REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1185** **(CTA Case No. 8391)**
- *versus* -	Present: *Del Rosario, P.J.* *Castañeda, Jr.,* *Bautista,* *Uy,* *Casanova,* *Fabon-Victorino,* *Mindaro-Grulla,* *Cotangco-Manalastas, and* *Ringpis-Liban, JJ.*
TOP MASTER CONSTRUCTION (PHILIPPINES), INC. (Formerly: HUME FURNITURE (PHILIPPINES), INC.), Respondent.	**Promulgated:** NOV 12 2015 11:46 a.m.

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review,[1] filed by registered mail by the Commissioner of Internal Revenue, on June 30, 2014, pursuant to Section 18[2] of Republic Act ("RA") No. 1125,

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[1] *Rollo*, CTA EB Case No. 1185 (CTA Case No. 8391), pp. 5- 82, with Annexes.

[2] Sec. 18. *Appeal to the Court of Tax Appeals En Banc.* – No civil proceeding involving matters arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA en banc.

as amended by RA No. 9282, and RA No. 9503, praying for the setting aside and the reversal of the Decision[3] and Amended Decision[4] promulgated by the Second Division of the Court ("Court in Division") on February 27, 2014 and May 29, 2014, respectively.

Antecedent Facts

The relevant antecedents are succinctly recited by the Court in Division in its Decision dated February 27, 2014, as follows:[5]

> Petitioner Top Master Construction (Philippines), Inc. (now hereinafter referred to as "Topmaster") is a corporation organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at 20th Floor LKG Tower, 6801 Ayala Avenue, Makati City, Metro Manila. It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, with Tax Identification No. 007-199-004-000, as evidenced by its Certificate of Registration No. OCN 9RC0000261756.
>
> Respondent (now hereinafter referred to as "CIR") is the duly appointed Commissioner of the Bureau of Internal Revenue, with authority, among others, to decide, approve and grant claims for refund or tax credit of internal revenue taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.
>
> Topmaster filed its original and amended Quarterly VAT Returns for the period covering the fourth quarter of fiscal year 2009 to the second quarter of fiscal year 2010, on the following dates:

QUARTER/YEAR	VAT RETURN	DATE OF FILING	EXHIBIT
Fourth Quarter/2009	Original	August 18, 2009	"K"
	First Amended	April 27, 2011	"L"
	Second Amended	June 30, 2011	"M"
First Quarter/2010	Original	October 26, 2009	"V"
	First Amended	January 11, 2011	"W"

[3]*Rollo*, CTA EB Case No. 1185 (CTA Case No. 8391), pp. 16-31; penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justice Caesar A. Casanova and Associate Justice Amelia R. Cotangco-Manalastas, concurring.
[4] *Id.*, pp. 33-40.
[5] *Id.*, pp. 17-21.

	Second Amended	April 27, 2011	"X"
	Third Amended	June 30, 2011	"Y"
Second Quarter/2010	Original	January 25, 2010	"HH"
	First Amended	January 11, 2011	"II"
	Second Amended	April 27, 2011	"JJ"
	Third Amended	June 30, 2011	"KK"

Alleging that it has unutilized input VAT from its zero-rated sales, Topmaster filed with the BIR Revenue District Office No. 50 its Application for Tax Credits/Refunds for excess input tax on June 30, 2011.

CIR failed to act on Topmaster's claim for refund or issuance of tax credit certificate, prompting Topmaster to file the instant Petition for Review on November 28, 2011.

In her 'Answer (with Motion to Dismiss)' filed on January 3, 2012, CIR interposed the following special and affirmative defenses:

> 8. Topmaster claim of its entitlement for refund or the issuance of a Tax Credit Certificate has no basis either in fact or in law, as we shall elaborate below:
>
> 9. First. Assuming but without admitting that the administrative claim for refund was made in time, still, the present action must necessarily fail. Contrary to Topmaster's claim, it may not seek judicial relief before this Honorable Court, for lack of jurisdiction to hear, decide, adjudicate and render judgment regarding the instant Petition;
>
> 10. Notwithstanding the invocation by Topmaster of the Honorable Supreme Court's pronouncements, Topmaster arguments do not hold water, as revealed by the facts of the case. Looking at the alleged application letter of the Topmaster (Annex 'MM' of the Petition), it can be seen that the same letter was filed on 27 June 2011, contrary to Topmaster's allegation that it was 30 June 2011;

11. The Revised National Internal Revenue Code of 1997 ('Tax Code' for brevity), in its Section 112, provides the remedies available to a taxpayer and the period within which to avail of the same, to wit:

> '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 of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales:

Provided, finally, That for a person making sales that are zero-rated between his zero-rated and non-zero-rated sales.

(B) Cancellation of VAT Registration. — A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes.

(C) Period within which Refund or Tax Credit of Input Taxes shall be Made. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the

> decision or the unacted claim with the Court of Tax Appeals.
>
> (D) Manner of Giving Refund. — Refunds shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being countersigned by the Chairman, Commission on Audit, the provisions of the Administrative Code of 1987 to the contrary notwithstanding: Provided, That refunds under this paragraph shall be subject to post audit by the Commission on Audit.' (Emphases and underlining all provided)

12. Counting the expiration of the one hundred and twenty (120) days period from 27 June 2011, the last day of that period will fall on 24 October 2011. Now, if the thirty (30) day period to appeal is to be counted from 24 October 2011, which Sec. 112 (C) of the Tax Code mandatorily holds for Topmaster to appeal the inaction of the CIR to the Honorable Court of Tax Appeals, then it will be readily seen that the true last day for Topmaster to file its appeal will fall on November 23, 2011;

13. Records will reveal that Topmaster filed the instant Petition only on 28 November 2011, which is apparently beyond the period contemplated by law. Thus, the present Petition for Review should be denied due course and be dismissed outright by this Honorable Court for being manifestly belatedly filed;

14. Second. It is incumbent upon Topmaster to show that it has complied with the provisions of the Tax Code, for in an action for refund, the burden is upon the taxpayer to

prove that [he] it is entitled thereto, and failure to discharge said burden is fatal to the claim (Emmanuel & Zenaida Aguilar v. Commissioner, CA-G.R. No. Sp. 16432, March 30, 1990, as cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, P. 206);

15. Topmaster failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected. It must be stressed that taxes paid and collected are presumed to have been made in accordance with the laws and regulations, hence, not creditable or refundable;

16. And as the Honorable Supreme Court even held in the case of Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue (G.R. No. 159471, January 26, 2011):

> 'Taxation is a destructive power which interferes with the personal and property rights of the people and takes from them a portion of their property for the support of the government. And since taxes are what we pay for civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed strictissimi juris against the taxpayer and liberally in favor of the taxing authority. A claim of refund or exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Elsewise stated, taxation is the rule, exemption therefrom is the exception.' (Emphases and underlining all provided)

> 17. Thus, applying the pertinent provisions of the law, rules and jurisprudence on the matter at hand, it is crystal clear that the instant petition for review lacks basis and merit, and should be dismissed outright by this Honorable Court.'

In a Resolution dated February 21, 2012, the Court denied CIR's Motion to Dismiss that was incorporated in her Answer for lack of merit.

On March 23, 2012, the Court issued a Resolution approving the Joint Stipulation of Facts and Issues filed by the parties on March 21, 2012, as well as terminating the pre-trial.

During trial, Topmaster presented both testimonial and documentary evidence; while CIR's counsel, Atty. Edward S. Magat, manifested in open court on January 28, 2013 that CIR will no longer present any evidence.

In a Resolution dated February 4, 2013, this Court ordered the parties to submit their memoranda within thirty (30) days from receipt of the said Resolution.

Upon motion of Topmaster, the Court allowed the changing of the caption of the case via a Resolution dated April 3, 2013, in view of the approval by the Securities and Exchange Commission on February 26, 2013 of the change of Topmaster registered name from "Hume Furniture (Philippines), Inc." to "Top Master Construction (Philippines), Inc."

The case was submitted for decision on April 24, 2013, considering Topmaster's Memorandum filed on March 8, 2013 and the 'Memorandum (for the Respondent)' filed through registered mail on April 8, 2013."

The Ruling of the Court in Division

On February 27, 2014, the Court in Division promulgated a Decision partially granting Topmaster's Petition for Review by ruling that:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent [CIR] is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner [Topmaster] in the reduced amount of Php9,808,710.73, representing excess and unutilized input VAT arising from its zero-rated transactions for the fourth quarter of fiscal year 2009 to the second quarter of fiscal year 2010.
>
> **SO ORDERED.**[6]

Unsatisfied with the Court in Division's Decision, both parties filed their respective motions. CIR filed her "Motion for Reconsideration on March 21, 2014. On the same day, Topmaster filed its "Motion for Partial Reconsideration."

In an Amended Decision promulgated on May 29, 2014, the Court denied CIR's "Motion for Reconsideration" and partially granted Topmaster's "Motion for Partial Reconsideration." The dispositive portion of the Amended Decision states:

> **WHEREFORE**, premises considered, respondent's [CIR] motion is **DENIED** for lack of merit.
>
> On the other hand, petitioner's [Topmaster] **Motion for Partial Reconsideration** is **PARTIALLY GRANTED**. Accordingly, the Decision promulgated on February 27, 2014 is **AMENDED** and **MODIFIED** to the extent that the respondent [CIR] is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner [Topmaster] the total amount of Php9,933,270.73, representing excess and unutilized input VAT arising from its zero-rated transactions for the fourth quarter of fiscal year 2009 to the second quarter of fiscal year 2010.[7]

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[6] *Id.*, p. 31.
[7] *Id.*, p. 40.

This prompted CIR to file her Petition for Review with the Court *En Banc* on June 30, 2014, and Topmaster to file its "Comment (To the Petition for Review)" on July 23, 2014.

In a Resolution[8] dated August 18, 2014, the Court *En Banc*, after giving due course to the Petition for Review, required both parties to file their respective memoranda.

CIR filed her "Manifestation (In Lieu of Submission of Memorandum)" by registered mail on October 18, 2014, while Topmaster filed its "Memorandum" on October 17, 2014.

In a Resolution dated November 27, 2014, the Court *En Banc* noted CIR's "Manifestation (In Lieu of Submission of Memorandum)," which adopted the Petition for Review as her Memorandum, and that it submitted the case for decision.

THE ISSUES

CIR proffers the following arguments:[9]

> 1. THAT RESPONDENT'S SALES OF SERVICES TO TRAVELERS INTERNATIONAL HOTEL GROUP, INC., A PEZA-REGISTERED ENTERPRISE, DOES NOT QUALIFY AS ZERO-RATED SALES BUT SUBJECT TO 12% VAT;
>
> 2. THAT THE FAILURE TO PRINT/IMPRINT THE WORD "ZERO-RATED"ON THE SALES INVOICES IS FATAL TO A CLAIM FOR REFUND OF INPUT VAT; AND
>
> 3. THAT RESPONDENT FAILED TO PROVE THAT THE COPIES OF INVOICES OR OFFICIAL RECEIPTS OF ITS CUSTOMERS/PURCHASERS DID NOT HAVE THE WORD ZERO-RATED STAMPED ON THEM.

Topmaster alleges the following:[10]

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[8] *Id.*, pp. 111-112.
[9] *Rollo*, CIR's "Petition for Review," pp. 7-13.
[10] *Id.*, Topmaster's "Memorandum," pp. 131.

1. THAT THE SECOND DIVISION OF THIS HONORABLE COURT CORRECTLY RULED THAT RESPONDENT'S SALES OF SERVICES TO TRAVELERS INTERNATIONAL HOTEL GROUP, INC., A PEZA-REGISTERED ENTITY, ARE SUBJECT TO ZERO PERCENT VAT;

2. THAT THE SECOND DIVISION OF THIS HONORABLE COURT CORRECTLY RULED THAT RESPONDENT DULY COMPLIED WITH THE REQUIREMENTS OF THE LAW AS REGARDS THE PRINTING OF THE WORD "ZERO-RATED"ON ITS OFFICIAL RECEIPTS; AND

3. THAT IN ANY EVENT, RESPONDENT IS ENTITLED TO ITS CLAIM FOR TAX REFUND/CREDIT CONSIDERING THAT TAX REFUNDS OR TAX CREDITS ARE FOUNDED ON THE PRINCIPLE WHICH UNDERLIES ALL QUASI CONTRACTS ABHORRING A PERSON'S UNJUST ENRICHMENT AT THE EXPENSE OF ANOTHER.

The Ruling of the Court En Banc

From the foregoing arguments raised by the parties, the issues to be resolved are the following:

a. Whether Topmaster's sales of services to a PEZA-registered client is subject to zero-percent VAT; and

b. Whether Topmaster failed to imprint the "zero-rated" on its official receipts as provided under Section 113 of the NIRC.

In the Decision dated February 27, 2014, the Court in Division unanimously ruled as follows:

"Topmaster hinges its claim for refund or issuance of tax credit certificate on Section 112 (A) of the National Internal Revenue Code (NIRC) of 1997, as amended, which reads:

> '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.'

Based on the above-quoted provision, in order to be entitled to a refund or tax credit of input VAT due or paid attributable to zero-rated or effectively zero-rated sales, the following requisites must be satisfied:

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 attributable to zero-rated or effectively zero-rated sales;

4. that the input taxes were not applied against any output tax liability; and
5. that the claim for refund was filed within the two-year prescriptive period.

The Court deems it necessary to focus initially on the fifth requisite pertaining to the timeliness of the filing of the instant case.

As explicitly stated under Section 112 (A) of the NIRC of 1997, as amended, an application for refund or issuance of tax credit certificate for unutilized input VAT must be filed within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the fourth quarter of fiscal year 2009 to the second quarter of fiscal year 2010 which closed on June 30, 2009, September 30, 2009, and December 31, 2009, respectively. Counting two years from these dates, Topmaster had until June 30, 2011, September 30, 2011, and December 31, 2011, respectively, within which to file its administrative claim for refund or tax credit. Given that Topmaster's claim for refund in the administrative level was filed on June 30, 2011, Topmaster's refund claim was seasonably lodged pursuant to Section 112 (A) of the NIRC of 1997, as amended.

As to the timeliness of Topmaster's judicial recourse on November 28, 2011, this Court likewise finds the same to have been filed on time. The Supreme Court in the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.* held that Section 112 (D) of the NIRC, as amended, clearly provides that the BIR Commissioner has a period of 120 days counted from the date of submission of the complete documents in support of the taxpayer's application for tax refund/credit within which to grant or deny the claim. In the event of a full or partial denial by the Revenue Commissioner, the taxpayer's recourse is to file an appeal before this Court within 30 days from receipt of the decision of the Revenue Commissioner. However, if after the 120-day period the Revenue Commissioner fails to act on the taxpayer's claim, the remedy of the taxpayer is to appeal the inaction of the Revenue Commissioner within 30 days to the Court of Tax Appeals.

Topmaster filed the administrative claim on June 30, 2011. Counting 120 days from the filing of the said administrative claim, CIR had until October 28, 2011 within which to decide. Since CIR failed to act on Topmaster's administrative claim, Topmaster had until November 28, 2011, within which to file its appeal before this Court, as provided under Section 112 (D) of the NIRC of 1997. Thus, the judicial claim filed by Topmaster on November 28, 2011 was timely filed.

The Court will now discuss the remaining requisites.

Records show that Topmaster is registered with the BIR as a VAT taxpayer, with Tax Identification No. 007-199-004-000. It is primarily engaged in the business of supplying furniture and interior fit-out services for the hospitality industry in the Philippines.

Topmaster argues that from April 1, 2009 to December 31, 2009, it rendered services to its sole client, Travelers International Hotel Group, Inc., a Philippine Economic Zone Authority (PEZA)-registered enterprise, for the hotel rooms and corridor interior design fit-out of Maxims Hotel at the Newport City Cybertourism Zone. Topmaster asserts that such sales of services qualify for VAT zero-rating under Section 108 (B) (3) of the NIRC of 1997, as amended, and Section 4.108-6 of Revenue Regulations (RR) No. 16-05, as amended, which provide:

> 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:

xxx xxx xxx

> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;"
>
> SECTION 4.108-6. Effectively Zero-Rated Sale of Services. — The term 'effectively zero-rated sales of services' shall refer to the local sale of services by a VAT-registered person to a person or entity who was granted indirect tax exemption under special laws or international agreement. . . ." (Emphasis supplied)

Section 24 of Republic Act (RA) No. 7916, as amended by RA No. 8748, otherwise known as 'The Special Economic Zone Act of 1995,'states that:

> 'SECTION 24. Exemption from National and Local Taxes. — Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:
>
> (a) Three percent (3%) to the National Government;
>
> (b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located.'

Republic Act No. 7916 is a special law which grants exemption from national (including VAT) and local taxes to duly registered business establishments operating within its proper jurisdiction except payment of the preferential tax rate of 5% on gross income earned. As such, sales of services by VAT-registered entities in the Customs Territory, like herein Topmaster, to PEZA-registered entities are effectively subject to zero percent (0%) VAT under Section 108 (B) (3) of the NIRC of 1997, as amended.

The Supreme Court in the case of *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.* explained the foregoing principle in this wise:

> 'Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.
>
> Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?
>
> The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT.' (Emphasis supplied).

Similarly, in the case of *Commissioner of Internal Revenue v. Sekisui Jushi Philippines, Inc.,* the High Court made the following disquisition:

> 'Notably, while an ecozone is geographically within the Philippines, it is deemed a separate customs territory and is regarded in law as foreign soil. Sales by suppliers from outside the borders of the ecozone to this separate customs territory are deemed as exports and treated as export sales. These sales are zero-rated or subject to a tax rate of zero percent.'

In its amended Quarterly VAT Returns for the subject period of claim, Topmaster reported an amount of P157,742,806.14 zero-rated receipts, broken down as follows:

Exhibit	Period Covered	Zero-rated Sales	
"M"	4th Qtr-FY 2009	April 1-June 30, 2009	P-
"Y"	1st Qtr-FY 2010	July 1-Sept. 30, 2009	82,576,610.20
"KK"	2nd Qtr-FY 2010	Oct. 1-Dec. 31, 2009	75,166,195.94
TOTAL			P157,742,806.14

In support of the foregoing, Topmaster submitted its VAT zero-rated official receipts issued to Travelers International Hotel Group, Inc., for the period covering July to December 2009 amounting to P154,587,950.04, detailed as follows:

EXHIBIT	OR NO.	DATE	AMOUNT
"EEE-1"	0001	10-Jul-09	P77,801,384.84
"EEE-2"	0002	28-Aug-09	2,159,794.56
"EEE-3"	0003	28-Aug-09	963,898.60
"EEE-4"	0004	2-Oct-09	19,689,394.28
"EEE-5"	0005	23-Oct-09	3,833,172.98
"EEE-6"	0006	23-Oct-09	26,339,446.11
"EEE-7"	0007	13-Nov-09	13,249,111.97
"EEE-8"	0008	1-Dec-09	4,529,478.02
"EEE-9"	0009	22-Dec-09	6,022,268.68
TOTAL			**P154,587,950.04**

While there is an apparent discrepancy of P3,154,856.10 (P157,742,806.14 less P154,587,950.04) between the amounts of zero-rated receipts as reflected in the Quarterly VAT Returns and as reflected in the official receipts, such discrepancy merely pertains to the two percent (2%) withholding taxes as accounted for by the Court-commissioned Independent Certified Public Accountant (CPA). Therefore, Topmaster's declared zero-rated receipts for the first and second quarters of fiscal year 2010 are duly substantiated.

After declaring that Topmaster had zero-rated receipts for the subject period of claim in the amount of P157,742,806.14, the Court will now proceed to determine the refundable amount of unutilized input VAT attributable thereto.

As indicated in its Quarterly VAT Returns for the fourth quarter of fiscal year 2009 to the second quarter of fiscal year 2010 (April 1, 2009 to December 31, 2009), Topmaster's unutilized input VAT amounted to P16,394,532.05, as follows:

Exhibit	Period Covered		Input Tax From	Domestic purchase of goods	Domestic purchase of services	Others	Total Input Tax
"M"	4th Qtr-FY 2009	Apr. 1-June 30, 2009	P8,551.96	P447,035.89	P851,861.16	-	P1,307,449.01
"Y"	1st Qtr-FY 2010		July 1-Sept. 30, 2009	2,736,194.48	3,402,766.64	-	6,138,961.12
"KK"	2nd Qtr-FY 2010		Oct. 1-Dec.31, 2009	3,951,029.72	4,997,092.20	-	8,948,121.92
TOTAL				**P6,695,776.16**	**P8,846,894.73**	**P851,861.16**	**P16,394,532.05**

To prove that it actually incurred/paid the input VAT of P16,394,532.05, Topmaster presented its Summary Lists of Purchases and the related suppliers' invoices and official receipts, which were examined by the Court-commissioned Independent CPA.

The results of the examination and validation made by the Independent CPA are summarized hereunder:

DESCRIPTION	EXHIBIT REFERENCE	INPUT TAX AMOUNT

Input Tax Claimed on Purchases with Proper Supporting Documents	"YY-1"	P7,029,815.13
Input Tax Allowable on Purchases with Discrepancies Between the Invoice/OR Amount Against the Amount Recorded by Petitioner	"YY-2"	5,228,468.51
Input Tax Claimed on Purchase of Services with Certified True Copy of Official Receipt and without Petitioner's TIN	"YY-3"	71,450.25
Input Tax Claimed Supported by Invoices with Petitioner's Name and TIN but Address is Malaysia	"YY-4"	579,320.25
Overclaimed Input Tax on Purchases with Discrepancies between the Invoice/OR Amount against the Amount Recorded by Petitioner	"YY-2"	1,664,515.97
Input Tax Claimed on Purchase of Services without Official Receipts	"YY-5"	283,101.60
Input Tax Claimed on Purchase of Goods That Are Not Supported by Invoices	"YY-6"	247,577.99
Input Tax Claimed on Purchase of Services Supported by Non-Vat Acknowledgement Receipt	"YY-7"	114.85
Input Tax Claimed on Purchases with Missing Supports	"YY-8"	1,290,167.51
Total Input Tax Reviewed		**P16,394,532.06**
Amount Claimed		**P16,394,532.06**
Difference		**(0.00)**

Notably, only the amounts of P7,029,815.13 and P5,228,468.51 under Exhibits 'YY-1' and 'YY-2,' respectively, totaling to P12,258,283.64 represent Topmaster's valid input taxes. The remaining claimed input taxes under Exhibits 'YY-3,' 'YY-4,' 'YY-2,' 'YY-5,' 'YY-6,' 'YY-7,' and 'YY-8' in the respective amounts of P71,450.25, P579,320.25, P1,664,515.97, P283,101.60, P247,577.99, P114.85, and P1,290,167.51 or in the aggregate sum of P4,136,248.42 shall be disallowed for failure to present VAT invoices or receipts as prescribed under Sections 110 (A) and 113 (A) and (B) of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-8, and 4.113-1 of RR No. 16-05, as amended.

However, the Court found that out of the P12,258,283.64 input VAT declared by the Independent CPA to be properly substantiated, the amount of P3,164,965.25, detailed hereunder, should likewise be disallowed:

1. Input tax on domestic purchase of services supported by VAT OR dated outside the period of claim				
Exhibit	OR No.	Date	Supplier	Input Tax
"VV-2"	0003	18-Jun-02	HNW Construction Works Pte Ltd. Co.	P124,560.00
Sub-total				P124,560.00
2. Input tax on domestic purchase of services supported by VAT OR but with discrepancy on address used				
"WW-10"	2258	20-Jul-09	Taisei Philippine Construction, Inc.	P64,285.71
"WW-27"	2263	25-Aug-09	Taisei Philippine Construction, Inc	193,202.68
"WW-12"	2257	20-Jul-09	Taisei Philippine Construction, Inc.	801,239.42
"XX-16"	2279	13-Oct-09	Taisei Philippine Construction, Inc.	189,502.88
"XX-18"	2278	13-Oct-09	Taisei Philippine Construction, Inc.	55,082.85
"XX-30"	2349	5-Nov-09	Taisei Philippine Construction, Inc.	134,872.32
"XX-41"	2348	2-Dec-09	Taisei Philippine Construction, Inc.	831,654.61
"XX-43"	2350	2-Dec-09	Taisei Philippine Construction, Inc.	107,222.68
"XX-45"	2351	21-Dec-09	Taisei Philippine Construction, Inc.	107,264.78
"XX-46"	2312	21-Dec-09	Taisei Philippine Construction, Inc.	3,152.58
"XX-48"	2317	21-Dec-09	Taisei Philippine Construction, Inc.	37,212.93
"XX-49"	2313	21-Dec-09	Taisei Philippine Construction, Inc.	430,727.52
"XX-50"	2316	21-Dec-09	Taisei Philippine Construction, Inc.	63,483.75
"XX-51"	2314	21-Dec-09	Taisei Philippine Construction, Inc.	21,500.54
Sub-total				**P3,040,405.25**
TOTAL				**P3,164,965.25**

Section 110 (A) (1) (b) and (2) (b) of the NIRC of 1997, as amended, provides as follows:

'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:

xxx xxx xxx

(b) Purchase of services on which a value-added tax has actually been paid.

xxx xxx xxx

> (2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:
>
> xxx xxx xxx
>
> (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 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: Provided, finally, That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.' (Emphasis supplied)

The afore-quoted provision states that the input tax on domestic purchase of services is creditable to the purchaser upon payment of compensation or fee which is upon issuance by the seller of the VAT official receipt evidencing receipt of the payment for services performed or yet to be performed (including VAT). Therefore, it was inevitable on the part of Topmaster to declare the input taxes on domestic purchase of services in the taxable quarter when the payment for the corresponding VAT was made.

Consequently, the input VAT on Topmaster's domestic purchase of services in the amount of P124,560.00, which is supported by a VAT official receipt dated beyond the period of claim, shall be denied for it should have been declared in the respective quarter when the VAT payment on the purchase of services was made.

In the same vein, Topmaster's claimed input tax in the amount of P3,040,405.25, supported by VAT official receipt but with discrepancy on address used, shall be denied pursuant to Section 113 (B) (4) of the NIRC of 1997, as amended, which states:

> 'SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. –
>
> xxx xxx xxx
>
> (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:
>
> xxx xxx xxx
>
> (4) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.'(Emphasis supplied)

It is noteworthy that the total input VAT of P4,136,248.42, which was not properly substantiated by VAT invoices or official receipts as found by the Independent CPA, included an input tax in the amount of P715,392.34 reported by the Independent CPA to have been overclaimed by Topmaster. However, a scrutiny of the corresponding official receipt and invoice reveals that the input tax amount indicated therein is P801,239.42 and was correctly claimed by Topmaster. Therefore, Topmaster's adjusted allowable input tax for the period of April 1, 2009 to December 31, 2009 is P9,808,710.73, computed as follows:

Claimed Input Tax		P16,394,532.06
Less: Disallowances		
Per ICPA report	P4,136,248.42	
Per this Court's further verification	3,164,965.25	(7,301,213.67)
Add: Input tax erroneously found by the ICPA to have been overclaimed by petitioner		715,392.34
Adjusted Allowable Input Tax		**P9,808,710.73**

Topmaster's amended Quarterly VAT Returns for the subject period of claim showed that Topmaster had no output tax liability against which the claimed input VAT may be applied or credited. Moreover, Topmaster deducted its input VAT claim for the current quarter which effectively prevented the carry-over and utilization of the claimed refund to the succeeding quarters.

In sum, Topmaster sufficiently proved its entitlement to a refund or issuance of tax credit certificate in the amount of P9,808,710.73 representing unutilized input VAT attributable to its zero-rated receipts for the fourth quarter of fiscal year 2009 to the second quarter of fiscal year 2010."

Likewise, in the Amended Decision dated May 29, 2014, the Court unanimously ruled that Topmaster's sales of services to its client, Travelers International Hotel Group, Inc., a PEZA-registered enterprise, qualifies for zero-rated sales, to wit:

"Republic Act No. 7916 is a special law which grants exemption from national (including VAT) and local taxes to duly registered business establishments operating within its proper jurisdiction except payment of the preferential tax rate of 5% on gross income earned. As such, sales of services by VAT-registered entities in the Customs Territory, like herein petitioner, to PEZA-registered entities are effectively subject to zero percent

(0%) VAT under Section 108(B)(3) of the NIRC of 1997, as amended.

The Supreme Court in the case of *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.*, explained the foregoing principle in this wise:

> Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.
>
> Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?
>
> The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT.

Similarly, in the case of *Commissioner of Internal Revenue v. Sekisui Jushi Philippines, Inc.*, the High Court made the following disquisition:

> Notably, while an ecozone is geographically within the Philippines, it is

> deemed a separate customs territory and is regarded in law as foreign soil. Sales by suppliers from outside the borders of the ecozone to this separate customs territory are deemed as exports and treated as export sales. These sales are zero-rated or subject to a tax rate of zero percent.
>
> (Emphasis supplied and citations omitted)

Proceeding to the issue on whether Topmaster complied with the "imprinting" requirement of official receipts, Section 113 of the NIRC of 1997, as amended provides:

> SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* —
>
> (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:
>
> xxx xxx xxx
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided,* that:
>
> xxx xxx xxx
>
> (c) If the sale is subject to zero percent (0%) value-added tax, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;
>
> xxx xxx xxx
>
> A perusal of the exhibits presented would show that it complied with the requirements of Sec. 113 of the NIRC of 1997, as amended. The law simply requires that the term "zero-rated sale" be written or printed

> prominently on the official receipt. On that premise, the Court sees no cogent reason to deviate from its ruling allowing Topmaster's claim for refund based on the questioned official receipts."

After a careful consideration of the factual milieu of the case at bench, the Court sitting *En* Banc affirms both the aforesaid Decision and Amended Decision rendered by the Court in Division.

Section 8 of Republic Act No. 7916 as amended by Republic Act No. 8784 provides that ECOZONEs are separate customs territory, to wit:

> SEC.8 ECOZONE to be Operated and Managed as Separate Customs Territory. - The ECOZONE shall be managed and operated by the PEZA as separate customs territory.

In the case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.,* the Supreme Court has provided for the VAT implications of treating the ECOZONE as a separate customs territory, to wit:

> "Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.
>
> Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?
>
> The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing

authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT.

Applying said doctrine to the sale of goods, properties, and services to and from the ECOZONES, the BIR issued Revenue Memorandum Circular (RMC) No. 74-99, on 15 October 1999. Of particular interest to the present Petition is Section 3 thereof, which reads –

SECTION 3. Tax Treatment Of Sales Made By a VAT Registered Supplier from The Customs Territory, To a PEZA Registered Enterprise. –

(1) If the Buyer is a PEZA registered enterprise which is subject to the 5% special tax regime, in lieu of all taxes, except real property tax, pursuant to R.A. No. 7916, as amended:

(a) Sale of goods (i.e., merchandise). – This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916, in relation to ART. 77(2) of the Omnibus Investments Code.

(b) Sale of service. – This shall be treated subject to zero percent (0%) VAT under the "***cross border doctrine***" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.

(2) If Buyer is a PEZA registered enterprise which is not embraced by the 5% special tax regime, hence, subject to taxes under the NIRC, e.g., Service Establishments which are subject to taxes under the NIRC rather than the 5% special tax regime:

(a) Sale of goods (i.e., merchandise). – This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916 in relation to ART. 77(2) of the Omnibus Investments Code.

(b) Sale of Service. – This shall be treated subject to zero percent (0%) VAT under the "*cross border doctrine*" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.

(3) In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to ART. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. No. 7916 and the "Cross Border Doctrine" of the VAT system."

Clearly, from the foregoing, starting October 15, 1999 when RMC No. 74-99 was established, the VAT rule ("new rule") was that any sale of goods, property or services made by a VAT registered supplier in the Customs Territory (ECOZONE) to any registered enterprise operating therein, regardless of the class or type of the latter's PEZA registration was entitled to zero percent (0%) VAT. Prior to October 15, 1999, the VAT rule ("old rule") was dependent on the class or type of incentive's to which a PEZA-registered enterprise has availed of. These incentives[11] are as follows:

(a) The five percent (5%) preferential tax rate on its gross income under Rep. Act No. 7916, as amended; and

(b) The income tax holiday provided under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, as amended.

The five percent (5%) preferential tax rate on gross income under Rep. Act No. 7916, as amended, is in lieu of all taxes. Except for real property taxes, no other national or local tax may be imposed on a PEZA-registered

[11] Cited in the case of *Toshiba Information Equipment (Phil.) Inc., vs. Commissioner of Internal Revenue*, G.R. No. 157594, March 9, 2010.

> enterprise availing of this particular fiscal incentive, not even an indirect tax like VAT.
>
> Alternatively, Book VI of Exec. Order No. 226, as amended, grants income tax holiday to registered pioneer and non-pioneer enterprises for six-year and four-year periods, respectively. Those availing of this incentive are exempt only from income tax, but shall be subject to all other taxes, including the ten percent (10%) VAT.

In the present case, records disclose that the sales of services made by Topmaster to Travelers International Hotel Group, Inc. qualify for VAT at zero percent for the former is a VAT registered entity, while the latter is a registered enterprise of the ECOZONE, and the sales cover the period fourth quarter of year 2009 to the second quarter of year 2010,[12] when RMC No. 74-99 was in forced and effect.

Thus, the Court *En Banc* cannot subscribe to CIR's view that the "old rule" of VAT treatment applies to Topmaster's sale of services to Travelers International Hotel Group, Inc. considering that the sales involved cover the period fourth quarter of year 2009 to the second quarter of year 2010 when the "old rule" was already abolished by the passing of RMC No. 74-99.

Finally, there is no merit to CIR's claim that Topmaster failed to imprint the word "zero-rated" on the official receipts. As found by the Court in Division, the exhibits[13] presented by Topmaster readily showed that it complied with the requirements set forth in Section 113[14] of the NIRC. Therefore, there is no reason to deviate therefrom absent any showing of the contrary.

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[12] *Rollo*, p. 17.
[13] *Rollo*, pp. 39-40; penned by Associate justice
[14] SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
(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:
xxx xxx xxx
(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided,* that:
xxx xxx xxx
(c) If the sale is subject to zero percent (0%) value-added tax, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;

In sum, the Court *En Banc* finds no cogent reason to rule in the contrary from the Court in Division's Decision and Amended Decision dated February 27, 2014 and May 29, 2014, respectively.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision dated February 27, 2014 and Amended Decision dated May 29, 2014 are hereby **AFFIRMED** in *toto*.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen RL
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice