 to 911
[33] Resolution dated September 2, 2015, Docket, vol. 2, pp. 919 to 921
[34] Docket, vol. 2, pp. 1035 to 1036

The supplemental documentary evidence offered by petitioner are as follows:

Exhibit	Description
WWW-1	AMInet Company Profile Fact Sheet of Deutsche Bank Aktiengesellschaft, Inlandsbank
WWW-2	AMInet Company Profile Fact Sheet of Deutsche Bank Aktiengesellschaft, Filiale New York
WWW-3	AMInet Company Profile Fact Sheet of Deutsche Bank Aktiengesellschaft, Filiale London
WWW-4	AMInet Company Profile Fact Sheet of Deutsche Group Services Pty Limited
WWW-5	AMInet Company Profile Fact Sheet of Deutsche Asia Pacific Holdings Pte Ltd
WWW-6	AMInet Company Profile Fact Sheet of Deutsche Securities Inc.
WWW-7	AMInet Company Profile Fact Sheet of Deutsche Bank Aktiengesellschaft, Filiale Hongkong
WWW-8	AMInet Company Profile Fact Sheet of Deutsche Bank Aktiengesellschaft, Filiale Jakarta
WWW-9	AMInet Company Profile Fact Sheet of Deutsche Bank Aktiengesellschaft, Filiale Singapur
WWW-10	AMInet Company Profile Fact Sheet of Deutsche Bank China Co Ltd Shanghai Branch
WWW-11	AMInet Company Profile Fact Sheet of Deutsche Asset Management (Asia) Limited
WWW-12	AMInet Company Profile Fact Sheet of Deutsche Bank Real Estate (Japan) YK
WWW-13	AMInet Company Profile Fact Sheet of DBOI Global Services Private Limited
WWW-14	AMInet Company Profile Fact Sheet of Deutsche Bank Aktiengesellschaft, Filiale Bangkok
WWW-15	AMInet Company Profile Fact Sheet of Deutsche Bank Aktiengesellschaft, Filiale Mumbai
WWW-16	AMInet Company Profile Fact Sheet of Deutsche Bank Aktiengesellschaft, Filiale Seoul
WWW-17	AMInet Company Profile Fact Sheet of Deutsche Bank Aktiengesellschaft, Filiale Taipei
WWW-18	AMInet Company Profile Fact Sheet of Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office
WWW-19	AMInet Company Profile Fact Sheet of DB Finance Inc.
WWW-20	AMInet Company Profile Fact Sheet of Deutsche Trust Company Limited Japan
XXX	Supplemental Sworn Statement of Ms. Rachel Concepcion to Questions Propounded by Atty. Dikki Jean Y. Sian dated October 14, 2015
XXX-1	Signature of Ms. Rachel Concepcion

In its Resolution[35] dated April 27, 2016, the Court directed respondent to submit a manifestation whether the latter would

[35] *Ibid.*

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continue with the presentation of his evidence. However, respondent failed to submit such manifestation.[36]

After the Court considered petitioner's Memorandum[37] filed through registered mail on September 9, 2016 and received by the Court on September 15, 2016, and the Report[38] dated October 6, 2016 of the Records Division that no memorandum was filed for the respondent, the instant case was considered submitted for decision on October 11, 2016.[39]

As stipulated by the parties, the following is the main issue to be resolved by this Court:

> Whether petitioner is entitled to a refund or issuance of tax credit certificate in the amount of ₱34,310,264.27, representing alleged unutilized input VAT arising from its purchases of goods and services attributable to zero-rated sales for the 1st quarter of CY 2008.[40]

Petitioner's claim for refund or tax credit finds legal basis on Section 112(A) and (C) of the National Internal Revenue Code of 1997, as amended, which provides:

> "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

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[36] Order dated June 27, 2016, Docket, vol. 2, p. 1038
[37] Docket, vol. 2, pp. 1068 to 1095
[38] Docket, vol. 2, p. 1098
[39] Resolution, Docket, vol. 2, p. 1099
[40] JSFI, Docket, vol. 1, p. 98

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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(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."

Pursuant to the above-quoted provision and as laid down by the Supreme Court in a number of cases[41], a taxpayer engaged in zero-rated or effectively zero-rated sales is entitled to a claim for refund or tax credit of excess input taxes attributable to such sales upon compliance with the following requisites:

1. that there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;

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[41] *Commissioner of Internal Revenue vs. Toledo Power Company,* G.R. Nos. 195175 and 199645, August 10, 2015; *Luzon Hydro Corporation vs. Commissioner of Internal Revenue,* G.R. No. 188260, *November* 13, 2013; *Southern Philippines Power Corporation vs. Commissioner of Internal Revenue,* G.R. No. 179632, October 19, 2011; *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue,* G.R. No. 172378, January 17, 2011; *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 182364, August 3, 2010; *San Roque Power Corporation vs. Commissioner of Internal Revenue,* G.R. No. 180345, November 25, 2009; *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 166732, April 27, 2007

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

Petitioner's administrative and judicial claims were timely filed

Petitioner's compliance with the fifth requisite has already been discussed and settled by the Court of Tax Appeals *En Banc*, in the following manner: [42]

> "Admittedly in respondent's Motion to Dismiss filed in CTA Case No. 8065, petitioner's administrative claim for refund pertaining to its alleged input VAT for the 1st quarter of 2008 (*i.e.*, from January 1 to March 31, 2008) was filed on March 29, 2010 and that its judicial claim was filed two (2) days thereafter or on March 31, 2010.
>
> Clearly, while petitioner timely filed its administrative claim, it never complied with the 120+30-day periods under the earlier quoted Section 112 (C) of the NIRC of 1997, as amended by RA 9337.
>
> Nevertheless, in view of BIR Ruling No. DA-489-03 vis-à-vis the above-quoted jurisprudential pronouncements, petitioner may be excused from complying with the 120+30-day periods as its refund claim was filed within the period from December 10, 2003 until October 6, 2010. Correspondingly, petitioner's Petition for Review in CTA Case No. 8065 is considered timely filed, pursuant to the *San Roque* case; and thus, the Court in Division has jurisdiction to entertain the same."

With the timely filing of petitioner's claim for refund or tax credit of its unutilized excess input VAT for the first quarter of 2008 before the administrative and the judicial levels, petitioner has complied with the fifth requisite.

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[42] *Deutsche Knowledge Services, Pte. Ltd. vs. Commissioner of Internal Revenue*, CTA EB No. 918 (CTA Case No. 8065), August 30, 2013

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The Court shall now proceed to determine petitioner's compliance with the other requisites.

Petitioner had zero-rated sales

Petitioner submits that its sales of services to entities engaged in business conducted outside of the Philippines constitute zero-rated sales pursuant to Section 108(B)(2) of the NIRC of 1997, as amended, quoted 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);"

In the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[43], the Supreme Court held that in order for the supply of services to be VAT zero-rated

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

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under Section 108(B)(2) of the NIRC of 1997, as amended, the following requisites must be satisfied:

1. the services must be other than processing, manufacturing or repacking of goods;
2. the payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and
3. the recipient of such services is doing business outside the Philippines.

On the first requisite, it is undisputed that petitioner is registered as a VAT taxpayer and is licensed to do business as a regional operating headquarters (ROHQ) in the Philippines engaged in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services; research and development services and product development; technical support and maintenance; data processing and communication and business development.[44] These services clearly fall within the scope of "services other than processing, manufacturing or repacking of goods" as contemplated by the afore-mentioned provision.

In relation to the second requisite, Sections 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(2), (B)(1) and (2)(c) of Revenue Regulations (RR) No. 16-05, 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.* –
>
> (A) *Invoicing Requirements.* – A VAT-registered person shall issue:
>
> xxx xxx xxx

[44] Par. 1, JSFI, Docket, vol. 1, pp. 96 to 97; Exhibit "A"

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

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

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

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

xxx xxx xxx

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

xxx xxx xxx

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

"SECTION 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; Provided, That:

xxx xxx xxx

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

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

For the first quarter of CY 2008, petitioner has established that it was paid in Euros for the services rendered to its affiliates which were duly accounted for in accordance with the BSP rules and regulations as evidenced by the Service Invoices[45], Zero-rated VAT Official Receipts[46], and Fund Transfer Credit Advices and Bank Statements[47].

However, a comparison of the amounts of zero-rated sales/receipts as reflected in the zero-rated VAT official receipts (ORs) and as declared in petitioner's amended Quarterly VAT Return for the

[45] Exhibits "TTT-759" to "TTT-865"
[46] Exhibits "TTT-919" to "TTT-973"
[47] Exhibits "TTT-866" to "TTT-918"

first quarter of CY 2008, shows the following discrepancy of ₱278,273.18:

Zero-Rated Sales/Receipts per Quarterly VAT Return[48]	₱517,369,339.93
Zero-Rated Sales/Receipts per Official Receipts[49]	517,091,066.75
Difference	**₱ 278,273.18**

Since the amount of ₱278,273.18 is not covered by zero-rated VAT official receipts, the same shall be denied VAT zero-rating.

Moreover, petitioner's sales/receipts in the amount of ₱47,058,000.23 (equivalent to €711,181.20) are supported by zero-rated VAT official receipts which are dated outside the period of claim, hence, shall be denied VAT zero-rating, to wit:

Exhibit	**OR No.**	**Date**	**Client**	**Amount in Euro**	**Phil. Peso Equivalent**
TTT-927	0132	12/14/2007	Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	24,000.00	1,588,049.40
TTT-928	0133	6/14/2007	Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	12,000.00	794,024.70
TTT-929	0134	9/13/2007	Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	12,000.00	794,024.70
TTT-930	0135	12/14/2007	Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	12,000.00	794,024.70
TTT-931	0136	9/13/2007	Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	36,000.00	2,382,074.10
TTT-932	0137	12/14/2007	Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	36,000.00	2,382,074.10
TTT-933	0138	9/14/2007	Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	12,000.00	794,024.70
TTT-934	0139	12/14/2007	Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	12,000.00	794,024.70
TTT-935	0140	12/14/2007	Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	84,000.00	5,558,172.90
TTT-936	0141	9/13/2007	Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	84,000.00	5,558,172.90
TTT-937	0142	12/14/2007	Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	18,285.71	1,209,942.12
TTT-938	0143	9/13/2007	Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	60,000.00	3,970,123.50
TTT-939	0144	12/14/2007	Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	9,498.22	628,531.42
TTT-940	0146	9/13/2007	Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	27,612.33	1,827,072.67
TTT-941	0147	12/14/2007	Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	36,800.00	2,435,009.08
TTT-942	0148	9/13/2007	Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	36,000.00	2,382,074.10
TTT-943	0149	12/14/2007	Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	25,032.26	1,656,352.73
TTT-944	0150	9/13/2007	Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	46,967.74	3,107,795.47
TTT-945	0151	12/14/2007	Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	12,783.33	845,856.65
TTT-946	0152	9/13/2007	Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	11,750.00	777,482.52
TTT-947	0153	9/13/2007	Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	24,000.00	1,588,049.40
TTT-948	0154	9/13/2007	Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	78,451.61	5,191,043.67
			Total	**711,181.20**	**47,058,000.23**

48 Exhibit "D", line 17
49 Exhibit "VVV", Annex C

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In compliance with the third requisite of proving that its clients are non-resident foreign corporations doing business outside the Philippines, petitioner presented the following documents:

1. Securities and Exchange Commission Certifications of Non-Registration of Corporation/Partnership;[50]
2. Intra-Group Service Agreements;[51]
3. Authenticated Articles of Association, Certificate of Incorporation on Change of Name of Company, Certificate of Registration of Oversea Company, and Certified Copy of all Historical Registered Matters;[52] and
4. AMInet Company Profile Fact Sheets.[53]

However, each of the aforesaid documents, standing alone, is inadequate proof that petitioner's client is a non-resident foreign corporation doing business outside the Philippines.

While the Authenticated Articles of Association, Certificate of Incorporation on Change of Name of Company, Certificate of Registration of Oversea Company and Certified Copy of all Historical Registered Matters prove that the named entities therein were incorporated/organized abroad, these documents do not necessarily establish that such entities are not doing business in the Philippines.

The same holds true for the SEC Certificates of Non-Registration which show that the named entities are not registered corporations/partnerships in the Philippines. However, they do not prove that such entities are non-resident foreign corporations doing business outside the Philippines.

Likewise, the Service Agreements only indicate the names and addresses of petitioner's customers to whom it renders services but they do not establish that such customers are non-resident foreign corporations doing business outside the Philippines.

In the case of *Sitel Philippines Corporation (formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue*[54], the Supreme

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[50] Exhibits "G" to "AA"
[51] Exhibits "BB" to "UU"
[52] Exhibits "VV" to "III"
[53] Exhibits "WWW-1" to "WWW-20"
[54] G.R. No. 201326, February 8, 2017

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Court held that while Sitel's documentary evidence, which included Certifications issued by the Securities and Exchange Commission and Agreements between Sitel and its foreign clients, may have established that Sitel rendered services to foreign corporations and received payment therefor through inward remittances, the said documents failed to specifically prove that such foreign clients were doing business outside the Philippines or have a continuity of commercial dealings outside the Philippines.

Therefore, in order 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** proof of foreign incorporation/association/business registration and that there is no other indication that the recipient of the services is doing business in the Philippines.

In this regard, the Court cannot give credence or probative value to the AMInet Company Profile Fact Sheets as the information contained therein were retrieved from the AMInet database set-up and maintained by Deutsche Bank Global, Head Office[55]. The said documents are self-serving and can be easily manipulated to favor petitioner in view of its affinity with the entity that maintains or keeps the said database.[56]

A careful scrutiny of the documents submitted shows that only the following clients of petitioner shall be considered as non-resident foreign corporations doing business outside the Philippines:

Client	SEC Certification of Non-Registration (Exhibit)	Authenticated Certificate of Foreign Incorporation/ Registration (Exhibit)
Deutsche Asia Pacific Holdings Pte Ltd.	"K"	"BBB" and "III"
Deutsche Bank Aktiengesellschaft, Filiale Hongkong	"N"	"EEE"
Deutsche Bank Aktiengesellschaft, Filiale Jakarta	"O"	"FFF"
Deutsche Bank Aktiengesellschaft, Filiale New York	"I"	"ZZ"
Deutsche Bank Aktiengesellschaft, Filiale Singapur	"P"	"WW"

55 Exhibit "XXX", Q&A Nos. 9 and 10, Docket, vol. 2, pp. 998 and 999

56 *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*, CTA EB No. 1244, March 30, 2017 (CTA Case No. 8443); *Deutsche Knowledge Services Pte. Ltd. vs. Commissioner of Internal Revenue*, CTA EB No. 1345 (CTA Case No. 8443), March 30, 2017

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Deutsche Bank Aktiengesellschaft, Filiale London	"J"	"AAA"
Deutsche Securities Inc.	"M"	"DDD"

Accordingly, out of the ₱517,369,339.93[57] zero-rated sales/receipts declared per petitioner's Quarterly VAT Return for the first quarter of CY 2008, only the amount of ₱440,922,979.00 (equivalent to €6,663,614.23), broken down below, qualifies for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended:

Exhibit	OR No.	Date	Client	Amount in Euro	Peso Equivalent
TTT-925	0130	1/22/2008	Deutsche Bank Aktiengesellschaft, Filiale Jakarta	13,500.00	893,277.79
TTT-926	0131	1/23/2008	Deutsche Asia Pacific Holdings Pte Ltd	15,000.00	992,530.87
TTT-921	0126	2/6/2008	Deutsche Bank Aktiengesellschaft, Filiale Hongkong	309,738.46	20,494,996.98
TTT-919	0124	2/20/2008	Deutsche Securities Inc.	594,889.41	39,363,095.58
TTT-957	0170	3/3/2008	Deutsche Bank Aktiengesellschaft, Filiale Singapur	23,500.03	1,554,965.70
TTT-951	0159	3/17/2008	Deutsche Bank Aktiengesellschaft, Filiale New York	1,185,787.72	78,462,061.50
TTT-950	0158	3/24/2008	Deutsche Asia Pacific Holdings Pte Ltd	15,000.00	992,530.87
TTT-922	0127	2/5/2008	Deutsche Bank Aktiengesellschaft, Filiale London	158,500.00	10,487,742.91
TTT-920	0125	2/7/2008	Deutsche Bank Aktiengesellschaft, Filiale London	3,624,447.61	239,825,075.72
TTT-958	0171	3/5/2008	Deutsche Bank Aktiengesellschaft, Filiale London	24,936.00	1,649,968.77
TTT-959	0172	3/5/2008	Deutsche Bank Aktiengesellschaft, Filiale London	32,224.00	2,132,231.58
TTT-960	0173	3/5/2008	Deutsche Bank Aktiengesellschaft, Filiale London	27,961.00	1,850,140.41
TTT-961	0174	3/5/2008	Deutsche Bank Aktiengesellschaft, Filiale London	57,321.00	3,792,872.70
TTT-962	0175	3/5/2008	Deutsche Bank Aktiengesellschaft, Filiale London	35,204.00	2,329,424.31
TTT-963	0176	3/5/2008	Deutsche Bank Aktiengesellschaft, Filiale London	100,750.00	6,666,504.99
TTT-964	0177	3/5/2008	Deutsche Bank Aktiengesellschaft, Filiale London	114,212.00	7,557,252.49
TTT-965	0178	3/5/2008	Deutsche Bank Aktiengesellschaft, Filiale London	62,735.00	4,151,119.71
TTT-966	0179	3/5/2008	Deutsche Bank Aktiengesellschaft, Filiale London	66,904.00	4,426,982.79
TTT-967	0180	3/5/2008	Deutsche Bank Aktiengesellschaft, Filiale London	76,466.00	5,059,651.77
TTT-968	0182	3/5/2008	Deutsche Bank Aktiengesellschaft, Filiale London	50,901.00	3,368,085.16
TTT-969	0183	3/5/2008	Deutsche Bank Aktiengesellschaft, Filiale London	73,637.00	4,872,466.40
Total				**6,663,614.23**	**440,922,979.00**

The rest of petitioner's declared zero-rated sales/receipts in the amount of ₱29,110,087.55 (equivalent to €439,936.91), detailed below, shall be denied VAT zero-rating for petitioner's failure to prove that the entities to whom it rendered services are non-resident foreign corporations doing business outside the Philippines:

Exhibit	OR No.	Date	Client	Amount in Euro	Peso Equivalent	SEC Certification of Non-Registration (Exhibit)	Authenticated Certificate of Foreign Registration (Exhibit)

[57] Exhibit "D", line 17

TTT-952	0160	3/26/2008	DB Operations International Pvt Ltd	2,250.00	148,879.63	None	None
TTT-973	0187	1/9/2008	DB Trust Company Limited Japan	1,125.00	74,439.82	"AA"	None
TTT-971	0185	1/2/2008	Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	35,249.93	2,332,442.92	"Y"	None
TTT-949	0157	3/31/2008	Deutsche Bank Aktiengesellschaft, Filiale Bangkok	15,000.00	992,530.87	"U"	None
TTT-954	0162	3/27/2008	Deutsche Bank Aktiengesellschaft, Filiale Guangzhou	7,500.00	496,265.44	None	None
TTT-970	0184	1/2/2008	Deutsche Bank Aktiengesellschaft, Filiale Seoul	15,000.00	992,530.87	"W"	None
TTT-956	0164	3/28/2008	Deutsche Bank Aktiengesellschaft, Filiale Seoul	15,000.00	992,530.87		
TTT-923	0128	2/1/2008	Deutsche Group Services	336,062.98	22,236,859.55	None	None
TTT-953	0161	3/25/2008	Deutsche Group Services Pty Limited	124.00	8,227.42	"L"	None
TTT-972	0186	1/9/2008	DTB Corporation	1,125.00	74,439.82	None	None
TTT-955	0163	3/28/2008	DWS Holdings & Service GmbH	10,000.00	661,687.25	None	None
TTT-924	0129	1/15/2008	PT Deutsche Securities Indonesia	1,500.00	99,253.09	None	None
				439,936.91	**29,110,087.55**		

Input taxes were incurred or paid and are attributable to zero-rated sales

Having resolved that petitioner had valid VAT zero-rated sales/receipts for the first quarter of CY 2008 in the amount of ₱440,922,979.00, the Court proceeds to determine whether petitioner incurred input taxes in connection therewith and if said input taxes were not applied against any output VAT liability of petitioner.

In its amended Quarterly VAT Return[58] for the first quarter of CY 2008, petitioner reflected a total amount of ₱34,310,264.27 input VAT arising from its current purchases of capital goods exceeding ₱1Million, domestic purchases of goods other than capital goods, domestic purchases of services and services rendered by non-residents, detailed as follows:

Purchases of Capital Goods exceeding ₱1Million	₱ 2,041,110.00
Domestic Purchases of Goods other than Capital Goods	1,860,076.08

[58] Exhibit "D", lines 21D, 21F, 21H, 21J, and 21L

Domestic Purchases of Services	27,951,218.70
Services Rendered by Non-residents	2,457,859.49
Total	**₱34,310,264.27**

In support thereof, petitioner presented its suppliers' invoices, official receipts, and other documents[59], which were all examined by the Court-commissioned Independent CPA. In the report[60] dated January 19, 2011, the Independent CPA found unallowable input VAT credits in the total amount of ₱7,862,422.85, broken down as follows:

Findings	Input VAT	Reference to ICPA Report (Exh. "VVV")
Purchases of goods/services not within the 1st quarter of 2008	₱ 2,103,490.27	Annex A.1
Purchases of goods not supported by suppliers' sales invoices	156,394.27	Annex A.2
Purchases of services not supported by official receipts	5,587,389.70	Annex A.3
Purchases of goods and services with invalid supporting documents	15,148.61	Annex A.4
Total	**₱7,862,422.85**	

The Court agrees with the above findings. The input VAT of ₱7,862,422.85 shall 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 of 1997, as amended, in relation to Sections 4.110-1, 4.110-8, and 4.113-1 of Revenue Regulations No. 16-05, as amended.

In addition, the following input VAT amounting to ₱21,539,366.41 shall be disallowed for non-compliance with the substantiation requirements under the afore-mentioned VAT law and regulations:

Exhibit	OR / Invoice No.	Date	Supplier	Input VAT[61]
SUPPORTED BY OFFICIAL RECEIPT/INVOICE BUT THE AMOUNT OF VAT IS NOT SEPARATELY INDICATED				
TTT-29	406	1/22/2008	Flowers by Sylvia	₱ 214.29
TTT-39	PRF 1/23/08	1/23/2008	Mercury Drug Store	3,061.47
TTT-39	28354650	2/28/2008	Mercury Drug Store	81.56
TTT-256	0148	1/28/2008	6-3 Property Holdings, Inc.	734,520.96
TTT-257	0149	1/28/2008	6-3 Property Holdings, Inc.	136,022.40
TTT-258	0150	1/28/2008	6-3 Property Holdings, Inc.	8,100.00

59 Exhibits "TTT-1" to "TTT-757"
60 Exhibit "VVV", pp. 4 and 5
61 Exhibit "VVV", Annex B

TTT-259	0254	2/5/2008	6-3 Property Holdings, Inc.	734,520.96
TTT-260	0217	2/6/2008	6-3 Property Holdings, Inc.	144,122.40
TTT-261	0230	2/29/2008	6-3 Property Holdings, Inc.	878,643.36
TTT-262	0264	3/27/2008	6-3 Property Holdings, Inc.	144,122.40
TTT-263	0265	3/27/2008	6-3 Property Holdings, Inc.	734,520.96
TTT-264	1790	2/23/2008	Atlantica Fire Safety Systems, Inc.	41,785.72
TTT-265	1791	2/29/2008	Atlantica Fire Safety Systems, Inc.	75,298.00
TTT-266	1836	2/13/2008	Atlantica Fire Safety Systems, Inc.	2,138.40
TTT-275	9293	3/14/2008	Ambassador Home and Electronics Centre, Inc.	4,558.93
TTT-276	4218	2/7/2008	Alecto General Technology Corporation	7,500.00
TTT-277	0253	2/22/2008	Agilys Inc.	20,544.55
TTT-278	0236	1/18/2008	Agilys Inc.	8,064.00
TTT-279	0235	1/18/2008	Agilys Inc.	11,844.00
TTT-280	0231	1/11/2008	Agilys Inc.	7,650.00
TTT-281	26045	1/18/2008	ACCRALAW	37,200.00
TTT-282	19187	3/4/2008	A. Soriano Corporation	432,476.35
TTT-283 to TTT-396	Various	Various	Bayan Telecommunications, Inc.	25,545.08
TTT-398	15805	1/23/2008	CIBI Information, Inc.	1,560.00
TTT-399	3310A	2/18/2008	Chittick Fire & Security Corporation	205,200.00
TTT-400	3298A	2/13/2008	Chittick Fire & Security Corporation	266,400.00
TTT-401	00068	3/4/2008	Career Management Consulting & Business Solution, Inc.	19,200.00
TTT-402	00069	3/14/2008	Career Management Consulting & Business Solution, Inc.	19,800.00
TTT-404	25685	3/19/2008	CWC International Corp.	1,022,142.86
TTT-405	0058	1/15/2008	CWC International Corp.	1,022,142.86
TTT-406	25540	2/15/2008	CWC International Corp.	17,417.41
TTT-408	822	1/4/2008	CRV Aircon & Plumbing Services	6,557.14
TTT-409	A2625	1/30/2008	Computer Support Center, Inc.	17,873.85
TTT-410	A2624	1/30/2008	Computer Support Center, Inc.	11,209.83
TTT-411	7264	1/23/2008	DB Wizards, Inc.	31,821.43
TTT-419	7471	3/5/2008	DB Wizards, Inc.	134,710.71
TTT-420	7522	3/12/2008	DB Wizards, Inc.	35,003.57
TTT-416	3305	2/29/2008	Design & Creative Logic Inc.	1,872.32
TTT-417	3296	2/15/2008	Design & Creative Logic Inc.	1,872.32
TTT-418	3298	2/20/2008	Design & Creative Logic Inc.	1,872.32
TTT-421 to TTT-432	Various	Various	DHL Express (Philippines) Corp.	18,416.25
TTT-433	412	3/12/2008	Electric Skye Inc.	27,164.73
TTT-452 to TTT-493	Various	Various	Exclusive Cars International Holdings, Inc.	83,212.71
TTT-494 to TTT-500	Various	Various	Facilities Managers, Inc.	95,776.74
TTT-502	69072	3/7/2008	Fuji Xerox Philippines, Inc.	27,926.45
TTT-541	1270	3/27/2008	Goudie Associates Manila Ltd. Co.	262,971.43
TTT-542	3252	2/8/2008	Great Year Industries Corp Manila	1,783.47
TTT-543	223	3/5/2008	Green Marbles Events, Strategies and Communications	45,852.75
TTT-544	30881	3/7/2008	Guthrie-Jensen Consultants, Inc.	5,760.00

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TTT-545	81553	1/21/2008	Hewlett-Packard Phils. Corporation	3,095.35
TTT-546	81739	2/28/2008	Hewlett-Packard Phils. Corporation	4,071.43
TTT-547	2003	3/12/2008	Hizon's Restaurant & Catering Services, Inc.	8,571.43
TTT-548	653	3/7/2008	I.Systems Integrators, Inc.	185,246.68
TTT-573	216469	3/26/2008	International Elevator & Equipment, Inc.	638,263.39
TTT-575	31235	2/26/2008	JobStreet.com Philippines Inc.	10,500.00
TTT-576 to TTT-581	Various	Various	Jones Lang LaSalle (Philippines) Inc.	722,075.90
TTT-583	1037	2/6/2008	Kapient Philippines, Inc.	7,560.00
TTT-584	1038	2/22/2008	Kapient Philippines, Inc.	58,140.00
TTT-585	1040	2/27/2008	Kapient Philippines, Inc.	11,340.00
TTT-586	1045	3/19/2008	Kapient Philippines, Inc.	18,900.00
TTT-587	38157	3/10/2008	KLG International, Inc.	3,280.93
TTT-588	79192	1/30/2008	Lane Moving & Storage	540.00
TTT-589	19329	3/5/2008	Lane Moving & Storage	540.00
TTT-590	5143	2/20/2008	Leaves & Branches Enterprises	2,394.64
TTT-591	5030	1/18/2008	Leaves & Branches Enterprises	2,394.64
TTT-592	5242	3/18/2008	Leaves & Branches Enterprises	2,394.64
TTT-594	11218A	2/29/2008	Manila Mandarin Hotel Inc.	56,548.80
TTT-595	9956A	1/29/2008	Manila Mandarin Hotel Inc.	2,142.86
TTT-596	8328A	1/11/2008	Manila Mandarin Hotel Inc.	90,843.75
TTT-597	11217A	2/29/2008	Manila Mandarin Hotel Inc.	91,677.60
TTT-598	143013	2/28/2008	Manila Bulleting Publishing Corporation	38,121.84
TTT-599	255017	2/15/2008	Mapecon Philippines, Inc.	937.50
TTT-600	255018	2/15/2008	Mapecon Philippines, Inc.	1,162.50
TTT-601	1119271	3/7/2008	Mapfre Insular Corporation	114.56
TTT-606	4874	2/13/2008	MC Engineering, Inc.	643,430.58
TTT-607	4880	3/18/2008	MC Engineering, Inc.	3,631,894.81
TTT-608	1597	1/11/2008	Metro Parking Management (Philippines) Inc.	81.56
TTT-609	8080	3/26/2008	MGE UPS Systems Philippines Inc.	516,331.36
TTT-610	23627	2/29/2008	Micro-D International, Inc.	55,177.39
TTT-611	23628	2/29/2008	Micro-D International, Inc.	9,287.96
TTT-612	23625	2/29/2008	Micro-D International, Inc.	58,856.56
TTT-613	23674	1/23/2008	Micro-D International, Inc.	226.72
TTT-614	23626	2/29/2008	Micro-D International, Inc.	9,017.41
TTT-629 to TTT-697	Various	Various	PLDT	216,915.89
TTT-698	236	3/19/2008	Ragojos Heritage Corporation	1,365,250.66
TTT-700 to TTT-711	Various	Various	Regus Centres, Inc.	346,037.27
TTT-712	0054	2/18/2008	Roadmaps & Beyond, Inc.	27,983.23
TTT-713	0052	2/18/2008	Roadmaps & Beyond, Inc.	35,880.00
TTT-714	0053	2/18/2008	Roadmaps & Beyond, Inc.	20,760.00
TTT-735	23015	1/25/2008	Sofitel Philippine Plaza Manila	43,392.57
TTT-738	3035	3/10/2008	Starmaker Inc.	1,607.14
TTT-740	36852	1/25/2008	Tempo Services, Inc.	1,206.46
TTT-741	36853	1/25/2008	Tempo Services, Inc.	1,126.46
TTT-742	37095	3/4/2008	Tempo Services, Inc.	1,726.46
TTT-743	37094	3/4/2008	Tempo Services, Inc.	2,300.92

TTT-744	37096	3/4/2008	Tempo Services, Inc.	1,126.46
TTT-745	37376	3/19/2008	Tempo Services, Inc.	1,126.46
TTT-746	37396	3/27/2008	Tempo Services, Inc.	1,073.80
TTT-747	8388	2/6/2008	The Baron Travel Corporation	1,416.84
TTT-748	2564	3/5/2008	Total Ventures Inc.	19,847.41
TTT-749	7000871	1/24/2008	AJA Enterprises Pte Ltd	458,118.78
TTT-750 to TTT-751	Various	Various	Esco Audio Visual Pte Ltd	1,176,922.20
Subtotal				**₱ 18,187,038.74**
SUPPORTED BY OFFICIAL RECEIPT DATED OUTSIDE THE PERIOD OF CLAIM				
TTT-438	3208	4/11/2008	ePLDT, Inc.	₱ 957.60
TTT-439	3209	4/11/2008	ePLDT, Inc.	235.71
TTT-440	3210	4/11/2008	ePLDT, Inc.	13,476.84
TTT-441	3207	4/11/2008	ePLDT, Inc.	110,931.72
TTT-447	3206	4/11/2008	ePLDT, Inc.	264,000.00
Subtotal				**₱ 389,601.87**
SUPPORTED BY OFFICIAL RECEIPT DATED OUTSIDE THE PERIOD OF CLAIM AND THE AMOUNT OF VAT IS NOT SEPARATELY INDICATED				
TTT-397	16554	4/11/2008	CIBI Information, Inc.	₱ 1,950.00
TTT-407	971	4/18/2008	CRV Aircon & Plumbing Services	4,307.14
TTT-571	218124	7/6/2008	International Elevator & Equipment, Inc.	334,501.07
TTT-572	218125	7/16/2008	International Elevator & Equipment, Inc.	504,771.43
TTT-752	250	4/2/2008	Executive International Movers, Inc.	37,018.93
TTT-540	1276	4/1/2008	Goudie Associates Manila Ltd. Co.	32,871.43
TTT-593	10664	6/11/2008	Manabat Sanagustin & Co.	36,000.00
TTT-699	4406	9/3/2008	RCW Construction & Development Corporation	3,935.76
TTT-728	1084	4/4/2008	Sinclair Knight Merz (Philippines) Inc.	268,209.79
TTT-739	8477	4/1/2008	Sun Microsystems Phils., Inc.	8,815.71
Subtotal				**₱ 1,232,381.26**
SUPPORTED BY UNDATED OFFICIAL RECEIPT				
TTT-274	9298	-	Ambassador Home and Electronics Centre, Inc.	₱ 18,307.50
TTT-715	24431	-	Rudolf Lietz Inc.	12,855.00
Subtotal				**₱ 31,162.50**
SUPPORTED BY DOCUMENT OTHER THAN VAT OFFICIAL RECEIPT				
TTT-582	926	3/28/2008	J-Rinc Enterprises Corp.	₱ 966.43
Subtotal				**₱ 966.43**
SUPPORTED BY SALES SUMMARY REPORT WITH ATTACHED RETAIL INVOICE BUT WITH INCOMPLETE/INCORRECT REGISTERED NAME OF THE PETITIONER AND/OR THE AMOUNT OF VAT IS NOT SEPARATELY INDICATED				
TTT-40	Various	1/6/2008	National Book Store	₱ 5,335.98
TTT-58	Various	1/14/2008	National Book Store	5,310.05
TTT-86	Various	2/3/2008	National Book Store	5,330.73
TTT-98	Various	2/9/2008	National Book Store	5,299.29
TTT-112	Various	2/17/2008	National Book Store	5,300.01

TTT-127	Various	2/25/2008	National Book Store	5,324.68
TTT-140	Various	2/27/2008	National Book Store	6,431.79
TTT-142	Various	2/29/2008	National Book Store	5,300.80
TTT-145	Various	3/2/2008	National Book Store	5,180.06
TTT-159	Various	3/5/2008	National Book Store	5,351.52
TTT-164	Various	3/6/2008	National Book Store	5,350.80
TTT-177	Various	3/7/2008	National Book Store	5,357.13
TTT-185	Various	3/3/2008	National Book Store	5,339.09
TTT-197	Various	3/4/2008	National Book Store	5,318.12
Subtotal				**₱ 75,530.05**
NO SUPPORTING DOCUMENTS				
-	0199	2/26/2008	Kapient Philippines, Inc.	₱ 40,824.00
-	1006	12/12/2007	Lantro Phils. Inc.	1,434,905.28
	SSR Dated 2/5/8	2/5/2008	National Book Store	5,195.68
-	08-002786	1/1/2008	Reuters Limited	16,796.97
-	08-002789	1/1/2008	Reuters Limited	16,535.34
-	08-002787	1/1/2008	Reuters Limited	16,535.34
	08-002788	1/1/2008	Reuters Limited	16,308.14
-	08-002784	1/1/2008	Reuters Limited	16,739.48
-	08-002785	1/1/2008	Reuters Limited	17,712.00
-	08-002783	1/1/2008	Reuters Limited	17,175.75
-	4810	10/18/2007	Sandoval Distributors Inc.	642.86
-	4925	11/5/2007	Sandoval Distributors Inc.	19,017.86
-	5086	11/17/2007	Sandoval Distributors Inc.	1,071.43
-	5044	11/15/2007	Sandoval Distributors Inc.	1,607.14
-	23949	1/29/2008	Ultralight Electrical Components	1,618.29
Subtotal				**₱ 1,622,685.56**
Total				**₱ 21,539,366.41**

Thus, out of the ₱34,310,264.27 input VAT claim for the first quarter of CY 2008, only the amount of ₱4,908,475.01 represents petitioner's valid input VAT, computed as follows:

Input VAT Claim	₱ 34,310,264.27
Less: Disallowances	
Per Independent CPA Report	7,862,422.85
Per this Court's further examination	21,539,366.41
Valid Input VAT	**₱4,908,475.01**

However, included in the said input VAT of ₱4,908,475.01 is the amount of ₱278,055.64[62] pertaining to petitioner's purchases of capital goods exceeding ₱1Million.

[62] Exhibit "VVV", Annex D

Pursuant to Section 110(A)(2) of the NIRC of 1997, as amended, as implemented by Section 4.110-3 of RR No. 16-05, input VAT on capital goods purchases attributable to zero-rated sales may be claimed either in full during the month of acquisition, or spread over a period of time, depending on the aggregate acquisition cost of the capital goods in the calendar month. If the aggregate acquisition cost exceeds ₱1Million, the claim for input tax should be spread over 60 months or the estimated useful life of the capital goods, whichever is shorter. On the other hand, if aggregate acquisition cost does not exceed ₱1Million, the total input taxes shall be allowed as credit/refund in the month of acquisition.

Applying the cited provisions to the present case, out of the ₱278,055.64 input VAT related to petitioner's purchases of capital goods exceeding ₱1Million, only the amount of ₱11,714.79 is creditable for the first quarter of CY 2008, computed as follows:

Supplier	Exhibit	Month Acquired	Input VAT	Useful Life	Monthly Input Tax	Allowable Input Tax for the 1st Quarter of CY 2008
Accent Micro Technologies Inc.	TTT-3	January	₱ 19,875.00	60	₱ 331.25	₱ 993.75
Accent Micro Technologies Inc.	TTT-9	January	4,178.57	60	69.64	208.93
Accent Micro Technologies Inc.	TTT-10	January	2,785.71	60	46.43	139.29
Accent Micro Technologies Inc.	TTT-8	January	1,834.07	60	30.57	91.70
Accent Micro Technologies Inc.	TTT-2	January	439.29	60	7.32	21.96
Accent Micro Technologies Inc.	TTT-1	January	1,512.86	60	25.21	75.64
Accent Micro Technologies Inc.	TTT-6	January	27,895.71	60	464.93	1,394.79
Accent Micro Technologies Inc.	TTT-7	January	1,157.14	60	19.29	57.86
Accent Micro Technologies Inc.	TTT-12	January	698.36	60	11.64	34.92
Accent Micro Technologies Inc.	TTT-16	January	8,892.86	60	148.21	444.64
Accent Micro Technologies Inc.	TTT-4	January	14,563.50	60	242.73	728.18
Accent Micro Technologies Inc.	TTT-14	January	1,285.71	60	21.43	64.29
Accent Micro Technologies Inc.	TTT-18	January	12,483.00	60	208.05	624.15
Accent Micro Technologies Inc.	TTT-5	January	31,135.50	60	518.93	1,556.78
Accent Micro Technologies Inc.	TTT-17	January	26,839.29	60	447.32	1,341.96
Accent Micro Technologies Inc.	TTT-21	January	439.29	60	7.32	21.96
Accent Micro Technologies Inc.	TTT-11	February	5,571.43	60	92.86	185.71
Accent Micro Technologies Inc.	TTT-13	February	964.29	60	16.07	32.14
Accent Micro Technologies Inc.	TTT-15	February	698.36	60	11.64	23.28
Accent Micro Technologies Inc.	TTT-19	February	27,895.71	60	464.93	929.86
Accent Micro Technologies Inc.	TTT-20	February	75,000.00	60	1,250.00	2,500.00
Accent Micro Technologies Inc.	TTT-22	February	1,157.14	60	19.29	38.57
Accent Micro Technologies Inc.	TTT-23	February	1,512.86	60	25.21	50.43

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Accent Micro Technologies Inc.	TTT-24	March	2,875.71	60	47.93	47.93
Accent Micro Technologies Inc.	TTT-25	March	4,735.71	60	78.93	78.93
Accent Micro Technologies Inc.	TTT-26	March	1,628.57	60	27.14	27.14
			₱278,055.64			**₱ 11,714.79**

In sum, petitioner's net substantiated input taxes amounted to ₱4,642,134.16, as computed below:

Properly Substantiated Input VAT		₱ 4,908,475.01
Less: Unamortized Input VAT on Purchases of Capital Goods Exceeding ₱1Million		
Input VAT on Purchases of Capital Goods Exceeding ₱1Million	₱278,055.64	
Less: Input VAT Creditable for the First Quarter of CY 2008	11,714.79	266,340.85
Net Substantiated Input VAT		**₱4,642,134.16**

Since petitioner had no taxable sales subject to 12% VAT nor exempt sales[63] for the first quarter of CY 2008, the net substantiated input VAT of ₱4,642,134.16 is entirely attributable to the zero-rated sales/receipts declared by petitioner for the same quarter amounting to ₱517,369,339.93[64]. However, only the input VAT of ₱3,956,213.61 is attributable to the valid zero-rated sales/receipts of ₱440,922,979.00, computed as follows:

Net Substantiated Input VAT	₱ 4,642,134.16
Multiply by Valid Zero-Rated Receipts	x 440,922,979.00
Divide by Total Zero-Rated Receipts Declared Per Return	÷ 517,369,339.93
Excess Input VAT Attributable to Valid Zero-Rated Receipts	**₱3,956,213.61**

Input taxes were not applied against any output VAT liability

Petitioner had no output tax liability[65] for the first quarter of 2008 against which the subject input VAT claim may be applied or credited. Even though the claimed input VAT was carried over by petitioner in its succeeding Quarterly VAT Returns[66], the same remained unutilized

63 Exhibit "D", lines 15, 15A, 16, and 16A
64 Exhibit "D", line 17
65 Exhibit "D", line 15B
66 Exhibits "KKK" to "RRR"

until it was deducted as "VAT Refund/TCC Claimed"[67] in its Quarterly VAT Return for the first quarter of CY 2010, thus, preventing the carry over or application of the claimed input VAT in the next taxable quarters.

In fine, petitioner has sufficiently proven its entitlement to a refund or issuance of TCC in the amount of ₱3,956,213.61, representing its unutilized excess input VAT for the first quarter of CY 2008 attributable to its zero-rated sales/receipts for the same period.

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of ₱3,956,213.61, representing petitioner's unutilized excess input VAT attributable to zero-rated sales for the first quarter of CY 2008.

SO ORDERED.

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

WE CONCUR:

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

CAESAR A. CASANOVA
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.

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

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[67] Exhibit "RRR", line 23D

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice