REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

DEUTSCHE KNOWLEDGE SERVICES PTE., LTD., Petitioner,	**CTA CASE NO. 9154**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 24 2023 1:30 p.m.

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AMENDED DECISION

UY, J.:

The instant case was remanded by the Court of Tax Appeals (CTA) *En Banc* in its Amended Decision dated June 1, 2022 and Resolution dated October 10, 2022 in CTA EB Case No. 2249 entitled "*Deutsche Knowledge Services Pte., Ltd., Petitioner, versus Commissioner of Internal Revenue, Respondent*", the dispositive portion of which reads as follows:

> **Amended Decision dated June 1, 2022**
>
> "**WHEREFORE**, the *Motion for Reconsideration Re: Decision dated December 14, 2021* filed by petitioner is **PARTIALLY GRANTED**.
>
> Accordingly, let the case be **REMANDED** to the CTA Third Division for computation of the refundable amount due to petitioner, if any.
>
> **SO ORDERED.**"

Resolution dated October 10, 2022

"**WHEREFORE**, the *Motion for Reconsideration Re: Amended Decision promulgated 1 June 2022)* filed by respondent Commissioner of Internal Revenue is **DENIED** for lack of merit.

SO ORDERED."

NATURE OF THE CASE

The instant case involves petitioner's claim for refund or issuance of tax credit certificate (TCC) in the aggregate amount of ₱28,938,050.29, allegedly representing excess and unutilized input value-added tax (VAT) attributable to zero-rated sales for the 3rd quarter of calendar year (CY) 2013.

THE FACTS

As culled from our Original Decision dated October 4, 2019, the undisputed facts of the instant case are as follows:

> "Petitioner Deutsche Knowledge Services, Pte., Ltd. is a Philippine branch of a multinational company organized and existing under and by virtue of the laws of Singapore, with registered address at One Raffles Quay, #17-10 South Tower, Singapore 048583.
>
> It is licensed to do business as a regional operating headquarters in the Philippines by the Securities and Exchange Commission on April 25, 2005, pursuant to the Omnibus Investment Code of 1987, as amended by Republic Act (RA) No. 8756, and its implementing rules and regulations, to engage in general administration and planning, business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services, marketing control and sales promotion; training and personal management; logistic services, research and development services and product development; technical support and maintenance; data processing and communication and business development.
>
> Petitioner was registered with the Bureau of Internal Revenue (BIR) on June 16, 2005 as a VAT registered

taxpayer with Taxpayer Identification No. (TIN) 238-763-115-000.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, empowered to perform the duties of his office, including among others, the duty to act upon and approve claims, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law.

On October 18, 2013, petitioner filed its Quarterly VAT Return for the 3rd quarter of CY 2013 with the BIR, through the electronic filing and payment system.

Thereafter, on June 1, 2015, petitioner filed with the BIR-Large Taxpayers Regular Audit Division III (LTRAD III) an *Application for Tax Credits/Refunds* (BIR Form No. 1914) of its excess and unutilized input VAT for the 3rd quarter of CY 2013 in the amount of ₱28,938,050.29.

Due to the alleged inaction of respondent, petitioner filed the instant Petition for Review before this Court on September 30, 2015.

Respondent filed his *Answer* on October 27, 2015, interposing certain special and affirmative defenses, to wit: (1) petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau; (2) the amount of ₱28,938,050.29 was not properly documented; (3) in an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit; (4) petitioner must show that it has complied with the provisions of Section 229 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit; (5) there is no record of petitioner ever submitting complete documents to substantiate its administrative claim for refund; and (6) claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation and such, they are looked upon with disfavor.

The Pre-Trial Conference was set on February 16, 2016. However, on February 9, 2016, petitioner filed an *Urgent Motion to Reset Pre-Trial Conference,* which was granted by the Court in the Resolution dated February 15, 2016. The Pre-Trial Conference was then reset to May 3, 2016.

Thereafter the parties' *Joint Stipulation of Facts and Issues* was filed on June 2, 2016. Subsequently, the Court issued a Pre-Trial Order on July 12, 2016.

During trial, petitioner presented its witnesses, namely, Rachel Concepcion, Katherine O. Constantino, the Court-commissioned Independent Certified Public Accountant (ICPA), and Maricel Tio-Balagtas.

Petitioner filed its *Formal Offer of Evidence* on December 22, 2016, and *Supplemental Formal Offer of Evidence* on March 20, 2018. In the Resolutions dated May 16, 2017 and May 4, 2018, this Court admitted petitioner's evidence, ***except*** for: (1) Exhibits "P-3.8", "P-3.12", "P-6.19", "P-107", "P-128", "P-196", "P-8.9", "P-8.10", "P-8.43", "P-8.48", and "P-6.39", for failure to present the originals for comparison; (2) Exhibits "P-5-49", "P-6.34", "P-6.40", "P-6.43", "P-6.53" and "P-9" for not being found in the records; and (3) Exhibit "P-9.57", for failure of the exhibit formally offered and actually marked to correspond with the document identified.

On the part of respondent, the latter's counsel manifested that respondent will not present any evidence in this case, since there is no report of investigation from the BIR investigating officer.

As directed by the Court, respondent filed his *Memorandum* on September 7, 2108; while petitioner filed its *Memorandum* on October 15, 2018. Thereafter, the instant case was deemed submitted for decision per this Court's Resolution dated October 19, 2018."

On October 4, 2019, this Court rendered its Original Decision denying the instant Petition for Review for failure of petitioner to show that its sales of services for the 3rd quarter of 2013 qualify for VAT zero-rating, wherein We found as follows:

"Thus, since it was never established that the place of performance of the subject services was in the Philippines, petitioner's sales of services to its clients/customers, who are identified as non-resident foreign corporations, cannot qualify as subject to the zero percent (0%) VAT under Section 108(B) of the NIRC of 1997, as amended. Such being the case, the subject refund claim on petitioner's alleged excess and unutilized input VAT must perforce fail."

Thereafter, petitioner filed its Motion for Reconsideration (Re: Decision dated October 4, 2019) on October 28, 2019, which was denied in the Resolution dated February 14, 2020.

On June 30, 2020, petitioner filed a Petition for Review before the CTA *En Banc*, which was docketed as CTA EB No. 2249.

In the Decision dated December 14, 2021, the CTA *En Banc* denied the Petition for Review in CTA EB No. 2249 and affirmed the ruling of this Court in the Decision dated October 4, 2019.

On February 2, 2022, petitioner filed its Motion for Reconsideration Re: Decision dated December 14, 2021.

Subsequently, on June 1, 2022 the CTA *En Banc* rendered an Amended Decision partially granting the Motion for Reconsideration filed by petitioner and ordered this case be remanded to this Court for computation of the refundable amount due to petitioner, if any.

Respondent filed a Motion for Reconsideration (Re: Amended Decision promulgated 1 June 2022) on June 14, 2022, which was denied by the CTA *En Banc* for lack of merit on October 10, 2022.

Hence, this Amended Decision.

ISSUE

The sole issue stipulated by the parties for resolution of this Court is as follows:

> "WHETHER OR NOT PETITIONER IS ENTITLED TO THE CLAIM FOR REFUND OF OR ISSUANCE OF TCC FOR EXCESS OR UNUTILIZED INPUT VAT IN THE AMOUNT OF ₱28,938,050.29 FOR THE 3rd QUARTER OF CY 2013."[1]

THE COURT'S RULING

The *Petition for Review* shall be partially granted in light of the ruling of the Court *En Banc* in CTA EB No. 2249 directing this Court to compute the refundable amount due to petitioner, if any.

[1] *Joint Stipulation of Facts and Issues, Stipulated Issue*, Division Docket (CTA Case No. 9154) –Vol. 4, p. 1874.

Requisites for the entitlement to VAT refund or issuance of a TCC under the law.

In the determination of petitioner's claim for the refund or issuance of a TCC of input VAT, petitioner is required to prove its compliance under Section 112(A) and (C) of the NIRC of 1997, as amended, which provides:

> "**SEC. 112.** ***Refunds or Tax Credits of Input Tax.*** **–**
>
> *(A) Zero-rated or Effectively Zero-rated Sales.-* Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and nonzero-rated sales.
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> xxx xxx xxx
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> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or 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."[2]

Pursuant to the foregoing provisions, and in line with the jurisprudential pronouncements of the Supreme Court, a taxpayer-claimant must comply with the following requisites, in order to successfully obtain a credit/refund of input VAT, to wit:

<u>As to the timeliness of the filing of the administrative and judicial claims:</u>

1. the claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[3]

2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner of Internal Revenue (CIR) to act on the said claim within a period of 120 days, the judicial claim has been filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[4]

<u>With reference to the taxpayer's registration with the BIR:</u>

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[2] Section 112(C) of the NIRC of 1997, was later on amended by Republic Act No. 10963 effective January 1, 2018, which provides:

"In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof; *Provided*, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code."

[3] *Commissioner of Internal Revenue vs. Chevron Holdings, Inc.*, G.R. No. 233301, February 17, 2020; *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue,* G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.

[4] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

3. the taxpayer is VAT registered;[5]

With regard to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[6]

5. for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[7]

With regard to the taxpayer's refund claim for input VAT:

6. that input taxes are not transitional input taxes;[8]

7. that the input taxes are due or paid;[9]

8. that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[10] and

9. that the input taxes have not been applied against output taxes during and in the succeeding quarters.[11]

Notably, considering that the *first, second* and *third* requisites were already resolved in the Court's Original Decision dated October 4, 2019 and remains undisputed, the Court shall proceed to discuss petitioner's compliance with the *fourth* to *ninth* requisites for the determination of its claim for refund of input VAT refund.

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[5] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, supra; San Roque Power Corporation vs. Commissioner of Internal Revenue, supra;* and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue, supra.*
[6] *Id.*
[7] *Id.*
[8] *Ibid.*
[9] *Ibid.*
[10] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.
[11] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue, supra*; and *AT&T Communications Services Philippines, Inc.*, supra.

Fourth and fifth requisites: Petitioner was able to establish that it was engaged in zero-rated or effectively zero-rated sales during the 3rd quarter of CY 2013.

The *fourth* and *fifth* requisites, respectively, require that the taxpayer is engaged in zero-rated or effectively zero-rated sales; and that for zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2) of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations.

Petitioner avers that for the 3rd quarter of CY 2013, it rendered services in the Philippines to persons engaged in businesses conducted outside the Philippines, the payments for which were made in Euro and other acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.[12]

In its original Quarterly VAT Return for the 3rd quarter of CY 2013, petitioner declared zero-rated sales in the amount of ₱1,931,914,361.46.[13]

Relative to the determination of VAT zero-rating of said sales is Section 108(B)(2) of the NIRC of 1997, as amended, which reads as follows:

> "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

[12] Paragraph 3, Petition for Review, Division Docket (CTA Case No. 9154) – Vol. 1, p. 11.
[13] Exhibit "P-3", Line 17, Division Docket (CTA Case No. 9154) – Vol. 5, p. 2362.

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)**;" *(Emphases supplied.)*

Based on the foregoing provisions, a sale or supply of services will be subject to the rate of zero percent (0%) VAT under Section 108(B)(2) of the NIRC of 1997, as amended, provided that the following essential elements are present:

1. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a non-resident person not engaged in business who is outside the Philippines when the services were performed;[14]

2. The services fall under any of the categories under Section 108(B)(2),[15] or simply, the services rendered should be other than "*processing, manufacturing or repacking goods*";[16]

3. The services must be performed in the Philippines[17] by a VAT-registered person; and

[14] *Sitel Philippines Corporation (Formerly Clientlogic Phils. Inc.) vs. Commissioner of Internal Revenue,* G.R. No. 201326, February 8, 2017; *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao. Inc.,* G.R. No. 153205, January 22, 2007; *Accenture, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 190102, July 11,2012.

[15] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch),* G.R. No. 152609, June 29, 2005.

[16] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* supra.

[17] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch),* supra.

4. The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[18]

Proof that the recipients of services are non-resident foreign corporations (NRFCs) not engaged in business in the Philippines.

To satisfy the *first* essential element, petitioner must show that the recipient of its services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a non-resident person not engaged in business who is outside the Philippines when the services were performed.

In other words, to comply with the *first* essential element, petitioner must submit for each of its foreign service-recipients/clients, at the very least, both: (1) the Certificate of Non-Registration of Corporation/Partnership issued by the Securities and Exchange Commission (SEC); **and** (2) proof of foreign incorporation, association or registration showing the state/province/country where the entity was organized.

The said documents are necessary. To the Court's mind, the SEC Certifications of Non-Registration show that their affiliates are foreign corporations.[19] On the other hand, the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines.[20]

In this case, records show that out of petitioner's *List of Zero-Rated Sales Customers*,[21] only the following foreign service-recipients shall be considered as non-resident foreign corporations not engaged in business in the Philippines, having complied with the above-stated two (2) basic documents, to wit:

[18] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, supra.

[19] *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Ptee. Ltd.*, G.R. No.234445, July 15, 2020.

[20] *Id.*

[21] Annex 3, ICPA Report (Exhibit "P-14"), Division Docket (CTA Case No. 9154) – Vol. 5, pp. 2021 to 2023.

Name of Service-Recipient	SEC Certificate of Non-Registration	Certificate/Article of Registration/ Incorporation/ Association
DB Energy Trading LLC	"P-5.3"	"P-8.2"
DB International Asia Limited	"P-5.4"	"P-8.3"
DB Investment Partners Inc.	"P-5.5"	"P-8.4"
DB Services New Jersey, Inc.	"P-5.6"	"P-8.5"
DBOI Global Services UK Limited	"P-5.8"	"P-8.7"
Deutsche Asia Pacific Holdings Pte Ltd	"P-5.9"	"P-7", "P-8.8"
Deutsche Asset Management (Korea) Company Limited	"P-5.13"	"P-8.12"
Deutsche Bank Aktiengesellschaft Filiale Hongkong	"P-5.20"	"P-7.3","P-8.18"
Deutsche Bank Aktiengesellschaft Inlandsbank Filiale Johannesburg	"P-5.22"	"P-8.20"
Deutsche Bank Aktiengesellschaft Filiale Labuan	"P-5.23"	"P-8.21"
Deutsche Bank Aktiengesellschaft Filiale London	"P-5.24"	"P-7.11", "P-8.22"
Deutsche Bank Aktiengesellschaft Filiale Mumbai	"P-5.25"	"P-8.23"
Deutsche Bank Aktiengesellschaft Filiale New York	"P-5.26"	"P-7.4", "P-8.24"
Deutsche Bank Aktiengesellschaft Filiale Seoul	"P-5.29"	"P-7.5", "P-8.27"
Deutsche Bank Aktiengesellschaft Filiale Singapur	"P-5.30"	"P-7.6", "P-8.28"
Deutsche Bank Aktiengesellschaft Filiale Taipei	"P-5.31"	"P-8.29"
Deutsche Bank Aktiengesellschaft Filiale Inlandsbank	"P-5.35"	"P-7.7"
Deutsche Bank (Malaysia) Berhad	"P-5.38"	"P-7.1"
Deutsche Bank Netherlands N.V.	"P-5.39"	"P-8.34"
Deutsche Bank Securities Inc.	"P-5.42"	"P-7.8", "P-8.36"
Deutsche Bank Suisse SA	"P-5.45"	"P-8.39"
Deutsche Bank Trust Corporation	"P-5.57"	"P-8.40"
Deutsche Group Services Pty Limited	"P-5.48"	"P-8.41"
Deutsche New Zealand Limited	"P-5.51"	"P-8.44"
Deutsche Securities Inc.	"P-5.52"	"P-7.10"
Deutsche Securities Korea Co.	"P-5.53"	"P-8.45"
RREEF Management L.L.C.	"P-5.61"	"P-8.53"
DB Alternative Trading Inc.	"P-5.1"	"P-8"

On the other hand, the following foreign service-recipients shall not be considered by the Court for the reasons stated below:

Name of Service-Recipient	SEC Certificate of Non-Registration	Certificate/ Article of Registration/ Incorporation/ Association	Reason/s for denial

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Deutsche Bank Aktiengesellschaft Filiale Dubai (DIFC)	"P-5.18"	"P-8.16"	Supported by SEC Certification of Non-registration of Company and proof of foreign registration but no English translation of the latter was attached.
DB Consortium S. Cons. A.R.L. in Liquidazione	"P-5.2"	"P-8.1"	Supported by SEC Certification of Non-registration of Company and proof of foreign registration but no English translation of the latter was attached.
Deutsche Bank Aktiengesellschaft Filiale Amsterdam	"P-5.15"	"P-8.13"	Supported by SEC Certification of Non-registration of Company and proof of foreign registration but no English translation of the latter was attached.
Deutsche Bank Aktiengesellschaft Filiale Bangkok	"P-5.16"	"P-8.14"	Supported by SEC Certification of Non-registration of Company and proof of foreign registration but no English translation of the latter was attached.
Deutsche Bank Aktiengesellschaft Filiale Brussels	"P-5.17"	"P-8.15"	Supported by SEC Certification of Non-registration of Company and proof of foreign registration but no English translation of the latter was attached.
Deutsche Bank Aktiengesellschaft Filiale Ho Chi Minh City	"P-5.19"	"P-8.17"	Supported by SEC Certification of Non-registration of Company and proof of foreign registration but no English translation of the latter was attached.
Deutsche Bank Aktiengesellschaft Filiale Jakarta	"P-5.21"	"P-8.19"	Supported by SEC Certification of Non-registration of Company and proof of foreign registration but no English translation of the latter was attached.
Deutsche Bank Aktiengesellschaft Filiale Paris	"P-5.27"	"P-8.25"	Supported by SEC Certification of Non-registration of Company and proof of foreign registration but no English translation of the latter was attached.
Deutsche Bank Aktiengesellschaft Filiale Prague	"P-5.28"	"P-8.26"	Supported by SEC Certification of Non-registration of Company and proof of foreign registration but no English translation of the latter was attached.
Deutsche Bank Aktiengesellschaft Filiale Tokyo	"P-5.32"	"P-8.30"	Supported by SEC Certification of Non-registration of Company and proof of foreign registration but no English translation of the latter was attached.
Deutsche Bank Aktiengesellschaft Filiale Wien	"P-5.33"	"P-8.31"	Supported by SEC Certification of Non-registration of Company and proof of foreign registration but no English translation of the latter was attached.

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Deutsche Bank Aktiengesellschaft Filiale Zurich	"P-5.34"	"P-8.32"	Supported by SEC Certification of Non-registration of Company and proof of foreign registration but no English translation of the latter was attached.
Deutsche Bank Luxemburg S.A.	"P-5.37"	"P-8.33"	Supported by SEC Certification of Non-registration of Company and proof of foreign registration but no English translation of the latter was attached.
Deutsche Bank Privat-und Geschangftskunden Aktieng/Deutsche Bank Pgk Ag	"P-5.41"	"P-8.35"	Supported by SEC Certification of Non-registration of Company and proof of foreign registration but no English translation of the latter was attached.
Deutsche Bank, Sociedad Anonima Espanola	"P-5.43"	"P-8.37"	Supported by SEC Certification of Non-registration of Company and proof of foreign registration but no English translation of the latter was attached. Moreover, the name indicated in the said SEC Certification is different from petitioner's client name.
Deutsche Bank, Societa per Azioni	"P-5.44"	"P-8.38"	Supported by SEC Certification of Non-registration of Company and proof of foreign registration but no English translation of the latter was attached.
Deutsche Trustees Malaysia Berhad	"P-5.54"	"P-8.46"	Supported by SEC Certification of Non-registration of Company and proof of foreign registration but no English translation of the latter was attached.
DWS Holdings & Service GmbH	"P-5.55"	"P-8.47"	Supported by SEC Certification of Non-registration of Company and proof of foreign registration but no English translation of the latter was attached.
OOO Deutsche Bank	"P-5.58"	"P-8.50"	Supported by SEC Certification of Non-registration of Company and proof of foreign registration but no English translation of the latter was attached.
DBOI Global Services Private Limited	"P-5.8"	"P-8.7"	Supported by SEC Certification of Non-registration of Company and proof of foreign registration but no English translation of the latter was attached. Moreover, the name indicated in the said SEC Certification is

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			different from petitioner's client name.
DWS Investment S.A.	"P-5.56"	"P-8.48"	Supported by SEC Certification of Non-registration of Company and proof of foreign registration but no English translation of the latter was attached.
Deutsche Asset & Wealth Management International GmbH	"P-5.11"	"P-8.9"	Exhibit "P-8.9" was denied admission.[22]
Deutsche Asset Management Group Limited	"P-5.12"	"P-8.10"	Exhibit "P-8.10" was denied admission.[23]
Deutsche Bank (China) Co., Ltd., Shanghai Branch	"P-5.36"	None	No proof of foreign registration and supported only by SEC Certification of Non-Registration of Company
Deutsche Bank PGK AG	"P-5.41"	None	No proof of foreign registration and supported only by SEC Certification of Non-Registration of Company
Deutsche Investment Management Americas, Inc.	"P-5.50"	"P-8.43"	Exhibit "P-8.43" was denied admission.[24]
DeAWM Service Company	"P-5.57"	None	No proof of foreign registration and supported only by SEC Certification of Non-Registration of Company
PT Deutsche Securities Indonesia	"P-5.59"	"P-8.51"	Supported by SEC Certification of Non-registration of Company and proof of foreign registration but no English translation of the latter was attached.
Deutsche Bank PBC Spólka Akcyjna	"P-5.40"	None	No proof of foreign registration and supported only by SEC Certification of Non-Registration of Company
Deutsche Bank Trust Company Americas	"P-5.46"	None	No proof of foreign registration and supported only by SEC Certification of Non-Registration of Company
Bankers International Corporation	"P-5"	None	No proof of foreign registration and supported only by SEC Certification of Non-Registration of Company
	"P-5.54"	"P-8.46"	Supported by SEC Certification of Non-registration of Company and

[22] Resolution dated May 4, 2018, Division Docket (CTA Case No. 9154) – Vol. 8, pp. 3900 to 3904.
[23] *Id.*
[24] *Id.*

Deutsche Trustees Malaysia Berhad			proof of foreign registration but no English translation of the latter was attached.
Deutsche Holdings (Luxembourg) S.a.r.l.	"P-5.49"	"P-8.42"	Exhibit "P-5.49" was denied admission.[25]
RREEF Management GmbH	"P-5.60"	"P-8.52"	Supported by SEC Certification of Non-registration of Company and proof of foreign registration but no English translation of the latter was attached.

With regard to Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office, petitioner presented in evidence, Exhibit "P-7.2", purporting to be an "*Authenticated Company Registration of Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office*", with an attached Certification that states that it "*is a segment of Deutsche Bank AG and is not a separate entity.*" In other words, Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office is merely a part or section of, and has no personality distinct from, Deutsche Bank AG.

Such being the case, We cannot treat Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office as a non-resident foreign corporation doing business outside the Philippines. This is simply because certain SEC negative certifications state that Deutsche Bank AG is a registered entity in the Philippines with SEC Registration No. F-1228.[26] Thus, Deutsche Bank AG is considered as a resident foreign corporation or foreign corporation engaged in trade or business in the Philippines. Correspondingly, since Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office is "*a segment*" of Deutsche Bank AG, the latter's status as a resident foreign corporation, applies with equal force to the former.

With respect to petitioner's service-recipients namely, Deutsche Bank (China) Co., Ltd., Shanghai Branch, Deutsche Bank PGK AG, Deutsche Investment Management Group Limited, PT. Deutsche Securities Indonesia, Deutsche Bank PBC Spólka, Deutsche Bank Trust Company Americas, Bankers International Corporation, Deutsche Trustees Malaysia Berhad[27] to show proof that these affiliates are registered to operate outside the Philippines, petitioner submitted the respective print-outs of Company Profile Fact Sheet of

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[25] *Id.*

[26] Exhibits "P-5.15", "P-5.37", "P-5.39", "P-5.42", "P-5.43", "P-5.44", "P-5.45", and "P5.58", Division Docket (CTA Case No. 9154) - Vol. 5, pp. 2418, 2440, 2442, 2445, 2446, 2447, 2448, and 2459, respectively.

[27] Exhibits "P-9.36", "P-9.41", "P-9.57", "P-9.59", "P-9.40", "P-9.46", "P-9" and "P-9.54", Division Docket (CTA Case No. 9154) - Vol. 6, pp.

the said service-recipients derived from its AMInet database. The Court, however, cannot give credence to the said documents.

This Court has consistently stressed that the subject print-outs of Company Profile Fact Sheet derived from petitioner's AMInet database are insufficient to prove that petitioner's clients are a NRFC doing business outside the Philippines. The AMInet database is a database maintained by petitioner's head office in Germany. Having derived the information in its own database, the Court is of the view that it is prone to manipulation in favor of petitioner. As such, the information contained therein cannot be given full faith and credence by this Court.

Proof that the services rendered are other than processing, manufacturing or repacking goods, and that said services were performed in the Philippines.

As regards the *second* and *third* essential elements, We adhere to the Court *En Banc* findings in the Amended Decision dated June 1, 2022 in CTA EB No. 2249 that the unrebutted testimony of petitioner's witness, Ms. Rachel Concepcion,[28] is sufficient to prove that petitioner's services rendered are other than processing, manufacturing or repacking of goods, and that said services were performed in the Philippines, to wit:

"Q4: As the Legal Entity Controller, can you state the nature of petitioner's business?

A: Yes. Petitioner, which is a multinational company organized and existing under and by virtue of the laws of Singapore, is licensed to do business as a regional operating headquarters (ROHQ) in the Philippines to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components' corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services, research and development services and product development; technical support and maintenance; data processing and communication and business development.

Specifically, Petitioner acts as a shared services center, which handles regional, as well as global,

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[28] Exhibit "P-11", Division Docket (CTA Case No. 9154) – Vol. 1, pp. 105 to 106 and 109.

accounting and related controlling processes, such as accounting production work in the global general ledger in SAP, developing and operating inter-company clearing house, accounting and head office reporting for non-regulated entities and product control.

Q5: What is your proof in saying so?

A: We have Petitioner's Certificate of Registration and License issued by the Securities and Exchange Commission (SEC) on April 25, 2005.

xxx xxx xxx

Q23: How did Petitioner incur the input VAT credits which are the subject of the present claim for refund?

A: Petitioner purchased goods and services **in the course of rendering services in the Philippines as a shared service center** to client engaged in business conducted in the Philippines. These clients are all part of the Deutsche Bank Aktiengesellschaft Group (DB Group)." *(Emphasis supplied)*

The said testimony was also corroborated by petitioner's Certificate of Registration and License[29] issued by the SEC, authorizing petitioner to act as an ROHQ, to conduct the services enumerated in Ms. Concepcion's testimony quoted above, and by petitioner's purchases of goods and services in the Philippines to be utilized in the Philippines in the course of rendering services to petitioner's clients.

With the foregoing being unrebutted and no contrary evidence was presented by respondent, the Court finds that petitioner has sufficiently established that the services rendered by petitioner to its affiliates are service other than processing, manufacturing, or repacking of goods, and that said services are rendered in the Philippines.

Proof that that the payment for such services are in acceptable foreign currency accounted for in accordance with the BSP rule.

[29] Exhibit "P-1", Division Docket (CTA Case No. 9154) – Vol. 5, p. 2343.

With respect to the *fourth* essential element, and in relation to the *fifth* requisite, petitioner presented the Bank Certificate of Inward Remittances[30] issued by Deutsche Bank for the 3rd quarter ending September 30, 2013, allegedly showing the payments for its sales in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

Relative thereto, it is equally important to consider that the said foreign currency remittances must be duly supported by VAT zero-rated official receipts ("ORs") pursuant to Section 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, which states that a VAT taxpayer, like herein petitioner, shall for every sale, barter or exchange of services, issue a VAT OR which must contain the information stated in the said provisions, to wit:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> (A) *Invoicing Requirements.* — A VAT-registered person shall issue:
>
> (1) A **VAT invoice for every sale, barter or exchange of goods or properties; and**
>
> (2) A <u>VAT official receipt</u> for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:
>
> xxx xxx xxx
>
> (c) If the sale is subject to zero percent (0%) value-added tax, the term '**<u>zero-rated sale</u>**' shall be written or printed prominently on the invoice or receipt;

MO

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30 Exhibit "P-231", CD.

xxx xxx xxx

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

Furthermore, Section 4.113-1(A)(2), B(1) and (2)(c) of Revenue Regulations ("RR") No. 16-2005, which implements the foregoing, also provides:

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

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

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or official receipts. Said documents shall be considered as a 'VAT Invoice' or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) Information contained in VAT invoice or VAT official receipt. — The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:

xxx xxx xxx

(c) If the sale is subject to zero percent (0%) VAT, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt." *(Underscoring ours)*

To support its zero-rated sales for the 3rd quarter of CY 2013, petitioner submitted the Extracted Schedule of Zero-Rated Sales,[31] and ORs with attached invoices,[32] which were examined by the Court-commissioned Independent Certified Public Accountant (ICPA), Katherine O. Constantino. We quote with approval the summary of the ICPA's findings on zero-rated sales presented below:[33]

Sale of Services	Reference[34]	Total Amount
Zero-Rated Sale of Services		
1. Zero-rated sale of services supported by VAT REG TIN ORs	***Annex 4-a***	₱ 1,660,174,313.67
2. Zero-rated sale of services supported by VAT REG TIN ORs without date	***Annex 4-b***	5,081,156.16
3. Zero-rated sale of services supported by VAT REG TIN ORs with unclear date	***Annex 4-c***	277,595.99
4. Zero-rated sale of services supported by VAT REG TIN ORs with incorrect customer's name	***Annex 4-d***	227,766,637.71
5. Zero-rated sale of services supported by VAT REG TIN ORs with incorrect customer's name and with the zero-rated sale amount altered with countersign	***Annex 4-e***	9,497,960.94
6. Zero-rated sale of services supported by VAT REG TIN ORs with incorrect customer's name and with the zero-rated sale amount altered without countersign	***Annex 4-f***	12,387,755.52
7. Zero-rated sale of services supported by VAT REG TIN ORs with abbreviated customer's name	***Annex 4-g***	2,448,504.12
8. Zero-rated sale of services supported by photocopied VAT REG TIN ORs	***Annex 4-h***	14,059,235.70
9. Zero-rated sale of services supported by photocopied VAT REG TIN ORs with unclear date	***Annex 4-i***	132,636.65
Total Per Extracted Schedule		**₱1,931,825,796.47**
Difference		**88,564.99**
Total Per VAT Return		**₱1,931,914,361.46**

[31] Annex 1, ICPA Report (Exhibit "P-14"), Division Docket (CTA Case No. 9154) – Vol. 5, pp. 1998 to 2019.
[32] Exhibits "P-22" to "P-226" (except for the exhibits denied admission by the Court).
[33] Annex 4, ICPA Report (Exhibit "P-14"), Division Docket (CTA Case No. 9154) – Vol.5, p. 2024.
[34] ICPA Report (Exhibit "P-14"), Division Docket (CTA Case No. 9154) – Vol. 5, pp. 2025 to 2059.

Based on the above-findings of the ICPA, *item nos. 2 to 9*, aggregating to ₱271,651,482.79, and the unaccounted difference of ₱88,564.99, or a total of ₱271,740,047.78 sales, shall be denied VAT zero-rating for failure to comply with the substantiation and invoicing requirements as prescribed under the afore-quoted law and regulations.

In addition, petitioner's sales to service-recipients which were not included in the list of considered NRFCs not engaged in business in the Philippines, earlier presented under the *first* essential element, shall likewise be denied VAT zero-rating. The corresponding sales, per the List of Zero-Rated Sales Customers,[35] made to these service-recipients, who failed to qualify as NRFCs not engaged in business in the Philippines, amounting to ₱282,785,615.32 (net of amounts included in the ICPA's findings, which were already denied of VAT zero-rating) are summarized below:

Name of Service Recipient	Sales Amount
Deutsche Bank Aktiengesellschaft, Filiale Amsterdam	₱1,539,745.34
Deutsche Bank Aktiengesellschaft, Filiale Dubai (DIFC)	536,836.87
OOO "Deutsche Bank"	239,013.88
Deutsche Bank, Sociedad Anónima Española	2,151,108.99
Deutsche Bank Aktiengesellschaft, Filiale Zürich	554,273.63
Deutsche Bank Aktiengesellschaft, Filiale Wien	53,286.82
Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	181,686,454.57
Deutsche Bank Aktiengesellschaft, Filiale Bangkok	1,342,769.91
Deutsche Bank Aktiengesellschaft, Filiale Mumbai	22,272,837.58
Deutsche Bank Aktiengesellschaft, Filiale Jakarta	1,610,311.43
Deutsche Bank Aktiengesellschaft, Filiale Ho-Chi-Minh-City	403,269.00
DWS Investment S.A.	544,822.20
Deutsche Bank Aktiengesellschaft, Filiale Brüssel	1,964,248.17
Deutsche Bank Aktiengesellschaft, Filiale Tokyo	3,073,347.96
Deutsche Bank Aktiengesellschaft, Filiale Paris	700,319.96
Deutsche Bank Aktiengesellschaft, Filiale Prag	53,356.21

[35] Annex 3, ICPA Report (Exhibit "P-14"), Division Docket (CTA Case No. 9154) – Vol. 5, pp. 2021 to 2023.

Deutsche Bank Luxembourg S.A.	392,653.56
Deutsche Bank Società per Azioni	882,408.20
Deutsche Asset & Wealth Management Investment GmbH	5,007.30
DeAM Inv. GmbH DEGEF	-
Deutsche Bank (China) Co., Ltd., Shanghai Branch	5,081,156.16
Deutsche Asset & Wealth Management International GmbH	255.22
DWS Holding & Service GmbH	4,215,925.58
Deutsche Bank PGK AG	426,379.98
RREEF Management GmbH	5,444,535.12
Deutsche Investment Management Americas Inc.	13,632,592.78
DeAWM Service Company	147,864.11
Deutsche Asset Management Group Limited	2.84
PT. Deutsche Securities Indonesia	107,281.01
Deutsche Bank PBC Spólka Akcyjna	27,138.86
Deutsche Bank Trust Company Americas	2,758,420.84
Bankers International Corporation	5,011,956.65
DB Energy Trading LLC	124,674.47
DBOI Global Services Private Limited	24,701,745.93
Deutsche Trustees Malaysia Berhad	115,865.70
DB Consorzio S. Cons. a r. l.	797,719.05
Deutsche Holdings (Luxembourg) S.à r.l.	186,029.44
TOTAL	**₱282,785,615.32**

Moreover, a total amount of ₱41,057.69 worth of sales, for reasons stated below, shall also be denied VAT zero-rating, to wit:

Sales covered by a supporting VAT zero-rated OR but with incorrect customer's name:

Customer's Name	Exhibit No.	Date	Doc. No.	Amount
DB Alternative Trading Inc.	"P-180"	September 16, 2013	4773	₱7,168.89

Sales not covered by supporting VAT zero-rated ORs:

Customer's Name	Sales per Schedule (*Annex 4-a* of ICPA Report)		Sales per VAT Zero-Rated OR				Difference (not covered by supporting OR)	
	Amount (in Euro) *a*	SAP (in Phil. Peso) *b*	Exhibit No.	Date	Doc. No.	Amount (in Euro) *c*	In Euro *d=a-c*	Peso Equivalent *e=d*(b/a)*
Deutsche Bank Trust Corporation	2,206.34	124,044.43	"P-27"	3-Jul-13	3348	1,762.91	443.43	24,930.44
Deutsche New Zealand Limited	3,264.37	184,699.95	"P-50"	12-Jul-13	3372	3,234.37	30.00	1,697.42
Total	**5,470.71**	**308,744.38**				**4,997.28**	**473.43**	**26,627.86**

Substantiated sales not traced to inward remittance per Bank Cert. of inward remittance:

Customer's Name	OR Exhibit No.	OR Date	OR No.	Amount per OR (in Euro) *a*	SAP (in Phil. Peso) per *Annex 4-a* *b*	Inward Remittance Reference No.	Amount Remitted per Bank Cert. of Inward Remittance	Difference (in Euro) *c*
Deutsche Group Services Pty Limited	"P-122"	12-Aug-13	3448	229,740.63	13,345,070.33	02RS08120093	229,615.63	125.00
				Peso Equivalent (*c* x *b* ÷ *a*):				**₱ 7,260.94**

In fine, and for purposes of compliance with the *fourth* essential element and the *fourth* and *fifth* requisites, petitioner was able to establish that its sales of services to NRFCs not engaged in business in the Philippines for the 3rd quarter of CY 2013, in the amount of ₱1,337,347,640.67, qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended, computed as follows:

Zero-Rated Sales per VAT Return		₱ 1,931,914,361.46
Less: Sales denied of VAT zero-rating		
Per ICPA findings	₱271,740,047.78	
Sales to clients not considered NRFCs not engaged in business in the Philippines	282,785615.32	
Sales with OR but incorrect customer's name	7,168.89	
Sales not covered by VAT zero-rated ORs	26,627.86	
Sale without corresponding inward remittance	7,260.94	554,566,720.79
Valid Zero-Rated Sales		**₱1,377,347,640.67**

Having found that petitioner had valid VAT zero-rated sales in the amount of ₱1,337,347,640.67 for the subject period of claim, the Court shall proceed to determine whether petitioner complied with the remaining requisites pertaining to the input VAT being claimed for refund.

The input taxes being claimed do not appear to be transitional input taxes.

In its Quarterly VAT Return for the 3rd quarter of CY 2013,[36] petitioner declared total input VAT of ₱29,981,910.77, out of which the amount of ₱28,938,050.29 is the subject of the claim for refund, as shown below:

Input Tax Deferred on Capital Goods Exceeding ₱1Million from Previous Quarter	₱ 1,488,706.03
Add: Input Tax on Purchase of Capital Goods exceeding ₱1Million	182,025.53
Less: Input Tax on Purchases of Capital Goods exceeding ₱1Million deferred for the succeeding period	1,306,641.28
Amortized Input Tax for the period	**₱ 364,090.28**
Current Input Taxes:	
On Purchase of Capital Goods not exceeding ₱1Million	₱ 205,098.03
On Domestic Purchases of Goods Other than Capital Goods	144,210.40
On Domestic Purchase of Services	28,759,080.71
On Services Rendered by Non-residents	509,431.35
Total Current Input Taxes	**₱ 29,617,820.49**
Total Input Taxes for the period	**₱ 29,981,910.77**
Less: Output Tax	928,020.68
Excess Input Taxes for the period	**₱ 29,053,890.09**
Divided by Total Sales	1,939,647,867.13
Multiplied by zero-rated sales	1,931,914,361.46
Input VAT claimed for refund	**₱ 28,938,050.29**

The above input taxes do not appear to be transitional input taxes, as understood under Section 111(A) of the NIRC of 1997, as amended, to wit:

> "SEC. 111. *Transitional/Presumptive Input Tax Credits.* –
>
> (A) *Transitional Input Tax Credits.* – A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of any inventory according to the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be allowed input tax on her beginning inventory of goods, materials and

[36] Exhibit "P-3", Division Docket (CTA Case No. 9154) – Vol. 5, pp. 2362 to 2363.

> supplies equivalent to two percent (2%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax."

Parenthetically, transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisitions of their beginning inventory of goods, materials and supplies. During the period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer.[37]

Since there is no showing that the above-stated input VAT is transitional input VAT, petitioner has complied with the *sixth* requisite for the grant of an input VAT refund.

A portion of the input taxes being claimed were due or paid.

Anent the *seventh* requisite, petitioner is required to present supporting documents that could prove that the subject input taxes claimed during the 3rd quarter of CY 2013 are actually due or paid in accordance with Section 110 (A) of the NIRC of 1997, as amended, which states:

> "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 output tax:
>
> (a) Purchase or importation of goods:
>
> (i) For sale; or
>
> (ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or

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[37] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue,* G.R. Nos. 158885 and 170680, April 2, 2009.

(iii) For use as supplies in the course of business; or

(iv) For use as materials supplied in the sale of service; or

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

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

(2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

xxx xxx xxx

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 of the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (₱1,000,000.00): *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."

The above provisions are implemented by Sections 4.110-1 to 4.110-3 of Revenue Regulation (RR) No. 16-2005, to wit:

"SECTION. 4.110-1. *Credits for Input Tax.* – 'Input tax' means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the Tax Code.

It includes input taxes which can be directly attributed to transactions subject to the VAT plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.

Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Secs. 113 and 237 of the Tax Code shall be creditable against the output tax:

(a) Purchase or importation of goods

(1) For sale;

(2) For conversion into or intended to form part of a finished product for sale, including packaging materials; or

(3) For use as supplies in the course of business; or

(4) For use as raw materials supplied in the sale of services; or

(5) For use in trade or business for which deduction or depreciation or amortization is allowed under the Tax Code,

(b) Purchase of real properties for which a VAT has actually been paid;

(c) Purchases of services in which a VAT has actually been paid;"

"SECTION 4.110-2. *Persons Who Can Avail of the Input Tax Credit.* – The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:

xxx xxx xxx

(b) To the purchaser of the domestic goods or properties upon consummation of the sale; or

(c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee."

"SECTION 4.110-3. *Claim for Input Tax on Depreciable Goods.* – Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million Pesos (P1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:

(a) If the estimated useful life of a capital good is five (5) years or more – The input tax shall be spread evenly over a period of sixty (60) months and the claim for input tax credit will commence in the calendar month when the capital good is acquired. The total input taxes on purchases or importations of this type of capital goods shall be divided by 60 and the quotient will be the amount to be claimed monthly.

(b) If the estimated useful life of a capital good is less than five (5) years – The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of the capital good. The claim for input tax credit shall commence in the calendar month that the capital goods were acquired.

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed One million pesos (₱1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition; *Provided,* however, that the total amount of input taxes (input tax on depreciable capital goods plus other allowable input taxes) allowed to be claimed against the output tax in the quarterly VAT Returns shall be subject to the limitation prescribed under Sec. 4.110-7 of these Regulations.

The aggregate acquisition cost of a depreciable asset in any calendar month refers to the total price agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired in installment for an acquisition cost of more than ₱1,000,000.00, excluding the VAT, will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed ₱1,000,000.00.

xxx xxx xxx

If the depreciable capital good is sold/transferred within a period of five (5) years or prior to the exhaustion of the amortizable input tax thereon, the entire unamortized input tax on the capital goods sold/transferred can be claimed as input tax credit during the month/quarter when the sale or transfer was made but subject to the limitation prescribed under Sec. 4.110-7 of these Regulations."

Further, Section 4.110-8 of RR No. 16-2005 provides for the substantiation requirements of input tax credits, as follows:

"SEC. 4.110-8. *Substantiation of Input Tax Credits.* –

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

xxx xxx xxx

(2) For the domestic purchase of goods and properties – invoice showing the information required under Secs. 113 and 237 of the Tax Code.

xxx xxx xxx

(4) For the purchase of services – official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code.

xxx xxx xxx

> (d) Input tax from payments made to non-residents (such as for services, rentals and royalties) shall be supported by a copy of the Monthly Remittance Return of Value Added Tax Withheld (BIR Form 1600) filed by the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor."

Based on the foregoing provisions, in order to prove that petitioner's input taxes were actually due or paid, its input VAT must be duly substantiated by supporting documents such as VAT invoices (for domestic purchases of goods) or ORs (for domestic purchases of services) issued in accordance with Section 113 of the NIRC of 1997, as amended, as well as, the Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld [BIR Form No. 1600] (for payments made to non-residents).

Furthermore, the sales invoices and ORs must be duly registered with the BIR pursuant to Section 237, in relation to Section 238, both of the NIRC of 1997, as amended, which respectively provide:

> "SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: x x x"

> "SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

The invoicing requirements for a VAT-registered taxpayer as provided in the NIRC and RRs are clear. It is reasonable and must be strictly complied with, as it is the only way to determine the veracity of the claim.[38]

Here, petitioner submitted various invoices and ORs[39] in support of its reported input VAT of ₱29,981,910.77, which were examined by the ICPA.

Upon verification by the Court, We affirm the findings of the ICPA on petitioner's input VAT on domestic purchases of services and goods other than capital goods, purchase of capital goods not exceeding ₱1 million, and services rendered by non-residents, the total amount of ₱7,556,589.69 input VAT, which shall be disallowed for failure to meet the substantiation and invoicing requirements earlier quoted, to wit:

	Reference to ICPA Report *(Exhibit "P-14")*[40]	**Total Amount**
PURCHASE OF GOODS		
Purchase of goods supported by VAT REG. TIN Invoices with date not within the quarter of claim	*Annex 9-q*	₱ 18,046.18
Purchase of goods supported by TIN NO. VAT Invoices with date not within the quarter of claim	*Annex 9-r*	12,365.77
Subtotal		**₱ 30,411.95**
PURCHASE OF SERVICES		
Purchase of services supported by VAT REG NO. ORs where input VAT shown in the OR is less than the schedule - excess amount is disallowed	*Annex 9-f*	₱ 2,498.36
Purchase of services supported by VAT REG. TIN ORs where input VAT shown in the OR is less than the schedule - excess amount is disallowed	*Annex 9-j*	3,764.61
Purchase of services supported by VAT REG. TIN. ORs where input VAT shown in the OR is less than the schedule but our independent computation is equal to the schedule - excess amount is disallowed	*Annex 9-l*	57,219.13
Purchase of services supported by VAT REG. TIN. ORs with date not within the quarter of claim	*Annex 9-t*	2,828,327.22

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[38] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011.
[39] Exhibits "P-236" to "P-708, "P-711"to "P-753".
[40] Division Docket (CTA Case No. 9154) – Vol. 5, pp. 2176, 2198, 2200 to 2201, 2209 to 2210, 2212 to 2230, 2232 to 2234, 2236 to 2240, 2244 to 2249.

Purchase of services supported by VAT REG. TIN. ORs with date not within the quarter of claim and such date was altered but with countersign and the input VAT shown in the OR is less than the schedule	*Annex 9-u*	42,786.18
Purchase of services supported by VAT REG. TIN. ORs with date not within the quarter of claim and with alteration on the Petitioner's TIN without countersign	*Annex 9-v*	1,607.14
Purchase of services supported by VAT REG. TIN. ORs with date not within the period of claim	*Annex 9-w*	50,824.64
Purchase of services supported by certified true copy VAT REG. TIN. ORs with date not within the quarter of claim	*Annex 9-x*	4,296.77
Purchase of services supported by VAT REG. TIN. ORs with date not within the quarter of claim and the input VAT shown in the OR is more than the schedule	*Annex 9-y*	57,206.49
Purchase of services supported by VAT REG. TIN. ORs with date not within the quarter of claim and the input VAT shown in the OR is less than the schedule	*Annex 9-z*	7,200.00
Purchase of services supported by VAT REG. TIN. ORs without date indicated	*Annex 9-aa*	238,809.60
Purchase of services supported by VAT REG. TIN. ORs with alteration on the date without countersign	*Annex 9-ac*	27,600.00
Purchase of services supported by VAT REG. TIN. ORs with alteration on the date without countersign, with alteration on the Petitioner's name but with countersign and without Petitioner's TIN indicated	*Annex 9-ad*	11,616.00
Purchase of services supported by VAT REG. TIN. ORs with unclear or unreadable date and the input VAT shown in the OR is less than the schedule but our independent computation is equal to the schedule	*Annex 9-ae*	4,850.65
Purchase of services supported by VAT REG. TIN. ORs with alteration on the name of the petitioner without countersign	*Annex 9-ag*	7,000.06
Purchase of services supported by VAT REG. TIN. ORs without Petitioner's TIN indicated	*Annex 9-ah*	1,057.40
Purchase of services supported by VAT REG. TIN. ORs with wrong Petitioner's TIN and the input VAT shown in the OR is more than the schedule	*Annex 9-ai*	2,089.29

Purchase of services supported by VAT REG. TIN. ORs with wrong Petitioner's TIN and the input VAT shown in the OR is less than the schedule	*Annex 9-aj*	17,352.80
Purchase of services supported by VAT REG. TIN ORs where VAT amount was not shown separately	*Annex 9-ak*	8,055.63
Purchase of services supported by VAT REG. TIN. ORs with alteration on the VAT amount without countersign and the input VAT shown in the OR is more than the schedule	*Annex 9-ao*	20,011.82
Purchase of services supported by VAT REG. TIN ORs with "not valid source of input VAT" is indicated	*Annex 9-ap*	86,648.13
Purchase of services supported by receipt with "not valid source of input VAT" is indicated	*Annex 9-aq*	7,820.25
Purchase of services supported by TIN NO. VAT ORs with wrong Petitioner's TIN and with alteration on the input VAT amount but with countersign	*Annex 9-ar*	160,714.20
Purchase of services supported by documents other than VAT ORs	*Annex 9-as*	456.61
Subtotal		**₱3,649,812.98**
PURCHASE OF CAPITAL GOODS NOT EXCEEDING ₱1 MILLION		
Purchase of capital goods not exceeding one million supported by VAT REG. TIN Invoices with date not within the quarter of claim	*Annex 9-at*	₱ 42.86
Subtotal		**₱ 42.86**
PURCHASE OF SERVICES WITHOUT SUPPORTING DOCUMENTS		3,876,321.90
Total		**₱7,556,589.69**

In addition to the above disallowances, further verification reveals that the input VAT amounting to ₱662,930.12 shall likewise be disallowed for reasons stated hereunder:

Name of Supplier	**Exhibit No.**	**Input VAT Amount**
Purchase of goods supported by VAT ORs but the input VAT amounts were not separately indicated therein		
MERCURY DRUG CORPORATION	"P-367"	₱ 1,732.50
MERCURY DRUG CORPORATION	"P-368"	655.47
MERCURY DRUG CORPORATION	"P-370"	1,098.75
MERCURY DRUG CORPORATION	"P-372"	517.10

Purchase of services supported by VAT OR with ATP dated between Jan. 1, 2011 to Jan. 17, 2013 not stamped "valid until October 31, 2013 only" (disallowed pursuant to RMC No. 52-2013)		
FUJI XEROX PHILIPPINES INC	"P-305"	24,278.26
Purchases of services supported by VAT ORs but without the BIR Authority to Print		
PLDT	"P-605"	4.27
PLDT	"P-606"	235.13
PLDT	"P-609"	4.27
PLDT	"P-610"	235.13
PLDT	"P-613"	582.86
PLDT	"P-614"	32,057.14
PLDT	"P-617"	1.91
PLDT	"P-618"	105.13
PLDT	"P-621"	1.91
PLDT	"P-622"	105.13
PLDT	"P-625"	151.09
PLDT	"P-626"	8.09
PLDT	"P-627"	445.18
PLDT	"P-628"	6.43
PLDT	"P-629"	353.57
PLDT	"P-630"	12.86
PLDT	"P-631"	707.14
PLDT	"P-632"	434.88
PLDT	"P-633"	66,852.30
PLDT	"P-634"	4.27
PLDT	"P-635"	235.12
PLDT	"P-636"	2.70
PLDT	"P-637"	148.40
PLDT	"P-652"	299.48
PLDT	"P-611"	32,640.00
PLDT	"P-612"	239.40
PLDT	"P-615"	239.40
PLDT	"P-616"	37,722.37
PLDT	"P-638"	151.09
PLDT	"P-639"	148.39
PLDT	"P-640"	239.40
PLDT	"P-642"	67,200.00
PLDT	"P-643"	64,723.84
PLDT	"P-644"	49,751.23
PLDT	"P-645"	50,754.96
PLDT	"P-646"	46,595.14
PLDT	"P-647"	360.00
PLDT	"P-648"	353.57
PLDT	"P-649"	360.00
PLDT	"P-650"	353.57
PLDT	"P-651"	151.09
PLDT	"P-654"	302.18
PLDT	"P-656"	105.00
PLDT	"P-657"	105.16
PLDT	"P-658"	32,057.14
Purchases of services supported by VAT ORs but without the nature of services indicated therein		

HOSPITALITY INTERNATIONAL, INC	"P-343"	17,142.86
BUSINESSWORKS, INC.	"P-558"	8,820.00
MR. SUN KIDDIE PARTYCOM,	"P-378"	33,726.00
ASALUS CORPORATION	"P-292"	82,704.78
Purchases of services supported by VAT ORs wherein the input VAT amount per OR is lower than the input VAT amount per schedule (overclaimed input)		
PREMIUM SECURITY & INVESTIGATION AGENCY, INC (₱7,527.92 per schedule less ₱7,393.48 per OR)	"P-423"	134.44
PREMIUM SECURITY & INVESTIGATION AGENCY, INC (₱420.00 per schedule less ₱401.65 per OR)	"P-424"	18.35
SKYCABLE CORPORATION (₱5,027.04 per schedule less ₱3,360.00 per OR)	"P-466"	1,667.04
BAYANTEL A/C 337550509 (₱182.04 per schedule less ₱178.79 per OR)	"P-553"	3.25
Purchase of services supported by documents other than VAT OR		
PAPERTONE CORPORATION	"P-400"	1,221.00
PAPERTONE CORPORATION	"P-401"	1,663.00
Total		**₱662,930.12**

As regards petitioner's reported input VAT on purchases of capital goods exceeding ₱1 million in the amount of ₱364,090.28, the results of the ICPA's examination are summarized below:

	Reference to ICPA Report[41]/ Exhibit No.	**Total Input VAT**	**Input VAT amortized during the quarter**
From previous period purchases:			
3rd quarter of CY 2009	*Annex 13* (based on CTA Decisions on Case Nos. 8342, 8402, 8443)	₱ 1,689,937.52	₱ 22,639.89
4th quarter of CY 2009		1,037,012.79	51,850.64
1st quarter of CY 2010		741,751.07	37,087.55
1st quarter of CY 2011	*Annex 10* (Exhibits "P-711" to "P-717")	261,314.57	16,332.16
1st quarter of CY 2013	*Annex 11* (Exhibits "P-718" to "P-753")	254,666.91	15,916.68
Subtotal		**₱3,984,682.86**	**₱143,826.92**
From current quarter purchases (3rd quarter of CY 2013):[42]	*Annexes 14 & 15* (Exhibits "P-671" to "P-708")		

[41] Exhibit "P-14", Division Docket (CTA Case No. 9154) Vol. 5, pp. 2250 to 2252 and 2254 to 2261.

[42] The total amortized input VAT of ₱11,376.60 is gleaned from Annex 12 (last line item) of ICPA Report (Division Docket (CTA Case No. 9154) – Vol. 5, p. 2253) and the amortized input VAT of ₱3,120.54 and ₱8,256.06 were computed using this formula: Total Input VAT ÷ 48 months (useful life) x 3 months (covered by the period of claim).

Purchase of capital goods exceeding 1Million with properly supported invoices	*Annex 15-a*	₱ 49,928.59	₱ 3,120.54
Purchase of capital goods exceeding 1Million supported by VAT REG TIN Invoices with date not within the quarter of claim	*Annex 15-b*	132,096.94	8,256.06
subtotal		**₱ 182,025.53**	**₱ 11,376.60**
Total		**₱4,166,708.39**	**₱155,203.52**

At the outset, the unaccounted difference of ₱208,886.76 between the amortized input VAT of ₱364,090.28 per VAT return and the amortized input VAT of ₱155,203.52, as accounted by ICPA, shall be disallowed from the claim.

Meanwhile, out of the ₱155,203.52 amortized input VAT accounted by the ICPA, only the amounts of ₱16,332.16 and ₱15,916.68 pertaining to purchases from previous periods (1st quarter of CYs 2011 and 2013), and ₱3,120.54 pertaining to purchases during the 3rd quarter of CY 2013, are valid tax credits being duly supported by VAT invoices.

The remaining amortized input VAT from previous period purchases (3rd and 4th quarters of CY 2009 and 1st quarter of CY 2010) in the amounts of ₱22,639.89, ₱51,850.64 and ₱37,087.55, or a total of ₱111,578.08, which were based merely on the related previous CTA Decisions, shall be disallowed for lack of evidentiary support. Courts are not authorized to take judicial notice of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been tried or are actually pending before the same judge.[43]

Furthermore, the amortized input VAT of ₱8,256.06 from purchases during the 3rd quarter of CY 2013 is also a proper disallowance being supported by VAT invoices dated outside the period of claim, as aptly found by the ICPA.

In sum, out of the total reported input VAT of ₱29,981,910.77, only the amount of ₱21,433,670.06, as computed below, represents petitioner's valid input VAT due or paid for the 3rd quarter of CY 2013, in compliance with the *seventh* requisite:

[43] *Pilipinas Shell Petroleum Corporation v. Commissioner of Customs*, G.R. No. 195876, December 5, 2016.

Total Input VAT per Quarterly VAT Return			₱ 29,981,910.77
Less: Disallowances			
On current Input VAT			
Per ICPA findings	₱7,556,589.69		
Per Court's further verification	662,930.12	₱8,219,519.81	
On amortized Input VAT			
Unaccounted/Unsupported Difference	₱ 208,886.76		
Input VAT from previous period purchases verified based only on CTA's previous Decisions without actual supporting documents	111,578.08		
Input VAT from current purchases not dated within the period of claim	8,256.06	328,720.90	8,548,240.71
Valid Input VAT			**₱21,433,670.06**

In view of the existence of both zero-rated or effectively zero-rated sales and taxable sales, the valid input VAT of ₱21,433,670.06 shall be proportionately allocated on the basis of sales volume.

To reiterate, the *eighth* requisite is to the effect that the input VAT claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.

For the subject period of claim, petitioner reported zero-rated sales and taxable sales subject to 12% VAT, in the following amounts:[44]

Vatable Sales	₱ 7,733,505.67
Zero-Rated Sales	1,931,914,361.46
Total Sales	**₱1,939,647,867.13**

Since petitioner's input VAT cannot be directly or entirely attributed to any of the transactions, the valid input VAT of ₱21,433,670.06 shall be allocated proportionately on the basis of the volume of its total sales, thus:

[44] Exhibit "P-3", Lines 15A, 17 and 19A, Division Docket (CTA Case No. 9154) – Vol. 5, p. 2362.

Total Vatable Sales for the period	₱ 7,733,505.67
Divided by the Total Sales for the period	1,939,647,867.13
Multiplied by Total Valid Input VAT for the period	21,433,670.06
Valid Input VAT Allocated to Total Vatable Sales	**₱ 85,457.47**

Total Zero-Rated Sales for the period	₱1,931,914,361.46
Divided by the Total Sales for the period	1,939,647,867.13
Multiplied by Total Valid Input VAT for the period	21,433,670.06
Valid Input VAT Allocated to Total Zero-Rated Sales	**₱ 21,348,212.58**

Thus, with regard to petitioner's compliance with the *eighth* requisite, only the amount of ₱21,348,212.58 represents its valid input VAT attributable to total zero-rated sales for the 3rd quarter of CY 2013.

The subject input taxes have not been applied against output taxes during and in the succeeding quarters.

Having established that petitioner had valid input VAT attributable to its zero-rated sales, we now proceed to determine the *ninth* requisite of Section 112(A) of the NIRC of 1997, as amended, *i.e., the input taxes have not been applied against output taxes during and in the succeeding quarters*. This must be read and applied in conjunction with Section 110 (B) thereof which reads as follow:

> "SECTION 110. Tax Credits. –
>
> (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, however, That any input tax attributable to zero-rated sale 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."

In the recent case of *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) vs. Commissioner of Internal Revenue*[45] the Supreme Court interpreted the above-mentioned provisions in this wise:

> "It must be stressed that the taxpayer can charge its input tax only against its output tax. The taxpayer

[45] G.R. No. 215159, July 5, 2022.

cannot ask for a refund of or credit against its other internal revenue tax liabilities for the "excess" input tax because the tax is not an excessively collected tax under Section 229 of the Tax Code. And, even if the "excess" input tax is in fact "excessively" collected, the person who can file the judicial claim for refund is the person legally liable to pay the input tax, not the person to whom the tax was passed on as part of the purchase price. The taxpayer will be entitled to the refund or tax credit of the "excess" and unused input tax only when its VAT registration is cancelled.

This rule, however, is not absolute. Sections 110 (B) and 112 (A) of the Tax Code read in part below:

> Section. 110. Tax Credits. – x x x
>
> (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, 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: x x x

Thus, **the input tax attributable to zero-rated sales may, at the option of the VAT-registered taxpayer, be: (1) charged against output tax from**

> **regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety. It must be stressed that the remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative. Furthermore, the option is vested with the taxpayer-claimant. It goes without saying that the CTA, and even the Supreme Court, may not, on its own, deduct the input tax attributable to zero-rated sales from the output tax derived from the regular twelve percent (12%) VAT-able sales first and use the resultant amount as the basis in computing the allowable amount for refund**. The courts cannot condition the refund of input taxes allocable to zero-rated sales on the existence of "excess" creditable input taxes, which includes the input taxes carried over from the previous periods, from the output taxes. These procedures find no basis in law and jurisprudence." (*Emphasis added)*

Based on the foregoing pronouncement, the Supreme Court laid down that in computing the refundable amount due, the taxpayer-claimant has two options whether the input tax attributable to zero-rated sales: 1) be charged from the regular 12% VATable sales, and any unutilized or excess input tax may be claimed for refund or tax credit; or 2) be issued for refund or tax credit of the input tax attributable to zero-rated sales in its entirety. The option to choose is vested with the taxpayer and not to the courts.

Applying the foregoing, records show that petitioner chose the ***first*** option, *i.e.,* that the input tax attributable to zero-rated be charged from the regular 12% VATable sales, based on its allegations in its Petition for Review,[46] Memorandum[47] and as confirmed in its Quarterly VAT Return for the 3rd quarter of CY 2013.[48] Petitioner declared a total input VAT of ₱29,981,910.77, out of which the amount of ₱28,938,050.29 is the subject of the claim for refund, computed below:

Input Tax Deferred on Capital Goods Exceeding ₱1Million from Previous Quarter	₱ 1,488,706.03

/rb

[46] Par. 5, Petition for Review, Division Docket (CTA Case No. 9154) – Vol. 1, pp. 10 to 16, at p. 12.
[47] Par. 7, Memorandum, Division Docket (CTA Case No. 9154) – Vol. 8, pp. 3923 to 3945, at p. 3925.
[48] Exhibit "P-3", Docket – Vol. 5, pp. 2362 to 2363.

Add: Input Tax on Purchase of Capital Goods exceeding ₱1Million	182,025.53
Less: Input Tax on Purchases of Capital Goods exceeding ₱1Million deferred for the succeeding period	1,306,641.28
Amortized Input Tax for the period	**₱ 364,090.28**
Current Input Taxes:	
On Purchase of Capital Goods not exceeding ₱1Million	₱ 205,098.03
On Domestic Purchases of Goods Other than Capital Goods	144,210.40
On Domestic Purchase of Services	28,759,080.71
On Services Rendered by Non-residents	509,431.35
Total Current Input Taxes	**₱ 29,617,820.49**
Total Input Taxes for the period	**₱ 29,981,910.77**
Less: Output Tax	928,020.68
Excess Input Taxes for the period	**₱ 29,053,890.09**
Divided by Total Sales	1,939,647,867.13
Multiplied by zero-rated sales	1,931,914,361.46
Input VAT claimed for refund	**₱ 28,938,050.29**

For the 3rd quarter of CY 2013, petitioner had output VAT liability amounting to ₱928,020.68.[49]

Considering that petitioner's valid input VAT allocated to total vatable sales, in the amount of ₱85,457.47, is not enough to cover the output VAT liability for the said sales, in the amount of ₱928,020.68, the valid input VAT allocated to total zero-rated sales, in the amount of ₱21,348,212.58, shall then be utilized against the remaining output VAT due in the amount of ₱842,563.21, resulting to an excess input VAT allocated to total zero-rated sales in the amount of ₱20,505,649.37, as computed below:

Output VAT due per Quarterly VAT Return	₱ 928,020.68
Less: Valid Input VAT allocated to Vatable Sales	85,457.47
Output VAT still due	**₱ 842,563.21**
Valid Input VAT allocated to Total Zero-Rated Sales	₱ 21,348,212.58
Less: Output VAT still due	842,563.21
Excess Input VAT Allocated to Total Zero-Rated Sales	**₱20,505,649.37**

Consequently, only the remaining input VAT of ₱20,505,649.37 can be attributed to the entire zero-rated sales of ₱1,931,914,361.46 and only the excess input VAT of ₱14,619,389.11 is attributable to the valid zero-rated sales of ₱1,337,347,640.67, computed as follows:

Excess Input VAT Allocated to Total Zero-Rated Sales	₱ 20,505,649.37
Divided by the Total Zero-Rated Sales	1,931,914,361.46
Multiplied by the Valid Zero-Rated Sales	1,377,347,640.67
Excess Input VAT Attributable to Valid Zero-Rated Sales	**₱ 14,619,389.11**

[49] Exhibit "P-3", Line 15B, Docket – Vol. 5, p. 2362.

Moreover, although the claimed amount of ₱28,938,050.29 was carried-over by petitioner in its succeeding Quarterly VAT Returns,[50] the same remained unutilized until it was deducted as "VAT Refund/TCC claimed"[51] in its Amended Quarterly VAT Return for the 2nd quarter of CY 2015. Accordingly, the subject claim no longer formed part of the excess input VAT of ₱153,420,123.36[52] as of the end of the 2nd quarter of 2015, to be carried over to the succeeding quarters. Such being the case, the excess valid input VAT of ₱14,619,389.11 was not utilized or applied against any output tax liability during the 3rd quarter of CY 2013 and in the succeeding quarters.

In fine, petitioner was able to satisfy the *ninth* requisite and has sufficiently proven its entitlement to the refund or issuance of TCC in the amount of ₱14,619,389.11, representing excess and unutilized input VAT attributable to its zero-rated sales for the 3rd quarter of CY 2013.

WHEREFORE, in consideration of the foregoing findings and discussions, the instant *Petition for Review* is **PARTIALLY GRANTED.** Accordingly, the dispositive portion of the Court's Decision dated October 4, 2019 is hereby **MODIFIED** to read as follows:

> "**WHEREFORE**, in light of the foregoing consideration, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱14,619,389.11**, representing petitioner's excess and unutilized input VAT attributable to its zero-rated sales for the 3rd quarter of CY 2013."
>
> **SO ORDERED**."

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[50] Exhibits "P-3.2", "P-3.3", "P-3.6", "P-3.8", "P-3.10", "P-3.12", "P-3.14", Division Docket (CTA Case No. 9154) – Vol. 5, pp. 2366 to 2391.
[51] Exhibit "P-3.14", Line 23D, Docket – Vol. 5, p. 2391.
[52] Exhibit "P-3.14", Line 29, Docket – Vol. 5, p. 2391.

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERLINDA P. UY
Associate Justice
Chairperson, Special 3rd Division

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 Amended 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