REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

MITSUI & COMPANY LTD. MANILA BRANCH, Petitioner,	**C.T.A. CASE NO. 7342**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JAN 0 5 2009 1:32 p.m.

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DECISION

CASTAÑEDA, JR., *J*.:

This is a Petition for Review of Mitsui & Company Ltd. Manila Branch, seeking refund or issuance of tax credit certificate in the amount of SEVEN MILLION ONE HUNDRED FORTY NINE THOUSAND FOUR HUNDRED SEVENTY FOUR AND 42/100 PESOS (P7,149,474.42), representing unutilized and/or unapplied input value-added tax (VAT) for the period covering the second quarter of fiscal year ending March 31, 2004 to the first quarter of fiscal year ending March 31, 2005 (July 1, 2003 to June 30, 2004). Jc

Mitsui & Company Ltd. Manila Branch (Petitioner) is a corporation organized and existing under the laws of Japan, whose head office is at 2-1, Ohtemachi 1-chome, Chiyoda-ku, Tokyo, Japan. It is duly registered with the Philippine Securities and Exchange Commission (SEC) and authorized to transact business in the Philippines through its branch office at 36th Floor, GT Tower International, 6815 Ayala Avenue, Makati City. Petitioner is engaged in the business of exporting, importing, and engaging in the sale of various kinds of commodities; carrying on an agency business; and manufacturing all types of machines.[1] It is duly registered with the Bureau of Internal Revenue (BIR) as a VAT-enterprise.[2]

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

For the period covering July 1, 2003 to June 30, 2004, petitioner allegedly generated export sales which it believes to be subject to zero percent (0%) VAT under Section 106(A)(2)(a)(1)(3) and (5), (b) and (c) and Section 108(B)(2) and (3) of the National Internal Revenue Code (NIRC), as amended. Petitioner's VAT Returns reflected zero-rated sales/receipts in the amount of P616,295,667.53, broken down as follows:

Exhibit	**Period Covered**		**Zero-rated Sales**
	FY ending March 31, 2004		
C	2nd quarter	(07/31/03 to 09/30/03)	P 125,581,903.95
F	3rd quarter	(10/01/03 to 12/31/03)	130,032,582.74

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[1] Annex "F", Petition for Review, Docket, pp. 31-37.

[2] Annex "A", Petition for Review; Par. 3. Statement of Facts Admitted, Joint Stipulation of Facts and Issues, Docket, p. 92.

I	4th quarter	(01/01/04 to 03/31/04)	227,395,535.04
	FY ending March 31, 2005		
L	1st quarter	(04/01/04 to 06/30/04)	133,285,645.80
			P 616,295,667.53

For the same period, petitioner allegedly incurred input VAT in the amount of P7,149,474.42, which is attributable to its zero-rated export sales of P616,295,667.53, the details of which are as follows:

MONTH	INPUT TAX DIRECTLY RELATED TO ZERO-RATED SALES	INPUT TAX ALLOCATED TO ZERO-RATED SALES	TOTAL
2003			
July	P 98,516.67	P 82,615.28	P 681,131.95
August	12,073.23	547,809.31	559,882.54
September	282,381.16	208,056.59	490,437.75
October	73,147.40	769,436.86	842,584.26
November	94,652.80	631,912.52	726,565.32
December	96,034.59	226,700.63	322,735.22
TOTAL	**P656,805.85**	**P2,966,531.19**	**P3,623,337.04**
2004			
January	P 105,310.02	P 331,487.74	P 436,797.76
February	96,838.06	1,029,343.78	1,126,181.84
March	209,548.63	280,000.75	489,549.38
April	81,203.82	260,996.31	342,200.13
May	83,022.61	292,087.57	375,110.18
June	165,235.69	591,062.40	756,298.09
TOTAL	**P 741,158.83**	**P2,784,978.55**	**P3,526,137.38**
GRAND TOTAL	**P1,397,964.68**	**P5,751,509.74**	**P7,149,474.42**

Unable to apply the input VAT amount of P7,149,474.42 against any output VAT, on September 30, 2005, petitioner filed a claim with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance covering the aforesaid period.[3] But to date, respondent has neither approved nor granted petitioner's claim for refund. Due to

[3] Exhibit "LLL", Docket, pp. 923-929.

respondent's inaction, petitioner filed the instant Petition for Review on October 18, 2005.

On December 19, 2005, respondent filed his Answer interposing the following Special and Affirmative Defenses:

> "4. The Honorable Court has no jurisdiction over the claim for refund for the period July 31, 2003 to December 31, 2005 because in petitioner's administrative claim for refund dated September 30, 2005, the amount claimed was only for the period March 31, 2004 to March 31, 2005.
>
> Section 204(C) and 229 of the National Internal Revenue Code of 1997 requires that a written claim for refund should first be filed with the Bureau of Internal Revenue before a judicial claim for refund be filed before this Honorable Court, to wit:
>
> > 'Section 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes -- the Commissioner may –
> >
> > (c) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. <u>No credit or refund of taxes or penalties shall be disallowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, that a return filed showing an overpayment shall be considered as a written claim for credit or refund.</u>' (Underscoring supplied).
> >
> > 'Section 229. Recovery of Tax Erroneously or Illegally Collected. – <u>No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been</u>

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excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any many wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner, but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be filed after the expiration of two (2) years form the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, that the Commissioner may, even without a written claim therefore, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.' (Underscoring supplied).

5. The claim for refund of alleged unutilized input taxes for the period July 1, 2003 to September 30, 2003 is already barred by prescription."

On August 9, 2007, petitioner presented its evidence, while respondent failed to present any.[4] On March 17, 2008, the case was deemed submitted for decision without any Memorandum from both parties.

The parties have jointly stipulated on the following issues for this Court's resolution:

"1. Whether Petitioner generated zero-rated export sales for the period July 1, 2003 to June 30, 2004;

2. Whether Petitioner's excess input VAT, which were directly related and allocable to its export sales for the period July 1, 2003 to June 30, 2004 amounted to P7,149,474.42;

3. Whether Petitioner's foreign exchange proceeds generated from its zero-rated export sales were duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas (BSP)*; JL

[4] Resolution dated January 8, 2008, Docket, p. 980.

4. Whether the aforementioned excess input VAT were applied against petitioner's output VAT liability in the succeeding quarters;

5. Whether Petitioner had any local sale subjected to the 10% VAT during the period covered by the claim;

6. Whether Petitioner is entitled to the refund or issuance of a tax credit certificate in the amount of P7,149,474.42 representing its unutilized and/or unapplied input VAT for the period July 1, 2003 to June 30, 2004;

7. Whether petitioner filed the proper administrative claim for refund;

8. Whether the claim for refund for the period July 1, 2003 to September 30, 2003 is barred by prescription."

The foregoing issues boil down to the sole issue of whether or not petitioner is entitled to a refund in the amount of P7,149,474.42, representing unutilized and/or unapplied input VAT covering the second quarter of fiscal year ending March 31, 2004 to the first quarter of fiscal year ending March 31, 2005 (July 1, 2003 to June 30, 2004).

In resolving the said issue, the Court notes of Section 112(A) of the NIRC of 1997, as amended, which reads as follows:

> "**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."

Based on the above provisions, the following requisites must be satisfied by petitioner in order to be entitled to a refund or tax credit of input taxes attributable to zero-rated or effectively zero-rated sales:

1. there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes are attributable to zero-rated sales or effectively zero-rated sales;
4. that the input taxes were not applied against any output tax liability during and in the succeeding quarters; and
5. that the claim for the refund was filed within the two-year prescriptive period.

As regards the first requisite, petitioner's VAT Returns for the second quarter of fiscal year ending March 31, 2004 to the first quarter of fiscal year ending March 31, 2005, reflected zero-rated sales/receipts in the amount of P616,295,667.53, broken down as follows:

Exhibit	Period Covered		Zero-rated Sales
	FY ending March 31, 2004		
C	2nd quarter	(07/31/03 to 09/30/03)	P 125,581,903.95
F	3rd quarter	(10/01/03 to 12/31/03)	130,032,582.74
I	4th quarter	(01/01/04 to 03/31/04)	227,395,535.04
	FY ending March 31, 2005		
L	1st quarter	(04/01/04 to 06/30/04)	133,285,645.80
			P 616,295,667.53

In its Amended Final Report dated January 16, 2007[5], it is noted by the Court-commissioned Independent Certified Public Accountant (CPA) that the amount of P616,295,667.53 treated by petitioner as zero-rated sales/receipts consisted of the following:

[5] Exhibit "U^3-2".

1.	Sale of goods and services to PEZA and BOI-registered entities	P 320,118,429.86
2.	Sale of services to non-resident foreign entity	296,177,237.67
		P 616,295,667.53

Regarding petitioner's sale of goods and services to Philippine Economic Zone Authority (PEZA) and Board of Investments (BOI)-registered entities, the Independent CPA made the following findings:

> "1. Sale of goods and services to PEZA and BOI-registered entities:
>
> | Period | Amount | Exhibit |
> |---|---|---|
> | Second (2nd) Quarter of FY 31 March 2004 | P 60,334,051.69 | 'O' |
> | Third (3rd) Quarter of FY 31 March 2004 | 83,963,120.91 | 'P' |
> | Fourth (4th) Quarter of FY 31 March 2004 | 94,210,699.91 | 'Q' |
> | First (1st) Quarter of FY 31 March 2005 | 81,610,657.35 | 'R' |
> | **Total Zero-Rated Sales per Summary List of Sales Submitted to the BIR** | **P320,118,529.86** | |
>
> We ascertained that the PEZA-entities based on the foregoing schedule are all duly registered and in good standing with PEZA. As such, sales made by the Company to these PEZA-registered entities are considered 'automatic zero-rated sales' pursuant to Section 3(3) of RMC 74-99. Such fact was verified either through vouching of PEZA Registration Certificates or checking with PEZA website.
>
> Furthermore, we determined that BOI-entities, the sales to which are also considered as automatic zero-rated sales pursuant to Section 3 of RMO 9-00, are supported by BOI Certificates attesting to their 100% export sales."

The Court agrees on the aforesaid findings of the Independent CPA that sales of goods and services by a VAT-registered entity to an entity registered with PEZA and BOI are subject to zero percent (0%) VAT, pursuant to Sections 106(A)(2)(a)(5) and 108(B)(3) of the NIRC of 1997, which are all quoted hereunder:

> **"SEC. 106. Value-added Tax on Sale of Goods or Properties.**
>
> **(A) Rate and Base of Tax.**

xxx xxx xxx

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* — The term '*export sales*' means:

xxx xxx xxx

(5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws."

"SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –

xxx xxx xxx

(B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

xxx xxx xxx

(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;"

The VAT zero-rating of the sales of goods and services by a VAT-registered entity to PEZA and BOI entities was clarified by the BIR in Section 3(3) of Revenue Memorandum Circular (RMC) 74-99 and Section 2 of Revenue Memorandum Order (RMO) No. 9-00, which in pertinent parts read as follows:

"SECTION 3. Tax Treatment of Sales Made By A VAT Registered Supplier from the Customs Territory, To A PEZA Registered Enterprise. -

xxx xxx xxx

3. In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, **all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC , in relation to Art. 77(2) of the Omnibus Investments Code**, while **all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the 'Cross Border Doctrine' of the VAT system**.

This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of issuance of this Circular." (*Emphasis supplied*)

"**SECTION 2. *Rationale*.** — In Revenue Memorandum Circular No. 74-99, promulgated on October 15, 1999, it has been clarified that sales of goods, property and services made by VAT-registered suppliers to PEZA-registered enterprises shall qualify for zero-rating pursuant to the provisions of Section 106(A)(2)(a)(5) of the National Internal Revenue Code of 1997, in relation to Section 23 of R A. No. 7916 (the PEZA Law) and Article 77(2) of Executive Order No. 226 (the Omnibus Investments Code of 1987). This treatment is anchored on the 'Cross Border Doctrine' of the VAT System, which in essence means that no value-added tax shall form part of the cost component of products which are destined for consumption outside of the territorial border of the Philippines. This principle is achieved through the application of VAT zero-rating products exported from the Philippines to foreign countries. Furthermore, Article 25 of the Omnibus Investments Code provides among others, that products sold *'to bonded manufacturing warehouses of export-oriented manufacturers* shall be considered *"constructively exported"* while Section 106(A)(2)(a)(5) NIRC of 1997, provides for the application of zero rating to *'those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws.'*

> **The rationale of RMC 74-99 may also find application to sales made by VAT registered suppliers to BOI-registered enterprises whose manufactured products are 100% exported to foreign countries and therefore said sales can likewise be accorded automatic zero-rating treatment.**" (*Emphasis supplied*)

However, petitioner must comply with the substantiation requirements provided in Sections 113(A) and 237 of the NIRC of 1997, as amended, in order for its alleged zero-rated sales to be considered as such:

> "**SEC. 113. Invoicing and Accounting Requirements for VAT-registered Persons. —**
>
> **(A) Invoicing Requirements.**—A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and
>
> (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."
>
> "**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."

In relation to the aforesaid requirements, Section 4.108-1 of Revenue Regulations No. 7-95 enumerates the information that must appear on the face of the receipts or invoices issued for sales of goods or services by all VAT-registered persons, to wit:

> "**SECTION 4.108-1. Invoicing Requirements** – All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show: *ge*

1. the name, TIN and address of seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. the word 'zero-rated' imprinted on the invoice covering zero-rated sales; and
6. the invoice value or consideration.

xxx xxx xxx

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

If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A 'VAT Invoice' shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the Code."

Moreover, Section 3 of RMO 9-00 sets forth the following requirements that must be complied with in order that the sales made by a VAT-registered entity to BOI-registered companies may qualify as zero-rated sales:

"SECTION 3. Sales of goods, properties or services made by a VAT-registered supplier to a BOI registered exporter shall be accorded automatic zero-rating, i.e., without necessity of applying for and securing approval of the application for zero-rating as provided in Revenue Regulations No. 7-95, subject to the following conditions:

(1) The supplier must be VAT-registered,

(2) The BOI-registered buyer must likewise be VAT-registered;

(3) The buyer must be a BOI-registered manufacturer/producer whose products are 100% exported. For this purpose a Certification to this effect must be issued by the Board of Investments

(BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI;

(4) The BOI-registered buyer shall furnish each of its suppliers with a copy of the aforementioned BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers; and;

(5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly-registered VAT invoice with the words 'zero-rated' stamped thereon in compliance with Sec. 4.108-1(5) of RR 7-95. The supplier must likewise indicate in the VAT invoice the name and BOI-registry number of the buyer."

While the foregoing laws and regulations appear to make no distinction as to the evidentiary value of an invoice or official receipts, the same must be read in conjunction with Section 106(A) and (D) and Section 108(A) and (C) of the NIRC of 1997, as amended; which provide for the manner of determining the output VAT due on the sale of goods or properties and sale of services, respectively.

Pursuant to Section 106(A) of the NIRC of 1997, as amended, the VAT on the sale of goods or properties accrues upon the ***consummation of sale*** regardless of whether or not the consideration thereof was actually received. It is for this reason that Section 106(D) of the NIRC of 1997, as amended, provides that the tax shall be computed by multiplying the total amount indicated in the ***invoice*** by one-eleventh (1/11).

On the other hand, Section 108(A) of the NIRC of 1997, as amended, provides that the VAT on the sale of services accrues upon ***actual or constructive receipt of the consideration*** irrespective of whether or not the service has been rendered. Thus, Section 108(C) of the NIRC of 1997, as amended, provides that the tax on the sale of services shall be computed by multiplying the total amount indicated in the ***official receipt*** by 1/11.

In other words, the VAT law and regulations require that ***sales invoices*** must support the ***sale of goods or properties*** whereas ***official receipts*** must substantiate the ***sale of services***. It is further required that invoices and official receipts **must be registered with the BIR** and must contain, among other information, the taxpayer's **TIN-VAT** and the imprinted word **"zero-rated"** in the case of zero-rated sales transactions. Moreover, the name and BOI registry number of the buyer must be indicated in the VAT zero-rated sales invoice in the case of zero-rated sales to BOI entities.

In the present case, petitioner merely presented the Report[6] of the Independent CPA and Schedules of Sale of Goods and Services to PEZA and BOI-registered entities[7]. Petitioner failed to present the corresponding VAT zero-rated sales invoices (in the case of sales of goods) and VAT zero-rated official receipts (in the case of sales of services). Likewise, petitioner failed to present the PEZA registration certificates and BOI Certification of its customers. For petitioner's failure to substantiate its alleged zero-rated sales to PEZA and BOI entities for the fiscal year July 1, 2003 to June 30, 2004 in the amount of P320,118,529.86, the alleged input VAT attributable thereto cannot be refunded. The refund/tax credit of input VAT under Section 112(A) of the NIRC of 1997 is premised on the existence of zero-rated or effectively zero-rated sales.

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[6] Exhibit "N-2".
[7] Exhibits "O" to "R".

Anent petitioner's alleged zero-rated sale of services to non-resident foreign entity, the Independent CPA made the following findings:

"2. Sale of services to non-resident foreign entity:

Period	Amount	Exhibit
Second (2nd) Quarter of FY 31 March 2004	Php 65,247,852.26	'S'
Third (3rd) Quarter of FY 31 March 2004	46,069,461.83	'T'
Fourth (4^{th}) Quarter of FY 31 March 2004	133,184,835.13	'U'
First (1^{st}) Quarter of FY 31 March 2005	51,675,088.45	'V'
Total Zero-Rated Sales per Summary List of Sales Submitted to the BIR	**Php296,177,237.67**	

For sales to non-resident foreign entity, the Company has fully substantiated the same through the presentation of bank certification of inward remittances; deposits slip or bank credit advices. These documents were compared to the total amount of export sales reported per Summary List."

Value-added tax at zero percent (0%) is imposed on revenues derived from sale of services aside from processing, manufacturing or repacking of goods for other person doing business outside the Philippines which goods are subsequently exported, provided that the transaction is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* under Section 108(B)(2) of the NIRC of 1997, as amended, which states:

"**SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties.** --

xxx xxx xxx

(B) Transactions Subject to Zero Percent (0%) Rate. -- The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*;

> (2) Services other than those mentioned in the preceding paragraph, 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);"

In the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[8], the Supreme Court ruled that in order for the supply of services to be VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended, the following requisites must be met:

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

In the instant case, petitioner failed to prove compliance with the above requisites as it merely adduced in evidence the Report[9] of the Independent CPA with the attached Schedule of Sale of Services to Non-resident Foreign Entities[10]. It should have presented documents such as service contracts and billing statements to prove the nature of the services it rendered; VAT zero-rated official receipts, bank credit advices/memos, bank certification of inward remittances, deposit slips to prove the receipt of foreign currency remittances for services rendered; and SEC Certifications of Non-Registration of Corporation/Partnership and other documents to prove that its clients are non-resident foreign corporations doing business outside the Philippines. Again,

[8] G.R. No. 153205, January 22, 2007.
[9] Exhibit "N-2".
[10] Exhibits "S" to "V".

for its failure to prove that it generated VAT zero-rated sales to a non-resident foreign entity in the amount of P296,177,237.67, the alleged input VAT attributable thereto cannot be refunded.

It is well settled principle that petitioner, as taxpayer claimant, has the burden of proof to show that it is entitled to the refund of the amount claimed as refundable because taxes are presumed to have been collected in accordance with laws and regulations on the matter. The burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund.[11] Petitioner failed in this regard.

Thus, the Court no longer finds it necessary to determine petitioner's compliance with the other requisites for the refund/tax credit of input VAT attributable to zero-rated or effectively zero-rated sales for its failure to comply with the first requisite, pursuant to Section 112(A) of the NIRC of 1997, as amended.

Parenthetically, the Supreme Court ruled in the recent case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*[12] that the applicable provision with respect to the prescriptive period on the claim for refund or tax credit or unutilized input VAT attributable to zero-rated or effectively zero-rated sales in Section 112 (A) of the National Internal Revenue Code (NIRC) of 1997 and not Sections 204 (C) and 229 of the same Code. In the said case, the Supreme Court interpreted the applicable provision of law in this manner:

> The claim for refund or tax credit for the creditable input VAT payment made by MPC embodied in OR No 0189 was filed

[11] *Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd.*, 244 SCRA 336.
[12] G.R. No. 172129, September 12, 2008.

beyond the period provided by law for such claim. Sec. 112 (A) of the NIRC pertinently reads:

> (A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x. (Emphasis Ours.)

The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether sad tax was paid or not. As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112(A), "[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid not from the time the official receipt was issued." Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid. (*Emphasis supplied*)

WHEREFORE, this Petition for Review involving a claim for refund or issuance of tax credit certificate in the amount of P7,149,474.42, representing unutilized and/or unapplied input value-added tax for the period covering July 1, 2003 to June 30, 2004 is hereby **DENIED** due to insufficiency of evidence.

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
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.

ERNESTO D. ACOSTA
Presiding Justice