REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

DEUTSCHE KNOWLEDGE SERVICES PTE. LTD., Petitioner,	C.T.A. CASE NO. 7695
	Members:
- versus -	ACOSTA, *Chairperson* UY, *and* FABON-VICTORINO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 07 2011 12:27pm

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DECISION

Fabon-Victorino, J.:

Petitioner Deutsche Knowledge Services Pte. Ltd. files this Petition for Review imploring the Court to render judgment directing respondent Commissioner of Internal Revenue (CIR) to refund or issue a Tax Credit Certificate (TCC) in its favor in the amount of Php5,188,511.53, allegedly representing excess and unutilized input value-added tax (VAT) on purchases of capital goods and services attributable to zero-rated sales for the 3rd and 4th quarters of calendar year (CY) 2005.

Petitioner alleges that it is a branch in the Philippines of Deutsche Knowledge Services Pte Ltd., a multinational company organized and existing under the laws of Singapore. It is authorized to conduct business in the Philippines as a regional operating headquarters (ROHQ) by the Securities and Exchange Commission (SEC) as of April 25, 2005, pursuant to the Omnibus Investment Code of 1987, as amended by Republic Act No. 8756 and its implementing rules and regulations. It provides services 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.[1]

Specifically, petitioner acts as a shared services center that handles regional as well as global accounting and related controlling processes, such as accounting production work in the global general ledger in SAP, developing and operating inter-company clearing house, accounting and head office reporting for non-related entities

[1] Exhibit "A", p. 307 of the case docket.

and product control. Petitioner is a registered VAT taxpayer with Tax Identification No. (TIN) 238-763-115-000.[2]

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR) empowered to act upon claims for refund or tax credit as provided by law. She holds office at the 4th Floor, BIR National Office Building, Agham Road, Quezon City.

In the 3rd and 4th quarters of CY 2005, petitioner rendered services in the Philippines to persons engaged in business conducted outside the Philippines. It was paid in Euro and other acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP).[3]

On October 24, 2005 and January 25, 2006, petitioner filed its original quarterly VAT return for the 3rd and 4th quarters of CY 2005, respectively. For such quarters, it accumulated excess and unutilized input tax in the total amount of Php5,188,511.53 attributable to zero-rated sales and purchases of capital goods, broken down as follows:[4]

[2] Exhibit "B", p. 326 of the case docket.
[3] Petition for Review, pp. 1 to 9, of the case docket.
[4] Petition for Review, pp. 1 to 9, of the case docket.

CY 2005	Input VAT
3rd Quarter	P 1,882,159.76
4th Quarter	3,306,351.77
Total	**P 5,188,511.53**

On August 31, 2007, petitioner filed with the BIR-Revenue District Office No. 47 an application for refund/tax credit of the cited excess and unutilized input VAT.[5]

On October 24, 2007, petitioner filed the instant Petition for Review for alleged failure of respondent to act on its application for refund/tax credit.[6]

In her Answer [7] dated December 14, 2007, respondent interposes the following special and affirmative defenses:

> "4. Granting *arguendo* that petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue.
>
> 5. Petitioner failed to demonstrate that the alleged tax sought for refund or tax credit has been or (*sic*) erroneously or illegally collected in violation of the tax laws relied upon by the petitioner.
>
> 6. Well settled is the rule that the interpretation placed upon a statute by executive officers, whose duty is to

[5] Exhibit "Q", pp. 362 to 367 of the case docket.
[6] Petition for Review, pp. 1 to 9, of the case docket.
[7] Case docket, pp. 29 to 32.

enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, the courts will not countenance administrative issuances and rulings that override, instead of remaining consistent and in harmony with the law which it seeks to apply and implement (Philippine Bank of Communication v. CIR, G.R. No. 112024, 302 SCRA 241, January 28, 1999).

7. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable.

8. It is incumbent upon the petitioner to show that it has complied with the provision of Sections 108 and 112 in relation to Section 229 of the 1997 Tax Code, as amended.

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

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

The Pre-trial Conference was set on February 14, 2008 for which the parties were required to file their respective pre-trial briefs.[8] Respondent however neither attended the scheduled proceeding nor filed the required pre-trial brief despite notice, prompting the Court to reset it to March 13, 2008, with final warning against respondent.

On the appointed date, respondent again failed to attend the pre-trial conference and to submit her pre-trial brief. In view thereof, petitioner moved for ex-parte presentation of its evidence.[9] In a Resolution dated March 17, 2008, the Court granted the motion.[10]

On April 3, 2008, respondent filed a Motion for Reconsideration with Leave to Admit Attached Pre-Trial Brief to which petitioner interposed an objection.[11] In a Resolution dated July 07, 2008, the Court denied respondent's motion for lack of merit.[12]

In support of its case, petitioner presented three (3) witnesses, namely: 1) Marilen V. Tuazon, its Chief Financial Officer; 2) Romeo A. De Jesus, the Court commissioned Independent

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[8] Case docket, p. 33.
[9] Case docket, p. 44.
[10] Case docket, p. 49.
[11] Case docket, p. 68 to 71.
[12] Case docket, pp. 91 to 94.

Certified Public Accountant (ICPA); and 3) Andrea S. Peralta, its Legal Entity Controller.

Marilen V. Tuazon, by way of Judicial Affidavit, testified that as petitioner's Chief Financial Officer, she is responsible for all the financial and statutory reporting and regulatory compliance of the petitioner. The latter is licensed to do business as an ROHQ in the Philippines to act as a shared services center that handles regional as well as global accounting and related controlling processes, such as accounting production work in the global general ledger in SAP, developing and operating inter-company clearing house, accounting and head office reporting for non-regulated entities and product control. This is shown in the Certificate of Registration and License dated April 25, 2005, issued by the SEC in favor of petitioner. On June 16, 2005, petitioner registered with the BIR as a VAT taxpayer with Tax Identification No. 238-763-115-000 as indicated in the BIR Certificate of Registration with OCN 9RC0000155974.

The witness further testified that the instant case is about petitioner's claim for refund or issuance of Tax Credit Certificate (TCC) for the amount of Php5,188,511.53 representing its excess and unutilized input tax attributable to zero-rated sales and purchases of capital goods for the 3rd and 4th quarters of CY 2005.

Under the law, petitioner is entitled to refund of unutilized input taxes on its purchases of capital and non-capital goods and services attributable to zero-rated sales of services to persons engaged in the business conducted outside the Philippines, for which it is paid in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.

In the course of its operation, petitioner purchased goods and services to which it incurred input VAT credits. Petitioner even obtained negative certifications[13] from the SEC to prove that the services rendered by petitioner were provided to entities engaged in business conducted outside the Philippines. The said input taxes for the 3rd and 4th quarters of CY 2005 remained unutilized and that petitioner carried over its excess input taxes of Php5,188,511.53 from the 3rd and 4th quarters of CY 2005 to the succeeding quarters until they were deducted as "VAT Refund/TCC Claimed" from the total input VAT in the Amended Quarterly VAT Return for the 4th quarter of CY 2007.

ICPA Romeo A. De Jesus testified that on September 29, 2008, he prepared and submitted to the Court his findings and conclusions relative to petitioner's claim for refund or issuance of

[13] Exhibits "FF" to "OO", pp. 422 to 432.

TCC in the amount of Php5,188,511.53 covering the 3rd and 4th quarters of CY 2005.

Petitioner's Legal Entity Controller Andrea S. Peralta testified that the sale of service and purchases of capital goods for the 3rd and 4th quarters of CY 2005 were subject to zero percent (0%) VAT as the services were rendered to non-resident foreign corporations which have been conducting business outside the Philippines for which petitioner was paid in Euros and accounted for in accordance with the rules and regulations of the BSP. To prove that the clients are non-resident foreign corporations, petitioner secured various certifications [14] from different governmental bodies abroad confirming that its clients are, among others, registered as legal entities, duly existing and maintaining offices in their respective countries.

On July 28, 2009, petitioner filed its Formal Offer of Evidence [15] to which no comment/opposition was filed by respondent, despite notice.

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[14] Exhibits "QQ" to "AAA-2"
[15] Case docket, pp. 284 to 305.

On August 28, 2009, the Court admitted petitioner's exhibits except exhibits W-117, W-118, W-224, and W-656, for failure to submit the marked exhibits.[16]

On September 18, 2009, petitioner filed a Manifestation (With Motion to Present Supplemental Evidence) which was granted in the Resolution dated October 22, 2009.

On November 26, 2009, petitioner filed a Supplemental Formal Offer of Evidence to which respondent did not also file any comment/opposition. In the Resolution dated December 10, 2009, the Court admitted petitioner's exhibits HHH to RRR-1.

On March 22, 2010, the instant case was submitted for decision taking into consideration petitioner's Memorandum *sans* that of respondent who again failed to file despite the opportunity granted.

The sole issue for this Court's resolution is:

> WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE OF ITS ALLEGED UNUTILIZED INPUT VAT IN THE AMOUNT OF

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[16] Case docket, pp. 564 to 565.

PHP5,188,511.53, ARISING FROM DOMESTIC PURCHASES OF GOODS AND SERVICES ATTRIBUTABLE TO ZERO-RATED SALES FOR THE 3RD AND 4TH QUARTERS OF CY 2005.

The Petition is partly meritorious.

Petitioner anchors its claim on Section 112(A) and (B) of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides as follows:

"SEC. 112. *Refunds or Tax Credits of Input Tax.*

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

> "(B) *Capital Goods.* — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made."

Based on the foregoing, a refund or tax credit of unutilized input VAT is allowed in two instances, to wit: a) when the excess input VAT is attributable to zero-rated or effectively zero-rated sales; and b) when the excess input VAT is attributable to capital goods purchased by a VAT-registered person.

To be entitled to a refund or issuance of a TCC under the first circumstance, petitioner must prove that the following requirements concur:

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

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On the other hand, to be entitled to a refund or issuance of TCC of input VAT paid on capital goods purchased, petitioner must prove compliance with the following requisites:

1) petitioner is a VAT-registered entity;

2) that its input taxes claimed were paid on capital goods duly supported by VAT invoices and/or official receipts;

3) petitioner did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability; and

4) the claim for refund was filed within the two-year prescriptive period both in the administrative and judicial levels.

However, Section 112(B) pertaining to the refund of input VAT on capital goods has been deleted when Republic Act No. 9337,[17] took effect on November 1, 2005. Henceforth, input VAT incurred on capital goods can only be refunded if the same is attributable to zero-rated or effectively zero-rated sales. The refundable amount is 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 as provided under Section

[17] An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as amended, and for other purposes.

110(A) of the NIRC of 1997, as amended.[18] Otherwise, the said input taxes can be credited against the taxpayer's output tax liability by virtue of the following provision of the Tax Code, to wit:

> "SEC. 110. *Tax Credits.* —
>
> "(A) Creditable input Tax. —
>
> "(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> "(a) Purchase or importation of goods:
>
> xxx xxx xxx
>
> "(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.
>
> "(2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:
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> "(a) To the purchaser upon consummation of sale and on importation of goods or properties; and
>
> "(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.
>
> "Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds

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[18] Sitel Philippines Corporation (Formerly Clientlogic Philippines, Inc.) vs. Commissioner Of Internal Revenue, C.T.A. Case No. 7623, March 3, 2010 as amended on July 23, 2010.

> One million pesos (P1,000,000): Provided, however, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: xxx

In its Quarterly VAT Returns for the 3rd and 4th quarters of 2005, petitioner reflected the following unutilized input VAT:

Third Quarter 2005 (Exhibit "D")			
	Input Tax on:		
	Domestic Purchases – Capital Goods	P1,948,096.45	
	Domestic Purchases – Services	2,179,937.79	P4,128,034.24
Fourth Quarter 2005 (Exhibit "E")			
	Input Tax on:		
	Purchase of Capital Goods not exceeding P1 Million	P1,547,262.10	
	Domestic Purchases of Goods other than Capital Goods	846,706.58	
	Domestic Purchases of Services	1,327,204.30	3,721,172.98
Total – 3rd & 4th Quarters of 2005			**P7,849,207.22**

Out of the reported input VAT of Php7,849,207.22, petitioner is claiming a refund of Php5,188,511.53 allegedly attributable to its zero-rated sales for the 3rd and 4th quarters of 2005, broken down as follows:

Period Covered	Input VAT Claim
3rd Quarter 2005	P 1,882,159.76
4th Quarter 2005	3,306,351.77
	P 5,188,511.53

At this point, it is necessary to determine whether petitioner seasonably filed its administrative and judicial claims for the refund and/or issuance of TCC of the cited amount.

Under Section 112 (A) of RA 8424, as amended, a VAT registered taxpayer whose sale is zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for refund or issuance of a TCC of its creditable input tax due or paid attributable to such sales.

This much had been clarified by the Supreme Court in *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation.*[19] The Final Arbiter ruled that the two-year prescriptive limit on claims for refund of input VAT attributable to zero-rated or effectively zero-rated sales should be reckoned from the close of the taxable quarter when the relevant sales were made, regardless of whether the said tax was paid or not.

Corollarily, Section 112(B) of RA 8424, as amended, provides that the taxpayer may apply for a refund or issuance of a TCC, within two (2) years from the close of the taxable quarter when the importation or purchase was made.

[19] G.R. No. 172129, September 12, 2008.

In the instant petition, petitioner is seeking a refund or issuance of a TCC of its unutilized input VAT paid on domestic purchases of capital goods and services attributable to its zero rated sales of services for the 3rd and 4th quarters of CY 2005. Hence, counting from September 30, 2005 and December 31, 2005, the close of the 3rd and 4th quarters of CY 2005, respectively, petitioner had until September 30, 2007 and December 31, 2007, respectively, within which to file its administrative claim with respondent. Evidently, petitioner seasonably filed its administrative claim for the 3rd and 4th quarters of CY 2005 on August 31, 2007.

As regards petitioner's judicial claim, Section 112(D) of the 1997 NIRC, as amended, is instructive, to wit:

> "SEC. 112. **Refunds or Tax Credits of Input Tax.** —
>
> xxx xxx xxx
>
> (D) Period Within Which Refund or Tax Credit of Input Taxes Shall be Made. — **<u>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</u>** in accordance with Subsections (A) and (B) hereof.

> **In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals**." (*Boldfacing and underscoring supplied*)

Since petitioner's administrative claim for refund was filed on August 31, 2007, the 120-day period enunciated under Section 112(D) ended on December 29, 2007. Any appeal from the adverse decision or inaction on the part of respondent should be filed within 30 days thereafter. Obviously, the filing of the instant Petition for Review on October 24, 2007 was premature as it was done before the lapse of the 120-day period given to respondent to grant or deny the claim. For doing so, petitioner failed to exhaust administrative remedies available under the law.

Well settled is the rule that a party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court.[20] If a litigant goes to court without first pursuing his administrative remedies, his action is premature as he has no cause of action to ventilate in Court. His case is not ripe for judicial determination.[21]

The Supreme Court, in many occasions, has consistently held that - "before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction then such remedy should be exhausted first before court's judicial power can be sought. The premature invocation of court's intervention is fatal to one's cause of action. Accordingly, absent any finding of waiver or estoppel the case is susceptible of dismissal for lack of cause of action."[22]

The doctrine of exhaustion of administrative remedies was not without its practical and legal reasons, for one thing, availment of

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[20] Carale vs. Abarintos, 269 SCRA 142.
[21] Aboitiz vs. Collector of Customs, 83 SCRA 271; Abe-Abe vs. Manila, 90 SCRA 531.
[22] Solo vs. Jareno, G.R. No. 38962, September 15, 1986; Hodges vs. Mun. Board L-18276, January 12, 1967; Paat vs. Court of Appeals, 266 SCRA 175

administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. It is no less true to state that the courts of justice for reasons of comity and convenience will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency concerned every opportunity to correct its error and to dispose of the case[23].

However, the principle of exhaustion of administrative remedies as tested by a battery of cases is not an ironclad rule. This doctrine is relative and its flexibility is called upon by the peculiarity and uniqueness of the factual and circumstantial milieu of a case. Hence, it is disregarded (1) when there is a violation of due process, (2) when the issue involved is purely a legal, (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction, (4) when there is estoppel on the part of the administrative agency concerned, (5) when there is irreparable injury, (6) when the respondent is a department secretary whose acts as an alter ego of the President bears the implied and assumed approval of the latter, (7) when to require exhaustion of administrative remedies would be unreasonable, (8) when it would amount to a nullification of a claim, (9) when the subject matter is a

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[23] Information Technology Foundation of the Philippines, et. al., v. COMELEC, 419 SCRA 141 [2004].

private land in land case proceedings, (10) when the rule does not provide a plain, speedy and adequate remedy, and (11) when there are circumstances indicating the urgency of judicial intervention.[24]

The instant petition falls within the ambit of one of the above excepted cases ☐ when there is estoppel/waiver on the part of the administrative agency concerned.

As earlier observed, petitioner elevated its claim to this Court before the 120-day period ended, in violation of the doctrine of exhaustion of administrative remedy. However, considering that non-exhaustion of administrative remedies is not jurisdictional and renders only the action premature, i.e., the claimed cause of action is not ripe for judicial determination and for that reason a party has no cause of action to ventilate in court[25] and considering further that **respondent did not raise as a defense the premature invocation by petitioner of the court's intervention at the time the Answer to the Petition for Review was filed, the said defense is therefore waived pursuant to Section 1, Rule 9 of**

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[24] City Treasurer of Manila vs. China Banking Corporation, C.T.A. A.C. No. 20, May 04, 2007, citing the cases of Quisumbing vs. Judge Gumban, G.R. No. 85156, February 5, 1991 and Paat vs. Court of Appeals, supra.
[25] *Id.*, note 21.

the Rules of Court.[26] In fine, the Court may entertain petitioner's instant Petition for Review.

Pertaining to the first requisite for entitlement for refund/tax credit, petitioner alleges that it is a multinational company duly authorized by the SEC to operate an ROHQ in the Philippines as early as April 25, 2005. As a shared services center, petitioner handles regional as well as global accounting and related controlling processes.[27]

For the 3rd and 4th quarters of 2005, petitioner's ROHQ allegedly generated sales from services rendered to foreign based entities for which it was paid in Euro or other acceptable foreign currency remitted inward through the banking system and accounted for in accordance with the rules and regulations of the BSP. Petitioner maintains that such services qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended, which states:

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[26] Rule 9. Effect of Failure to Plead: Section 1. Defenses and objections not pleaded. — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

[27] Exhibit S, page 2, Q&A No.4.

> "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;
>
> "(2) **Services other than those mentioned in the preceding paragraph, 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);**

It may be recalled that in *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*,[28] the Supreme Court explained that for the supply of services to be VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended [*then Section 102(b)(2) of the NIRC of 1977, as amended*], the following requisites must be met: 1) the services must be other than processing, manufacturing or repacking of goods; 2) payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and

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

regulations; and 3) the recipient of such services is doing business outside the Philippines. The pertinent portion of the Decision, reads:

> "**<u>The Tax Code not only requires that the services be other than "processing, manufacturing or repacking of goods" and that payment for such services be in acceptable foreign currency accounted for in accordance with BSP rules. Another essential condition for qualification to zero-rating under Section 102 (b) (2) is that the recipient of such services is doing business outside the Philippines.</u>** While this requirement is not expressly stated in the second paragraph of Section 102 (b), this is clearly provided in the first paragraph of Section 102 (b) where the listed services must be "for other persons doing business outside the Philippines". The phrase "for other persons doing business outside the Philippines" not only refers to the services enumerated in the first paragraph of Section 102 (b), but also pertains to the general term "services" appearing in the second paragraph of Section 102 (b). In short, services other than processing, manufacturing, or repacking of goods must likewise be performed for persons doing business outside the Philippines." (*Emphasis and underscoring supplied*)

The record shows that petitioner satisfactorily complied with the first and third requisites. Petitioner is duly registered with the BIR as a VAT taxpayer [29] and the services it performs in the Philippines, through its ROHQ, like: financial accounting; market and instrument control; enterprise cost control; and information

[29] Exhibit "B".

systems integrity services[30] are not the same category as "processing, manufacturing or repacking of goods". For the 3rd and 4th quarters of CY 2005, petitioner rendered services to the following entities[31]:

1. Deutsche Bank Aktiengesellschaft, Inlandsbank;
2. Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office;
3. Deutsche Bank Aktiengesellschaft, Filiale Singapur;
4. Deutsche Bank Aktiengesellschaft, Filiale Hongkong;
5. Deutsche Bank Aktiengesellschaft, Filiale Jakarta;
6. Deutsche Bank Aktiengesellschaft, Filiale New York;
7. Deutsche Bank Aktiengesellschaft, Filiale London;
8. Deutsche Securities, Inc.;
9. Deutsche Asia Pacific Holdings Pte. Ltd.; and
10. Deutsche Group Services Pty Limited.

These entities are non-resident foreign corporations engaged in business conducted outside the Philippines as indicated in the SEC Certifications of Non-Registration of Corporation/Partnership,[32] Certifications from different government agencies in the country of origin of petitioner's clients, all duly authenticated by the nearest

[30] Exhibit BB-15, Notes to Financial Statements, No. 14.
[31] Exhibit PP, Q&A No. 3; Exhibit "BBB", Q&A No. 7.
[32] Exhibits FF to OO.

consulate of the Philippines [33] and the Intragroup Service Agreements.[34]

To prove that petitioner had VAT zero-rated sales for the 3rd and 4th quarters of CY 2005, it presented its Accrual Notifications[35], Fund Transfer Credit Notices[36], official receipts issued by petitioner to its non-resident clients[37], audited financial statements as of December 31, 2005[38], which were all scrutinized and examined by the Court-Commissioned ICPA[39]. As found by the latter, **petitioner generated sales in the amount of 2,282,216.32 Euro with the peso equivalent of Php151,757,984.54** from services rendered for the 3rd and 4th quarters of 2005. **However, the foreign currency proceeds of said sales which were inwardly remitted and accounted for in accordance with the rules and regulations of the BSP amounted only to 1,112,072.58 Euro with the peso equivalent of Php74,058,158.18**.[40] Thus, out of the total sales of Php151,757,984.54, only the amount of Php74,058,158.18 qualifies for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

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[33] Exhibits TT to TT-1, UU to UU-1, CCC to CCC-2, WW to WW-2, XX to XX-2, SS to SS-2, FFF to FFF-6, RR to RR-3, QQ to QQ-3, DDD to DDD-4, YY to YY-2, ZZ to ZZ-2, AAA to AAA-2, and VV to VV-1.
[34] Exhibits HHH, III, JJJ, KKK, LLL, MMM, NNN, OOO, PPP and QQQ.
[35] Exhibits X-1 to X-44.
[36] Exhibits Y-1 to Y-14.
[37] Exhibits Z-1 to Z-12.
[38] Exhibits BB-1 to BB-16.
[39] Mr. Romeo A. De Jesus, Partner of R.S. Bernaldo & Associates.
[40] Exhibit "EE", Annex C.

On the claim that it has unutilized input VAT of Php5,188,511.53 attributable to zero rated or effectively zero-rated sales, petitioner presented invoices and official receipts from various suppliers[41] which the ICPA verified and per his report the amount of Php4,550,446.00 represents a valid claim for refund, net of exceptions of Php638,065.53[42], detailed as follows:

Annexed to Exhibit "EE"	**Findings**	**Input VAT**
Annex A.1	Excess of Input VAT Applied for Refund versus Schedule	P 32,204.13
Annex A.2	Purchases of Services Not Supported by Suppliers' Official Receipts	38,461.50
Annex A.3	Purchases of Goods Not Supported by Suppliers' Sales Invoices	254,776.62
Annex A.4	Purchase of Services/Goods Outside the Cut-off Period	37,098.07
Annex A.5	Overstatement in the Recorded and Claimed Input VAT	275,525.21
Total		**P 638,065.53**

However, upon scrutiny of petitioner's supporting documents, it appears that out of P254,776.62 input VAT pertaining to purchases of goods not supported by suppliers' sales invoices which the ICPA excluded, the Court finds the amount of Php213,747.64 to be duly supported by VAT invoices. Details of the said amount are as follows:

[41] Exhibits W-1 to W-883.
[42] Exhibit "EE", page 6.

Month	Supplier	Exhibit	VAT Base	Input Tax
July	Function Smith	W-393	P 909,090.90	P 90,909.09
August	JJED Philippines, Inc.	W-447	32,109.10	3,210.91
August	Quartz Business Products Corp.	W-719	7,009.10	700.91
August	SMJ Furnishing Philippines, Inc.	W-771	1,181,818.20	118,181.82
August	Triplex Enterprise, Inc.	W-821	7,449.10	744.91
			Total	**P213,747.64**

Thus, the input VAT disallowances recommended by the ICPA in the amount of Php638,065.53 should be reduced to Php424,317.89 (*Php638,065.53 less Php213,747.64*). Consequently, petitioner's input VAT claim duly covered by VAT invoices or official receipts amounts to Php4,764,193.64, computed as follows:

	Input VAT Claim		P 5,188,511.53
Less:	Not properly substantiated input VAT		
	Per ICPA's report	P 638,065.53	
	Less: Input VAT on purchases of goods found by this Court to be properly supported by VAT sales invoices	213,747.64	424,317.89
Input VAT Properly Supported by Suppliers' Sales Invoices/Receipts			**P4,764,193.64**

But as earlier stated, starting November 1, 2005, input VAT claim on capital goods purchases attributable to zero-rated sales may be claimed either in full during the month of acquisition, or

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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 Php1 Million, 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 Php1 Million, the total input taxes shall be allowed as credit/refund in the month of acquisition.

The supporting documents reveal that petitioner paid/purchased the following office equipment, furniture and improvements with an aggregate amount of Php2,534,053.22 for November 2005 and Php6,062,054.05 for December 2005:

Month	Supplier	Nature of Purchase	Exhibit No.	Vatable Base	Input VAT
Nov.	Accent Micro Technologies, Inc.	Computer hardware/software	W-26 to W-32	P 1,818,285.45	P 181,828.55
Nov.	Accent Micro Technologies, Inc.	Computer hardware/software	W-33 to W-36	270,272.73	27,027.27
Nov.	Accent Micro Technologies, Inc.	Computer hardware/software	W-43	17,272.73	1,727.27
Nov.	Adrianse Group Philippines, Inc.	Interior design	W-92	300,000.00	30,000.00
Nov.	Core Venture	Amano time and date stamp model 4746	W-348	26,818.20	2,681.82
Nov.	Electronic Security Sys Corp	supply and installation of card access system	W-793	10,193.70	1,019.37
Nov.	Electronic Security Sys Corp	supply and installation of card access system	W-378	31,169.18	3,116.92
Nov.	Electronic Security Sys Corp	Norton Anti-virus	W-381	17,818.18	1,781.82
Nov.	Lantro Phils. Inc.	structured cabling at 9th and 16th floors	W-483	21,041.23	2,104.12
Nov.	Rudolf Leitz Inc.	Ideal paper professional trimmer	W-740	13,000.00	1,300.00
Nov.	Rudolf Leitz Inc.	Ideal shredder+bin 4mm	W-741	8,181.82	818.18
			Subtotal	**P 2,534,053.22**	**P 253,405.32**
Dec.	Accent Micro Technologies, Inc.	Computer hardware/software	W-38	P 25,772.73	P 2,577.27
Dec.	Accent Micro	Computer	W-39 to	1,427,263.64	142,726.36

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	Technologies, Inc.	hardware/software	W-41		
Dec.	Citimex		W-339	165,218.20	16,521.82
Dec.	CWC International Corp.	Demountable partition and office furniture	W-353	573,272.73	57,327.27
Dec.	Electronic Security Sys Corp	Additional card access system	W-372	72,727.26	7,272.74
Dec.	Siemens	Optipoint	W-757	324,227.24	32,422.72
Dec.	Total Ventures, Inc.	Gypsum cladding/add'l civil and architectural works	W-807	666,818.20	66,681.82
Dec.	Total Ventures, Inc.	Electrical/Architectural Works	W-809	680,787.65	68,078.77
	Total Ventures, Inc.	Electrical/Architectural Works	W-808	1,363,636.40	136,363.64
Dec.	Jones Lang Lasalle (Phils), Inc.	Facilities management fee	W-454, W-453	150,000.00	15,000.00
Dec.	Jones Lang Lasalle (Phils), Inc.	Facilities management fee	W-455, W-453	612,330.00	61,233.00
			Subtotal	**P 6,062,054.05**	**P 606,205.41**
			Total	**P 8,596,107.27**	**P 859,610.73**

Considering that the above purchases are in the nature of depreciable assets and the monthly aggregate cost thereof exceeds Php1 million, the related input VAT shall be spread over 60 months or the estimated useful life of the capital goods, whichever is shorter. However, it could not be ascertained from the documents presented whether the said purchases were capitalized. There is also no way can the Court ascertain the estimated periods of usefulness employed in depreciating the above-mentioned assets. Hence, the Court is constrained to deny the input VAT claim of Php859,610.73.

In sum, petitioner's refundable input VAT attributable to zero-rated sales for the 3rd and 4th quarters of 2005 amounts to Php1,905,443.20, computed as follows:

Zero-Rated Sales	P 74,058,158.18
Divided by Total Sales	÷ 151,757,984.54
% of Zero-Rated Sales to Total Sales	**48.8001725%**
Input VAT properly supported by VAT sales invoices/receipts	P 4,764,193.64
Less: Input VAT related to depreciable assets - Nov & Dec 2005	859,610.73
Net Input VAT attributable to Total Sales	P 3,904,582.91
Multiplied by % of Zero-Rated Sales to Total Sales	48.8001725%
Input VAT attributable to Zero-Rated Sales	**P 1,905,443.20**

As to whether the said input VAT was applied against any output VAT and/or carried over to the succeeding taxable quarter(s), petitioner's Quarterly VAT Returns for the subject period of claim[43] show that petitioner had no output tax liability against which the claimed input VAT may be applied or credited. Although the claimed amount of Php5,188,511.53 was carried-over to the succeeding quarters[44], the same remained unutilized until it was deducted as "VAT Refund/TCC claimed"[45] in petitioner's amended Quarterly VAT Return for the 4th quarter of 2007. Thus, petitioner could not have utilized the subject claim in the succeeding quarters.

WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent Commissioner of Internal Revenue is hereby **DIRECTED TO REFUND** or **TO ISSUE A TAX**

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[43] Exhibits "D" and "E".
[44] Exhibits "F" to "O", "T" to "U".
[45] Exhibit "U", line 23D.

CREDIT CERTIFICATE in favor of petitioner Deutsche Knowledge Services, Pte. Ltd., in the reduced amount of **ONE MILLION NINE HUNDRED FIVE THOUSAND FOUR HUNDRED FORTY THREE AND 20/100 PESOS** (**Php1,905,443.20**), representing input VAT paid on its purchases of capital goods and other goods and services for the 3rd and 4th quarters of 2005.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ERNESTO D. ACOSTA
Presiding Justice

(with Concurring and Dissenting Opinion)
ERLINDA P. UY
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice