REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

DELTEK SYSTEMS (PHILIPPINES), LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7893

Members:

UY, *Chairperson and*
FABON-VICTORINO, *JJ.*

Promulgated:

JUL 19 2013 ; 2:00 p.m.

x- -x

DECISION

Fabon-Victorino, J.:

The instant Petition For Review dated March 31, 2009 filed by petitioner Deltek Systems (Philippines), Ltd. involves a claim for the issuance of tax credit certificate in the amount of P9,476,827.27, allegedly representing unutilized input value-added tax (VAT) attributable to VAT zero-rated sale of services for the period covering taxable year 2007.

Petitioner is a licensed branch office of DELTEK SYSTEMS (PHILIPPINES), LTD., a corporation organized and registered under the laws of the State of Virginia, USA.[1]

It was established to develop, market and support computer software, to render software development services, technical support, consulting services and marketing and sales support to corporations, associations, partnerships, individuals and others. It was issued License

[1] Paragraph 1, Stipulation of Facts, Joint Stipulations of Facts and Issues (JSFI), docket, pp. 145-146.

to Transact Business No. A199900007 dated January 19, 1999[2] by the Securities and Exhange Commission (SEC) to operate as a branch office. Likewise it was issued by the Bureau of Internal Revenue (BIR) a Certificate of VAT Registration No. OCN9RC0000228077[3] and Tax Identification Number (TIN) 202-001-648-000.[4]

Respondent on the other hand, is the Commissioner of the BIR, with authority, among others, to grant refund or tax credit pursuant to the provisions of the National Internal Revenue Code (NIRC), as amended, holding office at the BIR National Office Building, Diliman, Quezon City.

For the four quarters of taxable year 2007, petitioner filed with the BIR its Quarterly VAT Returns declaring the following:

	1st Quarter	**2nd Quarter**
	(Exhibit "G")	*(Exhibit "J")*
Zero Rated Sales/Receipts	**29,200,725.27**	**46,786,769.29**
Less: Allowable Input Tax		
Input Tax Carried Over From Previous Quarter	(11,207,567.13)	(11,908,278.84)
Input tax Deferred on Capital Goods Exceeding ₱1Million from Previous Quarter	-	(718,557.99)
Total	(11,207,567.13)	(12,626,836.83)
Current transactions		
Purchase of Capital Goods not exceeding ₱1M	-	-
Purchase of Capital Goods exceeding ₱1M	(742,209.68)	(647,764.06)
Domestic Purchases of Goods Other than Capital Goods	(9,713.40)	(23,213.38)
Domestic Purchase of Services	(667,346.62)	(656,631.87)
Total	**(1,419,269.70)**	**(1,327,609.31)**
Total Available Input Tax	(12,626,836.83)	(13,954,446.14)
Less: Input Tax on Purchases of Capital Goods exceeding ₱1M deferred for the succeeding period	718,557.99	1,316,140.05
Total Allowable Input Tax	(11,908,278.84)	(12,638,306.09)
Total Amount Payable(Overpayment)	(11,908,278.84)	(12,638,306.09)

[2] Paragraph 3, Stipulation of Facts, JSFI, docket, p. 146.
[3] Exhibit B.
[4] Paragraph 4, Stipulation of Facts, JSFI, docket, p. 147.

	3rd Quarter	4th Quarter	Total
	(Exhibit "O")	*(Exhibit "T")*	
Zero Rated Sales/Receipts	**36,622,676.11**	**66,569,041.44**	**179,179,212.11**
Less: Allowable Input Tax			
Input Tax Carried Over From Previous Quarter	(11,322,166.04)	(13,294,189.70)	(11,207,567.13)
Input tax Deferred on Capital Goods Exceeding ₱1Million from Previous Quarter	(1,316,140.05)	(2,578,018.28)	
Total	(12,638,306.09)	(15,872,207.98)	(11,207,567.13)
Current transactions			
Purchase of Capital Goods not exceeding ₱1M	-	(305,352.86)	(305,352.86)
Purchase of Capital Goods exceeding ₱1M	(1,377,285.41)	(2,406,140.65)	(5,173,399.80)
Domestic Purchases of Goods Other than Capital Goods	(59,379.24)	(51,227.25)	(143,533.27)
Domestic Purchase of Services	(1,797,237.24)	(733,325.61)	(3,854,541.34)
Total	**(3,233,901.89)**	**(3,496,046.37)**	**(9,476,827.27)**
Total Available Input Tax	(15,872,207.98)	(19,368,254.35)	(20,684,394.40)
Less: Input Tax on Purchases of Capital Goods exceeding ₱1M deferred for the succeeding period	2,578,018.28	4,743,939.61	4,743,939.61
Total Allowable Input Tax	(13,294,189.70)	(14,624,314.74)	(15,940,454.79)
Total Amount Payable(Overpayment)	(13,294,189.70)	(14,624,314.74)	(15,940,454.79)

On March 27, 2009, petitioner filed with the BIR Revenue District Office No. 50 an Application for Tax Credits or Refunds (BIR Form No. 1914) for its alleged excess or unutilized input VAT pertaining to its zero-rated sales of services for taxable year 2007.[5] Petitioner also filed on the same date an administrative claim for issuance of tax credit certificate in the amount of P9,476,827.27, representing its excess/unutilized input VAT as of December 31, 2007.[6]

Shortly thereafter, or on March 31, 2009, petitioner filed the present Petition for Review with this Court.

[5] Exhibit "D".
[6] Exhibit "C".

In her Answer[7] filed on June 4, 2009, respondent basically invoked the presumption of regularity in the collection of the subject tax, the lack substantiation to support the claim for refund/tax credit, the defense that the sale of services does not qualify as VAT zero-rated, that petitioner must prove entitlement to the claim for refund/tax credit, which partakes the nature of tax exemption thus should be strictly construed against petitioner.

The parties submitted a Joint Stipulations of Facts and Issues,[8] which was approved on January 20, 2010.[9]

To prove its case, petitioner first presented its Business Manager Gary A. Vargas who executed a judicial affidavit for his direct testimony. He declared that petitioner is a VAT registered entity which began operation in 1999. In the year 2007, it paid input VAT on its purchases of goods and services, as evidenced by VAT invoices and official receipts. These purchases of goods and services were in connection with the services it rendered to its clients, which were all non-resident foreign entities which in turn paid in US Dollars subjected to zero VAT rate. Petitioner had not incurred any output VAT liability against which it could apply its accumulated input VAT credits.

On March 29, (sic)[10] 2009, petitioner filed an application for refund of its unutilized input VAT with respondent. For failure of respondent to act on the application, petitioner elevated the matter to the Court via Petition for Review on March 13 (sic),[11] 2009.

On recall, witness Vargas presented SEC Certificate of Non-Registration of Company[12] dated July 30, 2009 to prove that petitioner was a non-resident foreign corporation. Per its consularized Certificate of Incorporation[13] and Articles of Incorporation,[14] petitioner was a registered corporation under the laws of the United States of America. For services

[7] Docket, pp. 93-95.
[8] Docket, pp. 145-149.
[9] Docket, p. 239.
[10] Should be March 27, the date the administrative claim for refund was filed.
[11] See Judicial Affidavit dated August 3, 2009, docket p. 155; should be March 31, 2009.
[12] Exhibit U
[13] Exhibit V.
[14] Exhibit W.

rendered, these foreign clients paid petitioner in US Dollars, an acceptable foreign currency, duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

Petitioner's second witness Evelyn C. Go, who handled the account of petitioner for the year 2007, merely corroborated the testimony of witness Gary A. Vargas. On recall[15] however, she added that as the accountant and bookkeeper of petitioner, she ensured that every invoice and official receipt issued to petitioner on its purchases was compliant with the requirements of Section 113 of the NIRC, specifically - it must include the name of the seller and the buyer, the BIR registration details of the invoice or official receipt, amount paid where the VAT paid was indicated separately, the date, quantity, unit cost, description of the goods or services subject of the transaction. She returned invoices or O.R.s to the supplier if details were missing for completion and further asked for a certification that the suppliers made the additions willingly.

The witness continued to state that petitioner had been paying VAT on its purchases since the VAT had been included in the amount paid by petitioner to the suppliers. These goods and services were used to provide the services to its lone client engaged in business outside the Philippines. Petitioner was paid by this foreign client in US Dollars duly accounted for in accordance with the rules and regulations of the BSP.

The Court-commissioned Independent Certified Public Accountant (ICPA) Katherine O. Constantino reported to the Court the results of her examination of documents relative to petitioner's claim for refund/tax credit. As contained in her preliminary and Final and Consolidated Independent CPA Report, petitioner is a VAT registered entity which paid the corresponding input VAT on its local purchases of goods and services. Further, the income of petitioner is derived from its sole client Deltek Inc., a company incorporated under the laws of the United States of America and is not registered with the SEC. Deltek Inc. inwardly remits payment for the services rendered by petitioner in US Dollars, duly accounted

[15] See Minutes of the hearing dated March 23, 2010, docket p. 258.

for in accordance with the rules and regulations of the BSP. This mode of sale between a local company and a foreign non-resident entity qualifies petitioner for VAT zero-rating under Section 108 of the NIRC.

Per the ICPA, the amount of input VAT credits of petitioner is greater than its output VAT liabilities and that petitioner was able to substantiate its input VAT but only in the amount of P3,401,652.48.

The witness further testified that petitioner made domestic purchases which were supported by official receipts and invoices. The sales of services to its non-resident foreign client were supported by VAT official receipts not printed or marked zero-rated. The amount of approximately P1,100,000.00 for purchases of capital goods was disallowed as well as the amount of P4,600,000.00, for failure to comply with the invoicing requirements under the Tax Code.

Petitioner rested its case after it formally offered its documentary exhibits which the Court resolved in its Resolutions dated November 25, 2010,[16] July 12, 2011,[17] and October 28, 2011.[18]

Meanwhile on January 18, 2011, respondent filed a Motion to Dismiss[19] the petition on jurisdictional ground. Allegedly, the Petition for Review was premature as it was filed before the lapse of the 120-day period within which to act on petitioner's claim for refund pursuant to Section 112 of the NIRC of 1997 which effectively deprived the Court of jurisdiction.

In the Resolution dated April 18, 2011,[20] the Court denied respondent's Motion to Dismiss, ruling that the Court acquired jurisdiction over the case. The Court explained that the failure to comply with the 120-day period merely results in non-exhaustion of administrative remedies rendering the action premature for lack of cause of action.

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[16] Docket, pp. 312-315.
[17] Docket, pp. 418-420.
[18] Docket pp. 550-551.
[19] Docket, pp. 348-353.
[20] Docket, pp. 372-382.

However, this defense was deemed waived when respondent failed to raise it in her Answer pursuant to Section 1, Rule 9 of the Rules of Court.

Respondent filed a Motion for Reconsideration which was denied in the Resolution dated July 15, 2011.[21]

Aggrieved, respondent filed a Petition for Review[22] with the Court *En Banc* on August 18, 2011, docketed as CTA EB No. 805. The petition was dismissed in the Decision[23] dated April 18, 2012, on the ground that the denial of a motion to dismiss was an interlocutory order, hence, could not be a subject of an appeal to the *En Banc*.

Thus, this case proceeded with respondent presenting her lone witness BIR Revenue Officer I Ruby S. Munion. The witness testified that on different dates, viz., September 4, 2009, March 31, 2010, January 17, 2011, March 10, 2011, and December 26, 2011, petitioner submitted documents in support of its application for refund of input VAT for the year 2007.

Respondent thereafter formally offered her exhibits[24] which were admitted except Exhibit 5-C for failure to present the original, in the Resolution[25] dated August 23, 2012.

On October 18, 2012,[26] the case was submitted for decision.

STATEMENT OF ISSUES

The parties submitted the following issues[27] for the resolution of the Court:

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[21] Docket, pp. 422-427.
[22] Docket, pp. 439-452.
[23] *Commissioner of Internal Revenue vs. Deltek Systems (Philippines), Ltd.*, CTA EB No. 805 (CTA Case No. 7893), April 18, 2012.
[24] Docket pp. 607-610.
[25] Docket, pp. 626-627.
[26] Docket, p. 662.
[27] Stipulation of Issues, JSFI, docket, pp. 147-148.

1. Whether or not Petitioner has accumulated and incurred excess and unutilized input VAT in the amount of nine million four hundred seventy-six thousand eight hundred twenty-seven and 27/100 pesos (Php9,476,827.27) for the period January 1 to December 31, 2007;

2. Whether or not Petitioner's alleged sales of services to clients and/or affiliates are zero-rated for VAT purposes under Section 108(B)(1)(2) of the 1997 Tax Code;

3. Whether or not Petitioner's accumulated and incurred excess input VAT in the amount of nine million four hundred seventy-six thousand eight hundred twenty-seven and 27/100 pesos (Php9,476,827.27) are attributable in full to its VAT zero-rated sale of services;

4. Whether or not the unused/unutilized input VAT of Petitioner in the amount of nine million four hundred seventy-six thousand eight hundred twenty-seven and 27/100 pesos (Php9,476,827.27) are substantiated with supporting documents;

5. Whether or not the unused/unutilized input VAT of Petitioner in the amount of nine million four hundred seventy-six thousand eight hundred twenty-seven and 27/100 pesos (Php9,476,827.27) have been utilized or offset against any output VAT liability;

6. Whether or not Petitioner is entitled to a TCC in the amount of nine million four hundred seventy-six thousand eight hundred twenty-seven and 27/100 pesos (Php9,476,827.27) for its unutilized input VAT arising from its VAT zero-rated sale of services.

The issues can be summarized as follows:

> Whether or not petitioner is entitled to the issuance of tax credit certificate in the amount of P9,476,827.27 allegedly representing alleged unutilized input VAT arising from its VAT zero-rated sale of goods and services.

DISCUSSION/RULING

Petitioner anchors its claim for refund/tax credit on Sections 108(B)(1) and (2) in relation to Sections 110(B) and 112(A) of the NIRC of 1997, as amended, which are all quoted hereunder for ready reference:

> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (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);

SEC. 110. *Tax Credits.* -

xxx xxx xxx

(B) *Excess Output or Input Tax.* - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided,* That the input tax inclusive of input VAT carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output VAT: *Provided, however,* That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

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 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.
>
> (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. x x x

First, the Court must determine whether the instant Petition for Review was seasonably filed to merit this Court's determination.

Based on the express provision of Section 112 and as expounded in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc. (Aichi),*[28] a VAT-registered person, such as petitioner, may within two (2) years from the close of the taxable quarter when the relevant sales were made, apply with respondent a claim for refund or issuance of tax credit certificate of creditable input tax attributable to such sales.

There is no denying that the instant case pertains to a claim for refund of input VAT for the year 2007. Hence, the administrative claim for refund/tax credit was seasonably filed with respondent on March 27, 2009.

The same Section 112 further provides that respondent had one hundred twenty (120) days to act on the claim. In case of adverse decision or expiration of the period granted, petitioner had thirty (30) days from notice of the adverse decision or expiration of the one hundred twenty-day (120) period to appeal the decision or the inaction of respondent to this Court.

Obviously, petitioner did not wait for the lapse of the 120-day period as it filed its Petition for Review on March 31, 2009 or barely four (4) days from the filing of the administrative action.

The said premature filing of the instant Petition for Review did not however render the instant petition infirm based on the recent case of *Commissioner of Internal Revenue vs. San Roque Power Corporation (San Roque)*[29] wherein the Supreme Court held, as follows:

> 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

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[28] G.R. No. 184823, October 06, 2010.
[29] 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, February 12, 2013

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.

x x x x x x x x x

BIR Ruling No. DA-489-03 does provide a valid claim for equitable estoppels 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 estoppels has set in as expressly authorized under Section 246 of the Tax Code.

x x x x x x x x x

> 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. x x x BIR Ruling No. DA-489-03 allowed premature filing of a judicial claim, which means non-exhaustion of the 120-day period for the Commissioner to act on an administrative claim.

While petitioner failed to exhaust administrative remedies by not waiting for the lapse of the 120-day period as mandated in Section 112 of the Tax Code, such apparent flaw falls under the exception provided in BIR Ruling No. DA-489-03 issued on December 10, 2003, which states that the taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the Court of Tax Appeals (CTA). It appearing that petitioner is deemed to have timely filed its Petition for Review by virtue of the *San Roque* Case, the Court acquired jurisdiction over the instant judicial claim for refund/tax credit.

Going now to the merits of the relief sought, Section 112(A) of the NIRC of 1997, provides the requisites to be complied with to be entitled to a refund/tax credit petitioner, namely:

> 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 VAT liability; and

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

On the first requisite, it is undisputed that petitioner is a branch office of Deltek Systems (Philippines), Ltd., a corporation organized under the laws of the State of Virginia, USA, licensed by our Philippine to operate as a branch office per SEC License to Transact Business No. A199900007 dated January 19, 1999.[30]

Petitioner claims that for the four quarters of taxable year 2007, it rendered services to its lone client, Deltek, Inc., a non-resident foreign corporation not doing business in the Philippines and paid in US Dollars therefor duly accounted for in accordance with the rules and regulations of the BSP. For such sale of services to Deltek, Inc. to be subject to zero percent (0%) VAT, petitioner must prove compliance with the provision of previously quoted Section 108(B) of the NIRC of 1997, as amended.

In the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[31], the Supreme Court held that in order for the supply of services to be VAT zero-rated under Section 108(B) of the NIRC of 1997, as amended, the following requisites must be satisfied:

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

[30] Exhibit "A".

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

Unfortunately, petitioner failed to prove compliance with all of the above requisites.

While the computer software development services referred to in Schedule 2 of the Service Agreement[32] between Deltek Systems (Philippines), Ltd. (petitioner's head office) and Deltek, Inc. (then Deltek Systems, Inc.[33]) are not in the same category as "processing, manufacturing or repacking of goods", petitioner failed to establish that it actually rendered services to Deltek, Inc. for the four quarters of taxable year 2007. Based on the Service Agreement, it shall be petitioner's head office which shall provide the necessary services to the client. Nowhere in the Service Agreement is it stated that the services shall be provided by petitioner to Deltek, Inc.

Further, the Court noted that although petitioner submitted documents[34] proving that Deltek, Inc. is a non-resident foreign corporation, the Service Agreement states that "Deltek Systems, Inc. carries on the business of software development through Deltek Systems (Philippines), Ltd. in the Philippines"[35]. As earlier stated, one of the requisites for VAT zero-rating of services under Section 108(B) of the NIRC of 1997, is that Deltek, Inc. (then Deltek Systems, Inc.) must be a non-resident foreign corporation doing business *outside* the Philippines.

With respect to its alleged receipt of foreign currency remittances for services purportedly rendered to Deltek, Inc., petitioner presented the Metrobank Certification of inward remittances for the year 2007[36], Summary of Revenue from October 1, 2006 to December 31, 2007[37], Computer Downloaded Cash in Bank–Metrobank USD General Leger for current year 2007[38], Monthly Revenue Journal Voucher for 2007[39], Summary of Official Receipts[40],

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[32] Exhibit "LLL".
[33] Exhibit "V".
[34] Exhibits "U" and "V".
[35] Exhibit "LLL", page 3/12, par. (A).
[36] Exhibit "Z".
[37] Exhibit "PP".
[38] Exhibit "RR"
[39] Exhibits "JJJ-1" to "JJJ-12".
[40] Exhibit "QQ".

with related official receipts[41] issued by petitioner for the year 2007.

Upon examination of the aforesaid documents, the Court noted that although it was indicated in the Metrobank Certification that the remitter of the foreign currency remittances received by petitioner for the year 2007 was Deltek, Inc. (then Deltek Systems, Inc.), petitioner's Computer Downloaded Cash in Bank-Metrobank USD General Ledger for current year 2007 and Monthly Revenue Journal Voucher for 2007 showed that the foreign currency remittances came from petitioner's head office and not Deltek, Inc.

As stated in petitioner's Computer Downloaded Cash in Bank-Metrobank USD General Ledger for current year 2007, petitioner indicated the foreign currency remittances as "Fund transfer from USHQ to Phils. USD account" or "Funding for the month of xxx from Deltek-USHQ", or "Funding received from Deltek - USHQ", or "Deltek Systems Phils. Ltd - Funding from USHO to Ph US$". Also, petitioner's Monthly Revenue Journal Voucher for 2007 disclosed that petitioner recognized and recorded its monthly revenues debiting "Receivables from Head Office" or "Advances to Head Office" and crediting "Revenues". Thus, based on petitioner's own records, the foreign currency remittances came from its head office contrary to what was reflected in the Metrobank Certification. Due to these inconsistencies, the Court finds the Metrobank Certification of little relevance or probative value without the supporting bank transfer advice(s).

In addition, the Court noticed that the official receipts presented by petitioner in support of its alleged receipt of foreign currency remittances from Deltek, Inc. were not actually sent/issued to Deltek, Inc. as can be gleaned from the final and consolidated report[42] of the Court-commissioned ICPA, the pertinent portion of which stated that the ICPA was able to examine all of the three copies of the official receipts, *viz.*, the original customer copy, the original duplicate , and the original booklet copy, to wit:

[41] Exhibits "QQ-1" to "QQ-49".
[42] Exhibit "GGG", page 9, under Findings and Observations No. 7.

7. The U.S. dollar denominated receipts from Deltek Systems Inc. for the CY 2007 were supported by VAT official receipts (to be presented to the CTA as **Exhibits QQ – 5 to QQ -14 and QQ – 30 to QQ – 31**). Verification disclosed the following:

- We have examined the three copies of the official receipt (Original customer copy, original duplicate copy and the original booklet copy of the official receipts).
- Official receipts were pre-printed with the Petitioner's TIN followed by the word VAT
- Official receipts were pre-printed with the BIR's authority to print
- Official receipts were issued on a date within the period of claim
- Official receipts were issued in the name of the customer, Deltek Systems, Inc. (*Underscoring supplied*)

Had the official receipts been actually issued to Deltek, Inc., the original customer copy could not be the possession of petitioner and could not be among those examined by the ICPA.

Even granting that the foreign currency remittances came from Deltek, Inc., the supporting official receipts were not fully compliant with the invoicing requirements under Section 113(A)(2) and B(2)(c) of the NIRC of 1997, as amended, because the term "zero-rated sale" was not written or printed prominently on the said official receipts. It has been held that failure to print the word "zero-rated" in the invoices/receipts is fatal to a claim for credit/refund of input value-added tax (VAT) on zero-rated sales.[43]

Since petitioner failed to prove that it had zero-rated receipts for the year 2007, the alleged input VAT

[43] J.R.A. Philippines, Inc. vs. CIR, G.R. No. 177127, October 11, 2010; Silicon Philippines, Inc. vs. CIR, G.R. No. 172378, January 17, 2011; Kepco Philippines vs. CIR, G.R. No. 179961, January 31, 2011.

attributable thereto in the amount of P9,476,827.27 cannot be refunded.

In view of the foregoing findings, the Court sees no further need to address whether petitioner complied with the other requisites to be entitled to the claim for refund.

WHEREFORE, the Petition for Review dated March 31, 2009 filed by petitioner Deltek Systems (Philippines), Ltd., is hereby **DENIED,** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

ERLINDA P. UY
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.

ERLINDA P. UY
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice