REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

AICHI FORGING COMPANY OF ASIA, INC., ***Petitioner,***	**C.T.A. CASE NO. 7271**
	Members:
-versus-	CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	**Promulgated:** JUN 10 2008 2:55 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

Pursuant to *Section 112 (A) of the National Internal Revenue Code of 1997* (hereafter "NIRC of 1997")*, as amended*, petitioner filed a claim for refund of its creditable input VAT attributable to its zero-rated sales. To do so, however, petitioner must be able to show that its input VAT paid and output VAT transactions are properly substantiated. Failure to show proof of proper documentation is fatal to one's claim for refund or credit.

THE CASE

This is a Petition for Review filed by Aichi Forging Company of Asia, Inc. (hereafter "petitioner") praying for a refund in the aggregate amount of P5,307,313.37, representing the VAT input taxes paid or incurred on its importation of goods and domestic purchases of goods and services attributable to its zero rated sales for the period April 1, 2003 to June 30, 2003.

THE PARTIES

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at Barrio Pulong, Sta. Cruz, Sta. Rosa, Laguna.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue vested with authority to exercise the functions of said office, including *inter alia*, the power to refund any internal revenue tax erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected or of VAT input taxes attributed to zero-rated revenue, with office address at the BIR National Office Building, Diliman, Quezon City.

THE FACTS

The facts as culled from the records, are as follows:

Petitioner is duly registered with the Bureau of Internal Revenue as a value-added tax entity, pursuant to *Section 107 (now Section 236)* of the Tax Code on May 19, 1995. Consequently, it was issued Certificates of Registration, with RDO Control No. 95-570-000481 (BIR Form No. 1556) and OCN IRC 000148499 (BIR Form No. 2303).

Petitioner has also registered its products, "close impression due steel forgings" and "tool and dies", with the Board of Investments (BOI) as a pioneer status, enjoying the privileges granted by the BOI. As such, it was issued Certificates of Registration Nos. 74-336, DP-92-057 & EP 95-132 by the Board of Investments.

For the period covering April 1, 2003 to June 30, 2003, petitioner allegedly generated and recorded zero-rated sales in the amount of P171,942,121.15. Said amount was paid to petitioner in acceptable foreign currency and was inwardly remitted, in accordance with existing regulations of the Central Bank of the Philippines, pursuant to *Section 106 (A) (2) (a) (1), (2) and (3) of the Tax Code*.

Petitioner purportedly incurred and paid VAT input taxes amounting to P5,307,313.37 from domestic purchases of goods, services, capital goods and from importation of goods and capital goods, which were all attributable to its zero rated sales.

On June 14, 2005, petitioner filed a claim for refund in the total amount of P5,307,313.37 with respondent, through Revenue District Office 57, San Pedro, Laguna.

For failure of the respondent to act on the request and in order to toll the running of the two-year prescriptive period, on June 21, 2005, petitioner filed the instant Petition for Review.

In her Answer, respondent alleged by way of special and affirmative defenses that:

> "6. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
>
> 7. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the Bureau of Internal Revenue;
>
> 8. Be that as it may, it is imperative for petitioner to prove that it has complied with the following requirements mentioned below, to wit:
>
> > (a) The registration requirements of a Value Added Taxpayer pursuant to Section 6 (a) & (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95.
> >
> > (b) That the VAT input taxes of Php: 5,307,313.37 allegedly paid by petitioner from its importation and purchases of capital goods and other taxable goods and

services were attributable to its zero-rated sales and such tax has not been applied against any output tax.

(c) That petitioner's claim for tax credit or refund of excess Input Value Added Tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 4.106-1 (Re: Refunds or Tax Credits of Input Tax) and Section 4.106-2 (Re:: Procedures for Claiming Refunds or Tax Credits of Input Tax) of Revenue Regulations No. 7-95.

(d) That petitioner's domestic purchases of services were made in the course of its trade or business, properly supported by invoices or receipts and import entry or other equivalent documents showing that it actually paid VAT in pursuance to Section4.104-5 (a) & (b) of Revenue Reg. No. 7-95. (Re: Substantiation of Claims for Input tax Credit).

(e) The requirements as enumerated under Section 4.104-2 of the Rev. Reg. 7-95 (Re: Persons who can avail of the Input Tax Credits)

(f) That Petitioner has complied with the governing rules and regulations with reference to recovery of tax erroneously or illegally collected as explicitly found in Sections 112 (A) and 229 of the Tax Code as amended.

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9. Furthermore, it is incumbent for petitioner to prove by sufficient evidence that it is entitled to the refund consistent with the well settled principle in taxation, that claims for refund are construed strictly against the claimant as they partake the nature of an exemption from tax and it is incumbent upon petitioner to prove that it is entitled thereto under the law. Failure to prove the same is fatal to its claim for tax refund. Exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or

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> statutory law. An exemption from common burden cannot be permitted to exist upon vague implications (Asia Petroleum Co., vs. Llamas 49 Phil.466)"

Petitioner presented Jesus B. Oliveros, Jr. and Ma. Wencita C. Salvador, as witnesses, and documentary evidence, marked as *Exhibits "A"* to *"MM"*, inclusive of submarkings, which were admitted by the Court, except for *Exhibits "B" and "P"* for failure of petitioner to identify the same during trial and compare the same with their originals.

On the other hand, respondent waived her right to present evidence and submitted the case for decision.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice. Both parties having complied thereto, the case was deemed submitted for decision on January 18, 2008.

Hence, this decision.

ISSUES

As stipulated upon by the parties, the following are the issues for the consideration of this Court:

I

WHETHER OR NOT PETITIONER HAS GENERATED AND RECORDED ZERO-RATED SALES AS CONTEMPLATED BY LAW IN THE AMOUNT OF

PHP171,942,121.15 DURING THE PERIOD APRIL 1, 2003 TO JUNE 30, 2003.

II

WHETHER OR NOT THE AMOUNT OF PHP171,942,121.15 WAS PAID FOR TO PETITIONER IN ACCEPTABLE FOREIGN CURRENCY AND WAS INWARDLY REMITTED IN ACCORDANCE WITH EXISTING REGULATIONS OF BSP.

III

WHETHER OR NOT THE PETITIONER INCURRED AND PAID VAT AMOUNTING TO P5,307,313.37 DURING THE PERIOD APRIL 1, 2003 TO JUNE 30, 2003 FROM DOMESTIC PURCHASES OF GOODS, SERVICES AND CAPITAL GOODS, AND FROM IMPORTATION OF GOODS AND CAPITAL GOODS.

IV

WHETHER THE VAT PAYMENTS IN THE AMOUNT OF PHP5,307,313.37 WERE ATTRIBUTABLE TO THE PETITIONER'S ALLEGED ZERO-RATED SALES OF PHP171,942,121.15.

V

WHETHER OR NOT THE ALLEGED VAT INPUT TAXES WERE PAID IN CONNECTION WITH THE TAXPAYER'S TRADE OR BUSINESS AND WERE DULY SUBSTANTIATED BY VALID RECEIPTS AND/OR INVOICES IN ACCORDANCE WITH SECTIONS 113 AND 237 OF THE TAX CODE, AS AMENDED.

VI

WHETHER OR NOT THE SAID AMOUNT HAS BEEN APPLIED AGAINST ANY VAT OUTPUT TAX

LIABILITY OF THE PETITIONER COVERING THE SAME PERIOD, OR ANY SUCCEEDING PERIOD OR PERIODS.

VII

WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND IN THE TOTAL AMOUNT OF PHP5,307,313.37 ALLEGEDLY REPRESENTING VAT INPUT TAXES PAID DURING THE PERIOD APRIL 1, 2003 TO JUNE 30, 2003.

VIII

WHETHER OR NOT THE ADMINISTRATIVE AND JUDICIAL CLAIMS FOR TAX REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE OF THE PETITIONER WERE FILED WITHIN THE TWO (2)-YEAR STATUTORY PERIOD.

Principal Issue

The foregoing issues raised by both parties boil down to the principal issue of whether or not petitioner is entitled to a refund or the issuance of a tax credit certificate in the amount of P5,307,313.37, representing VAT input taxes for the period covering April 1, 2003 to June 30, 2003.

Petitioner's Arguments

Petitioner argues that it is a VAT registered entity subject to VAT at 0% on its direct and indirect export sales, pursuant to *Sections 106 (A) (2) (a) (i), (ii) and (iii) and 108 (B)(1)* of the *NIRC of 1997, as amended,* and as such, its zero-rated sales will not result to any VAT output tax. Petitioner maintains that as an export-oriented enterprise, its finished products are sold to PEZA registered enterprises and others are exported abroad. For the period covering April 1, 2003 to June 30, 2003, petitioner allegedly generated zero-rated sales and paid VAT input taxes in the course of its trade or business. Thus, for the said sales, it has no output liability, as those sales are considered zero-rated transactions. As such, it now claims the refund of unutilized input taxes incurred on its importation of goods and domestic purchases of goods and services for said period. The indirect export sales of petitioner are not subject to 10% value-added tax, but are zero-rated, as these are sales to PEZA registered enterprise and direct export. The input taxes were paid by petitioner on its domestic purchases of goods and services and capital goods and importation of goods, which are necessary in the ordinary course of its trade and business, as manufacturer of all kinds of steel and steel by products, particularly but not limited to closed impression die steel forging and automotive steel parts. The finished products manufactured were either directly exported or sold to PEZA registered enterprises, which is tantamount to indirect export sales as expressly provided by the Tax Code. Further, petitioner claims that having been registered in accordance with the provisions of the Omnibus Investments Code of 1981, it is entitled to the incentives provided thereon. Finally, petitioner contends that its claim for refund is supported by the testimonial and documentary evidence presented to the Court.

Respondent's Counter-Arguments

Respondent, for her part, submits that petitioner is not entitled to the refund of the alleged input VAT for failure of petitioner to prove that the administrative and judicial claims for refund were filed within the two-year statutory period. The administrative claim for refund was mere pro forma, hence it failed to prove substantial compliance with the administrative requirements of the law. Further, respondent maintains that petitioner merely "stamped" the word zero-rated on its sales invoices, which is contrary to the established practice that the same should be imprinted in the invoice and no prior approval from the BIR was made. Petitioner, according to respondent, also failed to prove that the amount of P171,942,121.15 was paid in acceptable foreign currency and was remitted in accordance with existing BSP regulations. Hence, petitioner has failed to discharge its burden of proving entitlement to a refund in all material aspects.

THE RULING OF THE COURT

The petition is partly meritorious.

It is a settled rule that for a VAT registered entity whose sales are zero-rated, to validly claim a refund, it must comply with *Section 112 (A)* of the *NIRC of 1997*, as amended, which provides:

> "SEC. 112. Refunds or Tax Credits of Input Tax.-
>
> (A) Zero-rated or Effectively Zero-rated Sales.- Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: xxx"

Pursuant to the above provision, petitioner must comply with the following requisites: (1) the taxpayer is VAT-registered; (2) the taxpayer is engaged in sales which are zero-rated or effectively zero-rated; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

This Court finds that the first three requirements were complied with by petitioner.

As regards the first requisite, petitioner offered in evidence its Certificate of Registration with RDO Control No. 95-570-000481 and OCN 1RC00000148499 *(Exhibit "B")*, to prove compliance with the requirement that petitioner must be VAT registered. Although the said exhibit was denied admission by the Court for failure of petitioner to identify the same during trial and for failure to present the original for comparison, it bears stressing that respondent herself admitted in her answer the existence of the same document *(Answer, Original Docket, page 81)*. Hence, by virtue of judicial admission *(Section 4, Rule 129, Revised Rules of Court)*, petitioner has substantially complied with the first requisite.

The second requisite has likewise been complied with. The evidence presented by petitioner, such as the Sales Invoices (*Exhibits "T" to "T-400", "U" to "U-382", and "V" to "V-396")* and various VAT returns *(Exhibits "E" to "G", "I" to "O", "R" and "S")* shows that it is engaged in sales which are zero-rated.

In compliance with the third requisite, records show that petitioner filed its administrative claim for refund on June 14, 2005 *(Exhibit "H")* and the present Petition For Review on June 21, 2005. *Section 112 (A) of the NIRC of 1997, as amended*, provides that the prescription of

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claims for excess input VAT is counted from the close of the taxable quarter when the sales were made, which in this particular case is from June 30, 2003. It is therefore clear that both claims were filed within the two (2) year prescriptive period.

However, with regard to the fourth requirement, the Court finds that there are some documents and claims of petitioner that are baseless and have not been satisfactorily substantiated.

It bears stressing that as there is no output VAT imposed on zero-rated export sales, what the government reimburses or refunds to the claimant is the input VAT paid by such claimant in its purchases in the conduct of its business. Thus, more importantly, there is a need for petitioner to substantiate its paid input VAT by purchase invoices or official receipts. It is not only the export sales that should be proven, but also compliance with the requirements prescribed in *Section 110,* in relation to *Section 113* of the *NIRC of 1997*, as amended, and as further implemented by *Revenue Regulations No. 7-95.*

In this regard, *Section 110* of the *NIRC of 1997*, as amended, provides:

" SEC.110. Tax Credits.-

(A) Creditable Input Tax.-

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(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

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(B) Excess Output or Input Tax.- If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: Provided, however, That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

xxx xxx."

While, *Section 113* of the same Code provides:

"SEC. 113.- Invoicing and Accounting Requirements for VAT-registered Persons.-

(A) Invoicing Requirements.- A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

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Corollary thereto, *Section 4-108-1 of Revenue Regulations No. 7-95 (The Consolidated Value-Added Tax Regulations)* prescribes the following information which must appear on the face of receipts or invoices issued for the sale of goods by all VAT-registered entities:

> "SEC. 4-108-1. Invoicing Requirements – All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:
>
> 1. the name, TIN and address of the seller;
> 2. date of transaction;
> 3. quantity, unit cost and description of merchandise or nature of service;
> 4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
> 5. the word "zero-rated" imprinted on the invoice covering zero-rated sales; and
> 6. the invoice value or consideration.
>
> In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.
>
> Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoices or receipts and this shall be considered as "VAT Invoice". All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax.

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

The law is very clear. *Section 113* provides that "a VAT registered person shall, for every sale, issue a duly registered VAT invoice receipt for every sale transaction". Such VAT invoice or receipt must show the taxpayer's identification number, followed by the word "VAT" and the word "zero-rated" imprinted on the invoice receipt for sales covering a zero-rated sale.

Applying the applicable provisions of the law, We now proceed to the determination of the substantiation of petitioner's claim for refund.

Substantiation of Zero Rated Sales

We must first determine petitioner's substantiation of its alleged zero-rated sales. Petitioner declared in its Quarterly VAT Return for the second quarter of 2003 *(Exhibit "G")* that it generated and recorded zero rated export sales in the amount of P171,509,980.39.

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To prove its alleged zero-rated export sales, petitioner presented in evidence the following documents:

1) Sales Invoices *(Exhibits "T" to "T-400", "U" to "U-382", and "V" to "V-396")*;

2) Independent CPA Report *(Exhibit "JJ");*

3) Amended Commissioned Independent CPA Report (*Exhibit "LL"*).

A perusal of the above-mentioned documents, particularly the Amended Report of the Commissioned Independent CPA, reveals that the sales entered into by petitioner from April 1, 2003 to June 30, 2003 were mostly export sales to PEZA registered entities which are considered indirect export sales and some were direct export sales sent abroad.

However, the Court finds certain unacceptable invoices which did not comply with the above requirements of the law for VAT zero-rating, particularly the imprinting of the words "zero-rated". For this reason, the following should be disallowed and thus, excluded from the total zero rated sales/receipts, to wit:

EXHIBIT	INVOICE NUMBER	NAME OF BUYER	TOTAL AMOUNT OF INVOICE
T	16847	Aichi Forging Corp.	248,728.05
T-365	16666	Toyota	

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T-397	17042	Toyota	2,713,828.07
T-398	17043	Toyota	
U-315	17127	Isuzu	605,431.90
U-326	17323	Isuzu	184,582.76
U-346	17128	Toyota	299,742.58
U-347	17129	Toyota	207,132.24
U-368	17324	Toyota	1,405,837.11
U-369	17325	Toyota	150,126.36
U-381	17477	Toyota	1,103,155.71
U-382	17478	Toyota	298,996.56
V-384	17746	Toyota	724,577.17
TOTAL			**7,942,138.51**

Applying *Section 106 (A)(2)(a)(5)* of the *NIRC of 1997*, as amended, on value–added tax on the sale of goods or properties, particularly with respect to export sales, which provides:

> "SEC. 106. Value-added Tax on Sale of Goods or Properties.-
>
> (A) Rate and Base of Tax.-
> xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) Export Sales. – The term "export sales" means:
>
> xxx xxx
>
> (5) Those considered export sales under Executive Order No. 226, otherwise known as the

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> Omnibus Investments Code of 1987, and other special laws;
>
> xxx xxx."

Corollary thereto, *Article 23* in conjunction with *Article 77 (2)* of *Executive Order No. 226* (hereafter *"E.O. 226"*), otherwise known as the Omnibus Investments Code of 1987, provides that sales to registered zone enterprise shall be considered as export sales and the exporter shall be entitled to the benefits allowed by law for such transaction.

It must be emphasized that the bulk of petitioner's sales were exportations made to PEZA registered entities, which are considered constructive exportations under *E.O. 226*. Therefore, applying the foregoing provisions to the case at bar, petitioner as a VAT-registered entity under *Section 106 (A)(2)(a)(5)* of the Tax Code, its sales or transactions are subject to VAT at 0% rate. Subject to the requirements prescribed in *Section 112 (A)*, petitioner is, therefore, entitled to claim refund or issuance of a tax credit certificate for input VAT taxes attributable to the substantiated export sales.

We now proceed to the determination of whether or not petitioner's input VAT credits on its domestic purchases of goods and services for the second quarter of 2003 were fully substantiated.

Substantiation of
Input VAT other than
Capital Goods

After a thorough scrutiny of the evidence on record, the Court finds certain disallowable claims, in addition to the exceptions found by the independent CPA, as they were issued beyond the period covered by petitioner's claim, which will result to a discrepancy in the input VAT available for refund, to wit:

Outside of the period covered							
EXHIBITS	**COMPANY**	**Invoice No.**	**O.R. No.**	**Date of Invoice**	**Date of OR**	**Total Invoice Amount**	**Input VAT**
Y, Y-1	K Line Air Service Phils., Inc.	416	42956	3/3/2003	3/3/2003	1100	100
Y-3, Y-4	K Line Air Service Phils., Inc.	448	43302	3/12/2003	3/12/2003	1100	100
Y-5, Y-6	K Line Air Service Phils., Inc.	491	43470	3/26/2003	3/26/2003	1100	100
Y-96, Y-97	Ammex Machine Tools Phils.	5739	3557	3/31/2003		52000	4727.27
Y-158	Aries Technologies, Inc.		121		7/25/2003	88,363.64	
Y-159		312		6/25/2003		90000	8181.81
Y-160	Aries Technologies, Inc.		122		8/1/2003	156208.25	
Y-161		303		6/19/2003		16101	1463.73
Y-162		309		6/23/2003		143000	13000
Y-163	Aries Technologies, Inc.		123		8/1/2003	177123.93	
Y-164		315		6/27/2003		180404	16400.36
Y-167	Asia Machine Shop	18592	1444	6/30/2003	8/1/2003	91602	8327.45
Y-233	Asian Transmission Corp.		23016		0710/2003	22688.73	
Y-234		11330		11/29/2001		5416	492.36
Y-235		497		12/00/2002		17272.73	1570.25
Y-236	Assistco Energy & Ind. Corp		16972		6/20/2003	15780	
Y-237		18273		3/31/2003		15780	1434.55
Y-246	Autrans Phil. Corp		820		no date	93456.05	
Y-247		423		3/30/2003		102801.66	9345.61
Y-345	BPI/MS Insurance Corp		10178062	6/24/2003	7/9/2003	262.39	23.85
Y-352, Y-353	Cairhill Metrology Inc.	242	135	6/10/2003	7/25/2003	13365	1215
Y-354	CAJ International Forwarders		404		2/25/2003	3500	318.18
Y-357, Y-358	Cargohaus, Inc.	385107	885575	3/13/2003	3/13/2003	229.46	20.86
Y-359, Y-360	Cargohaus, Inc.	390119	890335	3/27/2003	3/27/2003	229.35	20.85

Y-364, Y-365	Cargohaus, Inc.	385122	885566	3/11/2003	3/13/2003	413.93	37.63
Y-382, Y-383	Castillo, Zamora & Poblador Law Offices	9799	250	5/19/2003	7/9/2003	149699	13609
Z-33, Z-34	DHL Worldwide Express	LGN121870	427744	6/9/2003	7/4/2003	292210.64	26564.6
Z-117	Exel Philippines, Inc		8839		3/7/2003	997	90.63
Z-118	Exel Philippines, Inc		8888		7/13/2003	997	90.63
Z-119, Z-120	Famous Paciic Forwarding Phils.	IMP#016986	43824	3/5/2003	3/6/2003	715	65
Z-126, Z-127	Fanuc Phils. Corp.	S1000306	1929	6/20/2003	8/1/2003	13750	1250
Z-137, Z-138	Filsonics Equipment & Services Inc	118	31	6/25/2003	9/5/2003	12870	1170
Z-166	German Tech Asia Pacific, Inc.	18	10	3/28/2003	5/16/2003	33000	3000
Z-204,z-205	GRM International Inc	25933	54144	2/27/2003	2/28/2003	880	80
Z-243	Intnl Container Terminal Services, Inc.		101786		2/28/2003	501.11	45.56
Z-244	Intnl Container Terminal Services, Inc.		101946		2/28/2003	355.03	32.27
Z-245	Intnl Container Terminal Services, Inc.		1953418		2/28/2003	2541	231
Z-293, Z-294	Laguna Internet, Inc.	3233	14366	6/22/2003	7/2/2003	2707.89	246.17
Z-303	Liquid Honey, Inc.	11573		3/18/2003		350	31.82
Z-304	Liquid Honey, Inc.	11597		3/19/2003		150	13.64
Z-305	Liquid Honey, Inc.	11621		3/20/2003		200	18.18
Z-306	Liquid Honey, Inc.	11647		3/21/2003		300	27.27
Z-307	Liquid Honey, Inc.	11662		3/22/2003		200	18.18
Z-309	Liquid Honey, Inc.	11676		3/24/2003		250	22.73
Z-310	Liquid Honey, Inc.	11690		3/25/2003		250	22.73
Z-311	Liquid Honey, Inc.	11709		3/26/2003		200	18.18
Z-312	Liquid Honey, Inc.	11732		3/27/2003		250	22.73
Z-314	Liquid Honey, Inc.	11757		3/28/2003		250	22.73
Z-315	Liquid Honey, Inc.	11770		3/29/2003		150	13.64
Z-316	Liquid Honey, Inc.	11786		3/31/2003		200	18.18
AA-14, AA-15	Matsushita Electric Phils. Corp	1212139	15227	4/1/2003	7/25/2003	9800	890.01
AA-38	Mesco, Inc.	111290		1/23/2003		2336	212.36
AA-61	Mesco, Inc.	110904		1/2/2003		9430	857.27
AA-62	Mesco, Inc.	110905		1/2/2003		18860	1714.55
AA-63	Mesco, Inc.	111357		1/24/2003		1658	150.73
AA-87, AA-88	MJD & sons, Inc.	4682	1927	6/20/2003	8/1/2003	52900	4809.09
AA-89, AA-90	MOF Company, Inc.	151910	326397	2/21/2003	2/24/2003	6751.8	613.8
AA-160	PID Controllers&Contractors Corp	4695	4176	5/20/2003	2/19/2003	54098	4918
AA-161	PID Controllers&Contractors Corp	4696	4326	5/20/2003	7/11/2003	6688	608
AA-164	PID Controllers&Contractors Corp	4696	4181	5/20/2003	3/13/2003	3344	304
AA-206	Ra-Tris General Merchandise	57		7/10/2003		3000	272.73
AA-376	Slick Energy Distributors	216		3/31/2003		17290	1571.82
BB-23	Spareman, Inc		351		7/4/2003	6466.59	587.87
BB-39, BB-	Speedway Electronics &	544	2037	7/1/2003	7/2/2003	1180	107.27

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BB-73	Steelworks Industrial Sales	2402		3/10/2003		3405.6	309.6
BB-115, BB-116	Sun Logistics Tech, Inc.	2048	596	6/9/2003	7/4/2002	23100	2100
BB-165, BB-166	Toyota	2424	3438	5/26/2003	7/25/2003	11250	1022.72
BB-167	Toyota		97003		7/18/2003	274341	24940.09
BB-181, BB-182	Transorient Container Terminal Services	129534	83276	3/12/2003	3/12/2003	5110.25	464.56
BB-188	Tri-Link Marketing Co.	2997		3/31/2003		22080	2007.27
SUBTOTAL						2336361.03	**162,066.37**

On the other hand, the Court finds that the following receipts are not legible, such that the Court cannot verify the amounts being claimed:

Unacceptable Receipts (not readable-not proven CTC)							
EXHIBITS	**COMPANY**	**Invoice No.**	**O.R. No.**	**Date of Invoice**	**Date of OR**	**Total Invoice Amount**	**Input VAT**
Z-218 to Z-241	Integrated Logistics Phils. Inc.	6610	4/30/2003	4/30/2003		41366.71	3760.61
		6433	2/21/2003	2/21/2003		18362.65	1669.33
		6434	3/21/2003			18362.65	1669.33
		6466	3/29/2000			18362.65	1669.33
		6478	3/31/2003			52600	4781.82
		6566	4/22/2003			52600	4781.82
		6551	4/14/2003			18271.89	1661.27
		6641	5/5/2003			10939.06	994.46
		6667	5/9/2003			10939.06	994.46
		6749	6/4/2003			9827.04	893.37
		6753	5/30/2003			18422.36	1674.76
SUBTOTAL							**24,550.56**

While the following sales of service are supported by invoices, in violation of *Section 113 of the NIRC of 1997, as amended*:

No Official Receipts (Sale of Services)							
EXHIBITS	**COMPANY**	**Invoice No.**	**O.R. No.**	**Date of Invoice**	**Date of OR**	**Total Invoice Amount**	**Input VAT**
Y-2	K Line Air Service Phils. Inc.	607		4/24/2003		1100	100
Y-363	Cargo Haus	401682		10-Apr		227.56	20.68
SUBTOTAL							**120.68**

With regard to the missing documents, as found by the Independent CPA, We adopt her findings during her examination *(Annex H.1 of the Independent CPA's Report, Exhibit "LL")* based on the evidence presented and the schedule of petitioner submitted to her. However, upon verification, the Court finds that the computation of the total amount is not correct, hence, it is hereby recomputed as follows:

Name of Vendor	Invoice No.	Date of Invoice	O.R. No.	Date of O.R.	Purchase of Capital Goods	Purchase of Supplies	Purchase of Services	Amount	Input VAT	Total Invoice Amount
Asian Terminals, Inc.			1857292				5,090.70	22,949.50	2,294.95	5,599.78
Autrans Phils., Corp.	0430	18-Jun-03	00829	27-Jun-03			29,406.00	61,261.23	2,940.60	32,346.65
Autrans Phils., Corp.	0431	19-Jun-03	00829	27-Jun-03			22,949.50	181.82	2,294.95	25,244.48
King's Devt, Inc.	57525						18.19	6,600.00	1.82	6,601.82
Primeworlld Digital Systems, Inc.							750.00	7,751.33	75.00	7,826.33
Roston Marketing Corp.	95521		10723	16-May-03		6,600		163.64	660.00	7,260.00
Sandvik Philippines, Inc.						3,420			342.00	342.00
TOTAL									**8,609.32**	

Substantiation of Input VAT on Capital Goods

Moreover, with respect to the claimed input VAT on capital goods amounting to P329,031.42, a careful examination of the records reveals that petitioner failed to present proofs of its purchases of capital goods and the paid input tax on such transactions. Capital goods or properties, as defined in *Revenue Regulations No. 7-95*, are "goods and 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." Thus, goods and properties used by the taxpayer in its VAT-taxable business, subject to depreciation or amortization in accordance with the Tax Code, are considered capital goods. Input VAT on the purchase of such capital goods is creditable against the taxpayer's output VAT. The taxpayer is further given the option to claim refund of the input VAT on its capital goods, but only to the extent that the said input VAT has not been applied to its output VAT. Conversely, the Court will not allow unsupported claims. Hence, for failure to show proof of substantiation of its claim, We disallow petitioner's claim on its alleged input VAT paid on capital goods.

Refundable Input VAT

The above disallowed claims resulted to a discrepancy in the available input VAT available for refund, computed as follows:

Input Tax on capital goods	P	329,031.42
Add: Input tax other than capital goods		4,978,281.95
Total Input Tax, per application	P	5,307,313.37
Less: Total exceptions as found by the Court		
A. Purchases Other than Capital Goods:		
Outside of the period covered	162,066.37	
Unacceptable receipts (fax copy only)	24,550.56	
No official receipts	120.68	
Missing ORs/Invoices	8,609.32	
Unlocated Difference per VAT Return & Schedule of importation	3,770.00	199,116.93
B. Purchases of Capital Goods		
Unsubstantiated Capital Goods		329,031.42
Substantiated Input Tax		**P 4,779,165.02**

Inasmuch as petitioner's input tax cannot be directly or entirely attributed to its zero-rated, taxable and exempt sales; the refundable amount of input tax shall be allocated proportionately to its zero-rated sales on the basis of its volume of sales, to wit:

Period Covered	Zero-Rated Sales	Exempt	VAT Sales	Total Sales	Substantiated Input Tax
2003	A	B	C	D	E
2nd quarter	163,567,841.88	432,140.76	7,619,710.16	171,619,692.80	4,779,165.02

Period Covered	Substantiated Input Tax Attributable to			Total Substantiated Input Tax	Output VAT
	Zero-Rated Sales	Exempt Sales	VAT Sales		
2003 Second Quarter	[(A/D) x (E)] 4,554,941.77	[(B/D) x (E)] 12,034.00	[(C/D) x (E)] 212,189.25	4,779,165.02	761,971.00

In addition, relative to the report of the independent CPA, We agree that in computing the input VAT available for refund, petitioner did not deduct the output VAT for sales subject to VAT in the amount of P761,971.00 *(Independent CPA's Report, Exhibit "LL").*

Based on the foregoing, the output tax payable must be applied against its substantiated claimed input tax allocated to zero-rated sales, resulting to a refundable input tax of P3,792,970.77 only, computed as follows:

Total Input tax allocable to zero-rated sales	P	4,554,941.77
Less: Output Tax that should have been paid		761,971.00
Total Input Tax Available for Refund	**P**	**3,792,970.77**

Likewise, it is also worthy to note that although petitioner carried-over the claimed input VAT of P5,307,313.37 to the succeeding quarters of 2003, all quarters of 2004 and until the second quarter of 2005, as evidenced by Quarterly VAT Returns for the said taxable periods *(Exhibits "I", "I-1", "J", "J-1", "K", "L", "M", "N", "O", and "R"),* the same was not applied against any output VAT for the said periods. Moreover, the same was deducted as "Any VAT Refund/TCC" claimed from the total available input tax of P18,911,940.14, as of the second quarter of 2005. In other words, the subject claim no longer formed part of the excess input VAT of P13,122,121.34, as of the month of July 2005, which was to be carried over/applied to the succeeding third quarter of 2005.

In sum, petitioner has sufficiently proved that it is entitled to a refund or issuance of a tax credit certificate representing unutilized excess input VAT payments for the period April 1, 2003 to June 30, 2003, which are attributable to its zero-rated sales for the same period, but in the reduced amount of P3,792,970.77.

WHEREFORE, premises considered, the present Petition for Review is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the reduced amount of **THREE MILLION SEVEN HUNDRED NINETY TWO THOUSAND NINE**

HUNDRED SEVENTY PESOS AND 77/100 (P3,792,970.77), representing the unutilized input VAT attributable to zero-rated sales incurred for the months of April to June 2003.

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 cases were assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice