REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

THIRD DIVISION

GALILEO ASIA, LLC – PHILIPPINE BRANCH,	**C.T.A. CASE NO. 8134**
Petitioner,	Members:
- versus -	BAUTISTA, Chairperson, PALANCA-ENRIQUEZ, and COTANGCO-MANALASTAS, JJ.
COMMISSIONER OF INTERNAL REVENUE,	**Promulgated:**
Respondent.	AUG 22 2012

x- 3:25 p.m. - - - - x

DECISION

PALANCA-ENRIQUEZ, *J*.:

THE CASE

This is a Petition for Review filed by Galileo Asia, LLC – Philippine Branch (hereafter "petitioner") praying for the refund or issuance of a TCC in the amount of P5,616,836.51, representing excess and unutilized input VAT on domestic purchases of non-capital goods and services attributable to its zero-rated sales of services for the period May 1, 2008 to July 31, 2009.

THE PARTIES

Petitioner is a duly registered Philippine Branch, under amended SEC Registration No. AFO94-000080 dated April 26, 2002, of Galileo Asia, LLC, a limited liability company organized under the laws of the State of Delaware, United States of America. Petitioner is engaged in the business of providing travel reservations, products and services to travel agencies and foreign and domestic airlines, using a "global computer reservation system" (GRS).

Petitioner is registered with the BIR as a VAT taxpayer in accordance with *Section 236 of the NIRC of 1997, as amended,* with Taxpayer Identification No. (TIN) 004-460-118-000.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested with authority to exercise the functions of said office, including inter alia, the power to abate or cancel a tax liability when the tax or any portion thereof appears to be unjustly or excessively assessed, and holds office at the BIR National Office Building, Diliman, Quezon City.

THE FACTS

The facts, as culled from the records, are, as follows:

Petitioner, being a foreign corporation, has a branch office in the Philippines which provides travel reservations, products and services, using GRS to travel agencies and foreign and domestic airlines in the Philippines.

Pursuant to a Service Agreement with its foreign affiliate, petitioner was appointed to promote and market its affiliate's Computerized Registration System services in the region.

For the period May 1, 2008 to July 31, 2009, petitioner rendered services in the Philippines to its foreign affiliate engaged in the business outside of the Philippines. Petitioner's total sales for said period amounted to P88,778,212.95, broken down, as follows:

Total Vatable Sales	P 61,857.62
Total Zero-rated Sales	88,713,655.33
Total Exempt Sales	2,700.00
TOTAL SALES (May 2008 to July 2009)	**P88,778,212.95**

For the same period, petitioner likewise incurred a total of P6,297,687.83 accumulated input VAT from domestic purchases of non-capital goods and services, P6,293,108.29 of which was attributable to its zero-rated sales of services.

Petitioner filed with the BIR its Monthly and Quarterly VAT Returns for the period May 1, 2008 to July 31, 2009 on the following dates, to wit:

Monthly VAT Return (2550 M) and Quaterly VAT return (2550 Q)	**Date of Filing of Original Return**
May 2008	June 20, 2008
Second Quarter CY 2008	October 27, 2008 (amended return)
July 2008	August 20, 2008
August 2008	September 22, 2008 (September 20, 2008 was a Saturday)
Third Quarter CY 2008	October 27, 2008 (October 25, 2008 was a Saturday)
October 2008	November 20, 2008
November 2008	December 22, 2008 (December 20, 2008 was a Saturday)
Fourth Quarter CY 2008	March 25, 2009 (amended return)
January 2009	February 20, 2009
February 2009	March 19, 2009

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First Quarter CY 2009	April 27, 2009 (April 25, 2009 was a Saturday)
April 2009	May 20, 2009
May 2009	June 22, 2009 (June 20, 2009 was a Saturday)
Second quarter CY 2009	July 27, 2009 (July 25, 2009 was a Saturday)
July 2009	August 20, 2009

On March 11, 2010, petitioner filed with the BIR, Revenue District Office (RDO) No. 49, an administrative claim for refund or tax credit of the total amount of P5,616,836.51, representing its excess and unutilized input VAT on its domestic purchases of goods and services attributable to zero-rated sales of services for the period May 1, 2008 to July 31, 2009.

In view of respondent's inaction, on July 23, 2010, petitioner filed the instant Petition for Review.

On August 11, 2010, respondent filed her Answer and alleged by way of special and affirmative defenses that taxes paid and collected by the BIR are presumed to have been in accordance with law, rules and regulations and the burden to prove otherwise is upon petitioner; the alleged claim for refund is subject to administrative routinary investigation/examination by the BIR; petitioner must prove that it paid the alleged input VAT for the period in question; the alleged input VAT was not utilized against any output tax liability and the same is attributable to its VAT zero-rated sales; the administrative and judicial claims were filed within the period prescribed by law; petitioner's assertion that its services rendered to its affiliates, subsidiaries or branches abroad are subject to zero percent (0%) VAT cannot be accorded weight without any evidentiary document; the claim must be substantiated with official receipts or invoices; and petitioner must prove that it has complied with the requirements of the law in claims for refund or tax credit.

Petitioner presented Antonio Maceda, Jr., as its sole witness, and documentary evidence, marked as *Exhibits "A" to "DD"*, inclusive of their submarkings, which were admitted by the Court in its Resolution dated November 28, 2011, except for *Exhibits "M-145" to "M-152", "M-157" to "M-160", "N-187" to "N-190", "P-102", "P-104", "P-106", "P-111", "P-115", "P-118", "P-120", "P-125", "P-174", "V-157", "V-159", "V-164", "V-171", "V-174", "V-177", "W-171", "W-200", "W-229", "W-306", "W-312", "W-319" to "W-323", "W-325", "W-331" to "W-332", "X-22", "X-53", and "X-219"*.

On the other hand, respondent, through counsel, manifested that she will no longer present any evidence.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice; afterwhich the case shall be deemed submitted for decision.

Considering respondent's "Memorandum" filed on March 27, 2012, and petitioner's "Memorandum" filed on April 25, 2012, the case was deemed submitted for decision on April 26, 2012.

THE ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND OR ISSUANCE OF TCC IN THE AMOUNT OF PHILIPPINE PESOS FIVE MILLION SIX HUNDRED SIXTEEN THOUSAND EIGHT HUNDRED THIRTY SIX AND 51/100 (PHP5,616,836.51) REPRESENTING ALLEGED UNUTILIZED INPUT VAT ON PURCHASES OF GOODS AND SERVICES ATTRIBUTABLE TO ITS VAT ZERO-RATED SALE OF SERVICES.

II

WHETHER THE ALLEGED UNUSED/UNUTILIZED INPUT VAT OF PETITIONER IN THE AMOUNT OF PHILIPPINE PESOS FIVE MILLION SIX HUNDRED SIXTEEN THOUSAND EIGHT HUNDRED THIRTY SIX AND 51/100 (PHP5,616,836.51) IS DULY SUBSTANTIATED BY SUPPORTING DOCUMENTS.

III

WHETHER PETITIONER HAS DULY COMPLIED WITH SUBMISSION OF THE REQUISITE DOCUMENTS IN SUPPORT OF ITS ADMINISTRATIVE CLAIM FOR REFUND OR TAX CREDIT.

Principal Issue

The foregoing issues raised by both parties boil down to the principal issue of whether or not petitioner is entitled to a refund or issuance of a TCC in the amount of P5,616,836.51, representing unutilized input VAT on domestic purchases of goods and services attributable to its VAT zero-rated sales of services for the period May 1, 2008 to July 31, 2009.

THE COURT'S RULING

The petition has no merit.

At the outset, petitioner's claim is clearly covered by *Section 112 (A) of the NIRC of 1997, as amended by RA 9337*, 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 ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis

> of the volume of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108 (B) (6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."

Pursuant to the above provision, in order to be entitled to a refund or issuance of a TCC of input VAT paid, petitioner must prove the following:

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

It is imperative, therefore, that petitioner should be able to prove its compliance with the above requirements.

Claimant must be a VAT-registered person

As regards the first requisite, records show that petitioner is a registered VAT entity, as evidenced by a Certificate of Registration dated January 1, 1997 issued by RDO Roberto Baquiran of RDO No. 49 *(Exhibit "F")*.

There must be Zero-Rated
or Effectively Zero-Rated Sales

As regards the second requisite, petitioner claims that the services it rendered to its foreign affiliate, Galileo Nederland B.V., for the period May 1, 2008 to July 31, 2009, which services were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), qualify for VAT zero-rating under *Section 108 (B) (2) of the NIRC of 1997, as amended by RA 9337*, which provides:

> "SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. —
>
> 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);
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> (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);
>
> xxx xxx." (Emphasis ours)

In the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc. (512 SCRA 135)*, the Supreme Court held that in order for the supply of services to be VAT zero-rated, the following requisites must be present:

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 regulations; and

3) the recipient of such services is doing business outside the Philippines.

As regards the first requisite, there is no dispute that petitioner is engaged in the business of providing travel reservations products and services using global computer reservation system (GRS) to travel agencies and foreign and domestic airlines in the Philippines *(Pre-trial Order dated January 7, 2011).* Thus, petitioner's services is not processing, manufacturing or repacking of goods under *Section 108 (B) (1) of the NIRC of 1997, as amended by RA 9337.*

As regards the second requisite, petitioner presented copies of inter-company invoices from May 2008 to July 2009, bank statements for the monthly remittances *(Exhibits "AA-1" to "AA-15")* and a Certificate of Inward Remittance from Bank of America *(Exhibit "H")* to show that it rendered marketing services to its foreign affiliate, Galileo Nederland B.V., pursuant to their Agreement for Services *(Exhibit "D")*.

Corollary thereto, petitioner must likewise prove its compliance with the substantiation and invoicing requirements, under *Section 113 of the NIRC of 1997, as amended by RA 9337*, which provides:

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

Clearly, the above provision requires the issuance of either an invoice or receipt for every sale by a VAT registered person. In this case, considering that petitioner is engaged in the sale of services, its transactions should be properly supported by VAT official receipts. A perusal of the evidence on record shows that petitioner presented merely inter-company invoices, not official receipts, to prove its sale of services to its foreign affiliates. Without proper VAT official receipts issued to its clients, petitioner cannot claim such sales as zero-rated VAT not subject to output tax.

A zero-rated sale of service by a VAT-registered person is a taxable transaction for VAT purposes, but shall not result in any output tax, and the input tax on purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund *(RR No. 16-2005)*. Thus, it is imperative for the VAT-registered person to first prove that it has zero-rated sale of service to be able to claim tax credit or refund on its input tax related thereto. In our taxable jurisdiction, the law prescribes certain invoicing requirements in the conduct of one's business, whether for zero-rated, exempt or taxable transactions.

The invoicing requirement is mandatory in nature and consequently, non-compliance regarding the issuance of such important documents is fatal to one's claim for credit or refund of its input taxes. Settled is the rule that for claims for refund or issuance of TCC to be allowed, the law requires compliance with the substantiation requirements, not only for input taxes, but also for output taxes, especially in instances where the claim is based on zero-rated sales or exemptions, as this will determine the creditable or unutilized input taxes that are available for refund. To sum, the invoicing requirements do not only pertain to documents required to prove input taxes, but rather it also requires the presentation of proper documents to prove the existence and/or non-existence of output taxes.

Thus, absent the second requisite and for petitioner's failure to substantiate its zero-rated sales for the period May 2008 to July 2009, the claimed P5,616,836.51 input VAT cannot be refunded.

Equally settled is the rule that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption is also *strictissimi* scrutinized and must be duly proven (*Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue, 456 SCRA 163).*

In view of the conclusion thus reached, the Court finds it unnecessary to discuss petitioner's compliance with the other requisites for refund of unutilized input VAT.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

A T T E S T A T I O N

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

C E R T I F I C A T I O N

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.

ERNESTO D. ACOSTA
Presiding Justice