REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

MSCI HONG KONG LIMITED, Petitioner,	CTA CASE NO. 9392
	Members:
-versus-	FABON-VICTORINO, *Acting Chairperson* and RINGPIS LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 20 2019 12:15 p.m.

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DECISION

Fabon-Victorino, J.:

This case is for refund or issuance of a tax credit certificate (TCC) in the amount of Seven Million Three Hundred Thirty-Eight Thousand One Hundred Forty-Two Pesos and Ninety Centavos (₱7,338,142.90), allegedly representing its excess and unutilized input value-added tax (VAT) for the four quarters of calendar year (CY) 2014, filed by petitioner MSCI Hong Kong Limited on July 26, 2016.

THE FACTS

Petitioner MSCI Hong Kong Limited is a Philippine branch office of a multi-national company registered in Hong Kong[1], with business address at 29th Floor Zuellig Building, Makati Avenue corner Paseo de Roxas, Makati City. It is engaged in the business of performing index benchmarking, portfolio risk and performance analytics, and research support services.

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[1] Exhibit "P-2".

Petitioner is registered with the Securities and Exchange Commission (SEC) as a regional operating headquarters (ROHQ) with SEC Registration No. FS201404144 dated March 3, 2014, and with the Bureau of Internal Revenue (BIR) with Taxpayer Identification Number (TIN) 008-724-942-000.[2]

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR) with 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.

Pursuant to a Service Agreement[3] dated April 1, 2014, petitioner rendered administration, sales support and marketing, analytics, management and index research and production services in the Philippines to MSCI, Inc., a corporation established and registered in Delaware, United States of America (USA), with headquarters in New York, USA[4]. For the services rendered to MSCI, Inc., petitioner was paid service fees amounting to ₱195,786,948.60.[5]

On various dates, petitioner filed with the BIR its original and amended Quarterly VAT Returns for the four quarters of CY 2014[6], showing VAT zero-rated sales for the four quarters of CY 2014 amounting to ₱195,786,948.60.

On March 31, 2016, petitioner filed an Application for Tax Credits/Refund with the BIR Revenue District Office (RDO) No. 50 for its alleged unutilized input VAT for the four quarters of CY 2014 in the total amount of ₱7,338,142.90[7] appending thereto documents relevant to its claim.

On April 19, 2016, petitioner received Letter of Authority (LOA) No. LOA-050-2016-0000010 (eLA201200035798)

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[2] Exhibit "P-3".
[3] Exhibit "P-4".
[4] Exhibits "P-5", "P-6" and "P-7".
[5] Exhibits "P-38" to "P-62".
[6] Exhibits "P-9" to "P-16".
[7] Exhibits "P-17" to "P-18".

dated April 15, 2016[8], for examination of its books of accounts and other accounting records for VAT for the period covering January 1 to December 31, 2014.

On June 27, 2016, petitioner received a letter signed by Revenue District Officer of BIR RDO No. 50, Rosita U. Meniano, denying the cited administrative claim for refund/tax credit[9].

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

In his Answer[10], respondent argues that petitioner failed to demonstrate that the subject tax was erroneously or illegally collected, thus, the presumption in favor of correctness of the taxes paid and collected applies. Besides, petitioner not only failed to prove entitlement to refund/TCC but also to substantiate it with proper documents. Lastly, respondent invokes the principle that claims for refund are construed strictly against the claimant for it partakes the nature of exemption from taxation[11] and as such, they are looked upon with disfavor[12].

After the pre-trial conference[13], the parties filed their Joint Stipulation of Facts and Issues (JSFI)[14] upon which the Pre-Trial Order[15] dated February 28, 2017 was based.

Trial ensued, during which petitioner presented Nerissa Tolentino and Katherine O. Constantino, as its witnesses.

Witness, **Nerissa Tolentino**, testified[16] that as petitioner's Senior Associate for Finance since May 2014, she reviews and safekeeps petitioner's corporate and financial documents, including tax returns and financial statements; oversees petitioner's compliance with the BIR requirements;

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[8] Exhibit "P-19".
[9] Exhibit "P-20".
[10] Docket, vol. 1, pp. 160-163.
[11] *Commissioner of Internal Revenue v. Ledesma*, 31 SCRA 95.
[12] *Western Minolco Corp. v. Commissioner of Internal Revenue,* 124 SCRA 1211.
[13] Minutes of the Hearing, docket, vol. 2, p. 502.
[14] Docket, vol. 2, pp. 515-524.
[15] Docket, vol. 2, pp. 568-574.
[16] Exhibits "P-28" and "P-28-1".

and coordinates with petitioner's external auditors and counsel regarding tax matters.

She further testified that petitioner is the Philippine branch office of a multinational company registered in Hong Kong.[17] It is a ROHQ engaged in the business of performing index bench marking, portfolio risk and performance analytics and research support services [18] and is a registered taxpayer with the BIR.[19]

The instant case involves petitioner's claim for refund/TCC resulting from its excess and unutilized input VAT attributable to its zero-rated sales of services for CY 2014 in the amount of ₱7,338,142.90. Petitioner rendered administration, sales support and marketing, analytics, management and index research and production services in the Philippines to MSCI, Inc. pursuant to its Service Agreement with MSCI, Inc. dated April 1, 2014[20].

She also declared that MSCI, Inc. is a foreign entity registered in Delaware, USA[21], therefore, not engaged in business in the Philippines[22]. On this account, it appointed petitioner to perform the services indicated in the Service Agreement for which it was paid service fees equivalent to the amount of the actual costs and expenses it incurred plus ten percent (10%) mark-up.

For the 1st to 4th quarters of CY 2014, petitioner generated sales amounting to ₱195,786,948.60. For the same period and in the course of rendering services to MSCI, Inc., it incurred excess and unutilized input VAT of ₱7,338,142.90. This occurred[23] since petitioner did not have any sales subject to twelve percent (12%) VAT and did not have any exempt sales during the four quarters of CY 2014, as reflected in its Quarterly VAT Returns. Hence, its input taxes amounting to ₱7,338,142.90 were not utilized or applied against any output tax liability for the same or succeeding taxable periods.

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[17] Exhibit "P-2".
[18] Exhibit "P-1".
[19] Exhibit "P-3".
[20] Exhibit "P-4".
[21] Exhibits "P-5" to "P-7".
[22] Exhibit "P-8".
[23] Exhibits "P-9" to "P-15".

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The witness continued to state that on March 31, 2016, petitioner filed with BIR RDO No. 50 a letter[24] and Application for Tax Credits/Refunds[25] of its unutilized input VAT for the 1st to 4th quarters of CY 2014 in the total amount of ₱7,338,142.90, with complete supporting documents. On April 19, 2016, petitioner received LOA-050-2016-0000010 (eLA201200035798) dated April 15, 2016[26] from the BIR authorizing the examination of its books of accounts and other accounting record for VAT for the period January 1, 2014 to December 31, 2014. On June 27, 2016, petitioner received a letter signed by Rosita U. Meniano, Revenue District Officer of BIR RDO No. 50, denying its administrative claim for refund/TCC[27], on the ground that petitioner carried over the amount subject of the claim for refund/TCC to the succeeding taxable period. According to the witness, while it is true that petitioner carried over its excess input taxes for the 1st to 4th quarters of CY 2014 amounting to ₱7,338,142.90 to the succeeding taxable period, it did not credit its input taxes against any output taxes from the 1st to 4th quarters of CY 2015[28] there being no sales subject to 12% VAT. In fact, petitioner removed the said excess input taxes when it filed its Amended Quarterly VAT Return for the 4th Quarter of CY 2015[29].

On July 26, 2016, petitioner elevated the said denial of its administrative claim for refund/TCC before the Court in Division.

Independent Certified Public Accountant (ICPA), **Katherine O. Constantino** declared[30] that she audited and evaluated petitioner's documents and records in support of its claim for refund/TCC for its excess and unutilized input VAT on its purchases of goods and services attributable to its zero-rated sales for the 1st to 4th quarters of CY 2014.

Per her examination and as stated in his ICPA Report dated April 26, 2017[31], petitioner is entitled to its claim for

[24] Exhibit "P-17".
[25] Exhibit "P-18".
[26] Exhibit "P-19".
[27] Exhibit "P-20".
[28] Exhibits "P-21" to "P-26".
[29] Exhibit "P-26".
[30] Exhibits "P-29" and "P-29-1".
[31] Exhibit "P-30".

refund of its excess and unutilized input VAT but in the reduced amount of ₱5,404,935.51. Such recommendation is based on the finding that some of petitioner's documents did not conform with the invoicing requirement as prescribed by law.

After formal offer of its evidence, petitioner rested, per Resolutions dated August 18, 2017[32] and January 4, 2018[33].

Respondent, on the other hand, did not present any evidence.[34]

On March 12, 2018[35], the case was submitted for decision after the parties filed their respective memoranda.

THE ISSUE

The parties submitted the following issue[36] for the Court's resolution:

> Whether petitioner is entitled to the refund of or issuance of a TCC for its excess and unutilized input VAT attributable to its zero-rated sales of service for the 1st to 4th Quarters of CY 2014 in the amount of ₱7,338,142.90.

THE RULING OF THE COURT

Sections 112(A) and (C) of the NIRC of 1997, as amended, relevantly provides:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –

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[32] Docket, vol. 2, pp. 1003-1004.
[33] Docket, vol. 3, pp. 1049-1051.
[34] Order dated August 22, 2017, docket, vol. 3, p. 1006.
[35] Resolution, docket, vol. 3, p. 1092.
[36] Issue, JSFI, docket, vol. 2, p. 516.

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

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.

Thus, to be entitled to refund/TCC of input tax due or paid attributable to zero-rated or effectively zero-rated sales, the following requisites must be satisfied:

1. that the taxpayer is VAT-registered;
2. that the claim for refund was filed within the prescriptive period;
3. that there must be zero-rated or effectively zero-rated sales;
4. that input taxes were incurred or paid;
5. that such input taxes are attributable to zero-rated or effectively zero-rated sales; and
6. that the input taxes were not applied against any output VAT liability.

Petitioner is a VAT-registered taxpayer.

Undeniably, petitioner is a VAT-registered taxpayer with the BIR as evidenced by the Certificate of Registration No. OCN 9RC0000442793 dated March 13, 2014, and its Taxpayer Identification No. 008-724-942-000.[37]

Petitioner's administrative and judicial claims were seasonably filed.

The second requisite was likewise satisfied. Per Section 112(A) of the NIRC of 1997, as amended, petitioner had two (2) years to file a claim for refund/TCC of input VAT attributable to zero-rated or effectively zero-rated sales reckoned from the close of the taxable quarter when the relevant sales were made. Shown below are the dates of the last day of the two-year period for petitioner to file its administrative claim for the four taxable quarters of CY 2014:

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[37] Exhibit "P-3".

Quarter (2014)	Close of Taxable Quarter	Last day of the 2-year Prescriptive Period
1st	March 31, 2014	March 31, 2016
2nd	June 30, 2014	June 30, 2016
3rd	September 30, 2014	September 30, 2016
4th	December 31, 2014	December 31, 2016

Evidently, petitioner's administrative claim for refund[38] covering the four quarters of CY 2014 was timely filed on March 31, 2016.

As to the timeliness of petitioner's judicial claim for refund, Section 112(C) of the NIRC of 1997, as amended speaks of two periods for filing judicial claim for refund, namely: (1) the period of 120 days for respondent to act on the administrative claim for refund/TCC; and (2) the 30-day period from notice of respondent's adverse ruling or the lapse of the 120 period without any action from respondent within which to file a judicial claim with the Court of Tax Appeals.[39]

In the landmark case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*[40], the Supreme Court held that the taxpayer can seek judicial review of its claim for refund/TCC in either of the following ways: (1) file the judicial claim within 30 days after the respondent denies the claim within the 120-day waiting period, or (2) file the judicial claim within 30 days from the expiration of the 120-day period if respondent does not act within that period.[41]

Thus, from the filing of petitioner's administrative claim, together with the supporting documents, on March 31, 2016, respondent had one hundred twenty (120) days or until July 29, 2016 to act on the said claim. Considering that respondent issued a letter denying the claim on June 27, 2016[42], petitioner had thirty (30) days or until July 27, 2016, within which to file a judicial claim before this Court. Thus, the instant Petition for Review was also seasonably filed on July 26, 2016.

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[38] Exhibits "P-17" to "P-18".
[39] *ROHM Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.
[40] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[41] *Supra*, Note 39.
[42] Exhibit "P-20".

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

Petitioner alleges that for CY year 2014, it rendered services to MSCI, Inc., a corporation registered in the USA. In relation thereto, it claims that its sales of services to MSCI, Inc. for the four quarters of CY 2014 qualify as VAT zero-rated sales under Section 108(B)(2) of the NIRC of 1997, as amended, which reads:

> 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);

For the supply of services to be VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended, the following requisites must concur:

> 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. the payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations.[43]

Evidence shows that petitioner is engaged in the business of performing index benchmarking, portfolio risk and performance analytics, and research support services. Further, per the Service Agreement entered into by and between petitioner and MSCI, Inc., the former shall provide administration, sales support and marketing, analytics, management and index research and production services to MSCI, Inc..[44] Evidently, such services are not in the same category as "processing, manufacturing or repacking of goods".

With respect to the requisite that the recipient of such services must be doing business outside the Philippines, petitioner points out that it rendered services to MSCI, Inc., which is registered as a corporation in the State of Delaware, United States of America, and is engaged in business therein.

In the the case of *Deutsche Knowledge Services, Pte Ltd. v. Commissioner of Internal Revenue*[45] Court *En Banc* held that 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** a certificate of non-registration of corporation/partnership issued by the Philippine Securities and Exchange Commission (SEC) **and** certificate/articles of foreign incorporation/association, and that there is no other indication that the recipient of the services is doing business in the Philippines.

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[43] *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* G.R. No. 153205, January 22, 2007.
[44] Exhibit "P-4".
[45] CTA EB Nos. 1244 and 1345, March 30, 2017.

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To prove that petitioner's client, MSCI, Inc., is a non-resident foreign corporation doing business outside the Philippines, petitioner presented the SEC Certificate of Non-Registration of MSCI, Inc.[46]; the Authenticated Third Amended and Restated Certificate of Incorporation,[47] and Amended and Restated By Laws[48] of MSCI, Inc., issued by the Secretary of the State of Delaware; and the Certificate of Tax Residence of MSCI, Inc.[49] issued by the U.S. Internal Revenue Service.

In relation to the third 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, such as 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
>
> (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);

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46 Exhibit "P-8".
47 Exhibit "P-5".
48 Exhibit "P-6".
49 Exhibit "P-7".

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(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 *(Emphases 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;" *(Emphases supplied)*

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

In its Quarterly VAT Returns for the four quarters of CY 2014, petitioner declared total zero-rated sales of ₱195,786,948.60, detailed as follows:

EXHIBIT	PERIOD COVERED	ZERO-RATED SALES
P-13	1st Quarter	₱ -
P-14	2nd Quarter	40,490,242.79
P-15	3rd Quarter	74,007,373.17
P-16	4th Quarter	81,289,332.64
TOTAL		**₱195,786,948.60**

Evidence shows that for services it rendered to MSCI, Inc. for the four taxable quarters of CY 2014, petitioner received the amount of US$4,426,842.34 with peso equivalent of ₱195,786,948.60,[50] which were accounted for in accordance with the BSP rules and regulations, as evidenced by the Transaction Credit Advices from Bank of America,[51] and duly supported by the zero-rated official receipts and invoices,[52] which were all examined by the ICPA.

[50] Exhibit "P-35".
[51] Exhibits "P-47" to "P-54".
[52] Exhibits "P-38" to "P-45" and "P-55" to "P-62".

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As ascertained by the ICPA, the zero-rated sales of US$4,426,842.34 were duly supported by official receipts. However, only the amount of US$4,400,758.14[53] was inwardly remitted as shown in the Transaction Credit Advices from Bank of America. As represented by petitioner, the difference of US$26,084.20 pertains to expenses payable to MSCI, Inc. deducted in invoice amount and foreign exchange difference, accounted as follows:[54]

Expenses payable to MSCI Inc.	US$ 27,548.75
Forex Difference	(1,464.55)
Total	**US$ 26,084.20**

Petitioner however failed to substantiate its claim that the expenses amounting to US$27,458.75 were indeed incurred and was due to MSCI, Inc., to warrant proper offsetting with its sales receipts. Likewise, the Court cannot ascertain whether the amount of US$1,464.55 indeed pertains to foreign exchange (forex) difference in the absence of any supporting document. This also casts doubt as it is denominated in US dollars. Usually, the impact of forex differences is on the peso conversion of the US dollar amounts since the denomination of the sale in US dollar is fixed. As such, the Court cannot subscribe to petitioner's justification on the noted differences. Consequently, the same shall be disallowed as zero-rated sales.

Converting the US dollar amounts of the disallowed zero-rated sales using the rates used by petitioner as of the date of sale, the amount disallowed in peso is ₱1,156,979.30, as computed below:

			Details of Difference in USD[55]		**Peso Conversion**	
OR No.	**Exhibit No.**	**Conversion Rate[56]**	**Expenses payable to MSCI Inc.**	**Forex Difference**	**Expenses payable to MSCI Inc.**	**Forex Difference**
0001	P-38	44.579	$ -	$ -	₱ -	₱ -
0002	P-39	43.755	3,139.38	-	137,363.57	-
0003	P-40	43.650	5,580.51	(1,464.55)	243,589.26	(63,927.61)
0004	P-41	43.480	340.73	-	14,814.94	-

53 ICPA Report, Exhibit "P-30".
54 Annex 4, ICPA Report, Exhibit "P-30".
55 Annex 4, ICPA Report, Exhibit "P-30".
56 Exhibit "P-35".

0005	P-42	43.600	3,618.94	-	157,785.78	-
0007	P-43	44.877	7,475.71	-	335,487.44	-
0008	P-44	44.875	4,610.09	-	206,877.79	-
0009	P-45	44.905	2,783.39	-	124,988.13	-
Total			**$27,548.75**	**$(1,464.55)**	**₱1,220,906.91**	**₱ (63,927.61)**
Net Total				**$ 26,084.20**		**₱1,156,979.30**

Based on the foregoing, out of petitioner's reported zero-rated sales of ₱195,786,948.60 for the subject period of claim, only the amount of ₱194,629,969.30 (₱195,786,948.60 less ₱1,156,979.30) qualifies for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

Input taxes were incurred or paid.

In its Quarterly VAT Returns for CY 2014, petitioner reported a total input VAT of ₱7,338,142.82[57], broken down as follows:

Input tax on:	**1st Quarter**	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**Total**
Input tax deferred on capital goods exceeding P1million from previous quarter	₱ -	₱ 1,394,063.43	₱ 2,044,548.75	₱ 2,343,164.74	₱ 5,781,776.92
Purchase of capital goods exceeding P1miilion	1,440,681.93	828,735.86	505,613.08	498,454.95	3,273,485.82
Less: Input tax on capital goods exceeding P1million deferred for the succeeding period	1,394,063.44	2,044,548.77	2,343,164.78	2,616,516.77	8,398,293.76
Input tax amortization on purchase of capital goods	*₱ 46,618.49*	*₱ 178,250.52*	*₱ 206,997.05*	*₱ 225,102.92*	*₱ 656,968.98*
Purchase of capital goods not exceeding P1million	-	11,738.52	35,264.34	-	₱ 47,002.86
Domestic purchase of goods other than capital goods	43,255.77	213,644.22	27,940.72	37,038.32	321,879.03
Domestic purchase of services	623,028.71	2,230,024.41	1,919,481.09	1,539,757.74	6,312,291.95
Total current input VAT	*₱ 666,284.48*	*₱ 2,455,407.15*	*₱ 1,982,686.15*	*₱ 1,576,796.06*	*₱ 6,681,173.84*
Total available input VAT	**₱712,902.97**	**₱2,633,657.67**	**₱2,189,683.20**	**₱1,801,898.98**	**₱7,338,142.82**

In support of the input VAT on its purchases of goods and services, petitioner submitted various suppliers' invoices and official receipts[58] which were examined by the ICPA.

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[57] With ₱0.08 difference against the present claim of ₱7,338,142.90.
[58] Exhibits "P-67" to "P-394".

As regards the input VAT on its current purchases amounting to ₱6,681,173.84, the ICPA summarized her findings as follows:

		Annex Reference to Exhibit P-30	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Properly Supported by VAT Invoices/Official Receipts							
1	Domestic Purchases of Goods Other than Capital Goods properly supported by VAT REG TIN invoices	Annex 5-1Q-a Annex 5-2Q-a Annex 5-3Q-a Annex 5-4Q-a	₱ 26,855.36	₱ 179,818.50	₱ 3,221.79	₱ 27,700.82	₱ 237,596.47
2	Domestic Purchases of Services supported by VAT REG TIN Official Receipts	Annex 5-1Q-b Annex 5-2Q-b Annex 5-3Q-b Annex 5-4Q-b	623,028.71	1,491,764.76	1,356,728.94	1,323,929.58	4,795,451.99
3	Domestic Purchases of Capital Goods Not Exceeding ₱1 million properly supported by VAT REG TIN invoices	Annex 5-2Q-n Annex 5-3Q-m	–	11,738.52	35,264.34	–	47,002.86
4	Domestic Purchase of Goods Other than Capital Goods supported by VAT REG TIN invoice not dated within the quarter but within the period of claim	Annex 5-3Q-c	–	–	22,500.00	–	22,500.00
TOTAL - PROPERLY SUPPORTED			**₱649,884.07**	**₱1,683,321.78**	**₱1,417,715.07**	**₱1,351,630.40**	**₱5,102,551.32**
Other Findings							
Purchase of Goods Other Than Capital Goods							
1	Domestic Purchase of Goods Other than Capital Goods supported by VAT REG TIN invoice not dated within the quarter but within the period of claim with inserted	Annex 5-2Q-c	₱ –	₱ 2,903.57	₱ –	₱ –	₱ 2,903.57

	name and TIN of Petitioner						
2	Domestic Purchase of Goods Other than Capital Goods supported by VAT REG TIN invoice with altered date	Annex 5-2Q-d	–	3,900.00	–	–	3,900.00
3	Domestic Purchases of Goods Other than Capital Goods supported by VAT REG TIN invoices with altered name of the Petitioner	Annex 5-2Q-e Annex 5-4Q-e	–	7,392.00	–	6,642.86	14,034.86
4	Domestic Purchases of Goods Other than Capital Goods supported by VAT REG TIN invoices with abbreviated name and incomplete address of the Petitioner	Annex 5-2Q-f Annex 5-3Q-d	–	1,285.72	535.71	–	1,821.43
5	Domestic Purchases of Goods Other than Capital Goods supported by VAT REG TIN invoices with incomplete address	Annex 5-1Q- c Annex 5-2Q- g Annex 5-3Q-e Annex 5-4Q-d	16,400.42	16,383.00	1,683.22	1,275.00	35,741.64
6	Domestic Purchase of Goods Other than Capital Goods supported by VAT REG TIN invoice with incomplete address and altered VAT breakdown	Annex 5-2Q-h	–	1,635.75	–	–	1,635.75

7	Domestic Purchase of Goods Other than Capital Goods supported by VAT REG TIN invoice with incomplete address with VAT per support higher than per schedule	Annex 5-2Q-i	–	284.46	–	–	284.46
8	Domestic Purchase of Goods Other than Capital Goods supported by VAT REG TIN invoice with altered TIN and higher VAT input per support than schedule	Annex 5-4Q-c	–	–	–	1,419.65	1,419.65
SUBTOTAL			**₱ 16,400.42**	**₱ 33,784.50**	**₱ 2,218.93**	**₱ 9,337.51**	**₱ 61,741.36**
Purchase of Services							
1	Domestic Purchases of Services supported by VAT REG TIN ORs with incomplete/ altered name of Petitioner	Annex 5-2Q-j Annex 5-3Q-f Annex 5-4Q-g	₱ –	₱ 122.69	₱ 82,587.87	₱ 1,440.00	₱ 84,150.56
2	Domestic Purchases of Services supported by VAT REG TIN ORs with altered TIN	Annex 5-2Q-k Annex 5-3Q-g Annex 5-4Q-i	–	285,182.10	49,832.35	112,891.95	447,906.40
3	Domestic Purchases of Services supported by VAT REG TIN ORs with incomplete address	Annex 5-2Q-l Annex 5-3Q-h Annex 5-4Q-j	–	322,947.86	268,395.07	7,203.63	598,546.56
4	Domestic Purchases of Services supported by TIN ORs with abbreviated name of Petitioner	Annex 5-2Q-m	–	94,486.98	–	–	94,486.98
5	Domestic Purchases of Services supported by VAT	Annex 5-4Q-h	–	–	–	24,252.27	24,252.27

	REG TIN ORs with abbreviated name and incomplete address of the Petitioner						
6	Domestic Purchases of Services supported by VAT REG TIN ORs with incomplete address and altered VAT breakdown	Annex 5-3Q-i	–	–	7,620.46	–	7,620.46
7	Domestic Purchases of Services supported by VAT REG TIN ORs with altered VAT breakdown	Annex 5-3Q-j Annex 5-4Q-k	–	–	81,594.55	5,767.15	87,361.70
8	Domestic Purchases of Services supported by TIN ORs	Annex 5-4Q-l	–	–	–	63,847.20	63,847.20
9	Domestic Purchases of Services supported by TIN ORs with incomplete address	Annex 5-3Q-k	–	–	41,822.00	–	41,822.00
10	Domestic Purchase of Services supported by VAT REG TIN OR with altered name and TIN of Petitioner and higher VAT per schedule than per support	Annex 5-3Q-l	–	–	30,899.86	–	30,899.86
11	Domestic Purchase of Services supported by VAT REG TIN OR without year indicated and with incomplete address of the Petitioner	Annex 5-4Q-f	–	–	–	426.00	426.00
12	Domestic Purchase of Services supported by VAT REG TIN OR without	Annex 5-2Q-o	–	35,520.00	–	–	35,520.00

	TIN and with altered Petitioner's address						
SUBTOTAL			**₱ –**	**₱ 738,259.63**	**₱ 562,752.16**	**₱ 215,828.20**	**₱1,516,839.99**
TOTAL - OTHER FINDINGS			**₱ 16,400.42**	**₱ 772,044.13**	**₱ 564,971.09**	**₱ 225,165.71**	**₱1,578,581.35**
GRAND TOTAL			**₱666,284.49**	**₱2,455,365.91**	**₱1,982,686.16**	**₱1,576,796.11**	**₱6,681,132.67**

Since, the ICPA failed to account for the difference of ₱41.17 (₱6,681,173.84 less ₱6,681,132.67), the same shall be disallowed. Likewise, the exceptions (under Other Findings) noted by the ICPA in the amount of ₱1,578,581.35 shall be disallowed for petitioner's failure to meet the substantiation requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended by Republic Act No. 9337, and as implemented by Sections 4.110-2, 4.110-8, and 4.113-1 of Revenue Regulations (RR) No. 16-05. Moreover, part of the total input VAT claim is the amount of ₱656,968.98, representing the amortization of the input VAT on purchases of capital goods exceeding ₱1Million, as determined below:

Input tax on:	**1st Quarter**	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**Total**
Input tax deferred on capital goods exceeding ₱1million from previous quarter	₱ -	₱ 1,394,063.43	₱ 2,044,548.75	₱ 2,343,164.74	₱ 5,781,776.92
Purchase of capital goods exceeding ₱1miilion	1,440,681.93	828,735.86	505,613.08	498,454.95	3,273,485.82
Less: Input tax on capital goods exceeding ₱1million deferred for the succeeding period	1,394,063.44	2,044,548.77	2,343,164.78	2,616,516.77	8,398,293.76
Input tax amortization on purchase of capital goods	**₱ 46,618.49**	**₱ 178,250.52**	**₱ 206,997.05**	**₱ 225,102.92**	**₱ 656,968.98**

Upon examination of the supporting sales invoices and official receipts,[59] the ICPA summarized her findings as follows:

		Annex Reference	**1st Quarter**	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**Total**
			Allowable Input VAT	**Allowable Input VAT**	**Allowable Input VAT**	**Allowable Input VAT**	**Allowable Input VAT**
Properly Supported by VAT Invoices							
1	Domestic purchases of capital goods exceeding P1 million properly supported by VAT REG TIN invoices	Annex 8-1Q-a Annex 8-2Q-a Annex 8-3Q-a Annex 8-4Q-a	₱ 4,406.11	₱ 48,449.78	₱ 76,481.66	₱ 103,501.33	₱ 232,838.88

[59] Exhibits "P-339" to "P-394".

2	Domestic purchases of capital goods (services) exceeding P1 million supported by VAT REG TIN ORs	Annex 8-1Q-b Annex 8-4Q-b	6,902.38	20,707.14	20,707.14	21,228.65	69,545.31
TOTAL - Properly supported			**₱ 11,308.49**	**₱ 69,156.92**	**₱ 97,188.80**	**₱ 124,729.98**	**₱ 302,384.19**
Other Findings							
1	Domestic purchase of capital goods exceeding P1 million supported by VAT REG TIN invoice with altered name and TIN of Petitioner	Annex 8-1Q-c	₱ 8,392.86	₱ 25,178.57	₱ 25,178.57	₱ 25,178.57	₱ 83,928.57
2	Domestic Purchase of Capital Goods Exceeding P1 million with altered name of Petitioner	Annex 8-3Q-b			714.67	1,072.00	1,786.67
3	Domestic Purchases of Capital Goods Exceeding P1 million supported by VAT REG TIN invoices with altered TIN of Petitioner	Annex 8-4Q-c				2,765.48	2,765.48
4	Domestic purchases of capital goods exceeding P1 million supported by VAT REG TIN NO. invoices without Petitioner's TIN	Annex 8-1Q-d Annex 8-2Q-b	3,928.22	14,948.22	14,948.21	14,948.22	48,772.87
5	Domestic Purchase of Capital Goods Exceeding P1 million supported by VAT REG TIN invoice without Petitioner's TIN and incomplete address	Annex 8-4Q-d				327.61	327.61
6	Domestic purchase of capital goods exceeding P1 million supported by VAT REG TIN invoice with wrong Petitioner's TIN	Annex 8-1Q-e	4,168.15	12,504.46	12,504.46	12,504.46	41,681.53
7	Domestic purchases of capital goods (services) exceeding P1 million with supporting documents other than	Annex 8-1Q-f Annex 8-4Q-e	18,820.79	56,462.37	56,462.37	43,576.61	175,322.14

	invoice (goods) / OR (services)						
Total - Other findings			**₱ 35,310.02**	**₱ 109,093.62**	**₱ 109,808.28**	**₱ 100,372.95**	**₱ 354,584.87**
GRAND TOTAL			**₱ 46,618.51**	**₱ 178,250.54**	**₱ 206,997.08**	**₱ 225,102.93**	**₱656,969.06**[60]

The Court finds the above ICPA's findings in order, except for the amortized input VAT in the amount of ₱4,064.84 under Annex 8-4Q-e (included in the total amount of ₱43,576.61), which was noted as exception by the ICPA and described as "Domestic purchase of capital goods (services) exceeding ₱1 million with supporting documents other than invoice (goods)/OR (services)", since upon further verification, the Court finds that the same was in fact properly supported with VAT Reg TIN OR. Therefore, only the amount of ₱350,520.03 (₱354,584.87 less ₱4,064.84), representing the amortization of the input VAT on purchases of capital goods exceeding ₱1Million shall be disallowed from petitioner's claim.

In sum, out of petitioner's claimed unutilized input VAT of ₱7,338,142.90, only the amount of ₱5,409,000.35 represents petitioner's substantiated and valid input VAT for the four quarters of CY 2014, computed as follows:

Input VAT claimed for refund		₱ 7,338,142.90
Less: Disallowances		
Unaccounted input VAT	₱ 41.17	
Exceptions noted per ICPA Report:		
Input VAT on current purchases other than capital goods	1,578,581.35	
Amortized input VAT on capital goods exceeding ₱1M	350,520.03	1,929,142.55
Substantiated Input VAT		**₱5,409,000.35**

<u>Petitioner's input taxes were attributable to its zero-rated sales and were not applied to any output tax liability.</u>

Since petitioner reported 100% zero-rated sales for CY 2014, the substantiated input VAT of ₱5,409,000.35 is wholly attributable thereto. However, only the amount of ₱5,377,036.52 is

60 With ₱0.08 difference against the declared input VAT of ₱656,968.98.

attributable to the valid zero-rated sales of ₱194,629,969.30, as computed below:

Substantiated Input VAT	₱ 5,409,000.35
Divide by total reported zero-rated sales	195,786,948.60
Multiply by substantiated zero-rated sales	194,629,969.30
Input VAT allowable for refund/issuance of TCC	**₱5,377,036.52**

Moreover, although the claimed input VAT was carried over by petitioner in its succeeding Quarterly VAT Returns[61], the same remained unutilized until it was deducted as "VAT Refund/TCC Claimed" in its Amended Quarterly VAT Return for the fourth quarter of CY 2015.[62] Consequently, the subject claim no longer formed part of the excess input VAT of ₱7,958,036.63[63] as of the end of the fourth quarter of CY 2015 that was to be carried over/applied to the succeeding quarters. As such, it eliminates the possibility that the present claim would be applied to future output VAT liability.

All stated, petitioner has sufficiently established that it is entitled to a refund or issuance of tax credit certificate corresponding to its unutilized and excess input VAT for the four quarters of CY 2014 but in the reduced amount of ₱5,377,036.52.

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **DIRECTED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner MSCI Hong Kong Limited in the reduced amount of **₱5,377,036.52**, representing its unutilized and excess input VAT attributable to its zero-rated sales for the four quarters of calendar year 2014

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[61] Exhibits "P-25", "P-22", "P-23", and "P-26", docket, vol. 2, pp. 975, 930, 949, and 993.
[62] Exhibit "P-26", Line 23D, docket, vol. 2, p. 993.
[63] Exhibit "P-26", Line 29, docket, vol. 2, p. 994.

I Concur:

MA. BELEN M. RINGPIS-LIBAN
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.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice