

REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SPECIAL SECOND DIVISION

SITEL PHILIPPINES
CORPORATION (Formerly
Clientlogic Philippines, Inc.),
Petitioner,

C.T.A. CASE NO. 7623

Members:

CASTAÑEDA, Chairperson,
UY, and
PALANCA-ENRIQUEZ, JJ.

-versus-

Promulgated:

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

MAR 03 2010

3:54 p.m.

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DECISION

PALANCA-ENRIQUEZ, JJ.:

The reckoning of the two-year prescriptive period for the filing of a claim for refund or issuance of a Tax Credit Certificate (“TCC”) for input VAT under *Section 112(A) and (B) of RA 8424, as amended*, commences from the close of the taxable quarter when the relevant sales, importation or purchases were made, regardless of whether said tax was paid or not.

QV

THE CASE

This is a Petition For Review filed by Sitel Philippines Corporation (hereafter “petitioner”) praying for the refund or issuance of a TCC in the amount P10,094,567.22, representing its excess input value-added taxes (“input VAT”) paid on domestic purchases of goods and services, which are attributable to petitioner’s zero-rated sales of goods and services for the first, second, third, and fourth quarters of taxable year 2005; and input VAT paid by petitioner on its local purchases of capital goods in the amount of P2,797,553.21.

THE PARTIES

Petitioner is a corporation organized and existing under the laws of the Philippines, with office address at 22nd Floor, Wynsum Corporate Plaza, Emerald Avenue, Ortigas Center, Pasig City.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, who holds office at the BIR National Office Building, located at Agham Road, Diliman, Quezon City.

THE FACTS

The facts, as stipulated by the parties, are as follows:



“8. Petitioner is engaged in the business of providing call center services from the Philippines to domestic and offshore businesses including, but not limited to, tactical telemarketing campaigns and programs and customer relationship management services.

9. Petitioner was formerly known as ‘Contact World, Inc.’ prior to the change in its corporate name to ‘ClientLogic Philippines, Inc.’ effective February 19, 2004 as evidenced by the Certificate of Filing of Amended Articles of Incorporation issued by the Securities and Exchange Commission (‘SEC’). On June 15, 2007, the SEC approved petitioner’s application for change of name to ‘Sitel Philippines Corporation’ as evidenced by the Certificate of Filing of Amended Articles of Incorporation of even date.

10. Petitioner is registered with the Bureau of Internal Revenue (‘BIR’) as a VAT taxpayer with TIN/VAT Registration No. 208-780-708 effective December 14, 2000 and with BIR Certificate of Registration No. OCN 3RC0000244761 issued by BIR Revenue District Office No. 43 (Pasig) under the name Clientlogic Philippine, Inc., which was subsequently amended to Sitel Philippines Corporation under BIR Certificate of Registration No. OCN 3RC0000371144.

11. Petitioner is also registered with the Board of Investments as a new information technology service firm in the field of call center on pioneer status with Board of Investments Certificate of Registration No. 2001-091.

12. For the period from January 1, 2005 to December 31, 2005, petitioner filed with the BIR its Quarterly VAT Returns as follows:



Period Covered	Date Filed
1 st Quarter 2005	April 25, 2005
2 nd Quarter 2005	July 22, 2005
3 rd Quarter 2005	October 26, 2005
4 th Quarter 2005	January 25, 2006

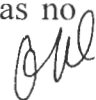
13. An amended Quarterly VAT Return for the 1st quarter of 2005 was filed by petitioner on March 21, 2006, while the amended Quarterly VAT Returns for the 2nd, 3rd and 4th quarters of 2005 were filed on July 31, 2006.

14. The amended Quarterly VAT Return for the 1st quarter of 2006 filed by petitioner on July 31, 2006 did not carry over the amount subject of the herein claim for refund or tax credit.

15. On March 30, 2007, petitioner timely filed separate formal claims for refund or issuance of tax credit with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance for its unutilized input VAT arising from domestic purchases of goods and services attributable to zero-rated transactions and purchases/importations of capital goods for the 1st, 2nd, 3rd, and 4th quarters of 2005, respectively, in the aggregate amount of P12,892,120.42.

16. At the time of the filing of this petition, respondent has not finally acted upon petitioner's claim for refund or tax credit."

In his answer, by way of special and affirmative defenses, respondent alleged that the instant Petition for Review was prematurely filed as petitioner has not exhausted the administrative remedies prescribed by law and jurisprudence on the actions of this nature as no



decision has yet been rendered by the respondent; and in an action for refund, it is the taxpayer who has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action.

Petitioner presented Roela Fallar, the Financial Controller of petitioner, and Mary Ann C. Capuchino, the duly commissioned Independent Certified Public Accountant, as witnesses, and documentary evidence, marked as *Exhibits "A" to "VV"*, inclusive of their submarkings, which were all admitted by the Court in a Resolution dated January 27, 2009, except for *Exhibits "H", "H-1", "H-2", and "I"*, which were denied admission for petitioner's failure to present the originals for comparison.

On the other hand, for the repeated failure of respondent's counsel to present his evidence, upon manifestation of petitioner, respondent was deemed to have waived the right to present his evidence.

Thereafter, petitioner was granted thirty (30) days from February 23, 2009 within which to file its memorandum, while respondent was granted twenty (20) days from notice. Petitioner having filed its



“Memorandum”, without respondent’s memorandum, the case was deemed submitted for decision on May 25, 2009.

ISSUES

I

WHETHER PETITIONER HAS UNUTILIZED INPUT VALUE-ADDED TAX FOR THE 1ST TO 4TH QUARTERS OF TAXABLE YEAR 2005.

II

WHETHER OR NOT THE UNUTILIZED INPUT VAT OF PETITIONER ON PURCHASES OF GOODS AND SERVICES ATTRIBUTABLE TO ZERO-RATED SALES AND PURCHASES/IMPORTATIONS OF CAPITAL GOODS ARE SUBSTANTIATED BY DOCUMENTARY EVIDENCE.

III

WHETHER OR NOT THE INPUT VAT REMAINS TO BE UNUTILIZED.

IV

WHETHER OR NOT THE INPUT VAT PAID BY PETITIONER WERE DIRECTLY ATTRIBUTABLE TO ITS ZERO-RATED SALES AND PURCHASES/IMPORTATION OF CAPITAL GOODS.



Principal Issue

The foregoing issues raised by both parties boil down to the principal issue of whether or not petitioner is entitled to refund or issuance of a TCC.

THE COURT'S RULING

The petition is partly meritorious.

A perusal of *Exhibit "S"* shows that petitioner's claim for refund or issuance of a TCC for unutilized input taxes for taxable year 2005 in the amount of P12,892,120.43, consists of the following:

Period	Input Tax from Capital Goods	Input Tax Attributable to Zero-Rated Sales	Total Input Tax For Refund or Tax Credit
1 st Quarter	P1,561,477.59	P2,205,729.30	P3,767,206.89
2 nd Quarter	1,061,939.66	2,429,722.49	3,491,662.15
3 rd Quarter	149,402.44	2,447,144.11	2,596,546.55
4 th Quarter	<u>24,733.52</u>	<u>3,011,971.32</u>	<u>3,036,704.84</u>
Total	P2,797,553.21	P10,094,567.22	P12,892,120.43

Petitioner anchors its claim for refund or issuance of a TCC under

Section 112(A) and (B) of RA 8424, as amended, which provides:

"SEC. 112. Refunds or Tax Credits of Input Tax. -

(A) Zero-rated or Effectively Zero-rated Sales. --

Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made,



apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax; *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP); *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

(B) Capital Goods. — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.”

The aforementioned provision allows the refund/tax credit of excess input VAT in two instances, namely: (1) when the excess input VAT is attributable to zero-rated or effectively zero-rated sales; and (2) when the excess input VAT is attributable to capital goods purchased by a VAT-registered person.



In order to be entitled to a refund or issuance of a TCC of input VAT due or paid attributable to zero-rated or effectively zero-rated sales, petitioner must prove compliance with the following requisites:

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

On the other hand, in order to be entitled to a refund or issuance of a TCC of input VAT paid on capital goods purchased, petitioner must prove compliance with the following requisites:

- 1) petitioner is a VAT-registered entity;
- 2) that its input taxes claimed were paid on capital goods duly supported by VAT invoices and/or official receipts;
- 3) petitioner did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability; and



- 4) the claim for refund was filed within the two-year prescriptive period both in the administrative and judicial levels.

Thus, it is imperative that petitioner should be able to prove the above prescribed requisites.

Prescription

We deal first with the timeliness of the filing of the instant claim.

Under *Section 112(A) of RA 8424, as amended*, a VAT registered taxpayer whose sale is 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 refund or issuance of a TCC of its creditable input tax due or paid attributable to such sales.

In the recent case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*, 565 SCRA 171 (hereafter referred to as the “Mirant Case”), the Supreme Court definitely settled the issue that the prescriptive period on claims for refund of input VAT attributable to zero-rated or effectively zero-rated sales is reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT, regardless of whether said tax was paid or not.



On the other hand, *Section 112(B) of RA 8424, as amended*, provides that the taxpayer may apply for a refund or issuance of a TCC, within two (2) years from the close of the taxable quarter when the importation or purchase was made.

In this case, petitioner is claiming for refund or issuance of a TCC of its unutilized input VAT paid on domestic purchases of goods or services attributable to its zero rated sales of services, and paid on its local purchases of capital goods for the four quarters of 2005. Hence, the two-year prescriptive period should be reckoned from March 31, 2005, the close of the taxable first quarter. Accordingly, petitioner had until April 2, 2007 (March 31, 2007, being a Saturday), within which to file its claim both in the administrative and judicial levels.

Records show that while the original administrative claim for refund or issuance of a TCC filed by petitioner on March 30, 2007 (*par. 15, Joint Stipulation of Facts and Issues, Original Docket, p. 77*) falls within the two-year prescriptive period; however, as to the first quarter of 2005, the Petition for Review filed before this Court on April 19, 2007 (*Original Docket, p. 1*) is beyond the two-year period prescribed by law. Thus, petitioner is barred from claiming refund of the alleged unutilized input



taxes for the first quarter of 2005 in the amount of P3,767,206.89, consisting of the following: P2,205,729.30, representing its input tax attributable to zero-rated sale, and P1,561,477.59, representing its input tax attributable to its purchases of capital goods under *Section 112 (B) of RA 8424, as amended*, due to prescription.

Other Requisites

We now proceed to the determination of petitioner's compliance with the other prescribed requisites for input VAT refund with respect to the remaining claim covering the second, third, and fourth quarters of 2005 in the amount of P9,124,913.54, consisting of the following: P7,888,837.92, representing its input tax attributable to zero rated sales, and P1,236,075.62, representing its input tax attributable to its purchases of capital goods, which was filed within the two-year prescriptive period.

**Petitioner's Claim In the amount of
P7,888,837.92, Representing Input VAT
Attributable to Zero Rated Sales For the
2nd to 4th Quarters of 2005**

As regards petitioner's claim of P7,888,837.92, representing its input VAT attributable to zero-rated sales for the second to fourth quarters of 2005, petitioner alleges that for taxable year 2005, it rendered



call center services to various non-residents, the consideration of which was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas. In other words, petitioner claims that its sales of services are VAT zero rated under *Section 108(B)(2) of RA 8424, as amended*, to wit:

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

(B) Transactions Subject tot 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, 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);

xxx xxx.”

Pursuant to the ruling of the Supreme Court in *Commissioner of
Internal Revenue vs. Burmeister and Wain Scandinavian Contractor*



Mindanao, Inc., 512 SCRA 135 (“CIR vs. Burmeister”), in order for the supply of services to be VAT zero-rated under *Section 108(B)(2) of RA 8424, 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.

As regards the third requisite, petitioner must prove that the recipients of its services are doing business outside the Philippines. To prove the same, petitioner presented *Exhibits “H”, “I”, “Q” to “Q-1i”, “EE” to “RR”, “TT” and “UU”*.

There is no specific criterion as to what constitutes “doing” or “engaging in” or “transacting” business. Each case must be judged in the light of its peculiar environmental circumstances. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization. “In order that a foreign corporation may be regarded as



doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character” (*Commissioner of Internal Revenue vs. British Overseas Airways Corporation*, 149 SCRA 405).

In light of the foregoing jurisprudence, the Court finds petitioner’s documentary evidence insufficient to prove that petitioner’s clients are non-resident foreign corporations doing business outside the Philippines. At the outset, the identity and corporate existence of said clients had not been clearly established. More so, petitioner failed to prove that its clients are engaged in continuous commercial dealings and arrangements outside the Philippines that are normally incident to, and in progressive prosecution of commercial gain for the purpose said clients were incorporated. Petitioner failed to present the articles of incorporation or registration of its clients, as well as other concrete documentary evidence that will prove that petitioner’s clients are indeed doing business outside the Philippines.

While petitioner alleges that its clients are non-resident foreign corporations, still the Court cannot give weight to such bare allegation. Mere allegations are not equivalent to proof (*Philippine National Bank vs.*



Court of Appeals, 266 SCRA 139). He who alleges a fact has the burden of proving it (*P.T. Cerna Corporation vs. CA, 221 SCRA 25*). As consistently held by this Court, “foreign clients” may also be engaged in doing business in the Philippines and in that case, when petitioner and the recipient of its services are both doing business in the Philippines, their transactions are not zero-rated, but fall squarely under *Section 108(A) of RA 8424, as amended*, governing domestic sale or exchange of services subject to 12% VAT.

Also, a perusal of petitioner’s documentary evidence shows that they do not tally with the “Inventory of Client Contracts” of petitioner and the “Summary of Collections of Export Sales Supported by Inward Remittance Certificate”. While in the “Inventory of Client Contracts”, the following are listed as petitioner’s clients: Dell Products L.P., SNT Deutschland AG, Juno Online Services, Inc., Rehome, Trilegiant Corporation, Green Dot Corporation, People PC, XM Satellite Radio, Inc., Microsoft Corporation, GT Merchandising and Licensing LLC, Hawaiian Airlines, Inc., RCN Telecom Services, Inc. and Capital One Services, Inc.; however, these entities do not appear as petitioner’s clients



in the “Summary of Collections of Export Sales Supported by Inward Remittance Certificate”.

Moreover, records show that *Exhibit “H”*, Service Agreement between Sony Electronics Inc. and Clientlogic Operating Corporation entered and executed on April 1, 2004, and *Exhibit “I”*, Sony/Clientlogic Statement of Work Service Agreement effective on November 1, 2005, were denied admission by the Court for failure of petitioner to present their originals for comparison.

The Court also finds flaws on the following exhibits of petitioner:

1) The Agreement between Clientlogic Philippines, Inc. and Clientlogic Operating Corporation dated January 1, 2004 (*Exhibit “Q”*) was acknowledged only on July 4, 2007, three years and six months after said agreement was alleged to have been executed;

2) The Service Agreement between petitioner and National Online Services, Inc. (*Exhibit “Q-1b”*) does not bear the date of execution, and there are no dates indicated for the commencement and end of the alleged contract;



3) The Service Agreement between petitioner and Fusion Marketing Partners, LLC dated June 10, 2003 (*Exhibit "Q-1c"*) does not contain the term/period of the contract;

4) *Exhibit "Q-1d"* is a mere proposal by petitioner to Direct One/Pacific One Media;

5) *Exhibits "Q-1e" to "Q-1i"*, which appear to be Memorandum Services between petitioner and Direct One/Pacific One Media, all do not bear the date of execution and term of the alleged contracts.

Hence, based on these agreements, there is no way for the Court to determine whether there were services actually rendered by petitioner to said entities during the period of claim. More so, these pieces of documentary evidence did not prove that the named entities therein were indeed petitioner's clients during the period of claim, and said clients are non-resident foreign corporations doing business outside the Philippines.

Furthermore, the SEC "Certificate of Non-registration" presented by petitioner only proves that the records of SEC do not show the registration of a particular corporation or partnership in the Commission. It does not prove that a particular corporation or partnership is duly existing and is doing business outside the Philippines.



Considering that petitioner failed to prove that its clients are non-resident foreign corporations doing business outside the Philippines, We find no need to discuss petitioner's compliance with the other prescribed requirements for entitlement of refund under *Section 108(B)(2) of RA 8424, as amended*. An essential condition for entitlement to 0% VAT under *Section (102)(b)(1) and (2)* is that the recipient of the services is a person doing business outside the Philippines (*CIR vs. Burmeister, supra*). The place of payment is immaterial, much less is the place where the output of the service is ultimately used (*Commissioner of Internal Revenue vs. American Express International, Inc. (Phil. Branch), 462 SCRA 219*). Pursuant to *CIR vs. Burmeister, supra, 136*, it is not enough that payment was made in foreign currency, but it must be established under *Section 102(b)(2)* that the recipient of the services must be persons doing business outside the Philippines in order to avoid the situation that those subject to the regular VAT under *Section 102(a)* can avoid paying the VAT by simply stipulating payment in foreign currency inwardly remitted by the recipient of services. To interpret *Section 102(b)(2)* to apply to a payer-recipient of services doing business in the Philippines is to make the payment of the regular VAT under *Section 102(a)* dependent on the



generosity of the taxpayer. The provider of services can choose to pay the regular VAT or avoid it by stipulating payment in foreign currency inwardly remitted by the payer-recipient. Such interpretation removes *Section 102(a)* as a tax measure in the Tax Code, an interpretation the Court cannot sanction. A tax is a mandatory exaction, not a voluntary contribution.

For all the foregoing, We have no alternative but to deny petitioner's unprescribed portion of its claim for refund in the amount of P7,888,837.92, pertaining to its sale of services subject to zero percent rate under *Section 108(B)(2) of RA 8424, as amended*, for failure to comply with the essential condition prescribed by *CIR vs. Burmeister, supra*, that the recipient of petitioner's services must be doing business outside the Philippines.

Well-settled is the legal principle that tax refunds are in the nature of tax exemptions (*BPI Leasing Corporation vs. Court of Appeals, 416 SCRA 4*). Accordingly, the claimants of those refunds bear the burden of proving the legal and factual bases of their claims (*Paseo Realty and Development Corporation vs. Court of Appeals, 440 SCRA 247*). Petitioner unfortunately failed to discharge this burden.



*Petitioner's Claim In the amount of
P1,236,075.62, Representing Input VAT
Attributable to Capital Goods Purchased
for the 2nd to 4th Quarters of 2005*

As regards petitioner's claim for refund that has not prescribed in the amount of P1,236,075.62 (P2,797,553.21 less prescribed portion of P1,561,477.59), representing its input tax on capital goods purchased, it must be emphasized that under *RA 8424*, input taxes paid on capital goods imported or locally purchased may be the subject of claim for refund under *Section 112(B)*. However, upon the effectivity of *RA 9337* on July 1, 2005, *Section 112* was amended, whereby *paragraph (B)* on Refunds or Tax Credits of Input Tax on Capital Goods was omitted. A reading of the Senate Deliberation During the Second Reading of Senate Bill 1950 held on April 13, 2005 reveals that the purpose of omitting *paragraph (B) of Section 112 of RA 8424* is to make a new rule on input taxes on capital goods purchased, wherein input taxes on capital goods may be claimed for refund or issuance of tax credit only if the same is attributable to zero-rated sales (*Senate Deliberation, Second Reading of Senate Bill 1950, April 13, 2005, pp. 105 to 113 and 128-131*). Otherwise, if the input taxes on capital goods purchased are not attributable to zero-rated sales,



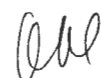
said input taxes may be spread over for a period not exceeding five years (*id.*), but, may not be claimed for refund or subject to the issuance of a TCC. Specifically, *Section 110(A)(2) of RA 9337* provides: “Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction or depreciation is allowed under this Code, shall be spread evenly over a 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 (P1,000,000.00): Provided, however, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: Provided, finally, that in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee”. Hence, while input taxes on capital goods purchased may be credited against the output tax liability, and any excess input tax may be carried over to the succeeding quarter or quarters, subject to the provision of *Section 110(A)(2) of RA 9337*, the same excess input taxes on capital goods purchased may not be refunded or subject to the issuance of a TCC



if the input tax on capital goods purchased is not attributable to zero rated sale. This is clear from *Section 110(B) of RA 9337*, which provides:

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

The phrase “*Any input tax attributable to the purchase of capital goods*” in *Section 110(B) of RA 8424* was omitted in the aforesaid *Section 110(B) of RA 9337*. Clearly, applying the legal maxim of *expressio unius, est exclusio alterius*, under *RA 9337*, effective July 1, 2005, excess input taxes on capital goods purchased that are not attributable to zero rated sales can no longer be claimed for refund or be subject to the issuance of a TCC. Therefore, in the instant case, petitioner may only claim for refund of input taxes attributable to purchases of capital goods for the second quarter of 2005 in the amount of P1,061,939.66, subject to its compliance with the requisites prescribed by law. The claim for



refund of input taxes attributable to purchases of capital goods for the third and fourth quarters of 2005, in the amounts of P149,402.44 and P24,733.52, respectively, for failure of petitioner to prove that said purchases of capital goods are attributable to zero-rated sales, has no longer legal basis. Accordingly, said claims for refund for the third and fourth quarters of 2005 are hereby denied.

We now proceed to determine petitioner's compliance with the requisites for claim of refund of input taxes attributable to capital goods under *Section 112(B) of RA 8424* with respect to the amount of P1,061,939.66, representing its input taxes for the second quarter of 2005.

As regards the first requisite, it was jointly stipulated by the parties that petitioner is a VAT registered taxpayer with the BIR with TIN/VAT Registration No. 208-780-708 (*par. 10, Joint Stipulations of Facts and Issues, Original Docket, p. 80*). Petitioner is also registered with the Board of Investments ("BOI"), as a new information technology service firm in the field of call center on pioneer status with the BOI with BOI Certificate Registration No. 2001-091 (*par. 11, Joint Stipulations of Facts and Issues, supra*).



As regards the second requisite, whether or not petitioner incurred input taxes on capital goods purchased, the Court-Commissioned Independent CPA made the following findings and observations in the Final Report dated January 29, 2008 (*Exhibit "S"*): that the input VAT declared by petitioner in the VAT Returns for the period from January 1, 2005 to December 31, 2005 as "Input Tax from Domestic Purchases of Capital Good" amounting to P2,797,553.21 were actually paid on purchases of capital goods; that the input VAT claimed on the capital goods were not capitalized as part of the assets purchased; and that the purchases of capital goods relating to the input VAT sought to be refunded formed part of petitioner's Property, Plant and Equipment account by comparing the amount of purchases of capital goods for the year per quarterly VAT returns (*Exhibits "A", "B" and "D"*) with the amount of total additions in the Property, Plant and Equipment account per Audited FS (*Exhibit "AA"*) using the reconciliation and schedules prepared by petitioner (*Exhibit "BB"*).

Based on the findings of the Court-Commissioned Independent CPA, We find that only the input taxes from domestic purchases of services properly supported by VAT ORs (*Annex 22, Exhibit "S"*) and input



taxes from domestic purchases of goods properly supported by VAT invoices (*Annex 23, Exhibit "S"*), are duly supported by evidence prescribed by law. However, out of P789,846.87 input taxes from domestic purchases of services properly supported by VAT ORs, We allow only the amount of P76,246.70, which pertains to the second quarters of 2005; and out of P2,618,702.49 input taxes from domestic purchases of goods properly supported by VAT invoices, We allow only the amount of P861,254.63, which pertains to the second quarter of 2005, or the total amount of P937,501.33, as shown hereunder:

Domestic Purchases of Services Properly Supported by VAT Official Receipts – Capital Goods				
Registered Name of Supplier	OR No. & Date	Input VAT per CCICPA Report (Annex 22 of Exhibit "S")	Disallowed Reason	Allowed
Datacraft	3773-31 March 05	P465,502.49	prescribed	
Celtech Network System & Electrical Services	627 - 6 May 05	19,680.04		P19,680.04
I-Secure Networks & Business Solutions, Inc.	87 - 15 April 05	7,492.96		7,492.96
Celtech Network System & Electrical Services	627 - 06 May 05	39,360.06		39,360.06
Meriden Industrial Corporation	4211 - 20 May 05	9,713.64		9,713.64
Cornersteel Systems Corporation	17993 - 3 Nov. 05	3,059.92	Claim for refund of capital goods was deleted in RA 9337	
Cornersteel Systems Corporation	18272 - 23 Dec. 05	7,139.81	Claim for refund of capital goods was deleted in RA 9337	
Teledatacom Phils Inc	2934 - 6 Dec. 05	14,222.33	Claim for refund of capital goods was deleted in RA 9337	



Cornersteel Corporation	Systems	18270 - 16 Dec. 05	40,890.72	Claim for refund of capital goods was deleted in RA 9337	
Cornersteel Corporation	Systems	18094 - 6 Dec. 05	40,890.71	Claim for refund of capital goods was deleted in RA 9337	
Cornersteel Corporation	Systems	18100 - 23 Dec. 05	70,909.09	Claim for refund of capital goods was deleted in RA 9337	
Engineered Fire and Security System		202 - 27 Dec. 05	70,985.10		
Total			P789,846.87		P76,246.70

Domestic Purchases of Goods Properly Supported by VAT Invoices				
Registered Name of Supplier	Invoice No. Date of Invoice	Input VAT per CCICPA Report (Annex 23 of Exhibit "S")	Disallowed-Reason	Allowed
Comlan Incorporated	10251 - 20 Jan. 05	P7,227.54	prescribed	
Comlan Incorporated	10315 - 26 Jan. 05	18,068.58	prescribed	
E-Security Plus	110 - 04 Jan. 05	8,122.50	prescribed	
Integrated Computer Systems, Inc.	22036 - 14 Jan. 05	94,772.73	prescribed	
Phil-Data Business Systems, Inc.	105886- 13 Jan. 05	46,381.82	prescribed	
Comlan Incorporated	10490 - 24 Feb. 05	7,490.25	prescribed	
Comlan Incorporated	10381 - 05 Feb. 05	11,984.63	prescribed	
Data Center Design Corporation	8257A - 20 Jan. 05	23,002.51	prescribed	
Teledatacom Phils., Inc.	1273 - 15 Feb. 05	8,239.50	prescribed	
Teledatacom Phils., Inc.	1279 - 16 Jan.. 05	42,420.46	prescribed	
Integrated Computer Systems, Inc.	23177 - 16 Mar. 05	12,954.54	prescribed	
Meriden Industrial Corporation	5265 - 11 Mar. 05	9,713.64	prescribed	
Northgate Technologies, Inc.	48348 - 10 Mar. 05	8,727.27	prescribed	
Phil-Data Business Systems, Inc.	106209- 28 Feb. 05	67,350.00	prescribed	
Teledatacom Phils., Inc.	1377 - 16 Mar. 05	63,630.68	prescribed	
Teledatacom Phils., Inc.	1376 - 16 Mar. 05	63,630.68	prescribed	
Teledatacom Phils., Inc.	1378 - 16 Mar. 05	42,420.46	prescribed	
Consultronix Systems Corporation	3657 - 12 Apr. 05	12,411.36		P12,411.36
Integrated Computer Systems,				

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Inc.	24550 - 26 May 05	67,345.45		67,345.45
Phil-Data Business Systems, Inc.	106551-27 Apr. 05	67,090.64		67,090.64
Teledatacom Phils., Inc.	1437 - 06 May 05	448,107.18		448,107.18
Integrated Computer Systems, Inc.	24860 -10 June 05	266,300.00		266,300.00
J R Appliance Center	100904-05 Oct. 05	16,363.64	Claim for refund of capital goods was deleted in RA 9337	
Northgate Technologies Inc.	49986 - 30 Aug. 05	39,575.81	Claim for refund of capital goods was deleted in RA 9337	
Northgate Technologies Inc.	56092 - 23 Sep. 05	25,227.27	Claim for refund of capital goods was deleted in RA 9337	
Nexus Technologies Inc.	40570 - 03 Oct. 05	371,682.22	Claim for refund of capital goods was deleted in RA 9337	
Ortigas Home Depot	4329 - 06 Dec. 05	18,962.00	Claim for refund of capital goods was deleted in RA 9337	
Teledatacom Phils Inc.	1655 - 08 Nov. 05	87,728.90	Claim for refund of capital goods was deleted in RA 9337	
Teledatacom Phils Inc.	1675 - 22 Nov. 05	69,169.43	Claim for refund of capital goods was deleted in RA 9337	
Nexus Technologies Inc.	40954 - 28 Oct. 05	204,056.02	Claim for refund of capital goods was deleted in RA 9337	
Teledatacom Phils Inc.	1601 - 29 Sep. 05	60,350.85	Claim for refund of capital goods was deleted in RA 9337	
Teledatacom Phils Inc.	1683 - 01 Dec. 05	53,550.00	Claim for refund of capital goods was deleted in RA 9337	
Teledatacom Phils Inc.	1686 - 02 Dec. 05	43,521.16	Claim for refund of capital goods was deleted in RA 9337	
Teledatacom Phils Inc.	1711 - 14 Dec. 05	20,420.42	Claim for refund of capital goods was deleted in RA 9337	
Trends and Technologies	12374 - 24 Nov. 05	210,702.35	Claim for refund of capital goods was deleted in RA 9337	
Total		P2,618,792.49		P861,254.63



Records also show that out of P720,335.50 adjustments/reversals made by petitioner on its purchases of capital goods during the calendar year 2005, pursuant to the Court-Commissioned Independent CPA's Report (*Annex 29, Exhibit "S"*), the amount of P19,680.04, pertaining to its purchases of capital goods from Celtech Network System & Electrical Services (*Schedule of Capital Assets, Exhibit "BB-2"*) was a reversal made on the second quarter of 2005. Accordingly, the amount of P19,680.04 will be deducted from the substantiated input VAT for the second quarter of 2005 of P937,501.33, leaving the balance of the substantiated input VAT to P917,821.29 only.

Per petitioner's Reconciliation of Additions to Property, Plant and Equipment (*Exhibit "BB"*), Audited Balance Sheets as of December 31, 2005 and 2006, and the related Notes to Financial Statements (Notes 3, 7 and 18) (*Exhibit "AA"*), the substantiated input VAT of P917,821.29 pertains to petitioner's purchases of software, computers and peripherals, telecommunications equipment, and office furniture and equipment. Since these purchases are in the nature of depreciable assets which have economic useful life of more than one year, formed part of petitioner's Property, Plant and Equipment account and were used directly or



indirectly in petitioner's business, the same falls within the definition of "capital goods" under *Section 4.106-1 of Revenue Regulations 7-95*, to wit:

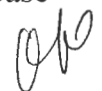
“SEC. 4.106-1. Refunds or Tax Credits of Input Tax.
– (a) xxx

(b) Capital Goods – xxx

‘Capital goods or properties’ refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29 (f), used directly or indirectly in the production or sale of taxable goods or services.”

On the basis of the foregoing, We rule that petitioner has complied with the second requisite.

As regards the third requisite, whether petitioner offset or applied the claimed input VAT payments on capital goods against any output VAT liability, a perusal of petitioner's Quarterly VAT Returns for the 1st, 2nd, 3rd, and 4th quarters of 2005 (*Exhibits "A" to "D"*) shows that the amounts claimed for refund or tax credit were deducted from the total available input tax for the corresponding quarters. Moreover, petitioner's amended Quarterly VAT Return for the 1st quarter of 2006 shows that the amount claimed for refund or tax credit by petitioner in the instant case



was not carried over to the 1st quarter of 2006. Hence, petitioner has complied with the third requisite.

For all the foregoing, We conclude that petitioner is entitled to refund or issuance of a TCC in the amount of P917,821.29, representing input VAT on capital goods purchased for the second quarter of 2005.

WHEREFORE, premises considered, the present Petition for Review is hereby **PARTLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Sitel Philippines Corporation in the reduced amount of P917,812.29, representing input VAT paid on capital goods purchased for the second quarter of 2005.

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

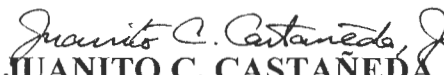
WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


ERLINDA P. UY
Associate Justice

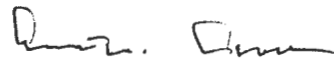
ATTESTATION

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


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's Division.


ERNESTO D. ACOSTA
Presiding Justice