REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

*Third Division*

**AIG SHARED SERVICES CORPORATION (PHILIPPINES)** ***[Formerly: CHARTIS TECHNOLOGY OPERATIONS MANAGEMENT CORPORATION (PHILIPPINES)],***
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 9351**

Members:

**UY,** *Chairperson*
**RINGPIS-LIBAN,** *and*
**MODESTO-SAN PEDRO,** *JJ.*

Promulgated:
DEC 0 2 2020
3:46 p.m.

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# DECISION

***RINGPIS-LIBAN, J.:***

## THE CASE

This *Petition for Review* prays that the Court grant petitioner's application for value-added tax (VAT) refund/tax credit and order respondent to refund/issue a tax credit certificate (TCC) in favor of petitioner in the amount of ₱9,908,662.44, representing excess and unutilized input VAT paid for the short period December 1 to 31, 2013.[1]

## THE PARTIES

Petitioner AIG Shared Services Corporation (Philippines) *[Formerly: Chartis Technology and Operations Management Corporation (Philippines)]* is a foreign corporation duly registered with and authorized by the Securities and Exchange

[1] Pre-Trial Order dated June 7, 2017, Docket – Vol. 1, p. 385.

Commission (SEC) under Amended SEC License No. FM00000152 to operate as a Regional Operating Headquarters ("ROHQ") in the Philippines.[2] It has been a VAT-registered entity since September 13, 1977 to the present, as shown by Bureau of Internal Revenue (BIR) Certificate of Registration No. OCN8RC0000059749.[3]

Respondent is the Commissioner of the BIR, presently in the person of the Honorable Caesar R. Dulay, who holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[4] He is vested with the power to decide tax cases, including claims for refunds and/or tax credits pursuant to Section 4 of the National Internal Revenue Code (NIRC) of 1997, as amended.[5]

## THE FACTS OF THE CASE

On December 18, 2015, petitioner filed its administrative application for refund/tax credit of its excess and unutilized input VAT for the Short Period December 1 to 31, 2013.[6]

Petitioner then filed the instant *Petition for Review* on May 16, 2016.[7]

On October 6, 2016, respondent filed his *Answer*,[8] interposing the following special and affirmative defenses, to wit:

> "**SPECIAL AND AFFIRMATIVE DEFENSES**
>
> 7. He reiterates and repleads the preceding paragraphs of this Answer as part his Special and Affirmative Defenses;
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> 8. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;
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> 9. Petitioner's claim for refund or issuance of tax credit certificate in the amount of **Php9,908,662.44**, allegedly representing its excess and unutilized input VAT arising from its domestic purchases of goods and services attributable to its zero-rated sales of services for the Short Period covering December 1, 2013 to December 31, 2013 evidently failed to comply with the substantiation requirements prescribed under Revenue

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[2] Par. 1.1, Stipulation of Facts, *Joint Stipulation of Facts and Issue* (JSFI), Docket – Vol. 1, p. 363.
[3] Par. 1.2, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 363.
[4] Par. 1.3, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 364.
[5] Par. 1.4, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 364.
[6] Pars. 1.5 and 1.6, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 364.
[7] Docket – Vol. 1, pp. 10 to 21; Par. 1.8, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 364.
[8] Docket – Vol. 1, pp. 180 to 183.

Regulations No. 16-2005 in relation to Section 113 and 237 of the 1997 Tax Code, as well as the conditions/requirements prescribed under Section 112(A)(C)(D) of the 1997 Tax Code;

10. In cases of claims for tax refund/credit, the burden of proof is upon herein petitioner to establish its right to the claimed refund and failure to adduce sufficient proof is fatal to its claim;

11. Petitioner's sales of services to its alleged clients/affiliates doing business outside the Philippines does not qualify as zero-rate VAT under Section 108 (B)(2) of the 1997 Tax Code;

12. The amount of the subject claim for refund/tax credit of petitioner does not pertain in full to its input VAT attributable to its zero-rated sales of services for the Short Period covering December 1, 2013 to December 31, 2013;

13. Claims for refund are construed strictly against herein petitioner for the same partakes of the nature of exemption from taxation (***Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and as such, they are looked upon with disfavor (***Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)***. Following the latin principle, ***Ei incumbit probation qui dicit, no qui negat*** (He who asserts, not he who denies, must prove), petitioner has the burden to prove with the required quantum of evidence of its entitlement to the claimed refund, and the court will render its decision on the basis of facts proven and the evidence presented applying the law and jurisprudence applicable to the issue under consideration, even if no controverting evidence was ever presented by the respondent."

Respondent transmitted the *BIR Records* of this case on January 25, 2017.[9]

The Court initially set this case for Pre-Trial Conference on February 14, 2017,[10] but was reset to,[11] and held on, May 9, 2017.[12] *Respondent's Pre-Trial Brief* was filed on February 5, 2017,[13] while petitioner's *Pre-Trial Brief* was submitted on February 9, 2017.[14]

[9] Transmittal letter dated January 24, 2017, Docket – Vol. 1, p. 198.
[10] *Notice of Pre-Trial Conference* dated October 24, 2016, Docket – Vol. 1, pp. 185 to 186.
[11] Resolution dated March 1, 2017, Docket – Vol. 1, pp. 353 to 354.
[12] Minutes of the hearing held on, and Order dated, May 9, 2017, Docket – Vol. 1, pp. 360 to 362, respectively.
[13] Docket – Vol. 1, pp. 207 to 209.
[14] Docket – Vol. 1, pp. 213 to 247.

The parties submitted their *Joint Stipulation of Facts and Issue* on May 24, 2017.[15] In the Pre-Trial Order on June 7, 2017,[16] the Court deemed the termination of the Pre-Trial Conference.

Thereafter, trial proceeded.

During trial, petitioner presented testimonial and documentary evidence. As part of its testimonial evidence, petitioner offered the testimonies of the following individuals, namely: (1) Ms. Glaiza A. Baroro,[17] petitioner's Accountant III; (2) Atty. Geronimo Randy Recinto,[18] petitioner's General Counsel; and (3) Mr. Edward L. Roguel,[19] the Court-commissioned Independent Certified Public Accountant (ICPA).[20]

The *Report* of the ICPA was submitted to the Court on August 24, 2017.[21]

On April 23, 2018, petitioner filed its *Formal Offer of Evidence*.[22] Respondent, however, failed to file his comment thereon.[23] In the Resolution dated November 5, 2018,[24] the Court admitted petitioner's Exhibits, but denied admission to the following:

1. Exhibits "P-71", "P-72", "P-73", "P-74", "P-75", "P-72", "P-80", "P-86", "P-90", "P-95", "P-108", "P-113", and "P-117", for failure to present the originals for comparison;

2. Exhibits "P-75-a", "P-77-a", and "P-89", for failure to present the originals for comparison and for failure of the exhibits formally offered and identified to correspond with the documents actually marked;

3. Exhibits "P-3", "P-43-a", "P-75-d", "P-76-e", "P-78-a", "P-78-b", "P-78-c", "P-78-d", "P-84-c", "P-88-b", "P-106-c", "P-

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[15] Docket – Vol. 1, pp. 363 to 382.
[16] Docket – Vol. 1, pp. 385 to 406.
[17] Exhibit "P-119", Docket – Vol. 1, pp. 248 to 296; Minutes of the hearing held on August 22, 2017, Docket – Vol. 1, p. 467.
[18] Exhibit "P-120", Docket – Vol. 1, pp. 298 to 336; Exhibit "P-120-b", Docket – Vol. 2, pp. 516 to 519; Minutes of the hearing held on, and Order dated, September 19, 2017, Docket – Vol. 2, pp. 522 to 524; Minutes of the hearing held on, and Order dated, April 2, 2018, Docket – Vol. 2, pp. 553 to 554.
[19] Exhibit "P-122", Docket – Vol. 2, pp. 528 to 535; Minutes of the hearing held on, and Order dated, December 5, 2017, Docket – Vol. 2, pp. 551 to 552.
[20] *Oath of Commission* dated July 25, 2017, Docket – Vol. 1, p. 459; Minutes of the hearing held on, and Order dated, July 25, 2017, Docket – Vol. 1, pp. 458 and 466, respectively.
[21] Docket – Vol. I, p. 468; Exhibit "P-121", Docket – Vol. I, pp. 469 to 509.
[22] Docket – Vol. 2, pp. 555 to 593.
[23] Records Verification Report dated May 18, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. 5, p. 2089.
[24] Docket – Vol. 5, pp. 3008 to 3014.

106-d", "P-106-e", "P-110", "P-111-a", "P-114-a", and "P-118", for failure of the exhibits formally offered and identified to correspond with the documents actually marked.

As a consequence, petitioner filed on November 19, 2018 a *Motion [(a) For Reconsideration of the Resolution dated 05 November 2018; and (b) To Recall Witnesses]*,[25] praying that the Court (a) allow petitioner to recall its witnesses, Atty. Recinto and Ms. Baroro, to explain and clarify and/or supplement their testimony, and to submit their respective Supplemental Sworn Statements at least five (5) days before the hearing date; and (b) allow petitioner to file an Amended/Supplemental Formal Offer of Evidence. Respondent failed to file his comment on petitioner's *Motion*.[26] In the Resolution dated February 6, 2019,[27] the Court granted petitioner's *Motion*; ordered petitioner to submit the respective Supplemental Sworn Statements of the recalled witnesses, Atty. Recinto and Ms. Baroro, at least five days before the hearing date; and suspended the initial presentation of evidence for respondent until further notice.

Petitioner then recalled to the witness stand Ms. Baroro[28] and Atty. Recinto.[29]

Thereafter, petitioner filed its *Supplemental Formal Offer of Evidence* on June 6, 2019.[30] Respondent filed his *Comment/Opposition (Petitioner's Supplemental Formal Offer of Evidence)* on June 17, 2019.[31] In the Resolution dated August 7, 2019,[32] the Court admitted Exhibits "P-3", "P-43-a", "P-75-d", "P-76-e", "P-78-a", "P-78-b", "P-78-c", "P-78-d", "P-84-c", "P-88-b", "P-106-c", "P-106-d", "P-106-e", "P-110", "P-111-a", "P-114-a", "P-118", "P-119-b", "P-119-b-1", "P-120-d", and "P-120-d-1", but *still* denied the admission of Exhibits "P-71", "P-72", "P-73", "P-74", "P-75", "P-75-a", "P-76", "P-77-a", "P-80", "P-86", "P-89", "P-90", "P-95", "P-108", "P-113", and "P-117", for failure to present the originals for comparison, considering that the requisites for the admission of secondary evidence were not complied with.

[25] Docket – Vol. 5, pp. 3017 to 3023.
[26] Records Verification Report dated December 19, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. 5, p. 3027.
[27] Docket – Vol. 5, pp. 3029 to 3030.
[28] Exhibit "P-119-b", Docket – Vol. 5, pp. 3035 to 3041; Minutes of the hearing held on, and Order dated, March 5, 2019, Docket – Vol. 5, pp. 3053 and 3054 to 3055, respectively; Minutes of the hearing held on, and Order dated, May 21, 2019, Docket – Vol. 5, pp. 3056 and 3057 to 3058, respectively.
[29] Exhibit "P-120-d", Docket – Vol. 5, pp. 3043 to 3051; Minutes of the hearing held on, and Order dated, March 5, 2019, Docket – Vol. 5, pp. 3053 and 3054 to 3055, respectively; Minutes of the hearing held on, and Order dated, May 21, 2019, Docket – Vol. 5, pp. 3056 and 3057 to 3058, respectively.
[30] Docket – Vol. 5, pp. 3059 to 3070.
[31] Docket – Vol. 5, pp. 3073 to 3074.
[32] Docket – Vol. 5, pp. 3077 to 3081.

On August 23, 2019, petitioner filed a *Motion for Reconsideration (Re: Resolution dated 07 August 2019)*.[33] A *Comment/Opposition (To Petitioner's Motion for Reconsideration)* was then filed by respondent on August 27, 2019.[34] In the Resolution dated October 4, 2019,[35] the Court denied the said *Motion for Reconsideration* for lack of merit.[36]

For his part, respondent likewise presented documentary and testimonial evidence. His lone witness is Ms. Cecille V. Uy,[37] a Revenue Officer of the BIR.

Respondent filed his *Formal Offer of Evidence* on September 6, 2019.[38] Petitioner then filed its *Comment (Re: Formal Offer of Evidence for the Respondent dated 06 September 2019)* on September 23, 2019.[39]

Subsequently, the Court, in the Resolution dated October 24, 2019,[40] admitted respondent's Exhibits, and gave the parties a period of thirty (30) days from receipt thereof, within which to file their memoranda.

On November 29, 2019, petitioner filed its *Memorandum*;[41] while respondent failed to file his memorandum.[42]

This case was deemed submitted for decision on December 26, 2019.[43]

## THE ISSUE RAISED BY THE PARTIES

The parties stipulated the following issue for the Court's resolution, to wit:

> "...*Whether or not Petitioner is entitled to a refund or the issuance of a tax credit certificate for its unutilized/excess input VAT payments for the Short Period of December 2013, amounting to a total of NINE MILLION NINE HUNDRED EIGHT THOUSAND SIX HUNDRED*

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[33] Docket – Vol. 5, pp. 3085 to 3089.
[34] Docket – Vol. 5, pp. 3097 to 3100.
[35] Docket – Vol. 5, pp. 3116 to 3119.
[36] The dispositive of the Resolution dated October 4, 2019 actually states "respondent's *Motion for Reconsideration (Re: Resolution dated 07 August 2019).*"
[37] Exhibit "R-5", Docket – Vol. 5, pp. 2092 to 2095; Minutes of the hearing held on, and Order dated, August 13, 2019, Docket – Vol. 5, pp. 3082 to 3084.
[38] Docket – Vol. 5, pp. 3104 to 3108.
[39] Docket – Vol. 5, pp. 3111 to 3113.
[40] Docket – Vol. 5, pp. 3121 to 3122.
[41] Docket – Vol. 5, pp. 3123 to 3141.
[42] Records Verification dated December 19, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. 5, p. 3144.
[43] Resolution dated December, 2019, Docket – Vol. 5, p. 3146.

*SIXTY TWO PESOS AND FORTY-FOUR CENTAVOS (P9,908,662.44).*"[44]

## THE ARGUMENTS OF THE PARTIES

Petitioner contends that it is entitled to its claim for refund/issuance of TCC for its excess and unutilized input VAT for the Short Period December 1 to 31, 2013. According to petitioner, it has met the requirements under Section 112(A) of the NIRC, as explained in *Luzon Hydro Corporation vs. Commissioner of Internal Revenue.*[45] Moreover, petitioner maintains that it has discharged its burden of proving its entitlement to the refund/tax credit it seeks by providing this Court with evidence that fully support its claim.

On the other hand, respondent argues that petitioner's claim for refund or issuance of tax credit certificate allegedly representing its excess and unutilized input VAT arising from its domestic purchases of goods and services attributable to its zero-rated sales of services for the Short Period covering December 1, 2013 to December 31, 2013 evidently failed to comply with the substantiation requirements prescribed under Revenue Regulations No. 16-2005 in relation to Section 113 and 237 of the NIRC of 1997, as well as the conditions/requirements prescribed under Section 112(A)(C)(D) of the same law.

Respondent also contends that petitioner has the burden to prove with the required quantum of evidence its entitlement to the claimed refund, and the Court will render its decision on the basis of facts proven and the evidence presented, applying the law and jurisprudence applicable to the issue under consideration, even if no controverting evidence was ever presented by respondent.

## THE RULING OF THE COURT

This Court partially grants the instant *Petition for Review.*

***Requisites for the grant of the refund or issuance of TCC under the law.***

Section 112 (A) and (C) of the NIRC of 1997, as amended by Republic Act (RA) No. 9337,[46] provides:

[44] Par. 2, Issue, JSFI, Docket – Vol. 1, p. 364.
[45] G.R. No. 188620, November 13, 2013.
[46] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

"SEC. 112. *Refunds or Tax Credits of Input Tax.* —

(A) *Zero-rated or Effectively Zero-rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

xxx xxx xxx

(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."

Pursuant to the foregoing provisions, jurisprudence has laid down certain requisites which must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT. Said requisites are classified into certain categories, to wit:

*Timeliness of the filing of the administrative and judicial claims:*

1. the claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[47]
2. in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 120 days from the date of submission of complete documents in support of the application, the judicial claim must be filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[48]

*Taxpayer's registration with the BIR:*

3. the taxpayer is a VAT-registered person;[49]

*Taxpayer's output VAT:*

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[50]

5. for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[51]

*Taxpayer's input VAT being refunded:*

6. the input taxes are not transitional input taxes;[52]

7. the input taxes are due or paid;[53]

8. 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

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[47] *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.

[48] *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.

[49] *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.

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] *Id.*

attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[54]

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[55]

***Petitioner's administrative and judicial claims were timely made.***

The *first* requisite pertains to the filing of the refund claim for tax credit or refund of input VAT before the BIR, within two (2) years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the Short Period December 2013, which closed on December 31, 2013. Counting two years from the said date, petitioner had until December 31, 2015, within which to file its administrative claim for refund or issuance of TCC. Thus, petitioner's administrative claim for the said period was seasonably filed on December 18, 2015.[56]

The *second* requisite is to the effect that the judicial claim must have been filed within thirty (30) days from receipt of respondent's decision or after the expiration of the 120-day period under Section 112(C) of the NIRC of 1997, as amended. Considering that there is no indication that respondent issued a decision relative to petitioner's administrative claim, the determination of the 120+30-day period, as applied to this case, is shown as follows:

| Date of Filing of Administrative Claim | End of 120 days for the CIR to decide the claim | End of 30 days from expiration of the 120 days |
|---|---|---|
| December 18, 2015 | April 16, 2016 | May 16, 2016 |

Considering that the instant *Petition for Review* was filed on May 16, 2016,[57] petitioner's judicial claim was likewise seasonably filed.

Such being the case, petitioner fulfilled the above-stated *first* and *second* requisites.

[54] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue,* supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue,* supra.
[55] *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.
[56] Pars. 1.5 and 1.6, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 364.
[57] Docket – Vol. 1, pp. 10 to 21; Par. 1.8, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 364.

***Petitioner is a VAT-registered taxpayer.***

It is undisputed that petitioner is a VAT-registered entity.[58] Thus, the *third* requisite is likewise complied with.

***Petitioner had zero-rated sales or effectively zero-rated sales during the Short Period December 1 to 31, 2013.***

The *fourth* and *fifth* requisites respectively require that the taxpayer be engaged in zero-rated or effectively zero-rated sales, and for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2) of the NIRC of 1997, as amended by RA No. 9337, the acceptable foreign currency exchange proceeds must have been duly accounted for in accordance with BSP rules and regulations.

Petitioner avers that as a Regional Operating Headquarters (ROHQ), it renders qualifying services, including business planning and coordination, corporate finance advisory, training and personnel management, technical support, and data processing and communication to its affiliates in the Asia-Pacific region and other foreign markets; that, within the Short Period of December 2013, it rendered such services to forty-eight (48) non-resident foreign affiliate-clients, who are all part of the American International Group. Petitioner allegedly rendered these services to its foreign affiliate-clients pursuant to Master Service Agreements.[59]

Moreover, petitioner posits that since the services it rendered to its non-resident foreign clients doing business outside the Philippines were paid for in US Dollars (USD) inwardly remitted to the Philiipines through petitioner's account with EastWest Banking Corporation and accounted for in accordance with the rules and regulations of the BSP, the same are classified as VAT zero-rated sales.

Section 108(B)(2) of the NIRC of 1997, as amended, states that:

> "SEC. 108.- *Value-added Tax on Sale of Services and Use or Lease of Properties.*-
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

[58] Par. 1.2, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 363.
[59] Petitioner's Memorandum, par. 45, Docket – Vol. 5, p. 3135.

(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)**;" *(Emphasis added)*

Based on the foregoing provision, certain essential elements must be present for a sale or supply of services to be subject to the VAT rate of zero percent (0%), under Section 108(B)(2) of the NIRC of 1997, as amended to wit:

1. The services fall under any of the categories under Section 108(B)(2),[60] or simply, the services rendered should be other than "*processing, manufacturing or repacking goods*";[61]

2. The recipient of the services is a foreign corporation, and the aforesaid 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;[62]

3. The services must be performed in the Philippines[63] by a VAT-registered person; and

4. The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[64]

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[60] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), supra.*

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

[62] *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, 2002.

[63] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch),* supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch),* supra.

[64] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch),* G.R. No. 152609, June 29, 2005.

Petitioner satisfactorily met the *first* essential element. Records show that petitioner is an ROHQ licensed 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.[65]

Pursuant to the service agreements[66] entered into between petitioner and its client-affiliates, the services provided by petitioner for the subject period of claim, included among others, information technology (IT) services, administrative and other certain services to assist the AIG group of companies. These services clearly fall within the scope of *"services other than processing, manufacturing or repacking of goods"*.

Within the Short Period 2013, petitioner rendered services to the following entities:[67]

| | |
|---|---|
| 1 | AIG Insurance Company of Canada |
| 2 | AIG Australia Limited |
| 3 | AIG Claims Inc |
| 4 | AIG Employee Services, Inc. |
| 5 | AIG Europe Limited |
| 6 | AIG Europe Limited – Belgium |
| 7 | AIG Europe Limited – Czech Republic Branch |
| 8 | AIG Europe Limited – Denmark |
| 9 | AIG Europe Limited – Direktion Fur Deutschland |
| 10 | AIG Europe Limited – France |
| 11 | AIG Europe Limited – Ireland |
| 12 | AIG Europe Limited – Italy |
| 13 | AIG Europe Limited – Netherlands |
| 14 | AIG Europe Limited – Poland |
| 15 | AIG Europe Limited – Switzerland Branch |
| 16 | AIG Europe Limited – Norway |
| 17 | AIG Europe Limited – Portugal Branch |
| 18 | AIG Europe Limited – Finland |
| 19 | AIG Europe Limited – Georgia |
| 20 | AIG Global Services (Malaysia) Sdn Bhd |
| 21 | AIG Global Services Inc |
| 22 | AIG Insurance Company CJSC (AIG Russia) |
| 23 | AIG Insurance Hong Kong Limited |
| 24 | AIG Insurance Limited, Sri Lanka |
| 25 | AIG Japan Holdings Kabusihi Kaisha |
| 26 | AIG Korea Inc. |
| 27 | AIG Latin America |
| 28 | AIG Malaysia Insurance Berhad |
| 29 | AIG Mea Limited Oman Branch |
| 30 | AIG Property Casualty Global Services Inc. |
| 31 | AIG Property Casualty U.S. Inc. |
| 32 | AIG Seguros Colombia S.A. |
| 33 | AIG Shared Services Corp. – Ireland Branch |

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[65] Exhibits "P-3" and "P-9", Docket – Vol. 2, pp. 595 and 619, respectively.
[66] Exhibits "P-82", "P-83", "P-88", "P-93", and "P-106".
[67] Exhibit "P-20", Docket – Vol. II, p. 696.

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| 34 | AIG South Africa Ltd |
| 35 | AIG Travel Assist, Inc. |
| 36 | AIG Vietnam Insurance Company Limited |
| 37 | American Home Assurance Company (UAE Branch) |
| 38 | American Home New Zealand |
| 39 | American International Group KK |
| 40 | American International Group, Inc |
| 41 | Chartis New Hampshire Insurance Co, Pakistan Branc |
| 42 | Guam Insurance Adjusters Inc. |
| 43 | Lexington Insurance Company |
| 44 | National Union Fire Insurance Company |
| 45 | New Hampshire Insurance Thailand |
| 46 | PT AIG Insurance Indonesia |
| 47 | United Guaranty Corporation |
| 48 | United Guaranty Services Inc |

As for the *second* essential element, the Supreme Court, in the very recent case of *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*,[68] held:

> "For purposes of zero-rating under Section 108(B)(2) of the Tax Code, the claimant must establish the two components of a client's NRFC[69] status, *viz*.: (1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of both of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines.
>
> Such proof must be especially required from ROHQs such as DKS. That the law expressly authorizes ROHQs to render services to local and foreign affiliates alike only stresses the ROHQs burden to distinguish among their client's nationalities and actual places of business operations and establish that they are seeking refund or credit of input VAT only to the extent of their sales or services to foreign clients doing business outside the Philippines.
>
> **To recall, the CTA found that the SEC Certification of Non-Registration of Company and Authenticated Articles of Association and/or Certificates of Registration/Good Standing/Incorporation sufficiently established the NRFC status of 11 of DKS's affiliates clients.**
>
> **<u>The Court upholds these findings</u>.**
>
> The Court accords the CTA's factual findings with utmost respect, if not finality, because the Court recognizes that it has

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[68] G.R. No. 234445, July 15, 2020.
[69] That is, non-resident foreign corporation.

necessarily developed an expertise on tax matters. Significantly, both the CTA Division and CTA *En Banc* gave credence to the aforementioned documents as sufficient proof of NRFC status. The Court shall not disturb its findings without any showing of grave abuse of discretion considering that the members of the tax court are in the best position to analyze the documents presented by the parties.

**In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court *a quo's* findings. To the Court's mind, the SEC Certifications of Non-Registration show that their affiliates are foreign corporations. 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.**

Proof of the above-mentioned second component sets the present case apart from *Accenture, Inc. v. Commissioner of Internal Revenue*[70] and *Sitel Philippines Corp. v. Commissioner of Internal Revenue.*[71] In these cases, the claimants similarly presented SEC Certifications and client service agreements. **However, the Court consistently ruled that documents of this nature only establish the *first* component (*i.e.*, that the affiliate is foreign). The absence of any other competent evidence (*e.g.*, articles of association/certificates of incorporation) proving the *second* component (*i.e.*, that the affiliate is not doing business here in the Philippines) shall be fatal to a claim for credit or refund of excess input VAT attributable to zero-rated sales.**" *(Emphases and underscoring added)*

In the present case, petitioner presented the related Certifications of Non-Registration of Company issued by the Philippine Securities Exchange Commission (SEC), printed screenshots of foreign government websites and consularized certificates of foreign registration, in order to prove that its client-affiliates are non-resident foreign corporations doing business outside the Philippines, detailed as follows:

| Document | Exhibit |
|---|---|
| **SEC Certificate of Non-Registration of Company:** | |
| SEC Certificate of Non-Registration of AIG Insurance Company of Canada | "P-23" |
| SEC Certificate of Non-Registration of AIG Australia Limited | "P-24" |
| SEC Certificate of Non-Registration of AIG Claims, Inc. | "P-25" |
| SEC Certificate of Non-Registration of Chartis Claims, Inc. | "P-25-a" |
| SEC Certificate of Non-Registration of AIG Employee Services, Inc. | "P-26" |
| SEC Certificate of Non-Registration of AIG Europe Limited | "P-27" |

[70] 690 Phil. 679 (2012).
[71] 805 Phil. 464 (2017).

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| SEC Certificate of Non-Registration of Chartis Europe S.A. | "P-27-a" |
| SEC Certificate of Non-Registration of Chartis Europe S.A. – Belgium | "P-28" |
| SEC Certificate of Non-Registration of Chartis Europe S.A. Czech Republic | "P-29" |
| SEC Certificate of Non-Registration of Chartis Europe S.A. – Denmark | "P-30" |
| SEC Certificate of Non-Registration of Chartis Europe S.A. – Direktion Fur Deutschland | "P-31" |
| SEC Certificate of Non-Registration of AIG Europe Limited – France | "P-32" |
| SEC Certificate of Non-Registration of Chartis Europe S.A. – France | "P-32-a" |
| SEC Certificate of Non-Registration of AIG Europe Limited – Ireland | "P-33" |
| SEC Certificate of Non-Registration of AIG Europe Limited – Italy | "P-34" |
| SEC Certificate of Non-Registration of Chartis Europe S.A. – Italy | "P-34-a" |
| SEC Certificate of Non-Registration of Chartis Europe S.A. – Netherlands Branch | "P-35" |
| SEC Certificate of Non-Registration of Chartis Europe S.A. Poland | "P-36" |
| SEC Certificate of Non-Registration of Chartis Europe S.A. – Switzerland Branch | "P-37" |
| SEC Certificate of Non-Registration of Chartis Europe S.A. – Norway | "P-38" |
| SEC Certificate of Non-Registration of AIG Europe Limited – Portugal | "P-39" |
| SEC Certificate of Non-Registration of Chartis Europe S.A. – Portugal | "P-39-a" |
| SEC Certificate of Non-Registration of Chartis Europe S.A., Finland Branch | "P-40" |
| SEC Certificate of Non-Registration of AIG Europe Limited – Georgia | "P-41" |
| SEC Certificate of Non-Registration of AIG Global Services Malaysia | "P-42" |
| SEC Certificate of Non-Registration of AIG Global Services Inc. | "P-43" |
| SEC Certificate of Non-Registration of Chartis Global Services Inc. | "P-43-a" |
| SEC Certificate of Non-Registration of CJSC Chartis | "P-44" |
| SEC Certificate of Non-Registration of Chartis Insurance Hong Kong Limited | "P-45" |
| SEC Certificate of Non-Registration of Chartis Insurance Limited, Sri Lanka | "P-46" |
| SEC Certificate of Non-Registration of AIG Japan Holdings KK | "P-47" |
| SEC Certificate of Non-Registration of AIG Korea Inc. | "P-48" |
| SEC Certificate of Non-Registration of AIG Latin America | "P-49" |
| SEC Certificate of Non-Registration of AIG Malaysia Insurance Berhad | "P-50" |
| SEC Certificate of Non-Registration of Chartis Malaysia Insurance Berhad | "P-50-a" |
| SEC Certificate of Non-Registration of Chartis Memsa Insurance Co. Ltd. Oman Branch | "P-51" |
| SEC Certificate of Non-Registration of AIG Property Casualty Global Services Inc. | "P-52" |
| SEC Certificate of Non-Registration of AIG Property Casualty US Inc. | "P-53" |
| SEC Certificate of Non-Registration of Chartis US (Chartis US Insurance Company) | "P-53-a" |
| SEC Certificate of Non-Registration of AIG Seguros Colombia S.A. | "P-54" |
| SEC Certificate of Non-Registration of AIG Shared Services Corp. – Ireland Branch | "P-55" |
| SEC Certificate of Non-Registration of Chartis South Africa Limited | "P-56" |
| SEC Certificate of Non-Registration of AIG Travel Assist, Inc. | "P-57" |
| SEC Certificate of Non-Registration of AIG Vietnam Insurance Company Limited | "P-58" |
| SEC Certificate of Non-Registration of American Home Assurance Company (UAE Branch) | "P-59" |
| SEC Certificate of Non-Registration of American Home New Zealand | "P-60" |
| SEC Certificate of Non-Registration of American International Group KK | "P-61" |
| SEC Certificate of Non-Registration of American International Group, Inc. | "P-62" |
| SEC Certificate of Non-Registration of Chartis New Hampshire Insurance Co., Pakistan Branch | "P-63" |
| SEC Certificate of Non-Registration Guam Insurance Adjusters Inc. | "P-64" |
| SEC Certificate of Non-Registration of Lexington Insurance Company | "P-65" |
| SEC Certificate of Non-Registration of New Hampshire Insurance Thailand | "P-67" |
| SEC Certificate of Non-Registration of PT AIG Insurance Indonesia | "P-68" |
| SEC Certificate of Non-Registration of Chartis Insurance Indonesia | "P-68-a" |
| SEC Certificate of Non-Registration of United Guaranty Corporation | "P-69" |
| SEC Certificate of Non-Registration of United Guaranty Services Inc. | "P-70" |
| **Printed Screenshot** | |
| Screenshot of the website of the Autorité Des Marchés Financiers of Quebec showing the registration details of AIG Insurance Company of Canada | "P-71-a" |
| Screenshot of the website of the Australian Securities and Investments Commission showing the business registration details of AIG Australia Limited | "P-72-b" |
| Screenshot of the website of New York Department of State's Division of Corporations, State Records and UCC showing the business registration details of AIG Claims, Inc. | "P-73-b" |
| Screenshot of the website of New York Department of State's Division of Corporations, State Records and UCC showing the business registration details of AIG Employee Services, Inc. | "P-74-a" |
| Screenshot of the website of the Companies Registration Office of the Republic of Ireland | "P-75-e" |
| Screenshot of the website fo the BCE Public Search of Belgium showing the business details of AIG Europe Limited – Belgium | "P-76-e" |
| Screenshot of the website of the Financial Supervisory Authority of Romania showing the business registration | "P-77-d" |

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| details of AIG Europe Limited – Czech Republic | |
| Screenshot of the website of the Financial Supervisory Authority of Denmark showing the business address of AIG Europe Limited – Denmark | "P-78-d" |
| Screenshot of the website of the Company Register of Germany showing the business registration details of AIG Europe Limtied – Direktion Fur Deutschland | "P-79" |
| Screenshot of the website of the Registrar of France showing the business registration details of AIG Europe Limited – France | "P-80-b" |
| Screenshot of the website of the Companies Registration Office of Ireland showing the business details of AIG Europe Limited – Ireland | "P-81" |
| Screenshot of the website of the Italian Chamber of Commerce showing the business address of AIG Europe Limited – Italy | "P-82-c" |
| Screenshot of the website of the Chamber of Commerce of Netherlands showing the business registration details of AIG Europe Limited – Netherlands | "P-83-c" |
| Screenshot of the website of the Financial Supervisory Authority of Romania showing the business registration details of AIG Europe Limited – Poland | "P-84-c" |
| Screenshot of the website of the Federal Commercial Registry Office of Switzerland showing the business registration details of AIG Europe Limited – Switzerland | "P-85-a" |
| Screenshot of the website of the Financial Supervisory Authority of Norway showing the business details of AIG Europe Limited – Norway | "P-86-d" |
| Screenshot of the website of the Finnish Patent and Registration Office the business registration details of AIG Europe Limited – Finland | "P-88-d" |
| Screenshot of the Official Website of Malaysia Goods and Services Tax (GST) – Royal Malaysian Customs Department showing the business registration details of AIG Global Services (Malaysia) Sdn Bhd | "P-90-d" |
| Screenshot of the website of the New York Department of State's Division of Corporations, State Records and UCC showing the business registration details of AIG Global Services, Inc. | "P-91-a" |
| Screenshot of the website of the Federal Tax Service of Russia showing the business registration details of AIG Insurance Company CJSC | "P-92-a" |
| Screenshot of the website of the Companies Registry of the Government of the Hong Kong Special Administrative Region showing the business registration details of AIG Insurance Hong Kong Limited | "P-93-c" |
| Screenshot of the website of the Financial Services Agency of Japan showing the business registration details of AIG Japan Holdings | "P-95-a" |
| Screenshot of the website of the Financial Supervisory Service of Korea showing the business registration details of AIG Korea Inc. | "P-96-c" |
| Screenshot of the website of the Central Bank of Malaysia showing the business registration details of AIG Malaysia Insurance Berhad | "P-98-a" |
| Screenshot of the website of the Invest Easy Services of Oman showing the business registration details of AIG MEA Limited (Oman Branch) | "P-99-a" |
| Screenshot of the website of the New York Department of State's Division of Corporations showing the business registration details of AIG Property Casualty Global Services Inc. | "P-100-a" |
| Screenshot of the website of the New York Department of State's Division of Corporations, State Records and UCC showing the business registration of AIG Property Casualty US Inc. | "P-101-b" |
| Screenshot of the website of the Companies Registration Office of Ireland showing the business registration details of AIG Shared Services Corporation – Ireland Branch | "P-103" |
| Screenshot of the website of the Financial Services Board of South Africa showing the business registration details of AIG South Africa Ltd. | "P-104-a" |
| Screenshot of the website of the New York Department of State's Division of Corporations, State Records and UCC showing the business registration details of AIG Travel Assist, Inc. | "P-105" |
| Screenshot of the website of the Business Registration of Vietnam showing the registration details of AIG Vietnam Insurance Company Limited | "P-106-e" |
| Screenshot of the website of the Department of Economic Development of the Government of Dubai showing the business registration details of American Home Assurance Company, UAE | "P-107-a" |
| Screenshot of the website of the Companies Office of New Zealand showing the business registration details of American Home Assurance Company New Zealand | "P-108-c" |
| Screenshot of the website of the New York Department of State's Division of Corporations, State Records and UCC showing the business registration details of American International Group, Inc. | "P-110-a" |
| Screenshot of the website of the Company Law Division of the Securities and Exchange Commission of Pakistan showing the business registration details of Chartis New Hampshire Insurance Company, Pakistan Branch | "P-111-a" |
| Screenshot of the official website of the Guam Department of Revenue and Taxation indicating the business registration details of Guam Insurance Adjusters, Inc. | "P-112-a" |
| Screenshot of the website of the Consumer Affairs and Business Regulation of Massachusetts indicating the business registration details of Lexington Insurance Company | "P-113-b" |
| Screenshot of the website of the Department of State of Pennsylvania showing the business registration details of National Union Fire Insurance Company | "P-114-b" |
| Screenshot of the website of the Securities and Exchange Commission of Thailand showing the business | "P-115-b" |

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|---|---|
| address of New Hampshire Insurance Company – Thailand | |
| Screenshot of the website of the Ditjen Ahu of Indonesia showing the business address of PT AIG Insurance Indonesia | "P-116-e" |
| Screenshot of the website of the North Carolina Department of State showing the business registration details of United Guaranty Corporation | "P-117-a" |
| Screenshot of the website of the New York Department of State's Division of Corporations, State Records and UCC showing the business registration details of United Guaranty Services, Inc. | "P-118" |
| **Articles/Certificate of Incorporation/Registration and/or other similar documents:** | |
| Consularized Current Company Extract of AIG Australia Limited | "P-72-a" |
| Consularized Certificate of Incorporation of American International Adjustment Company | "P-73-a" |
| Consularized Draft Terms of Merger between Chartis Europe Limited and Chartis Europe S.A. | "P-75-b" |
| Consularized Articles of Association of Chartis Europe S.A. | "P-75-c" |
| Consularized Full Excerpt from Data of Corporate Legal Entity of AIG Europe Limited – Belgium as of 25 July until 12 January 2016 | "P-76-a" |
| Consularized Full Excerpt from Data of Corporate Legal Entity of AIG Europe Limited – Belgium as of 18 January 2003 until 12 January 2016 | "P-76-b" |
| Consularized Certificate for the Philippine Tax Authorities | "P-76-c" |
| Consularized Certificate for the Philippine Tax Authorities | "P-76-d" |
| Consularized tax registration certificate of AIG Europe Limited – Czech Republic | "P-77-b" |
| Consularized extract from the Commercial Register kept by the Municipal Court in Prague | "P-77-c" |
| Consularized extract from the Danish Business Authority showing the domicile and change of name of AIG Europe Limited – Denmark from Chartis Europe Limited Denmark | "P-78-a" |
| Consularized Certificate of Registration of AIG Europe Limited – Denmark | "P-78-b" |
| Consularized Certified Translation of the business information of AIG Europe Limited – Denmark | "P-78-c" |
| Consularized Extract from the Principal Registration in the Trade and Companies Register of France | "P-80-a" |
| Consularized Certificate of Registatration of Chartis Europe S.A. – Italy issued by the Chamber of Commerce Milan | "P-82-a" |
| Consularized Certificate of Registration of AIG Europe Limited – Italy issued by the Chamber of Commerce of Milan | "P-82-b" |
| Consularized Certificate of Residence of AIG Europe Limited – Netherlands | "P-83-a" |
| Consularized Extract from the Netherlands Chamber of Commerce Commercial Register | "P-83-b" |
| Consularized Confirmation of Assignment of Tax Identification Number of Chartis Europe Limited, Poland Branch | "P-84-a" |
| Consularized letter of the Polish Financial Supervision Authority confirming the commencement of insurance activity of AIG Europe Limited – Poland | "P-84-b" |
| Consularized Certificate of Registration of AIG Europe Limited – Norway | "P-86-a" |
| Consularized Confirmation of Residency of AIG Europe Limited – Norway | "P-86-b" |
| Consularized Confirmation of registration of Chartis Europe Limited – Norway in the Register of Business Enterprises | "P-86-c" |
| Consularized Certificate of AIG Europe Limited – Finland's Recording in the Trade Register of Finland | "P-88-a" |
| Consularized Extract from the Trade Register of Finland | "P-88-b" |
| Consularized document detailing the business information of AIG Europe Limited – Finland | "P-88-c" |
| Consularized Certificate of Incorporation of AIG-Software International JV Sdn. Bhd. | "P-90-b" |
| Consularized Certificate of Change of Name from AIG-Software JV Sdn. Bhd. to AIG Global Services (Malaysia) Sdn. Bhd. | "P-90-c" |
| Consularized Business Registration Certificate of AIG Insurance Hong Kong Limited | "P-93-a" |
| Consularized Certificate of Change of Name from "Chartis Insurance Hong Kong Limited" to "AIG Insurance Hong Kong Limited" | "P-93-b" |
| Consularized Certificate of All Matters of Current Register issued by the Republic of Korea | "P-96-a" |
| Consularized Certificate of Business Registration of AIG Korea, Inc. | "P-96-b" |
| Consularized Certificate of Incorporation of Chartis Capex, Inc. | "P-100" |
| Consularized Certificate of Incorporation of NHIG Holding Corp. | "P-101-a" |
| Consularized License of Establishment and Operation of AIG General Insurance (Vietnam) Company Limited | "P-106-a" |
| Consularized Amended License showing the change of name from "AIG General Insurance (Vietnam ) Company Limited" to "Chartis Vietnam Insurance Company Limited" | "P-106-b" |
| Consularized Amended License showing the change of name from "Chartis Vietnam" to "AIG Vietnam Insurance Company Limited" | "P-106-c" |
| Consularized Certificate of Tax Registration of AIG Vietnam | "P-106-d" |
| Consularized Certificate of Incorporation of AIG Insurance New Zealand Limited | "P-108-a" |
| Consularized Amended and Restated Certificate of American International Group, Inc. | "P-110" |
| Consularized Certificate of Incorporation of Lexington Insurance Company | "P-113-a" |
| Consularized Articles of Incorporation of the National Union of Fire Insurance Company of Pittsburgh, Pennsylvania | "P-114-a" |

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|---|---|
| Consularized Certificate of Particulars Kept by the Registrar Under Foreign Business Act B.E. 2542 | "P-115-a" |
| Consularized Deed of Establishment of Limited Liability Company No. 189 of PT Asuransi AIU Indonesia No. 30 | "P-116-a" |
| Consularized certified translation of the tax registration certificate of PT AIG Insurance Indonesia | "P-116-b" |
| Consularized Resolution of Shareholders of PT Chartis Insurance Indonesia No. 13 | "P-116-c" |
| Consularized Resolution of Shareholders of PT Asuransi AIU Indonesia No. 30 | "P-116-d" |

This Court has consistently held that in order to be considered a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both SEC Certificate of Non-registration of Corporation/Partnership and Proof of Incorporation/ Association/Business Registration in a foreign country and that there is no other indication that would disqualify said entity in being classified as a non-resident foreign corporation.

As for the printed screenshots of foreign government websites database, this Court cannot give credence or probative value to the same considering that such can be easily manipulated and none from the said foreign governments attested to the authenticity of the said websites and to the registration of the purported petitioner's foreign clients found therein. More importantly, said printed screenshots fail to establish that the said clients are not doing business here in the Philippines.

Thus, out of petitioner's forty eight (48) clients, the following entities shall not be considered as non-resident foreign corporations doing business outside the Philippines for the reasons stated below:

a. *No proof of foreign registration and supported only by SEC Certification of Non-Registration of Company:*

| | Name of Company | Customer's Name per Official Receipt | SEC Certificate of Non-Registration of Company (Exhibit No.) |
|---|---|---|---|
| 1 | AIG EUROPE LIMITED –GEORGIA | BRANCH OF AIG SIGORTA IN GEORGIA RO#979 | "P-41" |
| 2 | AIG LATIN AMERICA | CHARTIS LATIN AMERICA | "P-49" |
| 3 | AIG PROPERTY CASUALTY GLOBAL SERVICES INC. | AIG PROPERTY CASUALTY GLOBAL SERVICES INC. | "P-52" |
| 4 | AIG SEGUROS COLOMBIA S.A. | CHARTIS SEGUROS COLOMBIA S.A. | "P-54" |
| 5 | AIG SHARED SERVICES CORP.-IRELAND BRANCH | AIG SHARED SERVICES CORP.-IRELAND BRANCH | "P-55" |
| 6 | AMERICAN INTERNATIONAL GROUP KK | AMERICAN INTERNATIONAL GROUP KK | "P-61" |

b. *No SEC Certification of Non-Registration of Company and supported only by Consularized Foreign Registration and the name indicated therein is different from petitioner's client's name:*

| | Name of Company | Customer's Name per Official Receipt | Name of Company per Consularized Foreign Registration | Exhibit No. |
|---|---|---|---|---|

| | | | | |
|---|---|---|---|---|
| 7 | NATIONAL UNION FIRE INSURANCE COMPANY | NATIONAL UNION FIRE INSURANCE COMPANY | NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA. | "P114-a" |

c. *Supported only by SEC Certification of Non-Registration of Company and the name indicated therein is different from petitioner's client name*

| | Name of Company | Customer's Name per Official Receipt | Name of Company per SEC Certificate of Non-Registration of Company | Exhibit No. |
|---|---|---|---|---|
| 8 | AIG EUROPE LIMITED – PORTUGAL BRANCH | AIG EUROPE LIMITED – SUCURSAL EM PORTUGAL | AIG EUROPE LIMITED – PORTUGAL | "P-39" |
| 9 | AIG INSURANCE COMPANY CJSC (AIG RUSSIA) | CJSC AIG | CJSC CHARTIS | "P-44" |
| 10 | AIG INSURANCE LIMITED, SRI LANKA | CHARTIS INSURANCE LTD., SRI LANKA | CHARTIS INSURANCE LIMITED, SRI LANKA | "P-46" |
| 11 | AMERICAN HOME ASSURANCE COMPANY (UAE BRANCH) | AMERICAN HOME ASSURANCE COMPANY, UAE | AMERICAN HOME ASSURANCE COMPANY, UAE | "P-59" |
| 12 | CHARTIS NEW HAMPSHIRE INSURANCE CO, PAKISTAN BRANC | CHARTIS NEW HAMPSHIRE INSURANCE CO, PAKISTAN BRANC | CHARTIS NEW HAMPSHIRE INSURANCE CO, PAKISTAN BRANCH | "P-63" |

d. *Supported by SEC Certification of Non-registration of Company and Consularized Foreign Registration but the name indicated in the latter document is different from petitioner's client name:*

| | Name of Company | Customer's Name per Official Receipt | SEC Certificate of Non-Registration of Company (Exhibit No.) | Consularized Foreign Registration | |
|---|---|---|---|---|---|
| | | | | Exhibit No. | Name of the Company indicated in the document |
| 13 | AIG EUROPE LIMITED | AIG EUROPE LIMITED HQ | "P-27" | "P-75-c" | CHARTIS EUROPE LIMITED (*FORMERLY AIG UK LIMITED AND CHARTIS INSURANCE UK LIMITED) |
| 14 | AIG EUROPE LIMITED – FRANCE | AIG EUROPE LIMITED – FRANCE | "P-32" | "P-80-a" | AIG EUROPE LIMITED |
| 15 | AIG EUROPE LIMITED – ITALY | AIG EUROPE LIMITED – ITALY | "P-34" | "P-82-b" | AIG EUROPE LIMITED GENERAL REPRESENTATIVE FOR ITALY |
| 16 | AMERICAN HOME NEW ZEALAND | AMERICAN HOME NEW ZEALAND | "P-60" | "P-108-a" | AIG INSURANCE NEW ZEALAND LIMITED |
| 17 | NEW HAMPSHIRE INSURANCE THAILAND | NEW HAMPSHIRE INSURANCE THAILAND | "P-67" | "P-115-a" | NEW HAMPSHIRE INSURANCE COMPANY, BANGKOK BRANCH |
| 18 | PT AIG INSURANCE INDONESIA | CHARTIS INSURANCE INDONESIA | "P-68" | "P-116-a" | P.T. ASURANSI AIU INDONESIA |

e. *Supported by SEC Certification of Non-registration of Company and Consularized Foreign Registration but the name indicated in both documents is different from petitioner's client name:*

| | Name of Company | Customer's Name per Official Receipt | SEC Certificate of Non-Registration of Company: Exhibit No. | SEC Certificate of Non-Registration of Company: Name of the Company indicated in the document | Consularized Foreign Registration: Exhibit No. | Consularized Foreign Registration: Name of the Company indicated in the document |
|---|---|---|---|---|---|---|
| 19 | AIG EUROPE LIMITED-BELGIUM | CHARTIS EUROPE SA – BELGIUM | "P-28" | CHARTIS EUROPE S.A.-BELGIUM | "P-76-a" | AIG EUROPE LIMITED (BELGIAN BRANCH OFFICE) |
| | | | | | "P-76-b" | CHARTIS EUROPE |
| 20 | AIG EUROPE LIMITED – CZECH REPUBLIC BRANCH | AIG EUROPE LIMITED, ORGANIZACNI SLOZCA PRO CESKOU | "P-29" | CHARTIS EUROPE S.A. CZECH REPUBLIC BRANCH | "P-77-c" | AIG EUROPE LIMITED, BRANCH FOR THE CZECH REPUBLIC |
| 21 | AIG EUROPE LIMITED – DENMARK | CHARTIS EUROPE SA-DENMARK | "P-30" | CHARTIS EUROPE S.A.-DENMARK | "P-78-a"; and "P-78-b" | AIG EUROPE DANS FILIAL AF AIG EUROPE LIMITED UNITED KINGDOM |
| 22 | AIG EUROPE LIMITED –NETHERLANDS | CHARTIS EUROPE S.A.-NETHERLANDS BRANCH | "P-35" | CHARTIS EUROPE S.A.-NETHERLANDS BRANCH | "P-83-b" | AIG EUROPE LIMITED; CHARTIS EUROPE, NETHERLANDS; AIG EUROPE; AIG EUROPE, NETHERLANDS; AIG EUROPE (NEDERLANDS BIJKANTOOR) |
| 23 | AIG EUROPE LIMITED –NORWAY | CHARTIS EUROPE SA – NORWAY | "P-38" | CHARTIS EUROPE S.A.-NORWAY | "P-86-a", "P-86-b", and "P-86-c" | AIG EUROPE LIMITED; CHARTIS EUROPE LIMITED |
| 24 | AIG EUROPE LIMITED –FINLAND | CHARTIS EUROPE S.A. – FINLAND | "P-40" | CHARTIS EUROPE S.A., FINLAND BRANCH | "P-88-a" | AIG EUROPE LIMITED SIVULIIKE |

f. *Supported by SEC Certification of Non-Registration of Company and documents which cannot be considered as valid proof of foreign incorporation/registration (such as for being mere printed screenshots of websites):*

| | Name of Company | Customer's Name per Official Receipt | Purported Proof of Foreign Incorporation/Registration | SEC Certificate of Non-registration of Company |
|---|---|---|---|---|
| 25 | AIG INSURANCE COMPANY OF CANADA | CHARTIS INSURANCE COMPANY OF CANADA | "P-71-a" | "P-23" |
| 26 | AIG CLAIMS, INC | CHARTIS CLAIMS, INC. | "P-73-b" | "P-25" |
| 27 | AIG EMPLOYEE SERVICES, INC. | AIG EMPLOYEE SERVICES INC. | "P-74-a" | "P-26" |
| 28 | AIG EUROPE LIMITED - IRELAND | AIG EUROPE LIMITED - IRELAND | "P-75-c" | "P-27" |
| 29 | AIG EUROPE LIMITED - DIREKTION FUR DEUTSCHLAND | CHARTIS EUROPE SA - DIREKTION FUR DEUTSCHLAND | "P-79" | "P-31" |
| 30 | AIG EUROPE LIMITED –POLAND | AIG EUROPE LIMITED – POLAND (Sp z oo ODDZIAL W POLSCE | "P-84-a"; "P-84-b"; and "P-84-c" | "P-36" |
| 31 | AIG EUROPE LIMITED – SWITZERLAND | CHARTIS EUROPE SA – SWITZERLAND | "P-85-a" | "P-37" |
| 32 | AIG GLOBAL SERVI CES (MALAYSIA) SDN BHD | AIG GLOBAL SERVICES MALAYSIA | "P-90-d" | "P-42" |
| 33 | AIG GLOBAL SERVICES INC | AIG GLOBAL SERVICES | "P-91-a" | "P-43" |

| | | | | |
|---|---|---|---|---|
| | | INC | | |
| 34 | AIG JAPAN HOLDINGS KABUSHI KAISHA | AIG JAPAN HOLDINGS KABUSHI KAISHA | "P-95-a" | "P-47" |
| 35 | AIG MALAYSIA INSURANCE BERHAD | AIG MALAYSIA INSURANCE BERHAD | "P-98-a" | "P-50" |
| 36 | AIG MEA LIMITED (OMAN BRANCH) | CHARTIS MEMSA INSURANCE CO. LTD. OMAN BRANCH | "P-99-a" | "P-51" |
| 37 | AIG PROPERTY CASUALTY U.S., INC. | CHARTIS US/CHARTIS US DOMESTIC A&H | "P-101-b" | "P-53" |
| 38 | AIG SOUTH AFRICA LTD | AIG SOUTH AFRICA LIMITED | "P-104-a" | "P-56" |
| 39 | AIG TRAVEL ASSIST, INC. | AIG TRAVEL ASSIST, INC. | "P-105" | "P-57" |
| 40 | GUAM INSURANCE ADJUSTERS INC. | GUAM INSURANCE ADJUSTERS INC. | "P-112-a" | "P-64" |
| 41 | UNITED GUARANTY CORPORATION | UNITED GUARANTY CORPORATION | "P-117-a" | "P-69" |
| 42 | UNITED GUARANTY SERVICES INC | UNITED GUARANTY SERVICES INC | "P-118" | "P-70" |

Thus, only the following clients of petitioner are considered as non-resident foreign corporations doing business outside the Philippines, to wit:

| | Name of Company | Customer's Name per Official Receipt | Consularized Foreign Registration | SEC Certificate of Non-Registration of Company |
|---|---|---|---|---|
| 43 | AIG AUSTRALIA LIMITED | AIG AUSTRALIA LIMITED | "P-72-a" | "P-24" |
| 44 | AIG INSURANCE HONGKONG LIMITED | CHARTIS INSURANCE HONG KONG LTD. | "P-93-b" | "P-45" |
| 45 | AIG KOREA INC. | AIG KOREA INC. | "P-96-b" | "P-48" |
| 46 | AIG VIETNAM INSURANCE COMPANY LIMITED | AIG VIETNAM INSURANCE COMPANY LIMITED | "P-106-c" | "P-58" |
| 47 | AMERICAN INTERNATIONAL GROUP, INC | AMERICAN INTERNATIONAL GROUP, INC | "P-110" | "P-62" |
| 48 | LEXINGTON INSURANCE COMPANY | LEXINGTON | "P-113-a" | "P-65" |

With regard to the *third* essential element, it was determined that only the service agreement below has a provision as to where the services are to be performed by petitioner, *i.e.*, in the Philippines, to wit:

| COMPANY NAME | SERVICE AGREEMENT | SERVICE PROJECT LOCATION | Exhibit |
|---|---|---|---|
| AIG VIETNAM INSURANCE COMPANY LIMITED | Master Agreement for Professional Services | Vendor will perform its services in its Manila Regional Technology Center (MRTC) and, when required at specific periods indicated in the project plan or as requested by the Customer and concurred to by the Vendor, at the Customer site. | "P-106"[72] |

[72] Docket – Vol. 4, p. 1655

Anent the *fourth* essential element and in relation to the *fifth requisite* for the granting of the input VAT refund, petitioner presented the Certifications[73] of bank inward remittances issued by EastWest Banking Corporation for December 2013 purportedly showing the remittances of its foreign clients/affiliates.

However, equally important to consider is that the said foreign currency remittances referred to under Section 108(B)(2) must be duly supported by VAT zero-rated official receipts (ORs) in accordance with Section 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, which provides that a VAT taxpayer, like herein petitioner, shall for every lease of goods or properties, and for every sale, barter or exchange of services, issue a VAT official receipt which must contain the information stated in the said provisions, viz:

> "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 VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:
>
>> (a) The amount of the tax shall be shown as a separate item in the invoice or receipt;
>>
>> (b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

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[73] Exhibits "P-21" and "P-22", Docket – Vol. 2, pp. 697 to 701.

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

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

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

(4) In the case of sales in the amount of One thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client."

These provisions of the NIRC of 1997, as amended, are further implemented by Section 4.113-1(A)(2), (B)(1) and (2)(C) of Revenue Regulations (RR) No. 16-2005, as amended, to wit –

"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:

(a) The amount of tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from VAT, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

(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;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) In the case of sales in the amount of one thousand peso (₱1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section."

The above-quoted Section 113 (A) of the NIRC of 1997, as amended by RA No. 9337, clearly mandates the instances when a *VAT invoice* or a *VAT official receipt* is issued. To reiterate, the law states that a VAT-registered person **shall** issue a *VAT invoice* for every sale, barter or exchange of goods or properties, and a *VAT official receipt* for every lease of goods or properties, and for every sale, barter or exchange of service. Parenthetically, jurisprudence and statutory construction teach Us that the word "shall" connotes mandatory character; it indicates a word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory in nature.[74]

In addition to the above requirements, the ORs must be duly registered with the BIR as prescribed under Section 237 in relation to Section 238 of the NIRC of 1997, as amended, to wit:

> "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. xxx"
>
> "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."

In the instant case, aside from the Certifications of bank inward remittances, petitioner also presented its "Schedule of Sales and Output VAT"[75] and the related ORs[76] in support of its total declared zero-rated sales/receipts of ₱365,720,522.25 covering the short period of December 2013.[77]

Further, the Court-commissioned ICPA presented a *"Comparison of amounts per OR vs per Sales Schedule and Inward Remittance"*,[78] which reflected that petitioner's receipts from sales of services to AIG Vietnam Insurance Company Limited for December 2013 amounted to ₱1,686,978.28 (equivalent to US$38,756.56), detailed as follows:

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[74] *UCPB General Insurance Company, Inc. vs. Hughes Electronics Corporation*, G.R. No. 190385, November 16, 2016.
[75] Exhibit "P-186".
[76] Exhibits "P-187" to "P-294".
[77] Exhibit "P-11" (Line 17), Docket – Vol. 1, p. 671.
[78] Exhibit "P-121" (Annex B)", Docket – Vol. 1, pp. 479 to 484.

| Official Receipt | | | | | Inward Remittance | | |
|---|---|---|---|---|---|---|---|
| Exhibit | Date[79] | Number | Amount in Philippine Peso | Amount in US Dollars | Amount Remitted | Bank Reference (Exhibit "P-21") | Date[80] |
| "P-294" | 06-Dec-13 | OR-0001905 | 625,729.12 | 14,524.80 | 14,524.80 | IR-2013-1774300333JM | 2-Dec-13 |
| "P-265" | 27-Dec-13 | OR-0001934 | 1,061,249.16 | 24,231.76 | 24,231.76 | IR-2013-6985900357FC | 26-Dec-13 |
| TOTAL | | | 1,686,978.28 | 38,756.56 | | | |

The Court finds that the ORs supporting the aforesaid amount of ₱1,686,978.28 (equivalent to US$38,756.56) are compliant with the invoicing requirements under the law and regulations. However, the Court notes that the corresponding Certification of bank inward remittance[81] shows that only the amount of ₱1,522,497.66 (equivalent to US$34,977.79)[82] was actually remitted.

In fine, petitioner partially complied with the *fourth* and *fifth requisites.* Out of the ₱365,720,522.25 zero-rated sales/receipts declared in petitioner's Quarterly VAT Return[83] for the 4$^{th}$ quarter of calendar year 2013 or the short period of December 2013, only the sales of services to AIG Vietnam Insurance Company Limited in the amount of ₱1,522,497.66 (US$34,977.79) qualifies for VAT zero-rating under Section 108(B)(2), in relation to Section 113(A)(2), (B)(1), (2)(c) and (3), both of the NIRC of 1997, as amended.

Having found that petitioner had valid zero-rated sales *only* in the total amount of ₱1,522,497.66 for the subject period of claim, the Court shall now determine whether petitioner complied with the following remaining requisites pertaining to the input VAT being claimed for refund or issuance of a tax credit certificate:

a. *sixth requisite*: the input taxes are not transitional input taxes;
b. *seventh requisite*: the input taxes are due or paid;
c. *eighth requisite*: 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 attributed to any of these

[79] Date Format: Day/Month/Year.
[80] *Id.*
[81] Exhibit "P-21", Docket – Vol. 2, pp. 697 to 698.
[82]

| Exhibit | Date | Number | Amount in PhP (a) | Amount In USD (b) | Conversion Rate (c = a ÷ b) | Amount remitted (d) | Equivalent Amount in PhP (e = c x d) |
|---|---|---|---|---|---|---|---|
| "P-294" | 6-Dec-13 | OR-0001905 | 625,729.12 | 14,524.80 | 43.08 | 13,108.63 | 564,720.44 |
| "P-265" | 27-Dec-13 | OR-0001934 | 1,061,249.16 | 24,231.76 | 43.80 | 21,869.16 | 957,777.22 |
| TOTAL | | | 1,686,978.28 | 38,756.56 | | 34,977.79 | 1,522,497.66 |

[83] Exhibit "P-11", Docket – Vol. 2, p. 671.

/v/

sales, the input taxes shall be proportionately allocated on the basis of sales volume; and

d. *ninth requisite*: the input taxes have not been applied against output taxes during and in the succeeding quarters.

***The input VAT being claimed are not transitional input taxes.***

Petitioner's input VAT claims are not transitional input taxes, as provided for 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 an inventory according to rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be allowed input tax on his beginning inventory of goods, materials and 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."

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.[84]

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

***The input taxes being claimed were due or paid.***

The input VAT claim of ₱9,908,662.44 arose from petitioner's amortization of input VAT on capital goods exceeding ₱1 Million, domestic purchases of goods other than capital goods and domestic purchase of services, as indicated in petitioner's Quarterly VAT Return for the 4th Quarter of calendar year 2013, to wit:

[84] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 158885 and 170680, April 2, 2008.

| | **4th Quarter of 2013 (December 2013)** |
|---|---|
| Input Tax Deferred on Capital Goods exceeding ₱1Million from Previous Quarter | ₱ 3,312,906.74 |
| Add: Input Tax on Capital Goods exceeding ₱1Million Purchased this Quarter | - |
| Total Allowable Input Tax | ₱ 3,312,906.74 |
| Less: Input Tax on Purchases of Capital Goods exceeding ₱1Million deferred for the succeeding period | 3,213,881.34 |
| *Amortization of Input Tax on Capital Goods exceeding ₱1Million* | *₱ 99,025.40* |
| Add: Input Tax on: | |
| *Domestic Purchases of Goods Other than Capital Goods* | *290,269.18* |
| *Domestic Purchase of Services* | *9,519,367.86* |
| **Total Input VAT Claim** | **₱ 9,908,662.44** |

Anent the *seventh requisite* in claiming VAT refund, it is imperative for petitioner to provide supporting documents to prove that the input taxes claimed during the short period of December 2013 were actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, which provides that:

> "SEC. 110. *Tax Credits.* —
>
> (A) *Creditable input Tax.* —
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> (a) Purchase or importation of goods:
>
> (1) For sale; or
>
> (ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
>
> (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.

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(b) Purchase of services on which a value-added tax has actually been 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 if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (₱1,000,000): *Provided, however*, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided*, finally, That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee."

The above provisions are implemented by Sections 4.110-1 to 4.110-3 of RR No. 16-2005, which provide as follows:

"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; or

(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 for depreciation or amortization is allowed under the Tax Code,

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

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

xxx xxx xxx

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 (₱1,000,000.00), 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 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 on domestic purchases of goods, properties and services, as follows:

"SECTION 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

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> 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."

It is categorically mentioned in the above provisions that in order to be entitled to input tax credits, the same must be evidenced by VAT invoices (for domestic purchases of goods or properties) or ORs (for domestic purchases of services) issued in accordance with Section 113 of the NIRC of 1997, as amended, which was quoted earlier. Moreover, an *invoice* and an *official receipt*, for purposes of the VAT law, are not interchangeable. One cannot be a substitute to the other.

In *Team Energy Corporation (formerly: Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue*,[85] the Supreme Court held:

> "Team Energy submits that the disallowances 'essentially result from the non-recognition [by] the [Court of Tax Appeals] En Banc of the interchangeability of VAT invoices and VAT [official receipts] in a claim for refund of excess or unutilized input tax.'
>
> In *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, this Court was confronted with the same issue on the substantiation of the taxpayer-applicant's zero-rated sales of services. In that case, AT&T Communications Services Philippines, Inc. (AT&T) applied for tax refund and/or tax credit of its excess/unutilized input VAT from zero-rated

[85] G.R. Nos. 197663 and 197770, March 14, 2018.

sales of services for calendar year 2002. The Court of Tax Appeals First Division, as affirmed by the En Banc, denied AT&T's claim 'for lack of substantiation' on the ground that:

> [C]onsidering that the subject revenues pertain to gross receipts from services rendered by petitioner, **valid VAT official receipts** and not mere sales invoices **should have been submitted** in support thereof. x x x

Reversing the Court of Tax Appeals, this Court held that since Section 113 did not distinguish between a sales invoice and an official receipt, the sales invoices presented by AT&T would suffice provided that the requirements under Sections 113 and 237 of the Tax Code were met. It further explained:

> Sales invoices are recognized commercial documents to facilitate trade or credit transactions. They are proofs that a business transaction has been concluded, hence, should not be considered bereft of probative value. Only the preponderance of evidence threshold as applied in ordinary civil cases is needed to substantiate a claim for tax refund proper. (Citations omitted)

However, in a subsequent claim for tax refund or credit of input VAT filed by AT&T for the calendar year 2003, the same issue on the interchangeability of invoice and official receipt was raised. This time in *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, this Court held that **there was a clear delineation between official receipts and invoices and that these two (2) documents could not be used interchangeably**. According to this Court, Section 113 on invoicing requirements must be read in conjunction with Sections 106 and 108, which specifically delineates sales invoices for sales of goods and official receipts for sales of services.

xxx xxx xxx

This Court reiterates that **to claim a refund of unutilized or excess input VAT, purchase of goods or properties must be supported by VAT invoices, while purchase of services must be supported by VAT official receipts**.

xxx xxx xxx

Our VAT system is invoiced-based, *i.e.*, taxation relies on sales invoices or official receipts. x x x.

xxx xxx xxx

**Strict compliance with substantiation and invoicing requirements is necessary considering VAT's nature and VAT system's tax credit method, where tax payments are based on output and input taxes and where the seller's output tax becomes the buyer's input tax that is available as tax credit or refund in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates computation of tax credits, and provides accurate audit trail or evidence for BIR monitoring purposes.**

The Court of Tax Appeals further pointed out that the non-interchangeability between VAT official receipts and VAT invoices avoids having the government refund a tax that was not even paid.

> **It should be noted that the seller will only become liable to pay the output VAT upon receipt of payment from the purchaser. If we are to use sales invoice in the sale of services, an absurd situation will arise when the purchaser of the service can claim tax credit representing input VAT even before there is payment of the output VAT by the seller on the sale pertaining to the same transaction. As a matter of fact[,] if the seller is not paid on the transaction, the seller of service would legally not have to pay output tax while the purchaser may legally claim input tax credit thereon. The government ends up refunding a tax which has not been paid at all. Hence, to avoid this, VAT official receipt for the sale of services is an absolute requirement.**

In conjunction with this rule, Revenue Memorandum Circular 42-03 expressly provides that **an 'invoice is the supporting document for the claim of input tax on purchase of goods <u>whereas official receipt is the supporting document for the claim of input tax on purchase of services</u>.'** It further states that **a taxpayer's failure to comply with the invoicing requirements will result to the disallowance of the claim for input tax**. Pertinent portions of this circular provide:

> A-13: **Failure by the supplier to comply with the invoicing requirements on the documents**

> **supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.**
>
> If the claim for refund/[tax credit certificate] is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (*e.g.*, failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer.

Pursuant to Sections 106(D) and 108(C) in relation to Section 110 of the 1997 NIRC, the output or input tax on the sale or purchase of goods is determined by the total amount indicated in the VAT invoice, while the output or input tax on the sale or purchase of services is determined by the total amount indicated in the VAT official receipt.

Thus, **the Court of Tax Appeals properly disallowed the input VAT of P258,874.55 for Team Energy's <u>failure to comply with the invoicing requirements</u>**." *(Emphases and underscoring supplied)*

Based on the foregoing, it is clear that the office of a VAT *invoice* is separate and distinct from a VAT *official receipt* or vice versa; that in a claim for refund of unutilized or excess input VAT, purchases of goods or properties must be supported by VAT *invoices*, while purchases of services must be supported by VAT ORs; that VAT *invoices* and VAT ORs are not interchangeable; and that failure to comply with the invoicing requirements will result to the disallowance of the claim for input VAT.

Thus, in order to prove entitlement to credits for input taxes due or paid, petitioner must not only present the supporting VAT invoices or ORs prescribed under Section 4.110-8 of RR No. 16-2005, but more importantly, these documents must comply with the invoicing requirements under Sections 113(A) and (B), 237 and 238 of the NIRC of 1997, as amended and implemented by Section 4.113-1(A) and (B) of RR No. 16-2005.

N

The invoicing requirements for a VAT-registered taxpayer as provided in the NIRC and revenue regulations are clear. A VAT-registered taxpayer is required to comply with all the VAT invoicing requirements to be able to file a claim for input taxes on domestic purchases for goods or services attributable to zero-rated sales.[86] In addition, the invoicing requirement is reasonable and must be strictly complied with, as it is the only way to determine the veracity of the claim.[87]

Moreover, it is already settled that in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law, he must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit and compliance with the invoicing and accounting requirements by the NIRC, as well as by revenue regulations implementing them.[88]

In this case, the results of the ICPA's examination of the VAT invoices and ORs supporting petitioner's input VAT claim were summarized as follows:[89]

| Findings | Input VAT | Reference to ICPA Report | Exhibit No. |
|---|---|---|---|
| **NO EXCEPTIONS NOTED** | ₱ 8,181,424.62 | Annex F | "P-307" to "P-362" |
| **WITH EXCEPTIONS NOTED** | | | |
| a. Invoices/Official Receipts which are out of period | ₱ 1,518,502.09 | Annex G | "P-363" to "P-387" |
| b. Purchases of services/goods supported by VAT ORs/Invoices with no TIN of the company | 85,913.71 | Annex H | "P-388" to "P-391" |
| c. Purchase of goods supported with invoice with incorrect TIN | 19,081.03 | Annex I | "P-392" |
| d. Purchase of service supported by VAT OR which do not show the VAT amount separately | 11,475.00 | Annex J | "P-393" |
| e. Invalid supporting documents | 85,228.78 | Annex K | "P-394" to "P-401" |
| f. No supporting documents | 7,051.25 | Annex L | |
| *Subtotal* | ₱1,727,251.86 | | |
| **TOTAL ACCOUNTED INPUT VAT** | **₱9,908,676.48**[90] | | |

[86] *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 180173, April 6, 2011.
[87] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011.
[88] *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017, citing *Western Mindanao Power Corp. vs. Commissioner of Internal Revenue*, 687 Phil. 328 (2012).
[89] Exhibit "P-121"", Docket – Vol. 1, pp. 475-476.
[90] This total amount is ₱14.04 higher than the input VAT claim per Petition for Review.

As correctly found by the ICPA, the claimed input tax due or paid of ₱1,727,251.86 should be disallowed for not being properly substantiated by VAT invoices or official receipts as prescribed under Sections 110(A), 113(A) and (B), 237, and 238 of the NIRC of 1997, as amended, in relation to Sections 4.110-2, 4.110-8 and 4.113-1 of RR No. 16-2005.

In addition, petitioner's claimed input tax paid in the amount of ₱14,534.96 related to its domestic purchases of services, should likewise be disallowed because the supporting ORs do not show the VAT component separately from the purchase amount, which is in violation of the earlier quoted provisions of Section 113(B)(2)(a) of the NIRC of 1997, as amended, as implemented by Section 4.113-1(B)(2)(a) of RR No. 16-2005. Below is the breakdown of the additional input VAT disallowance of ₱14,534.96:

| Supplier's Name | Official Receipt No. | Date[91] | Exhibit No. | Input VAT |
|---|---|---|---|---|
| ISNAP CREATIVES INC. | 11551 | 09-Dec-13 | "P-336" | ₱4,688.76 |
| | | | | |
| MARSMAN DRYSDALE TRAVEL, INC. | 353312 | 09-Dec-13 | P-346 | 153.05 |
| | | | | 222.66 |
| | | | | 223.76 |
| | | | | 223.76 |
| | | | | 223.76 |
| | | | | 223.76 |
| | | | | 223.76 |
| | | | | 223.76 |
| | | | | 223.76 |
| | | | | 223.76 |
| | | | | 223.76 |
| | | | | 223.76 |
| | | | | 223.76 |
| | | | | 225.24 |
| | | | | 23.51 |
| | | | | 154.14 |
| | | | | 154.15 |
| | | | | 154.14 |
| | | | | 154.14 |
| | | | | 224.25 |
| | | | | 224.25 |
| | | | | 154.15 |
| | | | | 154.14 |
| | | | | 154.14 |
| | | | | 154.14 |
| | | | | 154.39 |
| | | | | 154.39 |
| | | | | 154.39 |
| | | | | 154.39 |
| | | | | 224.25 |

[91] Date Format: Day/Month/Year

| | | | | |
|---|---|---|---|---|
| | | | | 154.26 |
| | | | | 154.26 |
| | | | | 154.26 |
| | | | | 154.26 |
| | | | | 224.42 |
| | | | | 224.41 |
| | | | | 154.26 |
| | | | | 224.42 |
| | | | | 224.41 |
| | | | | 154.26 |
| | | | *subtotal* | *7,432.49* |
| | | | | |
| MARSMAN DRYSDALE TRAVEL, INC. | 353558 | 13-Dec-13 | P-348 | 225.52 |
| | | | | 225.52 |
| | | | | 225.52 |
| | | | | 225.52 |
| | | | | 154.90 |
| | | | | 225.34 |
| | | | | 154.90 |
| | | | | 154.90 |
| | | | | 225.35 |
| | | | | 154.90 |
| | | | | 225.34 |
| | | | *subtotal* | *2,197.71* |
| | | | | |
| MARSMAN DRYSDALE TRAVEL, INC. | 353309 | 09-Dec-13 | P-349 | 216.00 |
| | | | | |
| **TOTAL ADDITIONAL DISALLOWANCE** | | | | **₱14,534.96** |

To reiterate, Section 113 (B) (2) (a) and (4) of the NIRC of 1997, as amended by RA No. 9337, require, *inter alia*, that the VAT is shown as a separate item in the invoice or receipt, as the case may be, and the TIN and address of the purchaser are indicated therein. Such being the case, it is clear that petitioner failed to comply with the said invoicing requirements, and thus, the pertinent items were correctly disallowed. An otherwise ruling would render nugatory the mandatory nature of, and the rule on strict compliance with, the said invoicing requirements. Although it is true that this Court is not strictly governed by technical rules of evidence, the invoicing and substantiation requirements must, nevertheless, be followed because it is the only way to determine the veracity of the taxpayer's claims.[92]

Thus, based on the foregoing, petitioner complied with the *seventh* requisite, *i.e.,* the input taxes were due or paid, but only to the extent of ₱8,166,875.62, computed as follows:

[92] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181858, November 24, 2010.

| | |
|---|---|
| Total Input VAT per Quarterly VAT Return | ₱ 9,908,662.44 |
| Less: Disallowances | |
| Per ICPA Report | ₱ 1,727,251.86 |
| Per this Court's further verification | 14,534.96 |
| Total Disallowances | ₱ 1,741,786.82 |
| **Valid Input VAT** | **₱8,166,875.62** |

***The input taxes being claimed are attributable to petitioner's zero-rated sales.***

The *eighth* requisite requires 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.

For the subject period of claim, petitioner reported only zero-rated or effectively zero-rated sales in the total amount of ₱365,720,522.25[93]. Thus, considering that petitioner had no other type of sales, the entire validly substantiated input VAT of ₱8,166,875.62 is attributable thereto. However, since only the amount of ₱1,522,497.66 is considered valid zero-rated sales, only the input VAT of ₱33,998.77, as computed below, may be refunded to the petitioner:

| | |
|---|---|
| **Valid Input VAT due or paid** | **₱ 8,166,875.62** |
| Divide by Total Declared Zero-Rated Sales/Receipts | 365,720,522.25 |
| Multiply by Valid Zero-Rated Sales/Receipts | 1,522,497.66 |
| **Valid Input VAT due or paid attributable to Valid Zero-Rated Sales/Receipts** | **₱ 33,998.77** |

Thus, for purposes of, and with regard to, petitioner's compliance with the *eighth* requisite, only the amount of ₱33,998.77 represents valid input VAT attributable to its valid zero-rated sales/receipts amounting to ₱1,522,497.66.

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

Considering that petitioner had no taxable sales for the subject period of claim, it had no output VAT against which the input ₱33,998.77 may be applied or credited.

[93] Exhibit "P-11" (Line 17), Docket – Vol. 2, p. 671.

Furthermore, although the total input VAT claim of ₱9,908,662.44, which includes the valid input VAT of ₱33,998.77, was carried-over by petitioner in its succeeding Quarterly VAT Returns,[94] the same remained unutilized until it was deducted as *"VAT Refund/TCC Claimed"* in its Quarterly VAT Return for the 4th quarter of CY 2015.[95] Therefore, the subject claim no longer formed part of the excess input VAT of ₱87,744,637.60[96] as of the end of the 4th quarter of calendar year 2015. Hence, petitioner is, in effect, deemed to have fulfilled the *ninth* requisite for the refund/tax credit of input VAT under Section 112(A) of the NIRC of 1997, as amended.

**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱33,998.77**, representing the latter's unutilized excess input VAT attributable to its zero-rated sales/receipts for the short period of December 2013.

**SO ORDERED.**

**MA. BELEN M. RINGPIS-LIBAN**
*Associate Justice*

**WE CONCUR:**

**ERLINDA P. UY**
*Associate Justice*

**MARIA ROWENA MODESTO-SAN PEDRO**
*Associate Justice*

[94] Exhibits "P-299" to "P-306".
[95] Exhibit "P-306" (Line 23D).
[96] Exhibit "P-306" (Line 29).

**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.

**ERLINDA P. UY**
*Associate Justice*
*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*