Republic of the Philippines
**COURT OF TAX APPEALS**
Quezon City

**SECOND DIVISION**

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| **MACQUARIE OFFSHORE SERVICES PTY. LTD. - PHILIPPINE BRANCH,** Petitioner, | **CTA Case Nos. 8221 & 8282** |
| | **Members:** |
| -versus- | **CASTAÑEDA, JR.**, *Chairperson* **CASANOVA**, *and* **COTANGCO-MANALASTAS**, *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | **Promulgated:** MAY 02 2014 1:05 p.m. |

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## DECISION

**CASANOVA, *J.*:**

These are two (2) consolidated Petitions for Review[1], separately filed by Macquarie Offshore Services Pty. Ltd. - Philippine Branch (petitioner), pursuant to Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals (RRCTA), in relation to Rule 4 thereof, to review by appeal the inaction of the respondent Commissioner of Internal Revenue over petitioner's administrative claim for tax refund or issuance of tax credit certificate of its alleged excess and unutilized input value-added tax (VAT) on purchases of goods and services attributable to its zero-rated sales of services

[1] Docket (CTA Case No. 8221, Vol. I), pp. 4-15; Docket (CTA Case No. 8282), pp. 1-15.

covering the period July 1, 2008 to March 31, 2009, in the aggregate amount of P4,318,178.19, broken down as follows:

| CTA Case No. | Period Covered | Amount |
|---|---|---|
| 8221 | July to December 2008 | P 2,129,229.47 |
| 8282 | January to March 2009 | 2,188,948.72 |
| **TOTAL** | | **P4,318,178.19** |

Petitioner is the Philippine branch of a multinational company organized and existing under and by virtue of the laws of Australia. It is licensed to do business as a Regional Operating Headquarters (ROHQ) in the Philippines by the Securities and Exchange Commission (SEC) on April 10, 2008, pursuant to the Omnibus Investment Code of 1987, as amended by Republic Act No. 8756 and its implementing rules and regulations, to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services; research and development services and product development; technical support and maintenance; data processing and communication and business development.[2] Its principal place of business is at the 30th Floor, Tower I, The Enterprise Center, Ayala Avenue, Makati City.[3]

Respondent is the duly appointed Commissioner of Internal Revenue, with the authority to act as such, including the power to decide, approve and grant claims for issuance of tax credit certificate or refund of overpaid internal revenue taxes as provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

As a Regional Operating Headquarters, petitioner is engaged in the business of providing qualifying services to its affiliates and

[2] Exhibit "A" SEC Certificate of Registration and License No. FS200805155; Exhibit "BB" Sworn Statement of Mr. Garry Taylor (to Questions Propounded by Atty. Lindy Andre' P. Ablaña) dated November 25, 2011; and Exhibit "YY" Sworn Statement of Mr. Garry Taylor (to Questions Propounded by Atty. Lindy Andre' P. Ablaña) dated July 13, 2011.

[3] Paragraph 1, Parties, Petitions for Review, Docket (CTA Case No. 8221, Vol. 1), p. 4 and Docket of CTA Case No. 8282, p. 1.

related parties in the Asia-Pacific Region and in other foreign markets as clearly stated in SEC Certificate of Registration and License.[4] These services were paid in Australian dollars (AUD) an acceptable foreign currency inwardly remitted through its account at Hong Kong and Shanghai Banking Corporation (HSBC) and accounted for in accordance with the rules and regulations of *the Bangko Sentral ng Pilipinas* (BSP).[5]

Petitioner purchased goods and services in the course of rendering services in the Philippines as a Regional Operating Headquarters to its foreign client.[6]

It is registered with the Bureau of Internal Revenue (BIR) as a VAT-registered taxpayer, with Taxpayer's Identification No. (TIN) 261-474-856-000, as evidenced by its Certificate of Registration OCN 9RC0000266681 dated June 2, 2008.[7]

Petitioner filed its original Quarterly VAT Returns for 2nd, 3rd and 4th quarters of fiscal year 2009, on the following dates:[8]

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[4] Paragraph 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket (CTA Case No. 8221, Vol. I), p. 340 and Docket (CTA Case No. 8282), p. 335; Exhibit "YY" Sworn Statement of Mr. Garry Taylor (to Questions Propounded by Atty. Lindy Andre' P. Ablaña).

[5] Exhibit "Z", Schedule of Remittances for the 2nd Quarter of f.y. 2009; Exhibit "AA", Schedule of Remittances for the 3rd Quarter of f.y. 2009; Exhibit "XX", Schedule of Bank Remittances for the 4th Quarter of f.y. 2009; Exhibit "II", HSBC Certification dated September 22, 2010 (re: Inward Remittances on December 9, 2008 and February 3, 2009); Exhibit "III", HSBC Certification dated October 26, 2010 (re: Inward Remittance on March 27, 2009); Exhibit "JJJ", HSBC Certification dated October 27, 2010 (re: Inward Remittance on May 11, 2009); Exhibit "BB" Sworn Statement of Mr. Garry Taylor (to Questions Propounded by Atty. Lindy Andre' P. Ablaña) dated November 25, 2011. Garry Taylor (to Questions Propounded by Atty. Lindy Andre' P. Ablaña) dated November 25, 2011; Exhibit "YY" Sworn Statement of Mr. Garry Taylor (to Questions Propounded by Atty. Lindy Andre' P. Ablaña) dated July 13, 2011.

[6] Exhibit "BB" Sworn Statement of Mr. Garry Taylor (to Questions Propounded by Atty. Lindy Andre' P. Ablaña) dated November 25, 2011; Exhibit "YY" Sworn Statement of Mr. Garry Taylor (to Questions Propounded by Atty. Lindy Andre' P. Ablaña); Exhibits "R" to "Y", "UU" to "VV-2" Quarterly and Monthly Summaries of Purchases for the 2nd to 4th Quarters of f.y. 2009.

[7] Par. 2, Stipulation of Facts, JSFI, Docket (CTA Case No. 8221, Vol. I), p. 341 and Docket (CTA Case No. 8282), p. 336; Exhibit "B".

[8] Par. 5, Stipulation of Facts, JSFI, Docket, (CTA Case No. 8221, Vol. I), p. 341 and Docket (CTA Case No. 8282), p. 336.

| Exhibit | Fiscal Year 2009 | Date Filed |
|---|---|---|
| D | July to September 2008 (2nd Qtr) | October 27, 2008 |
| E | October to December 2008 (3rd Qtr) | January 22, 2009 |
| F | January to March 2009 (4th Qtr) | April 21, 2009 |

On September 23, 2010, petitioner filed with the BIR Revenue District Office No. 47 an Application for Tax Credits/Refunds (BIR Form No. 1914) and a letter[9] dated September 23, 2010, requesting for the refund/issuance of Tax Credit Certificate (TCC) in the amount of P2,129,229.47, representing unutilized input value-added tax (VAT) attributable to its zero-rated sales for the period covering July 2008 to December 2008 or for second (2nd) and third (3rd) quarters of fiscal year 2009.

On November 25, 2010,[10] petitioner filed before the BIR Revenue District Office No. 47 an Application for Tax Credits/Refunds (BIR Form No. 1914) and a letter[11] dated November 24, 2010, requesting for the refund/issuance of Tax Credit Certificate (TCC) in the amount of P2,188,948.72, representing unutilized input value-added tax (VAT) attributable to its zero-rated sales for the period covering January to March 2009 (4th) quarter of fiscal year 2009.

However, due to the inaction of respondent Commissioner of Internal Revenue on petitioner's administrative claims, petitioner filed the two separate Petitions for Review docketed as CTA Case Nos. 8221 and 8282 on January 27, 2011 and April 20, 2011, respectively.

At the instance of petitioner, the two (2) separate cases filed were consolidated by the Third Division on August 22, 2011[12] which

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[9] Exhibit "C".
[10] Exhibit "BB" Sworn Statement of Mr. Garry Taylor (to Questions Propounded by Atty. Lindy Andre' P. Ablaña) dated November 25, 2011.
[11] Exhibit "ZZ".
[12] Docket (CTA Case No. 8282, Vol. I), pp. 435-436.

was confirmed by the CTA Second Division in a Resolution[13] dated August 31, 2011.

Respondent interposed the following Special and Affirmative Defenses in her Answers to the Petitions for Review docketed as CTA Case Nos. 8221[14] and 8282[15]:

**CTA Case No. 8221**

"5) Respondent reiterates and repleads the preceding paragraphs of the answer as part of his Special and Affirmative Defenses;

6) Petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue;

7) Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;

8) Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable;

9) It is incumbent upon the Petitioner to show that it has complied with the provision of Section 204(C) in relation to Section 229 of the 1997 Tax Code, as amended;

10) Petitioner's claim for refund or issuance of tax credit certificate in the amount of Php2,129,229.47, as alleged unutilized input VAT paid on purchases of

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[13] Docket (CTA Case No. 8282, Vol. I), pp. 437-438.
[14] Docket (CTA Case No. 8221, Vol. I), pp. 130-133.
[15] Docket (CTA Case No. 8282), pp. 116-118.

goods and services attributable to its zero-rated sales for the 2nd to 3rd Quarters of fiscal year 2009 was not fully substantiated by proper documents, such as sales invoices, official receipts and others.

11) In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim (*Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206*).

12) Claims for refund are construed strictly against the claimant, the same partake 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 121*)."

**CTA Case No. 8282**

"1. Respondent reiterates and repleads the preceding paragraphs of the answer as part of her Special and Affirmative Defenses;

2. Petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue;

3. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;

4. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable;

5. It is incumbent upon the Petitioner to show that it has complied with the provision of Section 204(C) in relation to Section 229 of the 1997 Tax Code, as amended;

6. Petitioner's claim for refund or issuance of tax credit certificate in the amount of Php2,188,948.72, as alleged unutilized input VAT paid on purchases of goods and services attributable to its zero-rated sales for the 4th Quarter of fiscal year 2009 was not fully substantiated by proper documents, such as sales invoices, official receipts and others.

7. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim (*Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206*).

8. Claims for refund are construed strictly against the claimant, the same partake 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 121*)."

On June 23, 2011 and February 2, 2012 this Court, upon Motion[16] of petitioner, appointed Jerome Antonio B. Constantino as Independent Certified Public Accountant (Independent CPA).[17]

During trial, petitioner presented as witnesses Garry Taylor, its Division Director and resident agent[18] and Jerome Antonio B.

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[16] Docket (CTA Case No. 8221, Vol. I), pp. 361-364 and pp. 523-526.
[17] Minutes of Hearing, Docket (CTA Case No. 8221, Vol. I), p. 385 and 541.
[18] Minutes of Hearing, Docket (CTA Case No. 8221, Vol. I), p. 402 and 522.

Constantino, the Independent CPA duly commissioned by this Court[19].

Thereafter, on November 16, 2012, petitioner filed its Formal Offer of Documentary Evidence,[20] submitting **Exhibits "A"** to **"NNN,"** inclusive of sub-marking which was admitted by the Court in the Resolution[21] dated January 7, 2013.

During the April 10, 2013 hearing[22], petitioner orally offered **Exhibit "OOO"** which was duly admitted by the Court on even date. Likewise, respondent manifested that she will not be presenting any evidence in this case. Thus, this Court granted the parties a period of thirty (30) days from said date or until May 10, 2013 to file their Memoranda; afterwhich, the case shall be deemed submitted for decision.

In the Resolution[23] dated July 3, 2013, the case was submitted for decision taking into consideration Petitioner's Memorandum, filed through registered mail on May 17, 2013, and received by this Court on May 30, 2013 and respondent's Memorandum, filed through registered mail on June 7, 2013, and received by this Court on June 20, 2013.

The following are the parties' jointly stipulated issues in CTA Case Nos. 8221[24] and 8282[25] submitted for this Court's resolution:

***CTA Case No. 8221***

"1. Whether or not petitioner rendered services to persons engaged in business conducted outside the Philippines, the services were paid for in Australian Dollars inwardly

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[19] Minutes of Hearing, Docket (CTA Case No. 8221, Vol. I), p. 433, 570 and 571.
[20] Docket (CTA Case No. 8221, Vol. II), pp. 720-739.
[21] Docket (CTA Case No. 8221, Vol. II), pp. 714-716.
[22] Minutes of Hearing, Docket (CTA Case No. 8221, Vol. II), p. 768.
[23] Docket (CTA Case No. 8221, Vol. II), p. 810.
[24] Docket (CTA Case No. 8221, Vol. I), pp. 342-343.
[25] Docket (CTA Case No. 8282), pp. 337-339.

remitted to the Philippines and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas for the 2nd to 3rd Quarters of Fiscal Year 2009 (or for the period of July to December 2008).

2. Whether or not petitioner's sales of services to persons engaged in business conducted outside of the Philippines is subject to VAT at zero-percent.

3. Whether or not petitioner has accumulated excess input VAT for the 2nd to 3rd quarters of f. y. 2009 amounting to Php2,129,299.47.

4. Whether or not petitioner's input VAT in the amount of Php2,129,229.47 is directly attributable to its alleged zero-rated sales for the 2nd to 3rd quarters of f. y. 2009;

5. Whether or not petitioner input VAT in the amount of P2,129,229.47 remains unutilized;

6. Whether or not petitioner's claim for refund/tax credit of alleged input VAT for the 2nd to 3rd quarters of f. y. 2009 is duly substantiated by documentary evidence.

7. Whether or not petitioner has complied with the invoicing requirements pursuant to Revenue Regulation No. 16-2005.

8. Whether or not petitioner is entitled to claim a refund or tax credit in the amount of Php2,129,229.47 representing alleged excess and unutilized input VAT for the 2nd to 3rd quarters of f. y. 2009."

**<u>CTA Case No. 8282</u>**

"1. Whether or not petitioner rendered services to persons engaged in business conducted outside the Philippines, the services were paid for in Australian Dollars inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas for the 4th Quarter of Fiscal Year 2009 (or for the period of January to March 2009).

2. Whether or not petitioner's sales of services to persons engaged in business conducted outside of the Philippines is subject to VAT at zero-percent.

3. Whether or not petitioner has accumulated excess input VAT for the 4th Quarter of fiscal year 2009 amounting to Php2,188,948.72.

4. Whether or not petitioner's input VAT in the amount of Php2,188,948.72 is directly attributable to its alleged zero-rated sales for the 4th Quarter of fiscal year 2009.

5. Whether or not petitioner input VAT in the amount of Php2,188,948.72 remains unutilized.

6. Whether or not petitioner's claim for refund/tax credit of alleged input VAT for the 4th Quarter of fiscal year 2009 is duly substantiated by documentary evidence.

7. Whether or not petitioner has complied with the invoicing requirements pursuant to Revenue Regulation No. 16-2005.

8. Whether or not petitioner is entitled to claim a refund or tax credit in the amount of Php2,188,948.72

> representing alleged excess and unutilized input VAT for the 4th Quarter of fiscal year 2009."

The foregoing issues boil down to one issue: "Whether or not petitioner is entitled to a refund of and/or issuance of a TCC in the aggregate amount of P4,318,178.19, representing petitioner's excess and unutilized input VAT paid on purchases of goods and services attributable to its zero-rated sales of services covering the period July 1, 2008 to March 31, 2009.

The Court shall first determine the timeliness of the filing of the instant claim, since it will determine the necessity of resolving petitioner's compliance with the other requisites.

***A. Timeliness of the claim***

Section 112(A) of the NIRC of 1997, as amended, plainly provides that a VAT-registered person may apply for the issuance of a tax credit certificate or refund of creditable input tax attributable to zero-rated or effectively zero-rated sales within two years after the close of the taxable quarter when the sales were made.

On the other hand, Section 112(C) of the same Tax Code clearly states that the affected taxpayer may appeal with the CTA within thirty (30) days from receipt of the decision or from inaction of the Commissioner of Internal Revenue after the lapse of the one hundred twenty (120) day period, to wit:

> "**(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 <u>(30) days</u> 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**." *(emphasis supplied)*

Taking into consideration the foregoing provisions, petitioner timely filed its claim for refund or tax credit both in the administrative and judicial levels, as illustrated below:

| **Period Covered (FY 2009)** | **Close of the taxable quarter** | **Last day of the 2-year prescriptive period to file administrative claim** | **Date of Administrative Claim** | **Last day of the 120-day period** | **Last day of the 30-day period to judicially appeal** | **Judicial Claim** |
|---|---|---|---|---|---|---|
| 2nd Quarter | 30-Sep-08 | 30-Sep-10 | 23-Sep-10[26] | 21-Jan-11 | 20-Feb-11 | 27-Jan-11 |
| 3rd Quarter | 31-Dec-08 | 31-Dec-10 | | | | |
| 4th Quarter | 31-Mar-09 | 31-Mar-11 | 25-Nov-10[27] | 25-Mar-11 | 24-Apr-11 | 20-Apr-11 |

This Court will now proceed to determine petitioner's compliance with the other requisites. Petitioner duly filed with the Bureau of Internal Revenue (BIR) its Quarterly VAT Returns for the second to fourth quarters of Fiscal Year 2009 (or for the period of July 2008 to March 2009) declaring the following:

| | **2nd Qtr** ***Exhibit "D"*** | **3rd Qtr** ***Exhibit "E"*** | **4th Qtr** ***Exhibit "F"*** |
|---|---|---|---|
| VAT Sales | | | |
| Zero-Rated Sales | ₱ 7,165,419.00 | ₱ 35,092,061.37 | ₱ 45,081,987.03 |
| Total Sales | 7,165,419.00 | 35,092,061.37 | 45,081,987.03 |
| Output VAT | - | - | - |
| Less: Allowable Input VAT | | | |
| Input Tax Carried-Over from Previous Quarter | ₱ 116,357.14 | ₱ 933,773.97 | ₱ 2,245,586.61 |
| Input Tax Deferred on Capital Goods | | 599,771.29 | 537,427.57 |

[26] Exhibit "C".
[27] Exhibit "ZZ".

| | | | |
|---|---|---|---|
| Exceeding P1M from Previous Qtr | | | |
| Total | ₱ 116,357.14 | ₱ 1,533,545.26 | ₱ 2,783,014.18 |
| Input VAT for the current transactions | | | |
| Purchase of Capital Goods not Exceeding ₱1M | | | |
| Purchase of Capital Goods Exceeding ₱1M | 662,115.00 | | |
| Domestic Purchase of Goods other than Capital Goods | 150,942.47 | 406,800.26 | 417,690.49 |
| Domestic Purchase of Services | 604,130.65 | 842,668.67 | 1,708,914.51 |
| Services Rendered by Non-residents | | | |
| Total Current Input VAT | ₱ 1,417,188.12 | ₱ 1,249,468.93 | 2,126,605.00 |
| Total Available Input VAT | 1,533,545.26 | 2,783,014.19 | 4,909,619.18 |
| Less: Deductions from Input VAT | | | |
| Input Tax on Purchase of Capital Goods exceeding ₱1M deferred for the succeeding period | 599,771.29 | 537,427.57 | 475,083.86 |
| VAT Refund/TCC Claimed | | | |
| Total | ₱ 599,771.29 | ₱ 537,427.57 | ₱ 475,083.86 |
| Total Allowable Input VAT | ₱ 933,773.97 | ₱ 2,245,586.62 | ₱ 4,434,535.32 |
| **Excess/Unutilized Input VAT** | **₱ 933,773.97** | **₱ 2,245,586.62** | **₱4,434,535.32** |

Petitioner is claiming a refund or TCC in the aggregate amount of ₱4,318,178.19 representing excess and unutilized input VAT paid for the second to fourth quarters of fiscal year 2009, broken down as follows:

| | **2nd Quarter** | **3rd Quarter** | **4th Quarter** | **Total** |
|---|---|---|---|---|
| Input Tax Deferred on Capital Goods exceeding ₱1M from Previous Quarter | | ₱ 599,771.29 | ₱ 537,427.57 | ₱ 1,137,198.86 |
| Add: Input Tax on Capital Goods exceeding ₱1M Purchased this Quarter | ₱ 662,115.00 | | | 662,115.00 |
| Total: Unamortized Input Tax on Capital Goods exceeding ₱1M | ₱ 662,115.00 | ₱ 599,771.29 | ₱ 537,427.57 | ₱ 1,799,313.86 |
| Less: Input Tax on Purchases of Capital Goods exceeding ₱1M deferred for the succeeding period | 599,771.29 | 537,427.57 | 475,083.86 | 1,612,282.72 |
| Amortization of Input Tax on Capital Goods exceeding ₱1M | ₱ 62,343.71 | ₱ 62,343.72 | ₱ 62,343.71 | ₱ 187,031.14 |
| Add: Input Tax on: | | | | - |
| Domestic Purchase of Goods other than Capital Goods | ₱ 150,942.47 | ₱ 406,800.26 | ₱ 417,690.49 | ₱ 975,433.22 |
| Domestic Purchase of Services | 604,130.65 | 842,668.67 | 1,708,914.51 | 3,155,713.83 |
| Total | 755,073.12 | 1,249,468.93 | 2,126,605.00 | 4,131,147.05 |
| Total Allowable Input Tax | ₱ 817,416.83 | ₱ 1,311,812.65 | ₱ 2,188,948.71 | ₱ 4,318,178.19 |
| Less: Output Tax Due | | | | |
| **Excess Input Tax** | **₱ 817,416.83** | **₱ 1,311,812.65** | **₱ 2,188,948.71** | **₱ 4,318,178.19** |

Pertinent to the present claim is the provision of Section 112(A) of the NIRC of 1997, as amended, which reads:

> "**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."

Based on the foregoing, in order to be entitled to a refund or tax credit of unutilized input VAT, the following must be complied with:

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 or effectively zero-rated sales;

4. that the input taxes were not applied against any output tax liability; and
5. that the claim for refund was filed within the two-year prescriptive period.

The Court shall discuss the validity of petitioner's claim by verifying the compliance with the above-mentioned requirements.

***B. There must be zero-rated or effectively zero-rated sales -***

In its VAT returns for the 2nd to 4th quarters of FY 2009, petitioner reflected the following zero-rated sales:

| **Exhibit** | **Period covered FY 2009** | **Amount** |
|---|---|---|
| D | 2nd Quarter | ₱ 7,165,419.00 |
| E | 3rd Quarter | 35,092,061.37 |
| F | 4th Quarter | 45,081,987.03 |
| | **Total** | **₱ 87,339,467.40** |

Petitioner claims that its sales of services were rendered almost exclusively to Macquarie Financial Holdings Limited (MFHL) during the fiscal year 2009. These services, though rendered in the Philippines, were for the exclusive benefit of MFHL who is domiciled in Australia and the payment of which were in AUD remitted to petitioner's bank account in the Philippines. As such, these sales are VAT zero-rated pursuant to Section 108(B)(2) of the NIRC of 1997, as amended, which reads as follows:

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

> "(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> "(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"

In the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[28], the Supreme Court held 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 the BSP rules and regulations; and
3. the recipient of such services is doing business outside the Philippines.

Petitioner complied with the foregoing requirements.

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

Petitioner is a duly licensed Regional Operating Headquarter (ROHQ)[29] engaged 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.[30] Such qualifying services rendered to its affiliates and related parties in the Asia Pacific Region and in other foreign markets services are not the same category as "processing, manufacturing or repacking of goods".

For the 2nd to 4th quarters of FY 2009, petitioner rendered services to Macquarie Financial Holdings Limited (MFHL)[31], an entity registered under the laws of Australia[32] and which is not registered with the Philippine SEC either as a corporation or as a partnership.[33] Petitioner's business transactions with MFHL was governed by a Service Agreement dated April 1, 2009 which was duly signed by its representatives and bears the Common Seal of both parties.[34]

Corollary to the second requisite, Sections 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, and as implemented by Sections 4.113-1(A)(2), B(1) and (2)(c) of Revenue Regulations (RR) No. 16-05 provides that a VAT taxpayer, like the 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 following information:

> **"SEC. 113. Invoicing and Accounting Requirements for VAT-registered Persons. —**
>
> "(A) *Invoicing Requirements.* — A VAT-registered person shall issue:

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[29] Exhibits "A" SEC Certificate of Registration and License No. FS200805155 and Exhibit "BB", A8.
[30] Exhibit "A-3".
[31] Formerly Macquarie Group Holdings No. 2 Ltd, as per Exhibit "GG-1".
[32] Exhibits "GG" to "GG-3" and "HH" to "HH-4".
[33] Exhibit "FF".
[34] Exhibit "DD".

xxx xxx xxx

"(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:

xxx xxx xxx

"(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;

x x x x x x x x x

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

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

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

xxx xxx xxx

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

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

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

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

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

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

xxx xxx xxx

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

Pursuant to the foregoing provisions, the foreign currency remittances referred by Section 108(B)(2) of the NIRC of 1997, as amended, must, likewise, be supported by VAT zero-rated official receipts.

In compliance thereto and to prove that it generated zero-rated sales and that the corresponding foreign currency payments it received were accounted for in accordance with the rules and regulations of the BSP, petitioner offered in evidence its sales invoices[35] and official receipts[36] issued to MFHL, as well as the certificates of inward remittances[37] issued by HSBC.

However, a comparison of the amounts of zero-rated sales/receipts declared in the Quarterly VAT Returns against the amounts supported by sales invoices, official receipts and inward remittances disclosed a discrepancy of ₱2,139,544.97, detailed as follows:

| | Per VAT Returns | | Per Invoice/OR/Inward Remittances | | |
|---|---|---|---|---|---|
| | **Exhibit** | **Amount** | **Exhibit** | **Amount** | **Discrepancy** |
| Macquarie Group Hold 2 Ltd / Macquarie Financial Holdings Ltd | | | LL-1/MM-1/II | ₱ 7,165,419.00 | |
| **Total 2nd Qtr FY 2009** | D | **₱7,165,419.00** | | **₱7,165,419.00** | - |
| | | | | | |
| Macquarie Group Hold 2 Ltd / Macquarie Financial Holdings Ltd | | | LL-2/MM-1/II | 5,067,371.63 | |
| Macquarie Group Hold 2 Ltd / Macquarie Financial Holdings Ltd | | | LL-3/MM-1/II | 2,810,770.86 | |
| Macquarie Group Hold 2 Ltd / Macquarie Financial Holdings Ltd | | | LL-4/MM-2/II | 6,791,793.69 | |
| Macquarie Group Hold 2 Ltd / Macquarie Financial Holdings Ltd | | | LL-5/MM-2/II | 18,949,421.37 | |
| **Total 3rd Qtr FY 2009** | E | **35,092,061.37** | | **33,619,357.55** | ₱1,472,703.82 |
| | | | | | |
| Macquarie Financial Holding Limited | | | GGG-1/HHH-1/III | 8,747,405.21 | |
| Macquarie Financial Holding Limited | | | GGG-2/HHH-1/III | 10,236,869.56 | |
| Macquarie Financial Holding Limited | | | GGG-3/HHH-2/JJJ | 10,217,066.75 | |
| Macquarie Financial Holding Limited | | | GGG-4/HHH-2/JJJ | 15,213,804.36 | |
| **Total 4th Qtr FY 2009** | F | **45,081,987.03** | | **44,415,145.88** | 666,841.15 |
| **Total Zero-Rated Sales** | | **₱87,339,467.40** | | **₱85,199,922.43** | **₱2,139,544.97** |

Based on records, the discrepancy of ₱2,139,544.97 is comprised of the following:

[35] Exhibits "LL-1" to "LL-5", "GGG-1" to "GGG-4".
[36] Exhibits "MM-1" to "MM-2", "HHH-1" to "HHH-2".
[37] Exhibits "II", "III" and "JJJ".

| | |
|---|---|
| Year-end adjustment | ₱ 666,841.15 |
| Sale to Macquarie Services Hongkong Limited | 1,472,703.82 |
| **Total** | **₱ 2,139,544.97** |

The amount of ₱666,841.15, allegedly pertaining to year-end adjustment, is not supported by any pertinent document, thus, shall be disallowed.

On the other hand, the alleged zero-rated sale to Macquarie Services Hongkong Limited (MSHL) in the amount of ₱1,472,703.82 shall, likewise, be disallowed for the same is not duly supported by any other pertinent document such as sales invoice, official receipts or proof of inward remittance. Moreover, no supporting document was presented to prove that MSHL is a corporation registered and conducting business outside the Philippines.

Thus, only the amount of ₱85,199,922.43 representing petitioner's sales to MFHL which are duly supported by documentary evidence qualify for VAT zero rating under Section 108(B)(2) of the NIRC of 1997, as amended. Consequently, only the portion of the input VAT claim attributable thereto may be considered for refund. The rate to be applied is based on the total declared amount of zero-rated receipts and is computed as follows:

| | |
|---|---|
| Substantiated zero-rated sales | ₱ 85,199,922.43 |
| Divided by total declared zero-rated sales | ÷ 87,339,467.40 |
| **Rate of substantiated zero-rated sales** | **0.975503114** |

### C. ***That input taxes were incurred or paid and were attributable to zero-rated of effectively zero-rated sales***

After having resolved that petitioner's sales to MFHL in the amount of ₱85,199,922.43 qualify for VAT zero rating, the Court will now proceed to the determination of whether or not petitioner incurred or paid input taxes in connection therewith.

### 1. Input VAT on domestic purchases of goods and services other than capital goods

In its VAT Returns for the 2nd to 4th quarters of FY 2009, petitioner declared input VAT on its purchases of services and goods other than capital goods in the aggregate amount of ₱4,131,147.05, broken down as follows:

| Input VAT on: | 2nd Quarter | 3rd Quarter | 4th Quarter | Total |
|---|---|---|---|---|
| Domestic Purchase of Goods other than Capital Goods | ₱ 150,942.47 | ₱ 406,800.26 | ₱ 417,690.49 | ₱ 975,433.22 |
| Domestic Purchase of Services | 604,130.65 | 842,668.67 | 1,708,914.51 | 3,155,713.83 |
| **TOTAL** | **₱ 755,073.12** | **₱1,249,468.93** | **₱2,126,605.00** | **₱4,131,147.05** |

In support thereof, petitioner offered in evidence BIR Form 1600 with bank payment slips, sales invoices and official receipts[38] issued by its various suppliers which were examined by the Independent CPA, Mr. Jerome Antonio B. Constantino of Constantino Guadalquiver & Co. In his Report dated March 5, 2012,[39] the ICPA summarized his findings as follows:

| | Findings | 2nd Quarter FY March 2009 (Annex 2-A) | 3rd Quarter FY March 2009 (Annex 2-B) | 4th Quarter FY March 2009 (Annex 2-C) | Consolidated Total |
|---|---|---|---|---|---|
| | ***PROPERLY SUBSTANTIATED*** | | | | |
| 1 | Input VAT on domestic purchases of goods supported by "TIN-VAT" invoices | ₱ 85,802.14 | ₱ 114,679.28 | ₱ 198,566.32 | ₱ 399,047.74 |
| 2 | Input VAT on domestic purchases of services supported by "TIN-VAT" official receipts (ORs) | 37,061.03 | 78,753.54 | 30,720.65 | 146,535.22 |
| 3 | Input VAT on domestic purchases of goods supported by "VAT REG TIN" invoices | 21,428.57 | 71,218.21 | 8,653.97 | 101,300.75 |

[38] Exhibits "NN-1" to "NN-35; "OO-1" to "OO-7"; "PP-1" to "PP-49" and "MMM-1" to "MMM-85".
[39] Exhibit "FFF".

| | | | | | |
|---|---|---|---|---|---|
| 4 | Input VAT on domestic purchase of services supported by "VAT REG TIN" ORs | 179,276.80 | 69,471.64 | 1,077,560.15 | 1,326,308.59 |
| 5 | Input VAT on domestic purchase of goods supported by "VAT REG TIN" invoices with erasures in the amount but with countersignature | | | 18,951.79 | 18,951.79 |
| 6 | Input VAT on domestic purchase of service supported by "VAT REG TIN" ORs with erasures in the amount but with countersignature | 76,388.40 | | 37,189.19 | 113,577.59 |
| 7 | Input VAT on domestic purchase of service supported by "VAT REG TIN" ORs with erasures in the address but with countersignature | | 182,160.00 | 191,670.00 | 373,830.00 |
| 8 | Input VAT on domestic purchase of goods supported by "TIN VAT" invoices not dated within the VAT-taxable quarter but within the taxable FY March 31, 2009 | | 103,197.86 | 152,438.65 | 255,636.51 |
| 9 | Input VAT on domestic purchase of services supported by "TIN VAT" ORs not dated within the VAT-taxable quarter but within the taxable FY March 31, 2009 | 900.00 | | | 900.00 |
| 10 | Input VAT on domestic purchase of services supported by "VAT REG TIN" ORs not dated within the VAT-taxable quarter but within the taxable FY March 31, 2009 | 233,592.99 | 554,358.48 | | 787,951.47 |
| 11 | Input VAT on domestic purchase of goods supported by "VAT REG TIN" invoices not dated within the VAT-taxable quarter but within the taxable FY March 31, 2009 | | 39,362.49 | | 39,362.49 |
| 12 | Input VAT on domestic purchases of services supported by BIR Form 1600 and bank payment slip | | 21,840.00 | | 21,840.00 |
| | ***subtotal*** | ***634,449.93*** | ***1,235,041.50*** | ***1,715,750.72*** | ***3,585,242.15*** |
| | ***OTHER FINDINGS*** | | | | |
| 1 | Input VAT on domestic purchase of services supported by "VAT REG TIN" ORs dated outside the taxable FY March 31, 2009 | | | 278,660.64 | 278,660.64 |
| 2 | Input VAT on domestic purchase of services supported by "TIN VAT" ORs dated outside the period the taxable FY March 31, 2009 | | 5,785.70 | | 5,785.70 |
| 3 | Input VAT on domestic purchase of goods supported by "TIN VAT" invoice dated outside the taxable FY March 31, 2009 | 45,731.39 | | | 45,731.39 |
| 4 | Input VAT on domestic purchase of services supported by "TIN-VAT" ORs with incomplete petitioner's name (e.g. Macquarie Offshore Services only, Macquarie only) | 14,051.80 | | | 14,051.80 |

| | | | | | |
|---|---|---|---|---|---|
| 5 | Input VAT on domestic purchase of services supported by "VAT REG TIN" ORs with incomplete petitioner's name (e.g. Macquarie Offshore Services only, Macquarie only) | | | 5,400.00 | 5,400.00 |
| 6 | Input VAT on domestic purchase of services supported by documents other than ORs | | | 23,986.21 | 23,986.21 |
| 7 | Input VAT on domestic purchase of services supported by "TIN" only ORs | | | 23,241.29 | 23,241.29 |
| 8 | Input VAT on domestic purchase of services supported by "VAT REG" only ORs | | | 2,505.50 | 2,505.50 |
| 9 | Input VAT on domestic purchase of goods supported by "TIN VAT" invoice without Petitioner's TIN | 840.00 | 8,513.58 | | 9,353.58 |
| 10 | Input VAT in domestic purchase of services supported by "TIN VAT" ORs with incorrect Petitioner's TIN | | 128.16 | | 128.16 |
| 11 | Input VAT on domestic purchase of goods supported by "TIN-VAT" invoices with incomplete petitioner's name and no TIN | | | 283.20 | 283.20 |
| 12 | Input VAT on domestic purchase of goods supported by "TIN VAT" invoices without petitioner's name and address | | | 10,080.00 | 10,080.00 |
| 13 | Input VAT on domestic purchase of services supported by "TIN-VAT" ORs without Petitioner's address | | | 295.14 | 295.14 |
| 14 | Input VAT on domestic purchase of services supported by certified true copy of "VAT REG TIN" ORs | 60,000.00 | | | 60,000.00 |
| 15 | Input VAT in domestic purchase of goods supported by certified true copy of "TIN VAT" Invoice | | | 66,402.32 | 66,402.32 |
| | ***Subtotal*** | ***120,623.19*** | ***14,427.44*** | ***410,854.30*** | ***545,904.93*** |
| | **GRAND TOTAL** | **₱ 755,073.12** | **₱1,249,468.95** | **₱2,126,605.02** | **₱4,131,147.08** |

Based on the above findings, the amount of ₱545,904.93 under the subtitle "Other Findings" shall be disallowed outright for the reasons stated therein.

Likewise, the Court finds that the following input VAT should be disallowed from petitioner's claim for its failure to meet the substantiation requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, and as implemented by Sections 4.110-1, 4.110-8 and 4.113-1 of Revenue Regulations No. 16-2005:

| **Findings** | **Exhibit No.** | **Input VAT Amount** |
|---|---|---|
| **1 *Domestic purchases of services supported by VAT ORs wherein the input VAT are not separately indicated*** | | |

| | | | |
|---|---|---|---|
| | King of Travel | NN-8 | ₱ 24.32 |
| | King of Travel | NN-9 | 49.28 |
| | King of Travel | NN-10 | 24.64 |
| | HBO+EMTB Construct, Inc. | NN-34 | 21,533.63 |
| | King of Travel | PP-9 | 58.93 |
| | King of Travel | PP-12 | 50.14 |
| | King of Travel | PP-13 | 50.57 |
| | King of Travel | PP-14 | 216.75 |
| | Quest Highlands, Inc. | PP-24 | 5,160.00 |
| | HBO+EMTB Construct, Inc. | MMM-19 | 24,609.86 |
| | ***subtotal*** | | ***51,778.12*** |
| | | | |
| **2** | ***Domestic purchase of goods supported by VAT invoice wherein the input VAT is not separately indicated*** | | |
| | Cornersteel Systems Corp. | PP-7 | 2,410.71 |
| | ***subtotal*** | | ***2,410.71*** |
| | | | |
| **3** | ***Domestic purchase of services supported by document other than VAT OR*** | | |
| | Business Process Outsourcing | MMM-30 | 966.36 |
| | ***subtotal*** | | ***966.36*** |
| | | | |
| **4** | ***Over-claimed input VAT on domestic purchases of services supported by VAT ORs*** | | |
| | Manila Bulletin Publishing Corp. | MMM-44 | 178.39 |
| | Manila Bulletin Publishing Corp. | MMM-45 | 178.39 |
| | Manila Bulletin Publishing Corp. | MMM-46 | 178.39 |
| | Manila Bulletin Publishing Corp. | MMM-47 | 178.39 |
| | Ascott Makati, Inc. | MMM-56 | 4,117.66 |
| | ***subtotal*** | | ***4,831.22*** |
| | **TOTAL** | | **₱ 59,986.41** |

2. **<u>Input VAT on domestic purchases of capital goods and services</u>**

A comparison of the total amount of input VAT indicated in the petitioner's VAT returns for the 2nd quarter of FY March 2009 covering the period July to September 2008 against the total amount of input VAT indicated in the invoices issued by HBO+EMTB for its Space Planning Interior Consultancy Project Administration and Construct Services disclosed the following:

| 2nd Quarter FY March 2009 (July 2008 to Sept. 2008): | Purchases | Input VAT on Domestic Purchase of Capital goods Exceeding P1 Million | Exhibit Reference |
|---|---|---|---|
| Per Quarterly VAT Return | ₱ 5,517,625.00 | ₱ 662,115.00 | Exhibit "D" |
| Per Invoices of Capital goods for the period July to December 2008: | | | |
| Invoice No. 08-06-143 | 5,071,312.50 | 608,557.50 | Exhibit "OO-1" |
| Invoice No. 08-06-144 | 959,017.86 | 115,082.14 | Exhibit "OO-2" |
| Total | 6,030,330.36 | 723,639.64 | |
| **Difference - VAT return over (under)** | **₱ (512,705.36)** | **₱ (61,524.64)** | |

The ICPA stated in his Report that the difference of ₱512,705.36 in domestic purchases of capital goods exceeding ₱1 Million is due to the professional fees paid which was included in invoice number 08-06-143 and reported as input tax on domestic purchases of services as indicated in the schedule of HBO+EMTB prepared by the petitioner.

For the 3rd and 4th quarters of FY 2009, petitioner does not have any purchases of capital goods.

Upon examination of the invoices and official receipts related to the claimed input VAT on domestic purchases of goods exceeding ₱1 Million, the Court finds the following:

a) Of the total Purchases of ₱6,030,330.36 supported by invoices nos. 08-06-143 and 08-06-144, the amount already included as domestic purchases of services (other than capital goods) is ₱546,278.67 with the related input VAT of ₱65,553.44. Hence, only the amount of ₱5,484,051.69 pertains to capital goods and services, as presented below:

| | Total Purchases | | Domestic Purchases of Services | | Domestic Purchases of Capital Goods and Services | |
|---|---|---|---|---|---|---|
| Exhibit | Net of VAT | Input VAT | Net of VAT | Input VAT | Net of VAT | Input VAT |
| NN-11/OO-1 | ₱ 1,267,828.13 | ₱ 152,139.38 | ₱ 128,176.33 | ₱ 15,381.16 | ₱ 1,139,651.80 | ₱ 136,758.22 |
| NN-34/MMM- | 760,696.88 | 91,283.63 | 179,446.92 | 21,533.63 | 581,249.96 | 69,750.00 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 19 | 1,014,262.50 | 121,711.50 | 205,082.17 | 24,609.86 | 809,180.33 | 97,101.64 |
| OO-4 | 1,521,393.75 | 182,567.25 | | | 1,521,393.75 | 182,567.25 |
| | 253,565.63 | 30,427.88 | | | 253,565.63 | 30,427.88 |
| | 126,782.81 | 15,213.94 | | | 126,782.81 | 15,213.94 |
| | 126,782.81 | 15,213.94 | | | 126,782.81 | 15,213.94 |
| ***sub-total*** | ***5,071,312.51*** | ***608,557.52*** | ***512,705.42*** | ***61,524.65*** | ***4,558,607.09*** | ***547,032.87*** |
| OO-2 | 239,754.46 | 28,770.54 | | | 239,754.46 | 28,770.54 |
| | 647,337.05 | 77,680.45 | | | 647,337.05 | 77,680.45 |
| PP-49 | 47,950.89 | 5,754.11 | 33,573.25 | 4,028.79 | 14,377.64 | 1,725.32 |
| | 23,975.45 | 2,877.05 | | | 23,975.45 | 2,877.05 |
| ***sub-total*** | ***959,017.85*** | ***115,082.15*** | ***33,573.25*** | ***4,028.79*** | ***925,444.60*** | ***111,053.36*** |
| **TOTAL** | **₱ 6,030,330.36** | **₱ 723,639.67** | **₱ 546,278.67** | **₱65,553.44** | **₱5,484,051.69** | **₱ 658,086.23** |

b) Of the purchases of ₱5,484,051.69 classified as capital goods and services, only the amount of ₱2,900,800.01 is duly substantiated by valid official receipts. It bears stressing that the purchases of ₱5,484,051.69 actually pertain to purchases of services as described in the sales invoice. As such, it must be supported by VAT official receipts in accordance with Sections 110(A), 113(A) and (B) of the NIRC of 1997, as amended, and as implemented by Sections 4.110-2, 4.110-8, 4.113-1 of RR No. 16-2005, as shown below:

| OR Exhibit No. | OR No. | OR Date | Total Purchases Net of VAT | Total Purchases Input VAT | Remarks |
|---|---|---|---|---|---|
| NN-11/OO-3 | 1091 | 7/24/2008 | ₱ 1,139,651.80 | ₱ 136,758.22 | supported by valid VAT OR |
| OO-4 | 1094 | 11/4/2008 | 1,521,393.75 | 182,567.25 | supported by valid VAT OR |
| NN-11/OO-3 | 1091 | 7/24/2008 | 239,754.46 | 28,770.54 | supported by valid VAT OR |
| ***sub-total*** | | | ***2,900,800.01*** | ***348,096.01*** | |
| NN-34/MMM-19/OO-5 | 1093 | 9/22/2008 | 581,249.96 | 69,750.00 | input VAT not separately indicated |
| | | | 809,180.33 | 97,101.64 | input VAT not separately indicated |
| PP-49 | 1099 | 4/27/2009 | 14,377.64 | 1,725.32 | dated outside the period of claim |
| ***sub-total*** | | | ***1,404,807.93*** | ***168,576.96*** | |
| **TOTAL** | | | **₱ 4,305,607.94** | **₱ 516,672.96** | |

c) Pursuant to Section 110(A) of the NIRC of 1997, as amended, and in relation to Section 4.110-3 of RR No. 16-2005, the input VAT claim on capital goods with acquisition cost exceeding ₱1 Million, excluding the VAT component thereof, shall be spread evenly over 60 months or the estimated useful life of the capital good, whichever is shorter. Thus, out of the P348,096.01 substantiated input

VAT, as shown above, only the amount of ₱78,234.89 shall be allowable for refund/credit, computed as follows:

| OR Exhibit No. | OR Date | Input VAT | Estimated useful life (No. of months) | Monthly Amortization | Total Amortization (2nd to 4th quarters FY 2009) |
|---|---|---|---|---|---|
| NN-11/OO-3 | 7/24/2008 | ₱ 136,758.22 | 29 | ₱ 4,715.80 | ₱ 42,442.20 |
| OO-4 | 11/4/2008 | 182,567.25 | 29 | 6,295.42 | 31,477.10 |
| NN-11/OO-3 | 7/24/2008 | 28,770.54 | 60 | 479.51 | 4,315.59 |
| **TOTAL** | | **₱ 348,096.00** | | **₱ 11,490.73** | **₱ 78,234.89** |

To recapitulate, petitioner's substantiated input VAT for the 2nd to 4th quarters of FY 2009 amounted to ₱3,790,521.74, computed as follows:

| | | |
|---|---|---|
| Claimed Input VAT for refund/TCC | | ₱ 4,318,178.19 |
| Less: Disallowances | | |
| Per ICPA Report | ₱ 545,904.93 | |
| Per this Court's Findings | 59,986.41 | 605,891.34 |
| Balance | | ₱ 3,712,286.85 |
| Add: Amortization of Input VAT on domestic purchases of services | | 78,234.89 |
| **Substantiated Input VAT** | | **₱3,790,521.74** |

However, out of the substantiated input VAT of ₱3,790,521.74, only the amount of ₱3,697,665.76 can be attributed to the substantiated zero-rated sales of ₱85,199,922.43, computed as follows:

| | |
|---|---|
| Substantiated zero-rated sales | ₱ 85,199,922.43 |
| Divided by total declared zero-rated sales | ₱ 87,339,467.40 |
| **Rate of substantiated zero-rated sales** | **0.975503114** |
| x Substantiated Input VAT | ₱ 3,790,521.74 |
| **Refundable Input VAT** | **₱ 3,697,665.76** |

***D. <u>The input taxes were not applied against any output VAT liability</u>***

It was established that petitioner's claimed input taxes were not applied against any output VAT liability during the period of claim and in the succeeding quarters since there is no output VAT for the period July 2008 to December 2010[40] against which the input taxes may be credited or applied. Moreover, in its Quarterly VAT Returns, petitioner deducted the amounts of ₱2,129,229.47 and ₱2,188,948.71, the subject claim, as "VAT Refund/TCC Claimed" for the second[41] and third[42] quarters of FY 2011, respectively. In other words, the aggregate input VAT of ₱23,972,276.02[43] as of the end of third quarter of FY 2011 carried over to the fourth quarter of FY 2011,[44] no longer included the claimed input VAT.

In sum, petitioner has sufficiently proven its entitlement to a refund or issuance of a tax credit certificate in the reduced amount of ₱3,697,665.76, representing unutilized input VAT attributable to its zero-rated sales to Macquarie Financial Holdings Limited (MFHL) for the second, third and fourth quarters of FY March 2009.

**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE in** the amount of ₱3,697,665.76, representing unutilized input VAT attributable to its zero-rated sales to Macquarie Financial Holdings Limited (MFHL) for the second, third and fourth quarters of FY March 2009.

**SO ORDERED**

**CAESAR A. CASANOVA**
Associate Justice

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[40] Exhibits "D" to "L" and "CCC".
[41] Exhibit "L", Line 23D.
[42] Exhibit "CCC", Line 23D.
[43] Exhibit "CCC", Line 29.
[44] Exhibit "DDD", Line 20A.

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

**CERTIFICATION**

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

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice