REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Special Third Division

MANULIFE DATA SERVICES, INC. (PHILIPPINES),
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7913

x -x

MANULIFE DATA SERVICES, INC. (PHILIPPINES),
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7977

x -x

MANULIFE DATA SERVICES, INC. (PHILIPPINES),
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8018

Present:

BAUTISTA, *Chairperson*, and
COTANGCO-MANALASTAS, *JJ*.

Promulgated:

JUN 13 2013

ABFernandez 10:12 a.m.

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DECISION

BAUTISTA, J.:

Before the Court are consolidated "Petitions for Review" filed by petitioner on April 14, 2009[1], September 30, 2009,[2] and December 29, 2009"[3] for the issuance of tax credit certificates for unutilized/unapplied input Value-Added Tax ("VAT") for the 1st to 4th Quarters of taxable year 2007, in the aggregate amount of ₱7,302,946.31.

The Parties

Petitioner, Manulife Data Services, Inc. (Philippines), is a foreign corporation duly registered with and authorized by Securities and Exchange Commission ("SEC") to operate as a Regional Operating Headquarters ("ROHQ") in the Philippines as evidenced by SEC License No. FS2006030505. Petitioner is engaged in the business of providing qualifying services to its affiliates and related parties in the Asia-Pacific Region and in other foreign markets, as expressly stipulated in its SEC License. Petitioner is a VAT-registered entity as of March 9, 2006.[4]

Respondent, the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR"), is vested with the power to decide tax cases, including claims for refunds and/or tax credits or erroneously paid or illegally collected internal revenue taxes.[5]

The Facts

CTA Case No. 7913

On February 27, 2009, petitioner filed with the BIR's Revenue District Office No. 38 ("RDO No. 38") an application for issuance of tax credit certificate for its excess/unutilized input VAT for the first (1st) and second (2nd) Quarters of taxable year 2007 in the amount of ₱3,578,830.856[6]

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[1] *Rollo*, (CTA Case No. 7913),"*Petition For Review*," pp. 1-101 with Annexes. Raffled to the then Second Division of the Court before the issuance of CTA Administrative Circular No. 01-2010, dated January 5, 2010, entitled "*Implementing the Fully Expanded Membership in the Court of Tax Appeals.*"
[2] *Rollo*, (CTA Case No. 7977),"*Petition for Review*," pp. 1-77 with Annexes.
[3] *Rollo*, (CTA Case No. 8018),"*Petition for Review*," pp. 1-34 with Annexes.
[4] *Rollo*, (CTA Case No. 7913),"*Joint Stipulation of Facts and Issues*," pp. 282-283.
[5] *Rollo*, (CTA Case No. 7913),"*Joint Stipulation of Facts and Issues*," pp. 282-283.
[6] *Rollo*, (CTA Case No. 7913),"*Joint Stipulation of Facts and Issues*," p. 283.

On April 14, 2009, petitioner filed a "Petition For Review" for the same period.[7]

On June 3, 2009, respondent filed her Answer,[8] raising the following Special and Affirmative Defenses:

> "7. The claim for refund is still under examination by the respondent's Bureau;
>
> 8. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund or issuance of tax credit certificate;
>
> 9. The grant of claim for refund is tantamount to an exemption from taxation which is construed strictly against the claimant and in favour of the taxing authority;
>
> 10. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same.
>
> 11. The prevailing law on the existence, authority and powers of this Honorable Court is now embodied in Republic Act No. 9282;"

On June 17, 2009, petitioner filed its "Reply,"[9] stating that petition was filed within the two (2)-year prescriptive period under the law, and that under Revenue Memorandum Circular No. 49-2003,[10] the Court of Tax Appeals and the Bureau of Internal Revenue can proceed separately with a claim for refund/issuance of tax credit certificate, and that it has sufficiently cited clear and unequivocal pertinent provisions of law which support its claim for refund.

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[7] *Rollo*, (CTA Case No. 7913),"*Petition For Review*," pp.1-101 with Annexes.
[8] *Rollo*, (CTA Case No. 7913), pp. 108-110.
[9] *Rollo*, (CTA Case No. 7913), pp. 114-118.
[10] *"Amending Answer to Question Number 17 of Revenue Memorandum Circular No. 42-2003 and Providing Additional Guidelines on Issues Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS-DOF) by Direct Exporters"*

On March 17, 2010, the Court issued a Resolution granting petitioner's "Motion for Consolidation"dated December 2, 2009, praying that CTA Case No. 7977 with CTA Case No. 7013.[11]

On July 7, 2010, the Court issued a Resolution[12] noting the "Compliance and Manifestation" filed by petitioner with regard to the Resolution of the First Division dated June 21, 2010 consolidating CTA Case No. 8018, with CTA Case Nos. 7913 and 7977.[13]

<u>CTA Case No. 7977</u>

On June 2, 2009, petitioner filed with the BIR's RDO No. 38 an application for issuance of tax credit certificate for its excess/unutilized input VAT for the third (3rd) Quarter of year 2007 2007 in the amount of ₱1,458,274.42[14]

On September 30, 2009, petitioner filed a "Petition For Review" for the same taxable quarter.[15]

On October 26, 2009, respondent filed her Answer,[16] raising the following Special and Affirmative Defenses:

> "4. He reiterates and re-pleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses.
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> 5. Petitioner's claim for the issuance of tax credit certificate is subject to administrative investigation/examination by respondent's Bureau.
>
> 6. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable.

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[11] *Rollo*, (CTA Case No. 7977), pp. 427-428.
[12] *Rollo*, (CTA Case No. 7977), pp. 468.
[13] *Rollo*, (CTA Case No. 7913), pp. 630-631.
[14] *Rollo*, (CTA Case No. 7913),"*Joint Stipulation of Facts and Issues*," p. 283.
[15] *Rollo*, (CTA Case No. 7977),"*Petition For Review*," pp. 1-77 with Annexes.
[16] *Rollo*, (CTA Case No. 7977), pp. 80-84.

7. Moreover, in order to validly claim for tax credit/refund, it is imperative for petitioner to prove its compliance with the following, *viz*:

a. The registration requirements of a value-added taxpayer under the pertinent provision of the 1997 NIRC, as amended, and its implementing revenue regulations.

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT pursuant to the provisions of Section 113 and 114 of the 1997 NIRC, as amended. Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax of the taxpayer claimant. (Revenue Memorandum Circular No. 42-2003)

c. The submission of complete documents in support of the administrative claim for tax refund pursuant to Section 112(C) of the 1997 NIRC, as amended, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax credit/refund which is a condition *sine qua non* prior to the filing of such claim.

d. That the input taxes of ₱1,458,274.42 allegedly representing unutilized input VAT from its purchases of goods and services were:

i. paid by petitioner;

ii. attributable to its zero-rated or effectively zero-rated sales; and ,

iii. such input taxes paid should not have been applied against any output tax.

e. That petitioner's claim for tax credit/refund allegedly representing unutilized input VAT in the amount of ₱1,458,274.42 was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112(A) of the 1997 NIRC, as amended.

8. In an action for tax credit/refund, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for tax credit/refund.

9. Finally, basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same (*Philippine Geothermal, Inc., vs. Commissioner of Internal Revenue, G.R. No. 154028, July 27, 2005*). Moreover, statutes in derogation of sovereignty such as those containing exemption from taxation should be strictly construed in favour of the State. In this regard, taxation is the rule and exemption is the exception. The law does not look with favour on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted. (*Sea-Land Service, Inc. vs. Court of Appeals, 357 SCRA 444*)"[17]

On January 11, 2010, pursuant to CTA Administrative Circular No. 01-2010, dated January 5, 2010,[18] the Court issued an order transferring the case to the Third Division. Of the Court[19]

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[17] *Ibid.* pp. 81-83.
[18] "*Implementing the Fully Expanded Membership in the Court of Tax Appeals*"
[19] *Rollo*, (CTA Case No. 797), p. 464.

On March 17, 2010, the Court issued a Resolution granting petitioner's "Motion for Consolidation" dated December 2, 2009, praying for consolidation with CTA Case No. 7913. Thus, CTA Case No. 7977 was consolidated with CTA Case No. 7913.

CTA Case No. 8018

On August 7, 2009, petitioner filed with the BIR's RDO No. 38 an application for issuance of tax credit certificate for its excess/unutilized input VAT for the fourth (4th) Quarter of 2007 in the amount of ₱2,265,841.03 [20]

On December 29, 2009, petitioner filed a "Petition For Review" for the issuance of tax credit certificate for unutilized/unapplied input VAT for the same quarter.[21]

On February 3, 2010, respondent filed his "Answer" raising the following Special and Affirmative Defenses:

> "4. Claims for refund are strictly construed against the taxpayer as the same partakes the nature of tax exemption;
>
> 5. The taxpayer has the burden to show that the taxes were erroneously or illegally paid. Failure on the part of the Petitioner to prove the same is fatal to its cause of action. In the instant case, the [p]etitioner failed to present proof that the sales of the [p]etitioner are subject to VAT at the rate of 0%. In addition, [p]etitioner must prove that the compensation or consideration which it received for the services rendered were actually paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Banko Sentral ng Pilipinas;
>
> 6. The [p]etitioner should prove its legal basis for claiming the amount being refunded."

[20] *Rollo*, (CTA Case No. 8018),"pp. 33-35.
[21] *Rollo*, (CTA Case No. 8018),"*Petition For Review*," pp. 1- 34 with Annexes.

On May 7, 2010, petitioner filed a "Motion for Consolidation," praying that CTA Case No. 8018, be consolidated with CTA Case Nos. 7913 and 7977.

On June 21, 2010, the Court issued a Resolution granting the motion and consolidating CTA Case Nos. 7913, 7977, and 8018.[22]

CTA Case Nos. 7913, 7977, and 8018

During trial, petitioner presented testimonial and documentary evidence,[23] which were admitted in Resolutions dated October 10, 2011,[24] and January 17, 2012.[25]

On April 23, 2012, respondent manifested in open court that since it has not yet terminated the examination of petitioner's records, she will no longer present evidence and is submitting the case for decision.[26] On the same date, Respondent filed an "Explanation (in Compliance with Resolution dated April 18, 2012)" stating the same.[27]

On April 30, 2012, the Court ordered both parties to submit their simultaneous memoranda within thirty (30) days from notice thereof.[28]

Petitioner submitted its Memorandum on June 7, 2012.[29] Respondent did not file her Memorandum.

On June 13, 2012, the Court resolved that the consolidated Petitions for Review be deemed submitted for Decision.[30]

Hence, this Decision.

The Issues

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[22] *Rollo*, (CTA Case No. 8018), pp. 516-517.
[23] *Rollo*, (CTA Case No. 7913), pp. 847-911.
[24] *Rollo*, (CTA Case No. 7913), pp. 916-918.
[25] *Rollo*, (CTA Case No. 7913), pp. 296-938.
[26] *Rollo*, (CTA Case No. 7913), p. 950.
[27] *Rollo*, (CTA Case No. 7913), pp. 948-949.
[28] *Rollo*, (CTA Case No. 7913), p. 952.
[29] *Rollo*, (CTA Case No. 7913), pp. 961-1006.
[30] *Rollo*, (CTA Case No. 7913), p. 1008.

The issues to be resolved, as agreed upon by the parties, are as follows:

1. WHETHER OR NOT PETITIONER'S CLAIM FOR UNUTILIZED VAT WAS FILED WITHIN THE PERIOD PRESCRIBED BY LAW;

2. WHETHER OR NOT PETITIONER IS ENTITLED TO THE ISSUANCE OF A TAX CREDIT CERTIFICATE FOR ITS UNUTILIZED/EXCESS INPUT VAT PAYMENTS FOR THE 1ST TO 4TH QUARTERS OF 2007 AMOUNTING TO PHP 7,302,946.31[31]

Ruling of the Court

On the matter of the timeliness of petitioner's claim, the Court finds the Supreme Court decision in the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation; Taganito Mining Corporation vs. Commissioner of Internal Revenue; Philex Mining Corporation vs. Commissioner of Internal Revenue*[32] (*"San Roque case"*) clarifying the application of the doctrines in the cases of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*,[33] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*,[34] and *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*,[35] as well as the application of Revenue Memorandum Circular No. 49-03 (RMC 49-03)[36] dated 15 April 2003 and BIR Ruling No. DA-489-03 dated 10 December 2003[37] to claims for refund particularly instructive. The Supreme Court ruled as follows:

> "The Atlas doctrine, which held that claims for refund or credit of input VAT must comply with the two-

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[31] *Rollo*, (CTA Case No. 7913), p. 980.
[32] G.R. No. 187485; G.R. No. 196113; G.R. No. 197156, February 12, 2013.
[33] G.R. Nos. 141104 & 148763, 8 June 2007, 524 SCRA 73.
[34] G.R. No. 172129, 12 September 2008, 565 SCRA 154.
[35] G.R. No. 184823, 6 October 2010, 632 SCRA 422.
[36] *"Amending Answer to Question Number 17 of Revenue Memorandum Circular No. 42-2003 and Providing Additional Guidelines on Issues Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS-DOF) by Direct Exporters"*
[37] Issued to the Department of Finance, One Stop Shop Inter-AgencyTax Credit and Duty Drawback Center *Re: Lazi Bay Resources Development, Inc.*

year prescriptive period under Section 229, should be effective only from its promulgation on 8 June 2007 until its abandonment on 12 September 2008 in Mirant. The Atlas doctrine was limited to the reckoning of the two-year prescriptive period from the date of payment of the output VAT. Prior to the Atlas doctrine, the two-year prescriptive period for claiming refund or credit of input VAT should be governed by Section 112(A) following the *verba legis* rule. The Mirant ruling, which abandoned the Atlas doctrine, adopted the *verba legis* rule, thus applying Section 112(A) in computing the two-year prescriptive period in claiming refund or credit of input VAT.

The Atlas doctrine has no relevance to the 120+30 day periods under Section 112(C) because the application of the 120+30 day periods was not in issue in Atlas. The application of the 120+30 day periods was first raised in Aichi, which adopted the *verba legis* rule in holding that the 120+30 day periods are mandatory and jurisdictional. The language of Section 112(C) is plain, clear, and unambiguous. When Section 112(C) states that 'the Commissioner shall grant a refund or issue the tax credit within one hundred twenty (120) days from the date of submission of complete documents,' the law clearly gives the Commissioner 120 days within which to decide the taxpayer's claim. Resort to the courts prior to the expiration of the 120-day period is a patent violation of the doctrine of exhaustion of administrative remedies, a ground for dismissing the judicial suit due to prematurity.

Philippine jurisprudence is awash with cases affirming and reiterating the doctrine of exhaustion of administrative remedies. Such doctrine is basic and elementary.

When Section 112(C) states that 'the taxpayer affected may, within thirty (30) days from 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,' the law does not make the 120+30 day periods optional just because the law uses the word 'may.' The word 'may' simply means that the taxpayer may or may not appeal the decision of the Commissioner within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period. Certainly, by no stretch of the imagination can the word 'may' be construed as making the 120+30 day periods optional, allowing the taxpayer to file a judicial claim one day after filing the administrative claim with the Commissioner.

The old rule that the taxpayer may file the judicial claim, without waiting for the Commissioner's decision if the two-year prescriptive period is about to expire, cannot apply because that rule was adopted before the enactment of the 30-day period. The 30-day period was adopted precisely to do away with the old rule, so that under the VAT System the taxpayer will always have 30 days to file the judicial claim even if the Commissioner acts only on the 120th day, or does not act at all during the 120-day period. With the 30-day period always available to the taxpayer, the taxpayer can no longer file a judicial claim for refund or credit of input VAT without waiting for the Commissioner to decide until the expiration of the 120-day period.

To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, <u>strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the Atlas doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the Aichi doctrine was adopted</u>, which again reinstated the 120+30 day periods as mandatory and jurisdictional.

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BIR Ruling No. DA-489-03 does provide a valid claim for equitable estoppel under Section 246 of the Tax Code. BIR Ruling No. DA-489-03 expressly states that the 'taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review.' Prior to this ruling, the BIR held, as shown by its position in the Court of Appeals, that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed.

There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. The second exception is where the Commissioner, through a general interpretative rule issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.

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Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule.

Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional."[38] (Underlining Ours.)

[38] G.R. No. 187485; G.R. No. 196113; G.R. No. 197156, February 12, 2013.

Petitioner filed its judicial claims as follows: the first and second quarters of 2007 on April 14, 2009 merely forty six (46) days after it filed its administrative claim on February 27, 2009; for the third quarter of 2007 on September 30, 2009, one hundred twenty (120) days after it filed its administrative claim on June 2, 2009; and for the fourth quarter of 2007 on December 29, 2009, one hundred forty four (144) days after it filed its administrative claim on August 7, 2009. In all three filings, the 120+30 day period mandated by law was not observed. Given the above discussion, however, petitioner's claims fall squarely within the period when taxpayers could rely on BIR Ruling No. DA 489-03. Thus, petitioner, did not have to observe the period strictly.

The present claim covers the four taxable quarters of 2007 which closed on March 31, 2007; June 30, 2007; September 30, 2007 and December 31, 2007. Counting two years from the said dates, petitioner had until March 31, 2009; June 30, 2009; September 30, 2009 and December 31, 2009, respectively, within which to file its administrative claim for tax credit certificate/refund. Thus, petitioner's administrative claims for refund were seasonably filed on February 27, 2009, June 8, 2009 and August 7, 2009, as shown below:

CTA Case No.	Year 2007	Close of the Taxable Quarter	Last Day to File Administrative Claim	Date of Filing of Administrative Claim	Exhibit
7913	1st Quarter	Mar. 31, 2007	Mar. 31, 2009	Feb. 27, 2009	"C" to "C-3"
	2nd Quarter	June 30, 2007	June 30, 2009		
7977	3rd Quarter	Sept. 30, 2007	Sept. 30, 2009	June 8, 2009	"LLL"
8018	4th Quarter	Dec. 31, 2007	Dec. 31, 2009	Aug. 7, 2009	"PPP"

For the period covering January 1, 2007 to December 31, 2007, petitioner duly filed with the Bureau of Internal Revenue (BIR) its Quarterly VAT Returns declaring the following:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
	(Exhibit "E")	*(Exhibit "F")*	*(Exhibit "G")*	*(Exhibit "H")*	
Vatable Sales/Receipts	-	-	-	-	-
Zero-Rated Sales/Receipts	₱ 33,331,432.22	₱ 57,000,269.38	₱ 71,128,630.44	₱ 78,007,661.34	₱239,467,993.38
Total Sales/Receipts	₱ 33,331,432.22	₱ 57,000,269.38	₱ 71,128,630.44	₱ 78,007,661.34	₱239,467,993.38
Output tax due	-	-	-	-	-

Less: Allowable input tax					
Input Tax Carried Over from Previous Quarter	₱ 3,205,753.06	₱ 5,159,089.30	₱ 6,784,583.91	₱ 8,242,858.33	₱ 3,205,753.06
Input Tax Deferred on Capital Goods Exceeding ₱1 Million from Previous Quarter	4,748,012.08	4,952,774.92	5,339,837.54	5,252,089.14	4,748,012.08
Current Transactions					
Purchase of Capital Goods not exceeding ₱1M	152,045.60	-	46,212.75	128,673.73	326,932.08
Purchase of Capital Goods exceeding ₱1M	508,376.03	735,206.32	286,844.54	660,346.56	2,190,773.45
Domestic Purchase of Goods Other than Capital Goods	111,149.57	91,453.03	70,503.30	262,351.17	535,457.07
Domestic Purchase of Services	1,386,527.88	1,185,897.88	966,965.43	1,486,465.97	5,025,857.16
Total Available Input Tax	₱ 10,111,864.22	₱ 12,124,421.45	₱ 13,494,947.47	₱ 16,032,784.90	₱ 16,032,784.90
Less: Deductions from Input Tax					
Input Tax on Purchases of Capital Goods exceeding ₱1 Million deferred for the succeeding period	(₱ 4,952,774.92)	(₱ 5,339,837.54)	(₱ 5,252,089.14)	(₱ 5,524,085.54)	(₱ 5,524,085.54)
VAT Refund/TCC claimed	-	-			
Total	(₱ 4,952,774.92)	(₱ 5,339,837.54)	(₱ 5,252,089.14)	(₱ 5,524,085.54)	(₱ 5,524,085.54)
Total Allowable Input Tax	₱ 5,159,089.30	₱ 6,784,583.91	₱ 8,242,858.33	₱ 10,508,699.36	₱ 10,508,699.36
Net VAT Payable/(Overpayment)	**(₱ 5,159,089.30)**	**(₱ 6,784,583.91)**	**(₱ 8,242,858.33)**	**(₱ 10,508,699.36)**	**(₱ 10,508,699.36)**

As indicated in the returns, petitioner's excess input VAT arising from its domestic purchases of capital goods not exceeding ₱1Million, domestic purchases of goods other than capital goods, domestic purchases of services and amortization of input VAT on purchases of capital goods exceeding ₱1Million for the four quarters of 2007 amounted to ₱7,302,946.30, broken down as follows:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Input Tax Deferred on Capital Goods exceeding ₱1 Million from Previous Quarter	₱ 4,748,012.08	₱ 4,952,774.92	₱ 5,339,837.54	₱ 5,252,089.14	₱ 4,748,012.08
Add: Input Tax on Capital Goods exceeding ₱1 Million Purchased this Quarter	508,376.03	735,206.32	286,844.54	660,346.56	2,190,773.45
Total: Unamortized Input Tax on Capital Goods exceeding ₱1 Million	₱ 5,256,388.11	₱ 5,687,981.24	₱ 5,626,682.08	₱ 5,912,435.70	₱ 6,938,785.53
Less: Input Tax on Purchases of Capital Goods exceeding ₱1 Million deferred for the succeeding period	4,952,774.92	5,339,837.54	5,252,089.14	5,524,085.54	5,524,085.54
Amortization of Input Tax on Capital Goods exceeding ₱1 Million	₱ 303,613.19	₱ 348,143.70	₱ 374,592.94	₱ 388,350.16	₱ 1,414,699.99
Add: Input Tax on:					
Purchase of Capital Goods not exceeding ₱1 Million	152,045.60	-	46,212.75	128,673.73	326,932.08
Domestic Purchases of Goods Other than Capital Goods	111,149.57	91,453.03	70,503.30	262,351.17	535,457.07
Domestic Purchase of Services	1,386,527.88	1,185,897.88	966,965.43	1,486,465.97	5,025,857.16
Total Allowable Input Tax Due	₱ 1,953,336.24	₱ 1,625,494.61	₱ 1,458,274.42	₱ 2,265,841.03	₱ 7,302,946.30
Less: Ouput Tax Due	-	-	-	-	-
Excess Input Tax	**₱ 1,953,336.24**	**₱ 1,625,494.61**	**₱ 1,458,274.42**	**₱ 2,265,841.03**	**₱ 7,302,946.30**

The aforesaid excess input tax of ₱7,302,946.30 is the subject of the present claims for refund.

Section 112(A) of the NIRC of 1997, as amended, allows the refund/tax credit of unutilized excess input VAT attributable to zero-rated or effectively zero-rated sales subject to the taxpayer's compliance with the following requisites:[39]

1. there must be zero-rated or effectively zero-rated sales;

2. that input taxes were incurred or paid;

3. that such input taxes are attributable to zero-rated or effectively zero-rated sales;

4. that the input taxes were not applied against any output VAT liability; and

5. that the claim for refund was filed within the two-year prescriptive period.

The fifth requisite pertains to the filing of the administrative claim for tax credit certificate/refund of input VAT. As explicitly stated under Section 112(A), the application for tax credit certificate/refund of unutilized excess input VAT must be filed within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

Now to the first requisite, petitioner alleges that its sales of services to its foreign affiliates, who are all engaged in business

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[39] *Section 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 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.

conducted outside the Philippines, were paid for in United States Dollars inwardly remitted to the Philippines 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, which states that:

> **SEC. 108.-*Value-added Tax on Sale of Services and Use or Lease of Properties.-***
>
> "(B) *Transactions Subject to Zero Percent (0%) Rate.*-- The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> "(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> "(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"

In the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,*[40] the Supreme Court held that in order 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 be met:

1. the services must be other than processing, manufacturing or repacking of goods;

[40] G.R. No. 153205, January 22, 2007, 512 SCRA 124.

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.

Corollary to the second requisite, Sections 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(2), B(1) and (2)(c) of Revenue Regulations (RR) No. 16-05[41] provides that a VAT taxpayer, like herein petitioner, shall for every 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);
>
> "(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:

---

[41] *"Consolidated Value-Added Tax Regulations of 2005"*

xxx xxx xxx

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

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

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

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

xxx xxx xxx

(B) (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**:
>
> (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; (*underlining supplied*)

Pursuant to 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.

The Court now proceeds to determine if petitioner has complied with the aforementioned requisites for VAT zero-rating of sales of services.

It is undisputed that petitioner is duly registered with the BIR as a VAT taxpayer.[42] As a Regional Operating Headquarters (ROHQ), petitioner is authorized to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services; research and development services and product development; technical support and maintenance; data processing and communication and business development.[43] Such services are not the same category as "processing, manufacturing or repacking of goods."

For the taxable year 2007, petitioner rendered services to its affiliates, namely: Manulife (International) Limited, John Hancock Life Insurance Company (U.S.A.) and The Manufacturers Life Insurance Company.[44]

It was established that Manulife (International) Ltd. and John Hancock Life Insurance Company (U.S.A.) are non-resident foreign entities doing business outside the Philippines as shown by the SEC

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[42] *Rollo*, (CTA Case No. 7913), "*Joint Stipulation of Facts and Issues,*" p. 283.
[43] Petitioner's Evidence, Exhibit "*A-3.*"
[44] Petitioner's Evidence, Exhibits "*GG*" to "*GG-7,*" "*HH*" to "*HH-3*" and "*JJ*" to "*JJ-4.*"

Certificates of Non-Registration of Corporation/Partnership,[45] certified copy of the Philippine Stock Exchange of Manulife Financial Corporation Annual Report for 2007,[46] Registration Information of Manulife (International) Ltd. from the website of the Hong Kong Company of Registry[47], Registration Information of John Hancock Life Insurance Company (U.S.A.) from the website of the Department of Energy, Labor and Economic Growth of the State of Michigan,[48] authenticated and certified copy of Amended Articles of Redomestication of John Hancock Life Insurance Company (U.S.A.),[49] and authenticated and certified copy of Certified Documents of Manulife (International) Ltd.[50]

However, the Court noted that with regard to petitioner's client-affiliate, The Manufacturer's Life Insurance Company, records show that it is a corporation organized under the laws of the Dominion of Canada but duly licensed and registered with the SEC to do business in the Philippines though a branch, as evidenced by the 2007 General Information Sheet[51]. Clearly, it did not satisfy the final requisite. Consequently, petitioner's reported sales of services to The Manufacturer's Life Insurance Company in the amount of ₱72,476,309.15, detailed below, cannot qualify for VAT zero rating.

Summary Reference	Exhibit (Invoice)	Exhibit (Official Receipt)	Client	Amount of Sales
First Quarter of 2007				
January				
AAA-1	AAA-1b1	AAA-1b	The Manufacturer's Life Insurance Company	₱ 124,309.36
AAA-1	AAA-1e1	AAA-1e	The Manufacturer's Life Insurance Company	1,318,885.34
AAA-1	AAA-1g1	AAA-1g	The Manufacturer's Life Insurance Company	714,992.61
February				
AAA-1	AAA-1k1	AAA-1k	The Manufacturer's Life Insurance Company	1,300,717.67
AAA-1	AAA-1l1	AAA-1l	The Manufacturer's Life Insurance Company	691,509.83
AAA-1	AAA-1o1	AAA-1o	The Manufacturer's Life Insurance Company	381,205.11
March				
AAA-1	AAA-1r1	AAA-1r	The Manufacturer's Life Insurance Company	632,521.04
AAA-1	AAA-1t1	AAA-1t	The Manufacturer's Life Insurance Company	1,197,308.34
AAA-1	AAA-1v1	AAA-1v	The Manufacturer's Life Insurance Company	486,727.23

45 Petitioner's Evidence, Exhibits "*KK*" and "*LL*."
46 Petitioner's Evidence, Exhibits "*HHH*," "HHH-1" to "HHH-1-c."
47 Petitioner's Evidence, Exhibit "*NN-1*."
48 Petitioner's Evidence, Exhibit "*NN-2*."
49 Petitioner's Evidence, Exhibit "*TTT*."
50 Petitioner's Evidence, Exhibit "*UUU*."
51 Petitioner's Evidence, Exhibit "*MM*."

AAA-1	AAA-1w1	AAA-1w	The Manufacturer's Life Insurance Company	896,781.87
AAA-1	AAA-1x1	AAA-1x	The Manufacturer's Life Insurance Company	752,880.79
AAA-1	AAA-1y1	AAA-1y	The Manufacturer's Life Insurance Company	559,413.46
AAA-1	AAA-2b1	AAA-2b	The Manufacturer's Life Insurance Company	342,233.90
Subtotal				**₱ 9,399,486.55**
Second Quarter of 2007				
April				
AAA-2	AAA-2e1	AAA-2e	The Manufacturer's Life Insurance Company	₱ 514,028.70
AAA-2	AAA-2h1	AAA-2h	The Manufacturer's Life Insurance Company	1,092,308.19
AAA-2	AAA-2i1	AAA-2i	The Manufacturer's Life Insurance Company	688,305.97
AAA-2	AAA-2k1	AAA-2k	The Manufacturer's Life Insurance Company	900,054.21
AAA-2	AAA-2l1	AAA-2l	The Manufacturer's Life Insurance Company	755,267.37
AAA-2	AAA-2n1	AAA-2n	The Manufacturer's Life Insurance Company	571,260.95
May				
AAA-2	AAA-2o1	AAA-2o	The Manufacturer's Life Insurance Company	762,350.42
AAA-2	AAA-2p1	AAA-2p	The Manufacturer's Life Insurance Company	608,514.88
AAA-2	AAA-2q1	AAA-2q	The Manufacturer's Life Insurance Company	926,410.44
AAA-2	AAA-2x1	AAA-2x	The Manufacturer's Life Insurance Company	1,013,980.59
AAA-2	AAA-2y1	AAA-2y	The Manufacturer's Life Insurance Company	511,669.07
AAA-2	AAA-2z1	AAA-2z	The Manufacturer's Life Insurance Company	677,719.34
June				
AAA-2	AAA-3d1	AAA-3d	The Manufacturer's Life Insurance Company	1,067,111.03
AAA-2	AAA-3f1	AAA-3f	The Manufacturer's Life Insurance Company	492,260.19
AAA-2	AAA-3g1	AAA-3g	The Manufacturer's Life Insurance Company	502,162.85
AAA-2	AAA-3j1	AAA-3j	The Manufacturer's Life Insurance Company	876,722.80
AAA-2	AAA-3k1	AAA-3k	The Manufacturer's Life Insurance Company	604,175.48
AAA-2	AAA-3l1	AAA-3l	The Manufacturer's Life Insurance Company	971,720.59
Subtotal				**₱13,536,023.07**
Third Quarter of 2007				
July				
AAA-3	AAA-3q1	AAA-3q	The Manufacturer's Life Insurance Company	₱ 1,070,561.73
AAA-3	AAA-3s1	AAA-3s	The Manufacturer's Life Insurance Company	455,404.93
AAA-3	AAA-3t1	AAA-3t	The Manufacturer's Life Insurance Company	505,719.64
AAA-3	AAA-3w1	AAA-3w	The Manufacturer's Life Insurance Company	978,918.71
AAA-3	AAA-3x1	AAA-3x	The Manufacturer's Life Insurance Company	613,032.17
AAA-3	AAA-3y1	AAA-3y	The Manufacturer's Life Insurance Company	1,610,757.45
AAA-3	AAA-3z1	AAA-3z	The Manufacturer's Life Insurance Company	236,939.13
August				
AAA-3	AAA-4e1	AAA-4e	The Manufacturer's Life Insurance Company	1,099,132.08
AAA-3	AAA-4g1	AAA-4g	The Manufacturer's Life Insurance Company	536,632.59
AAA-3	AAA-4h1	AAA-4h	The Manufacturer's Life Insurance Company	519,215.91
AAA-3	AAA-4k1	AAA-4k	The Manufacturer's Life Insurance Company	1,048,275.28
AAA-3	AAA-4l1	AAA-4l	The Manufacturer's Life Insurance Company	621,480.67
AAA-3	AAA-4m1	AAA-4m	The Manufacturer's Life Insurance Company	1,291,973.37

AAA-3	AAA-4n1	AAA-4n	The Manufacturer's Life Insurance Company	384,195.77
AAA-3	AAA-4o1	AAA-4o	The Manufacturer's Life Insurance Company	1,003,274.93
September				
AAA-3	AAA-4t1	-	The Manufacturer's Life Insurance Company	930,633.60
AAA-3	AAA-4w1	AAA-4w	The Manufacturer's Life Insurance Company	469,492.91
AAA-3	AAA-4x1	AAA-4x	The Manufacturer's Life Insurance Company	443,079.20
AAA-3	AAA-5a1	AAA-5a	The Manufacturer's Life Insurance Company	821,020.20
AAA-3	AAA-5b1	AAA-5b	The Manufacturer's Life Insurance Company	519,107.17
AAA-3	AAA-5c1	AAA-5c	The Manufacturer's Life Insurance Company	1,721,159.01
AAA-3	AAA-5d1	AAA-5d	The Manufacturer's Life Insurance Company	304,508.23
AAA-3	AAA-5e1	AAA-5e	The Manufacturer's Life Insurance Company	317,553.62
AAA-3	AAA-5g1	AAA-5g	The Manufacturer's Life Insurance Company	841,174.70
AAA-3	AAA-5h1	AAA-5h	The Manufacturer's Life Insurance Company	1,891,706.57
AAA-3	AAA-5i1	AAA-5i	The Manufacturer's Life Insurance Company	19,421.70
Subtotal				**₱20,254,371.27**
Fourth Quarter of 2007				
October				
AAA-4	AAA-5n1	AAA-5n	The Manufacturer's Life Insurance Company	₱ 902,429.45
AAA-4	AAA-5q1	AAA-5q	The Manufacturer's Life Insurance Company	405,907.27
AAA-4	AAA-5r1	AAA-5r	The Manufacturer's Life Insurance Company	459,587.22
AAA-4	AAA-5u1	AAA-5u	The Manufacturer's Life Insurance Company	840,912.51
AAA-4	AAA-5v1	AAA-5v	The Manufacturer's Life Insurance Company	502,870.10
AAA-4	AAA-5w1	AAA-5w	The Manufacturer's Life Insurance Company	1,720,533.04
AAA-4	AAA-5x1	AAA-5x	The Manufacturer's Life Insurance Company	295,279.69
AAA-4	AAA-5y1	AAA-5y	The Manufacturer's Life Insurance Company	291,387.98
AAA-4	AAA-6a1	AAA-6a	The Manufacturer's Life Insurance Company	589,167.91
AAA-4	AAA-6b1	AAA-6b	The Manufacturer's Life Insurance Company	908,239.29
AAA-4	AAA-6c1	AAA-6c	The Manufacturer's Life Insurance Company	1,933,423.12
November				
AAA-4	AAA-6h1	AAA-6h	The Manufacturer's Life Insurance Company	868,924.46
AAA-4	AAA-6k1	AAA-6k	The Manufacturer's Life Insurance Company	427,451.29
AAA-4	AAA-6l1	AAA-6l	The Manufacturer's Life Insurance Company	473,520.80
AAA-4	AAA-6o1	AAA-6o	The Manufacturer's Life Insurance Company	843,811.07
AAA-4	AAA-6p1	AAA-6p	The Manufacturer's Life Insurance Company	492,696.78
AAA-4	AAA-6q1	AAA-6q	The Manufacturer's Life Insurance Company	2,471,115.32
AAA-4	AAA-6r1	AAA-6r	The Manufacturer's Life Insurance Company	274,007.24
AAA-4	AAA-6t1	AAA-6t	The Manufacturer's Life Insurance Company	515,516.19
AAA-4	AAA-6u1	AAA-6u	The Manufacturer's Life Insurance Company	731,827.83
AAA-4	AAA-6v1	AAA-6v	The Manufacturer's Life Insurance Company	37,364.62
AAA-4	AAA-6w1	AAA-6w	The Manufacturer's Life Insurance Company	1,123,497.63
AAA-4	AAA-6x1	AAA-6x	The Manufacturer's Life Insurance Company	2,019,911.01
AAA-4	AAA-6y1	AAA-6y	The Manufacturer's Life Insurance Company	294,131.68
December				
AAA-4	AAA-7d1	AAA-7d	The Manufacturer's Life Insurance Company	896,885.81
AAA-4	AAA-7g1	AAA-7g	The Manufacturer's Life Insurance Company	428,628.08

AAA-4	AAA-7h1	AAA-7h	The Manufacturer's Life Insurance Company	456,763.98
AAA-4	AAA-7k1	AAA-7k	The Manufacturer's Life Insurance Company	954,731.89
AAA-4	AAA-7l1	AAA-7l	The Manufacturer's Life Insurance Company	475,092.49
AAA-4	AAA-7m1	AAA-7m	The Manufacturer's Life Insurance Company	1,697,867.60
AAA-4	AAA-7n1	AAA-7n	The Manufacturer's Life Insurance Company	252,534.91
AAA-4	AAA-7o1	AAA-7o	The Manufacturer's Life Insurance Company	264,585.23
AAA-4	AAA-7q1	AAA-7q	The Manufacturer's Life Insurance Company	492,128.53
AAA-4	AAA-7r1	AAA-7r	The Manufacturer's Life Insurance Company	711,639.13
AAA-4	AAA-7s1	AAA-7s	The Manufacturer's Life Insurance Company	132,457.71
AAA-4	AAA-7t1	AAA-7t	The Manufacturer's Life Insurance Company	1,032,503.55
AAA-4	AAA-7u1	AAA-7u	The Manufacturer's Life Insurance Company	2,067,095.85
Subtotal				**₱29,286,428.26**
TOTAL				**₱72,476,309.15**

For services rendered for the four quarters of 2007, petitioner received foreign currency payments, which were accounted for in accordance with the BSP rules and regulations, as evidenced by the Schedule of Sales,[52] VAT zero-rated sales invoices and official receipts,[53] Summary of Bank Remittances,[54] Customer Advices – Bank Credit Memos,[55] issued by Citibank and consolidated report[56] of the Court-commissioned Independent Certified Public Accountant (CPA), Nila N. Mendiola.

However, petitioner failed to substantiate the amount of ₱5,200,302.44 with VAT zero-rated official receipts its sales of services, detailed as follows:

Year 2007	Exhibit (Invoice)	Client	Amount of Sales
August	AAA-4d1	John Hancock Life Insurance Co.	₱ 4,594,871.83
September	AAA-5f1	John Hancock Life Insurance Co.	135,057.39
December	AAA-7p1	John Hancock Life Insurance Co.	470,373.22
Total			₱ 5,200,302.44

In sum, the Court finds that of the ₱239,467,993.38 zero-rated sales declared by petitioner for the first, second, third and fourth

[52] Petitioner's Evidence, Exhibits "*R*," "*MMM*" and "*QQQ*."
[53] Petitioner's Evidence, Exhibits "*AAA-1-a*" to "*AAA-7-u-1*."
[54] Petitioner's Evidence, Exhibits "*PP*," "*GGG*" and "*SSS*."
[55] Petitioner's Evidence, Exhibits "*QQ*" to "*QQ-26-d*," "*RR*" to "*RR-33-d*," "*GGG-1*" to "*GGG-49-d*."
[56] Petitioner's Evidence, Exhibit "*WWW-2*."

quarters of 2007, only the amount of ₱161,791,381.79 qualifies for VAT zero rating, computed as follows:

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Total
Zero-Rated Sales per Returns	₱33,331,432.22	₱57,000,269.38	₱71,128,630.44	₱78,007,661.34	₱239,467,993.38
Less: Disallowances					
Sales to The Manufacturer's Life Insurance Company	₱ 9,399,486.55	₱13,536,023.07	₱20,254,371.27	₱29,286,428.26	₱ 72,476,309.15
No Supporting Official Receipts	-	-	4,729,929.22	470,373.22	5,200,302.44
Total Disallowances	₱ 9,399,486.55	₱13,536,023.07	₱24,984,300.49	₱29,756,801.48	₱ 77,676,611.59
Valid Zero Rated Sales	**₱23,931,945.67**	**₱43,464,246.31**	**₱46,144,329.95**	**₱48,250,859.86**	**₱161,791,381.79**

After resolving that petitioner indeed has VAT zero-rated sales of services for the four quarters of 2007 in the amount of ₱161,791,381.79, the Court proceeded to determine the amount of input VAT incurred by petitioner corresponding thereto.

In support of its claimed input VAT, petitioner submitted various suppliers' invoices and official receipts,[57] which were examined by an Independent CPA. In the Independent CPA's consolidated Report dated September 8, 2010, she recommended a reduction of petitioner's claim of ₱70,881.96,[58] for the following reasons:

Supplier	Exhibit (Invoice)	Exhibit (OR)	Input Tax	Nature of Exception
1st Quarter				
TV Food Chefs, Inc.	ZZ-2a1	ZZ-2a	₱ 1,119.64	Not within the period claim
TV Food Chefs, Inc.	ZZ-2b1	ZZ-2b	331.07	Not within the period claim
Bayan Telecommunications Inc.	ZZ-2f1	ZZ-2f	1,637.14	No TIN
PLDT	ZZ-2g1	ZZ-2g	154.89	No TIN
PLDT	ZZ-2h1	ZZ-2h	3,474.28	No TIN
PLDT	ZZ-2v1	ZZ-2v	151.22	No TIN
PLDT	ZZ-2v2	ZZ-2v	151.28	No TIN
PLDT	ZZ-2v3	ZZ-2v	152.59	No TIN
PLDT	ZZ-2v4	ZZ-2v	152.59	No TIN
PLDT	ZZ-2v5	ZZ-2v	153.91	No TIN
PLDT	ZZ-2v6	ZZ-2v	154.82	No TIN

[57] Petitioner's Evidence, Exhibit "*ZZ-1-a*" to "*ZZ-15-w-1.*"
[58] Petitioner's Evidence, Exhibits "*BBB*" to "*BBB-2.*"

PLDT	ZZ-2v7	ZZ-2v	156.69	No TIN
PLDT	ZZ-3m1	ZZ-3m	148.88	No TIN
PLDT	ZZ-3m2	ZZ-3m	152.59	No TIN
PLDT	ZZ-3m3	ZZ-3m	152.59	No TIN
PLDT	ZZ-3m4	ZZ-3m	151.22	No TIN
PLDT	ZZ-3m5	ZZ-3m	153.91	No TIN
PLDT	ZZ-3m6	ZZ-3m	156.69	No TIN
PLDT	ZZ-3m7	ZZ-3m	154.82	No TIN
PLDT	ZZ-4s1	ZZ-4s	4,229.66	No TIN
PLDT	ZZ-4a1	ZZ-4a	247.89	No TIN
Bayan Telecommunications Inc.	ZZ-4c1	ZZ-4c	1,637.14	No TIN
Xentrix Solutions	-	-	387.32	No document presented
Total disallowed Input VAT for the 1st Quarter			**₱ 15,362.83**	
2nd Quarter				
TV Food Chefs, Inc.	ZZ-5h1	ZZ-5h	₱ 320.89	No TIN
PLDT	ZZ-5l1	ZZ-5l	148.05	No TIN
PLDT	ZZ-5l2	ZZ-5l	146.61	No TIN
PLDT	ZZ-5l3	ZZ-5l	146.61	No TIN
TV Food Chefs, Inc.	ZZ-6f1	ZZ-6f	321.43	No TIN
Bayan Telecommunications Inc.	ZZ-6n1	ZZ-6n	1,637.14	No TIN
Profiles Asia Pacific Inc.	-	-	16,941.00	No document presented
Total disallowed Input VAT for the 2nd Quarter			**₱ 19,661.73**	
3rd Quarter				
Innospecs	ZZ-9l1	ZZ-9l	₱ 12,801.60	No Invoice
Punongbayan & Araullo	ZZ-9t1	ZZ-9t	463.68	No Invoice
Accent Micro Technologies	ZZ-9x1	ZZ-9x	9,765.29	Incomplete document presented
Total disallowed Input VAT for the 3rd Quarter			**₱ 23,030.57**	
4th Quarter				
Rentokil Initial (Philippines) Inc.	ZZ-14k1	ZZ-14k	₱ 360.00	No Invoice
Accent Micro Technologies	ZZ-14r2	ZZ-14r	10,962.54	No Invoice
CWC International Corp	-	-	1,504.29	No Invoice
Total disallowed Input VAT for the 4th Quarter			**₱ 12,826.83**	
Total disallowed Input VAT for the 1st to 4th Quarters of 2007			**₱ 70,881.96**	

After perusal of petitioner's submissions and the Independent CPA's report, the Court agrees with these disallowances.

The Court also finds that, petitioner's claim should be reduced further by ₱64,246.56, broken down as follows:

Supplier	Exhibit (Invoice)	Exhibit (OR)	Input Tax	Nature of Exception
1st Quarter				
John Clements Consultants	ZZ-1a1	ZZ-1a	₱ 2,207.47	Not within the period claim
Goudie Associates Manila Ltd.	ZZ-4p1	ZZ-4p	6,479.14	VAT not separately shown
Total disallowed Input VAT for the 1st Quarter			**₱ 8,686.61**	
3rd Quarter				
Cafea Restaurant	-	ZZ-10p	₱ 14,464.29	OR not dated
Maxicare *(Exhibit ZZ-9m1)*	-	-	349.57	Supported with Statement of Account only
Celebrity Sports Plaza *(Exhibit ZZ-10q)*	-	-	15,910.70	Supported with Statement of Account only
Guthrie Jensen	-	-	6,480.00	No document presented
Hizons Restaurant	-	-	1,404.00	No document presented
Human Capital	-	-	3,420.00	No document presented
E-Global Structure	-	-	2,203.93	No document presented
E-Global Structure	-	-	133.93	No document presented
Total disallowed Input VAT for the 3rd Quarter			**₱ 44,366.42**	
4th Quarter				
CWC International	-	-	₱ 11,193.53	No document presented
Total disallowed Input VAT for the 4th Quarter			**₱ 11,193.53**	
Total disallowed Input VAT for the 1st to 4th Qrts of 2007			**₱ 64,246.56**	

Furthermore, petitioner's claim should be further reduced by ₱897.71, representing the discrepancy between the claimed input VAT *vis-à-vis* the input VAT per summary, as shown below:

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Total
Per Claim	₱ 1,953,336.24	₱ 1,625,494.61	₱ 1,458,274.42	₱ 2,265,841.03	₱ 7,302,946.30
Per Summary	1,952,438.53	1,625,494.61	1,458,274.42	2,265,841.03	7,302,048.59
Difference	₱ 897.71	-	-	-	₱ 897.71

Considering all the aforesaid disallowances, out of the total reported input VAT of ₱7,302,946.30, only the input VAT of ₱7,166,920.07 was properly substantiated in accordance with Sections 110(A) and 113(A) of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of RR No. 16-2005. Below is the computation of the amount of ₱7,166,920.07:

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Total
Input VAT Claim	₱1,953,336.24	₱1,625,494.61	₱1,458,274.42	₱2,265,841.03	₱7,302,946.30
Less: Disallowances					

Per ICPA's report	₱ 15,362.83	₱ 19,661.73	₱ 23,030.57	₱ 12,826.83	₱ 70,881.96
Per this Court's findings	8,686.61	-	44,366.42	11,193.53	64,246.56
Discrepancy between input VAT per claim and input VAT per Summary	897.71	-	-	-	897.71
Total	₱ 24,947.15	₱ 19,661.73	₱ 67,396.99	₱ 24,020.36	₱ 136,026.23
Valid Input VAT	**₱1,928,389.09**	**₱1,605,832.88**	**₱1,390,877.43**	**₱2,241,820.67**	**₱7,166,920.07**

Since petitioner had no VATable or exempt sales but only zero-rated sales for the four quarters of 2007, the substantiated input VAT claim in the amount of ₱7,166,920.07 can be attributed to the entire zero-rated sales declared by petitioner in the amount of ₱239,467,993.38. However, only the input VAT of ₱4,898,053.35 is attributable to the valid zero-rated sales of ₱161,791,381.79, as computed below:

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Total
Valid Zero-Rated Sales	₱23,931,945.67	₱43,464,246.31	₱46,144,329.95	₱48,250,859.86	₱161,791,381.79
Divided by Total Declared Zero-Rated Sales	33,331,432.22	57,000,269.38	71,128,630.44	78,007,661.34	239,467,993.38
Multiplied by Valid Input VAT	1,928,389.09	1,605,832.88	1,390,877.43	2,241,820.67	7,166,920.07
Input VAT Attributable to Valid Zero-Rated Sales	**₱ 1,384,582.06**	**₱1,224,490.98**	**₱ 902,324.52**	**₱ 1,386,655.79**	**₱ 4,898,053.35**

Although the claimed input VAT was carried-over by petitioner in its succeeding Quarterly VAT Returns,[59] the same remained unutilized until it was deducted as "Any VAT Refund/TCC Claimed"[60] in its Quarterly VAT Return for the first and second quarter of 2009. Thus, the excess input VAT of ₱25,975,755.15[61] as of the end of the second quarter of 2009 which was to be carried-over to the succeeding third quarter of 2009 no longer included the subject claim.

WHEREFORE, given the forgoing, the Petition for Review is hereby **PARTLY GRANTED.** Respondent is hereby **ORDERED** to issue a Tax Credit Certificate to petitioner in the reduced amount of **Four Million Eight Hundred Ninety Eight Thousand Fifty Three and 35/100 pesos (₱4,898,053.35)** for its unutilized/unapplied input VAT for the 1st to 4th Quarters of 2007.

SO ORDERED.

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[59] Petitioner's Evidence, Exhibits "*I*," "*K*," "*M*," "*N*," "*P*," and "*Q*."
[60] Petitioner's Evidence, Exhibits "*P-3*" and "*Q-5*."
[61] Petitioner's Evidence, Exhibit "*Q-6*."

LOVELL R. BAUTISTA
Associate Justice

I CONCUR:

AMELIA R. COTANGCO-MANALASTAS
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.

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice