Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB CASE NO. 1071** (CTA Case No. 8059)
-versus-	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, RINGPIS-LIBAN, JJ.
SONY ERICSSON MOBILE COMMUNICATIONS INT'L. AB, *Respondent.*	Promulgated: OCT 14 2014 4:03 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *en banc* under *Section 2(a)(1), Rule 4*, in relation to *Section 4(b), Rule 8 of the 2005 Revised Rules of the Court of Tax* Appeals (RRCTA)*, as amended*, seeking the reversal of the Decision[1] and Resolution[2] rendered by the Special Third Division of this Court on June 11, 2013 and September 17, 2013, respectively, which partially granted respondent's claim for refund or issuance of tax credit certificate in the reduced amount of ₱5,340,366.72, representing the latter's unutilized input VAT attributable to zero-rated sales for the period January 1, 2008 to December 31, 2008.

The antecedent facts are as follows:

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the

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[1] Penned by Associate Justice Amelia R. Cotangco-Manalastas and concurred in by Associate Justice Lovell R. Bautista; *en banc* Docket, pp. 16-33.
[2] *Id.*, at 35-38.

duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes.[3] She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[4]

Respondent Sony Ericsson Mobile Communications International AB is a branch office duly registered with and licensed by the Securities and Exchange Commission to do business in the Philippines, with principal office address at 7th Floor Octagon Building, San Miguel Avenue, Ortigas Complex, San Antonio, Pasig City.[5] It is a VAT-registered entity, as evidenced by its BIR Certificate of Registration No. OCN 3RCOOOO172137, bearing Taxpayer's Identification Number (TIN) 219-660-821-000.[6]

Respondent filed its Quarterly VAT Returns for the first,[7] second,[8] third,[9] and fourth[10] quarters of the taxable year 2008, respectively as follows:[11]

EXHIBIT	YEAR 2008	ZERO-RATED SALES/RECEIPTS	INPUT VAT
D	1st Quarter	₱ 29,060,379.43	₱ 3,460,297.47
E	2nd Quarter	38,523,884.61	2,510,522.72
F	3rd Quarter	35,965,980.50	2,714,357.33
G	4th Quarter	45,673,301.26	3,947,080.74
TOTAL		**₱ 149,223,545.80**	**₱ 12,632,258.26**

On March 30, 2010, respondent filed its administrative claim for refund or issuance of a tax credit certificate for its alleged unutilized input VAT in the amount of ₱12,632,258.26, with all supporting documents, with BIR Revenue District Office No. 43 - Pasig.[12]

On March 31, 2010, or a day after it filed its administrative claim for refund, respondent filed a Petition for Review before this Court.

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[3] Par. 2, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Vol. 1, p. 75.
[4] *Id.*
[5] Par. 1, Summary of Admitted Facts, JSFI, Division Docket, Vol. 1, p. 75.
[6] Par. 3, Summary of Admitted Facts, JSFI, Division Docket, Vol. 1, p. 75; See Exhibit "A", Division Docket, Vol. 1, p. 354.
[7] Exhibit "D", Division Docket, Vol. 1, p. 364.
[8] Exhibit "E", Division Docket, Vol. 1, p. 365.
[9] Exhibit "F", Division Docket, Vol. 1, p. 366.
[10] Exhibit "G", Division Docket, Vol. 1, p. 367.
[11] *Supra* note 1, p. 17.
[12] Par. 5, Summary of Admitted Facts, JSFI, Division Docket, Vol. 1, p. 75.

In her answer,[13] petitioner interposes the following special and affirmative defenses:

> "6. The claim for refund is still under examination by the respondent's Bureau;
>
> 7. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund;
>
> 8. The grant of a claim for refund [sic] tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;
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> 9. 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."

On June 11, 2013, the Court *a quo* promulgated a Decision[14] partially granting respondent's claim for unutilized input VAT attributable to zero-rated sales for the year 2008 in the reduced amount of ₱5,340,366.72. The dispositive portion of the said Decision reads:

> Decision dated June 11, 2013:
>
> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of ₱5,340,366.72 in favor of petitioner, representing petitioner's unutilized input VAT attributable to its zero-rated sales for the period covering January 1, 2008 to December 31, 2008.
>
> **SO ORDERED**."[15]

Petitioner thereafter filed a "Motion for Partial Reconsideration"[16] which was denied by the Court *a quo* in a Resolution[17] dated September 17, 2013, the dispositive portion of which reads:

> Resolution dated September 17, 2013:
>
> "**WHEREFORE**, the instant motion for reconsideration is **DENIED** for lack of merit.

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[13] Filed on April 27, 2010; Division Docket, Vol. 1, pp. 28-30.
[14] *Supra* note 1.
[15] *En Banc* Docket, pp. 32-33.
[16] Filed on July 3, 2013; Division Docket, Vol. 2, pp. 646-651.
[17] *Supra* note 2.

SO ORDERED."[18]

Hence, petitioner filed this instant Petition for Review.

Petitioner raises the following grounds, to wit:[19]

I. WHETHER OR NOT RESPONDENT'S SALES OF SERVICES TO ITS AFFILIATE COMPANIES LOCATED OUTSIDE THE PHILIPPINES ARE ZERO-RATED SALES;

II. WHETHER OR NOT RESPONDENT'S SALES OF SERVICES TO ITS AFFILIATE COMPANIES LOCATED OUTSIDE THE PHILIPPINES FOR THE FOUR QUARTERS OF TAXABLE 2008 ARE PROPERLY SUBSTANTIATED BY INVOICES AND OFFICIAL RECEIPTS;

III. WHETHER OR NOT RESPONDENT SEASONABLY FILED ITS ADMINISTRATVE AND JUDICIAL CLAIMS FOR REFUND;

IV. WHETHER THE GOVERNMENT IS BOUND BY THE ERRORS COMMITTED BY ITS AGENTS;

V. WHETHER OR NOT RESPONDENT FAILED TO PROVE BY SUFFICIENT EVIDENCE THAT IT IS ENTITLED TO THE CLAIM FOR TAX CREDIT/REFUND;

VI. WHETHER OR NOT RESPONDENT IS ENTITLED TO A TAX CREDIT/REFUND FOR ITS UNUTILIZED INPUT VAT FOR THE FOUR QUARTERS OF TAXABLE YEAR 2008 IN THE TOTAL AMOUNT OF P5,340,366.72.

The principal issue to be resolved in the instant case is whether respondent is entitled to a tax refund or credit of its alleged unutilized input VAT attributable to zero-rated sales for the period January 1, 2008 to December 31, 2008 in the amount of ₱5,340,366.72.

The instant petition is bereft of merit.

In a claim for unutilized input VAT credit/refund attributable to zero-rated sales, *Section 112 (A)* [20] *of the*

[18] *En Banc* Docket, p. 38.
[19] *En Banc* Docket, pp. 7-8.
[20] 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

National Internal Revenue Code (NIRC) of 1997, as amended, provides the following requisites, to wit:[21]

1. the taxpayer must be VAT-registered;
2. the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated;
3. the claim must be filed within two years after the close of the taxable quarter when such sales were made; and
4. the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

The evidence presented in the instant case reveals that respondent sufficiently complied with the above-mentioned requisites in the reduced amount of ₱5,340,366.72.

First, respondent confirmed that it is a VAT-registered entity, as evidenced by its BIR Certificate of Registration No. OCN 3RCOOOO172137, with assigned TIN 219-660-821-000.[22]

Second, respondent established that it is engaged in the supply of services that is subject to VAT zero-rated, pursuant to *Section 108(B)(2) of the NIRC of 1997, as amended.* In ***Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*** [23] the Supreme Court laid down the requisites for transactions subject to zero-rate under *Section 102(b)(2) [now Section 108(B)(2)] of the Tax Code*, to wit:

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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.

[21] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011.

[22] Par. 3, Summary of Admitted Facts, JSFI, Division docket, Vol. 1, p. 75; See Exhibit "A", Division docket, Vol. 1, p. 354.

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

1. that the services must be other than processing, manufacturing or repacking of goods;
2. that payment of such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and
3. that the recipient of such services is doing business outside the Philippines.

As aptly discussed by the Court *a quo* in the assailed Decision, respondent proved that it is engaged in the supply of services which is subject to zero-rate, thus:

> "This Court finds that [respondent] complied with the first requirement. [Respondent] is primarily engaged in providing marketing services to its affiliate company, Sony Ericsson Mobile Communications AB, which is located outside the Philippines, by organizing promotional events to launch new products and services under the brand name of 'Sony Ericsson' in the local market. The Sales Promotion and Marketing Services Agreement between [respondent] and Sony Ericsson Mobile Communications AB provides that the local branch shall perform sales promotion services, implementation of marketing strategies and other related services collectively set out in Appendix A of said agreement. Clearly, such marketing services are not in the same category as 'processing, manufacturing or repacking of goods'.
>
> Likewise, the second requisite was also complied with. For services rendered for the year 2008, [respondent] received foreign currency payments which were accounted for in accordance with the BSP rules and regulations as evidenced by official receipts issued by [respondent] and by bank statements.
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> Furthermore, a scrutiny of [respondent's] Summary of Zero-Rated Sales of Services and supporting VAT official receipts shows that [respondent's] sales of services in the aggregate amount of P149,223,545.80 to Sony Ericsson Mobile Communications AB, its sole non-resident foreign client/affiliate, are properly supported by valid VAT zero-rated official receipts, qualifying it for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.
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> With regard to the third requisite, this Court also finds that [respondent] has sufficiently established that services were rendered to a non-resident person not engaged in trade or business in the Philippines. As shown in the records, during the period of January 1 to December 31, 2008, [respondent] rendered services to Sony Ericsson Mobile Communications AB. It is a non-resident foreign

corporation engaged in business conducted outside the Philippines, as indicated in the Certification of Non-Registration of Sony Ericsson Mobile Communications AB issued by the Philippine Securities and Exchange Commission, as well as the Certificate of Registration of Sony Ericsson Mobile Communications AB issued by Bolagsverket Swedish Companies Registration Office. [Respondent] likewise presented the Articles of Association of its head office, 'Sony Ericsson Mobile Communications International AB', to prove that its head office and Sony Ericsson Mobile Communications AB are two separate entities."[24]

Third, contrary to petitioner's stance, respondent timely filed its administrative and judicial claims for unutilized input VAT refund/credit. In the case of ***Commissioner of Internal Revenue vs. San Roque Power Corporation, G.R. No. 187485; Taganito Mining Corporation vs. Commissioner of Internal Revenue, G.R. No. 196113; Philex Mining Corporation vs. Commissioner of Internal Revenue, G.R. no. 197156*** (the "*San Roque Case*"), promulgated on February 12, 2013, the Supreme Court emphasized that strict compliance with the 120+30 day periods under *Section 112 of the NIRC of 1997, as amended*, is necessary for a judicial claim of refund or credit under the VAT system to prosper, 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, which again reinstated the 120+30 day periods as mandatory and jurisdictional. The afore-mentioned exception based on *equitable estoppel* was explained by the Supreme Court in this wise:

"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, 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, which again reinstated the 120+30 day periods as mandatory and jurisdictional.

[24] *En Banc* Docket, pp. 29-30.

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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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BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the **One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance**. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was in fact asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period.

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." [Underscoring supplied.]

In the instant case, respondent filed its judicial claim on March 31, 2010, or after the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 but before the adoption of the *Aichi* doctrine on October 6, 2010. Therefore, respondent can invoke BIR Ruling No. DA-489-03, which expressly ruled 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." Thus, respondent is deemed to have timely filed its judicial claim with this Court.

Finally, a careful examination of the records reveals that respondent's input taxes claimed are attributable to its zero-rated sales as it was determined that the purchases of goods and services were used in connection with services rendered to Sony Ericsson Mobile Communications, AB.[25] In fact, respondent's revenues for the taxable year 2008 are derived solely from its service contract with Sony Ericsson Mobile Communications, AB.[26] Similarly, the Court *a quo* correctly found that respondent sufficiently established that its claimed input taxes were not applied against any output VAT liability during the period of claim and in the succeeding quarters since there is no output VAT for the period from January 2008 to December 2010 from which the input taxes may be credited or applied.[27] We quote:

"Anent the second requisite for the entitlement to a refund of input VAT, [respondent] reported input VAT for the four quarters of 2008 in the aggregate amount of ₱12,632,258.26, details of which are as follows:

Exhibit	Year 2008	Purchases of Goods Other than Capital Goods	Importation of Goods Other than Capital Goods	Purchase Of Services	Input VAT
D	1st Quarter	₱ 197,075.46	₱ 1,009,766.00	₱ 2,253,456.01	₱ 3,460,297.47
E	2nd Quarter	7,294.98	449,757.00	2,053,470.74	2,510,522.72
F	3rd Quarter	170,045.69	468,284.00	2,076,027.64	2,714,357.33
G	4th Quarter	231,763.70	772,383.00	2,942,934.04	3,947,080.74
				Total	**₱12,632,258.26**

[25] Exhibit "AA", Independent CPA Report, p. 7; Division Docket, Vol. 1, p. 458.
[26] *Id.*
[27] *En Banc* Docket, p. 32.

The Independent CPA, Mr. Clifford E. Chua, summarized the results of his verification of the claimed input VAT of [respondent] in the amount of P12,638,459.15, as follows:

Total amount of input VAT being claimed during the year			₱ 12,638,459.15
Exceptions noted	**Exhibit**	**Amount**	
A. Certain local purchases of services were not supported by VAT official receipts	V-1 to V-5	₱ 2,311.58	
B. Certain local purchases of goods were not supported by VAT invoices	V-6 to V-7	36,520.72	
C. Certain invoices and official receipts were dated outside the year of claim	V-8 to V-50	202,139.84	
D. Certain invoices and official receipts did not show the TIN of the Company	V-51 to V-64	153,978.76	
E. Certain invoices and official receipts did not show the address of the Company	V-65 to V-67	15,803.02	
F. Certain invoices and official receipts contain erroneous VAT computation	V-68 to V-87	56,807.95	
G. Certain invoices and official receipts with no separate VAT computation	V-88 to V-120	64,958.22	
H. Importations supported by Import Entry and Internal Revenue Declaration which are dated outside the year of claim	V-121 to V-126	32,190.00	
I. Importations with no supporting documents	V-127 to V-221	1,646,085.00	
J. Local purchases with no documents	V-222 to V-884	5,081,071.81	
K. Excess amount of input VAT between the VAT claimed per Petition and input VAT per return		6,200.89	7,298,067.79
Amount of Input VAT without exceptions	**V-885 to V-1405**		**₱ 5,340,391.36**

It must be emphasized that the Independent CPA's findings under "Exceptions noted" are disallowed for failure to meet the substantiation requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, and as implemented by Sections 4.110-1, 4.110-8, and 4.113-1 of Revenue Regulations No. 16-2005. Hence, total disallowances per Independent CPA report amounted to P7,298,067.79.

However, the amount of ₱5,340,391.36 noted by the Independent CPA as without exceptions includes the amount of ₱24.64, which should be deducted since the supporting document cannot be found in the records of this case. Therefore, the total of petitioner's substantiated input taxes for the four quarters of 2008 is ₱5,340,366.72.

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As to the fourth requisite, it was likewise sufficiently established that [respondent's] claimed input taxes were not applied against any output VAT liability during the period of claim and in the succeeding quarters since there is no output VAT for the period from January 2008 to December 2010 from which the input taxes may be credited or applied. Even though [respondent] carried over the said input VAT to the succeeding first quarter of taxable year 2009 until the third quarter of taxable year

2010, the same remained unutilized until it was fully deducted as 'VAT Refund/TCC Claimed' in the third quarter of taxable year 2010. Stated otherwise, the input tax of ₱15,370,774.84 as of the end of third quarter of taxable year 2010 carried over to the last quarter of that same year, no longer included the claimed input VAT."[28]

In fine, we see no cogent reason to deviate from the factual findings of the Court *a quo* that respondent is entitled to its claim for unutilized input VAT tax refund or credit for the period January 1, 2008 to December 31, 2008 in the reduced amount of ₱5,340,366.72.

WHEREFORE premises considered, the petition is **DENIED**. The Decision of the Special Third Division of this Court in CTA Case No. 8059 dated June 11, 2013 and its Resolution dated September 17, 2013 are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

[28] *En Banc* docket, pp. 30-32.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice