REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD., *Petitioner,*	**CTA CASE NO. 8402**
	Members:
-versus-	***Bautista,*** *Chairperson* ***Fabon-Victorino,*** *and* ***Ringpis-Liban, JJ.***
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 16 2014 2:59 p.m.

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DECISION

BAUTISTA, J:

The Case

This is a claim for refund or issuance of a Tax Credit Certificate ("TCC") for the amount of Thirty Four Million One Hundred Seven Thousand Two Hundred Eighty Four and 30/100 Pesos (Php30,107,284.30), representing petitioner's excess and unutilized input value-added tax ("VAT") attributable to zero-rated sales for the 4th quarter of calendar year (CY) 2009.[1]

The Parties[2]

Petitioner Deutsche Knowledge Services, Pte. Ltd. is the Philippine branch of a multinational company organized and existing under and by virtue of the laws of Singapore, with registered office address at One Raffles Quay, #17-10 South Tower, Singapore 048583.

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[1] *Records*, CTA Case No. 8402, p. 6.
[2] *Id.*, *Joint Stipulation of Facts and Issues* ("JSFI"), pp. 63-64.

Respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of her office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law, with office address at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City, where she may be served summons and other legal processes of this Court.

The Facts

On January 25, 2010, petitioner filed with the BIR its original Quarterly VAT Return for the 4th quarter of taxable year 2009.[3]

On August 3, 2011, petitioner filed with the BIR a written Application for Tax Credits/Refunds (BIR Form No. 1914) of its excess and unutilized input VAT for the same period, in the total amount of Thirty Four Million One Hundred Seven Thousand Two Hundred Eighty Four and 30/100 Pesos (Php34,107,284.30).[4]

As the two-year period prescribed under Section 229 of the National Internal Revenue Code of 1997, as amended ("1997 NIRC") was about to expire, and respondent had not acted upon the administrative claim for refund, petitioner filed a Petition for Review with the Court on December 28, 2011.[5]

On February 10, 2012, respondent filed its Answer,[6] interposing the following Special and Affirmative Defenses:

> **"SPECIAL AND AFFIRMATIVE DEFENSES**
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> On the basis of the foregoing allegations and in further support of the Specific Denials herein set forth, respondent respectfully alleges as her defense that:
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> 6. Taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with the law.

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[3] *Id.*, p. 64.
[4] *Id.*, p. 65
[5] *Id.*, pp. 6-12.
[6] *Id.*, pp. 39-44.

7. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of internal Revenue. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.

8. The amount of Thirty Four Million One Hundred Seven Thousand Two Hundred Eighty-Four and 30/100 pesos (Php34,107,284.30) being claimed by petitioner as alleged excess and unutilized input VAT attributable to zero-rated sales for the 4th quarter of taxable year is not properly documented.

9. Petitioner must prove that it has complied with the provisions of Section 112(A) and (C) of the National Internal Revenue Code of 1997, as amended, on the prescriptive period for claims for VAT refund/tax credit

10. Petitioner must prove compliance with the prescribed checklist of requirements to be submitted involving claims for VAT refund pursuant to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the tiling of an administrative claim for refund, the administrative claim thereof being merely pro-forma. Further, Section 112(C) of the 1997 Tax Code, as amended, requires the submission of the complete documents in support of the application filed with the BIR before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the Petition for Review.

11. Petitioner must likewise prove that it has complied with the invoicing requirements mentioned in Sections 110 and 113 of the 1997 Tax Code, as amended, in relation to the provisions of Revenue Regulations No. 7-95.

12. Taxes are essential to governments very existence; **(CIR v. Solid [B]ank Corporation, G.R. No. 148191, November 25, 2003)** hence, the dictum that "taxes

are the lifeblood of the government." For this reason, the right of taxation cannot easily be surrendered, statutes granting tax exemptions are considered as a derogation of the sovereign authority. **(CIR v. Fortune Tobacco Corporation, G.R. Nos. 167274-75, July 21, 2008)** Since tax refunds are regarded as tax exemptions therefore, these are to be construed ***strictissimi juris*** against the person or entity claiming the exemption. **(Philippine Phosphate Fertilizer Corporation vs. Commissioner of internal Revenue G.R 141973, June 28, 2005)**

13. In an action for refund, **the burden of proof is on the taxpayer who claims the exemption** and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications **(BPI Leasing Corporation vs. Honorable Court of Appeals, G.R 127624, November 18, 2003)** The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. **(Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc. G.R. 163835 July 7, 2010)**

14. Following the premise above-mentioned, petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim."

On April 2, 2012, the parties filed their Joint Stipulation of Facts and Issues ("JSPI"),[7] which was approved by the Court on April 30, 2012 when it promulgated a Resolution[8] to this effect.

On January 21, 2013, petitioner filed its Formal Offer of Evidence,[9] which was resolved by the Court on March 22, 2013.[10]

On April 10, 2013, petitioner filed a Motion for Reconsideration over the Resolution promulgated on March 22, 2013,[11] which was resolved on June 3, 2013.[12]

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[7] *Id.*, pp. 66-69.
[8] *Id.*, pp. 85-89.
[9] *Id.*, pp. 210-233, with attachments.
[10] *Id.*, pp. 731-732.
[11] *Id.*, pp. 750-762, with attachments.
[12] *Id.*, pp. 820-822.

On July 15, 2013, in open court, respondent manifested that she will no longer present any evidence, thus the parties were given a period of thirty (30) days to file their respective Memoranda.[13]

On August 13, 2013, respondent filed a Motion for Extension of Time to File Memorandum,[14] while petitioner filed its own Motion for Extension of Time to File Memorandum[15] the following day. The Court issued a Resolution on August 16, 2013, allowing respondent until September 13, 2013 to file her Memorandum.[16] On the other hand, the Court also issued a Resolution allowing petitioner an extension until September 3, 2013 to file its Memorandum.[17]

On September 3, 2013, petitioner filed its Memorandum,[18] while respondent filed her Memorandum on September 13, 2013.[19] Thus on September 18, 2013, the Court promulgated a Resolution[20] submitting the case for Decision.

Hence, this Decision.

The Issues

Based on the Memoranda[21] filed by the parties, the sole issue to be resolved in the present case is as follows:

> "WHETHER OR NOT PETITIONER IS ENTITLED TO THE CLAIM FOR REFUND OF OR ISSUANCE OF TCC FOR EXCESS OR UNUTILIZED INPUT VAT IN THE AMOUNT OF PHP34,107,284.30 FOR THE 4th QUARTER OF CY2009."

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[13] *Id.*, p. 823.
[14] *Id.*, pp. 824-827.
[15] *Id.*, pp. 829-831.
[16] *Id.*, p. 833.
[17] *Id.*, p. 854.
[18] *Id.*, pp. 834-852.
[19] *Id.*, pp. 853-879.
[20] *Id.*, p. 882.
[21] *Id.*, pp. 834-879.

The Ruling of the Court

The Court finds partial merit in the Petition for Review.

Petitioner's claim for refund of excess or unutilized input VAT finds legal support in Section 108(B)(2), in relation to Sections 110(B) and 112(A) of the 1997 NIRC, as amended, which state:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
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> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.*— The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
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> (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);"
>
> xxx xxx xxx
>
> SEC. 110. *Tax Credits.* -
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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 xxx

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 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."

In the case of *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,*[22] the Supreme Court held that in order for the supply of services to be VAT zero-rated under Section 108(B)(2) of the 1997 NIRC *(then Section 102(b)(2) of the NIRC of 1977, as amended)*, the following requisites must be met:

[22] G.R. No.153205, January 22, 2007, 515 SCRA 124.

1) the services by a VAT registered person 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.

Corollary to the second requisite, Sections 113(A)(2), (B)(1), (2)(c) and (3) of the 1997 NIRC, 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 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:

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;

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

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 to under Section 108(B)(2) of the 1997 NIRC, must likewise be supported by VAT zero-rated official receipts.

Records show that petitioner satisfactorily complied with the requisites for VAT zero-rating of sales of services.

Petitioner is duly registered with the BIR as a VAT taxpayer[23] and the services it performs in the Philippines, through its regional operating headquarters (ROHQ), such as accounting, valuation and information systems maintenance and development services[24] are not the same category as "processing, manufacturing or repacking of goods."

For services rendered for the fourth quarter of taxable year 2009, petitioner received foreign currency payments which were accounted for in accordance with the Bangko Sentral ng Pilipinas ("BSP") rules and regulations, as evidenced by sales invoices and official receipts issued by petitioner to its alleged non-resident foreign clients, various inward remittance advices and bank statements.[25]

For the said taxable quarter, petitioner rendered services to the following entities,[26] as enumerated:

1. Deutsche Bank Aktiengesellschaft, Inlandsbank
2. Deutsche Bank Aktiengesellschaft, Filiale Amsterdam
3. Deutsche Bank Aktiengesellschaft, Filiale Riad
4. Deutsche Bank Aktiengesellschaft, Filiale Zurich
5. Deutsche Bank Aktiengesellschaft, Filiale Wien

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[23] *Records*, JSFI, Admitted Facts, par. 3, Docket, p. 64; Exhibit "B."
[24] *Exhibit* "M-1306", Notes to the Financial Statements, No 1, Reporting Entity.
[25] *Exhibits* "M-1" to "M-81."
[26] *Exhibit* "J," A22, Docket Vol. 1 pp. 679 to 680; Petitioner's Memorandum, Docket Vol. 2, pp. 843 to 844.

6. Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office
7. Deutsche Bank Aktiengesellschaft, Filiale Singapur
8. Deutsche Bank Aktiengesellschaft, Filiale Bangkok
9. Deutsche Bank Aktiengesellschaft, Filiale Mumbai
10. Deutsche Bank Aktiengesellschaft, Filiale Hongkong
11. Deutsche Bank Aktiengesellschaft, Filiale Jakarta
12. Deutsche Bank Aktiengesellschaft, Filiale Karachi
13. Deutsche Bank Aktiengesellschaft, Filiale Ho-Chi-Minh-Stadt
14. Deutsche Bank Aktiengesellschaft, Filiale Seoul
15. Deutsche Asset Management (Asia) Limited
16. Deutsche Bank Aktiengesellschaft, Filiale New York
17. Deutsche Bank Aktiengesellschaft, Filiale London
18. Deutsche Bank Aktiengesellschaft, Filiale Tokyo
19. Deutsche Bank Luxembourg S.A.
20. Deutsche Securities Inc.
21. Deutsche Bank (Suisse) SA
22. Deutsche Bank Societa per Azioni (SPA)
23. Deutsche Bank (China) Co. Ltd., Beijing Branch
24. Deutsche Bank (China) Co. Ltd., Shanghai Branch
25. DWS Holding & Service GmbH
26. Deutsche Bank Aktiengesellschaft, Reprasentanz Kiew
27. Deutsche Bank Real Estate (Japan) Y.K.
28. Deutsche Bank Securities Inc.
29. PT. Deutsche Securities Indonesia
30. Deutsche Group Services Pty Limited
31. Deutsche Bank PBC Spolka Akcyjna
32. Deutsche Securities Korea Co.
33. DB Services New Jersey, Inc.
34. DB Finance Inc.
35. DB Trust Company Limited Japan
36. DB International (Asia) Limited
37. Rud, Blass & Cie AG Bankgeschaft
38. Global Markets Centre Private Limited
39. DB Consortium S. Cons. a.r.l. in liquidazione

The foregoing entities are all non-resident foreign corporations doing business outside the Philippines, as evidenced by the following:

(1) SEC Certifications of Non-Registration of Company;[27]

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[27] *Exhibits* "F-1" to "F-24;" "F26" to "F-40."

(2) Articles of Association; Authenticated Certificate of Registration; Company Profile Fact Sheet; Authenticated Certificate of Incorporation in Change of Names of Company; Authenticated Certificate of Good Standing; Certificate of Incorporation;[28]
(3) Intragroup Service Agreements;[29] and
(4) Deutsche Bank List of Shareholdings 2008.[30]

Accordingly, petitioner's sales of services to the aforementioned entities for the fourth quarter of taxable year 2009 in the amount of €23,266,744.75 with peso equivalent of Php1,600,232,233.09, as presented below, qualify for VAT zero-rating under Section 108(B)(2) of the 1997 NIRC:

Provider	OR NO.	OR Exhibit No.	Amount in Euro (€)	Inward Remittance Exhibit No.	Peso Equivalent (Php)
DT Bank (Suisse) SA	547	M-6.1	30,287.18	M-6.2	2,102,799.53
DB AG Seoul	548	M-7.2	144,678.82	M-7.3	9,899,807.41
DB International (Asia) Limited	549	M-8.1	46,250.10	M-8.2	3,164,713.97
DB AG London	550	M-9.1	127,186.77	M-9.2	8,576,462.52
DB AG London	551	M-10.1	65,510.33	M-10.2	4,524,208.90
DB Trust Co. Ltd Japan	554	M-12.1	1,387.50	M-12.2	96,036.51
DB Finance Inc	555	M-13.1	1,387.50	M-13.2	96,036.51
DB AG Amsterdam	556	M-14.1	5,550.00	M-14.2	384,146.03
DT Bank PBC SA	557	M-15.1	462.81	M-15.2	32,012.86
DT Bank (Suisse) SA	558	M-16.1	18,777.54	M-16.2	1,299,696.82
DB AG London	559	M-17.1	54,446.98	M-17.2	3,768,574.94
DB AG London	560	M-18.1	12,218.27	M-18.2	845,693.67
DB AG London	561	M-19.1	14,245.46	M-19.2	986,006.64
DT Group Services PLTD	562	M-20.1	47,843.27	M-20.2	3,311,495.85
Deutsche Bank Real Estate (Japan) Y.K.	564	M-22.1	6,475.00	M-22.2	451,730.97
DB AG Asia Pacific HO	565	M-23-.1	160,444.59	M-23-.2	11,193,481.00
DB AG Ho-Chi-Minh	566	M-24.1	2,315.69	M-24.2	161,555.04
DB AG RP Kiew	567	M-25.1	18,500.04	M-25.2	1,292,610.74
DB AG London	568	M-26.1	268,321.85	M-26.2	16,747,835.48
DB AG Asia Pacific HO	569	M-27.1	248,472.42	M-27.2	17,360,941.92
DB AG Jakarta	570	M-28.1	25,019.17	M-28.2	1,748,106.92
DB AG, Inlandsbank	571	M-29.1	1,024,334.00	M-29.2	72,058,311.73
DB Consorzio SCARL	572	M-30.1	13,875.03	M-30.2	976,059.80
PT DT Securities Indonesia	573	M-31.1	1,850.01	M-31.2	130,141.73
DB AG Hongkong	574	M-32.1	28,232.48	M-32.2	1,986,056.15
DT Group Services PLTD	575	M-33.1	496,622.74	M-33.2	34,866,740.34
DB AG New York	577	M-34.1	3,228,798.28	M-34.2	227,575,712.05
DB AG SPA	580	M-36.1	13,875.03	M-36.2	968,092.76
DB AG New York	581	M-37.1	1,579,235.39	M-37.2	109,796,498.41

[28] *Exhibits* "G-1" to "G-39."
[29] *Exhibits* "H-2" to "H-39."
[30] *Exhibit* "I."

Global Markets Centre Private Limited	582	M-38.1	1,387.50	M-38.2	96,767.58
DB AG New York	583	M-39.1	172,110.27	M-39.2	12,050,300.55
DB AG Hongkong	584	M-40.2	40,683.74	M-40.3	2,837,381.67
DB AG London	585	M-41.3	5,052,160.68	M-41.4	353,088,436.90
Deutsche Bank Real Estate (Japan) Y.K.	586	M-42.1	6,475.02	M-42.2	452,866.78
DB AG Singapore	587	M-43.1	25,000.02	M-43.2	1,747,216.40
DB AG Zurich	589	M-44.1	9,527.52	M-44.2	675,438.29
DB AG Asia Pacific HO	590	M-45.1	82,190.95	M-45.2	5,735,884.48
DB AG Singapore	591	M-46.1	101,963.70	M-46.2	7,115,771.32
DB AG Singapore	592	M-47.1	1,919.87	M-47.2	133,982.54
DB AG Singapore	593	M-48.1	1,606.95	M-48.2	112,144.70
DB AG Asia Pacific HO	594	M-49.1	47,521.51	M-49.2	3,316,397.87
DB AG Singapore	596	M-50.1	6,724.19	M-50.2	469,263.06
DB AG Singapore	597	M-51.1	56,213.41	M-51.2	3,922,982.11
DB AG Singapore	598	M-52.1	27,823.62	M-52.2	1,941,735.32
DB AG Singapore	599	M-53.1	4,232.27	M-53.2	295,358.70
DB AG, Inlandsbank	600	M-54.1	1,308,423.00	M-54.2	91,311,308.43
DT Securities Inc.	602	M-56.1	128,506.81	M-56.2	8,787,231.41
DB AG Tokyo	603	M-57.1	4,823.31	M-57.2	329,815.53
DB AG Riyadh	604	M-58.1	7,862.52	M-58.2	531,014.16
DB AG Riyadh	605	M-59.1	7,862.52	M-59.2	531,014.16
DT Securities Inc.	608	M-62.1	891,615.82	M-62.2	60,217,414.28
DB AG Bangkok	609	M-63.1	18,500.04	M-63.2	1,249,444.60
DB AG London	610	M-64.1	469,563.27	M-64.2	31,713,082.39
DB AG Asia Pacific HO	611	M-65.1	37,500.00	M-65.2	2,532,652.50
DB AG Asia Pacific HO	612	M-66.1	37,500.03	M-66.2	2,532,654.53
DT Asset Management (Asia) Limited	613	M-67.1	150,833.44	M-67.2	10,166,249.27
DB Luxembourg SA	614	M-68.1	10,175.01	M-68.2	685,800.76
DB China Co. Beijing	615	M-69.1	18,499.48	M-69.2	1,246,874.20
DWS Holding & Services GmBH	616	M-70.1	18,500.04	M-70.2	1,246,911.95
DB AG Hongkong	617	M-71.1	605,023.19	M-71.2	40,778,865.52
DB China Co. Shanghai	619	M-73.1	68,566.77	M-73.2	4,585,464.45
DB AG Ho-Chi-Minh	620	M-74.1	3,956.77	M-74.2	264,612.55
DB AG Ho-Chi-Minh	621	M-75.1	2,743.23	M-75.2	183,455.98
DT Group Services PLTD	622	M-76.2	20,400.13	M-76.3	1,364,277.06
DT Bank (Suisse) SA	623	M-77.1	18,777.54	M-77.2	1,250,003.94
DB AG London	624	M-78.3	5,817,931.77	M-78.4	388,792,017.43
DB AG Riyadh	625	M-79.1	12,975.00	M-79.2	867,073.84
DB AG Hongkong	626	M-80.1	40,954.74	M-80.2	2,711,080.92
DB AG New York	627	M-81.1	241,104.85	M-81.2	15,960,417.76
TOTAL			**23,266,744.75**		**1,600,232,233.09**

The rest of petitioner's declared zero-rated sales in the amount of Php182,641,289.18 (Php1,782,873,522.27 less Php1,600,232,233.09) must be denied VAT zero-rating for petitioner's failure to present the corresponding official receipts or documents proving that its clients are non-resident foreign corporation doing business outside the Philippines.

Petitioner also alleges that the entire amount of Php34,107,284.30, reflected in its Quarterly VAT Returns for the fourth quarter of taxable year 2009 as input VAT from current purchase transactions, is attributable to its zero-rated sales of services for the said quarter. Below is the breakdown of the input tax in the amount of Php34,107,284.30:

Input VAT from Current Transactions	
Purchase of Capital Goods exceeding 1Million	Php 1,048,052.79
Purchase of Capital Goods not exceeding 1Million	21,696.22
Domestic Purchases of Goods Other than Capital Goods	1,079,423.29
Domestic Purchases of Services	30,916,434.79
Services Rendered by Non-Residents	1,041,677.21
Total Input VAT	**Php 34,107,284.30**

It must be noted that part of the total input VAT claim of Php34,107,284.30 is the amount of Php1,048,052.79, representing input VAT on purchases of capital goods exceeding Php1,000,000.00. Pursuant to Section 110(A) of the 1997 NIRC, as implemented by Section 4.110-3 of RR No. 16-2005, input VAT claim on capital goods purchases attributable to zero-rated sales may be claimed either in full during the month of acquisition, or spread over a period of time, depending on the aggregate acquisition cost of the capital goods in the calendar month.

If the aggregate acquisition cost exceeds Php1,000,000.00, the claim for input tax should be spread over 60 months or the estimated useful life of the capital goods, whichever is shorter. On the other hand, if the aggregate acquisition cost does not exceed Php1,000,000.00, the total input taxes shall be allowed as credit/refund in the month of acquisition.

Thus, while petitioner was able to substantiate the total claimed input VAT of Php1,048,052.79 on capital goods purchases exceeding Php1,000,000.00, only the amortization[31] for the fourth quarter of taxable year 2009 in the amount of Php31,796.71 may be claimed by petitioner as valid input tax credits for the same taxable quarter, as determined below:

[31] Based on estimated useful life of 60 months since the Court cannot ascertain the estimated useful life used by petitioner in depreciating the said capital goods.

Registered Name of Supplier	Exhibit No.	Input Vat Reported per QVAT Return (Php)	Life	No. of Months Amortized	Allowable Input VAT (Php)
Accent Micro Technologies Inc.	M-99	536.57	60	3	26.83
Accent Micro Technologies Inc.	M-109	168,846.43	60	3	8,442.32
Accent Micro Technologies Inc.	M-110	483.00	60	3	24.15
Accent Micro Technologies Inc.	M-111	1,449.00	60	3	72.45
Accent Micro Technologies Inc.	M-112	236,385.00	60	3	11,819.25
Accent Micro Technologies Inc.	M-113	11,040.00	60	3	552.00
Accent Micro Technologies Inc.	M-114	804.43	60	3	40.22
Accent Micro Technologies Inc.	M-115	2,250.00	60	2	75.00
Accent Micro Technologies Inc.	M-116	623.14	60	2	20.77
Accent Micro Technologies Inc.	M-117	498.21	60	2	16.61
Accent Micro Technologies Inc.	M-118	708.86	60	2	23.63
Accent Micro Technologies Inc.	M-119	483.00	60	2	16.10
Accent Micro Technologies Inc.	M-120	483.00	60	2	16.10
Accent Micro Technologies Inc.	M-121	13,507.71	60	2	450.26
Accent Micro Technologies Inc.	M-122	2,107.29	60	2	70.24
Accent Micro Technologies Inc.	M-123	270,154.29	60	1	4,502.57
Accent Micro Technologies Inc.	M-124	337,692.86	60	1	5,628.21
TOTAL		**1,048,052.79**			**31,796.71**

Consequently, the unamortized input VAT of Php1,016,256.08 (Php1,048,052.79 less Php31,796.71) shall be deducted from petitioner's input VAT claim.

In addition, the input VAT of Php14,068,220.19, as summarized below, shall be disallowed for petitioner's failure to meet the substantiation requirements under Sections 110(A) and 113(A) and (B) of the 1997 NIRC, and as implemented by Sections 4.110-2, 4.110-8 and 4.113-1 of Revenue Regulations No. 16-05:

FINDINGS		Disallowed Input VAT (Php)
1	Input VAT on purchases of goods supported by invoices dated outside the period of claim	558,887.64
2	Input VAT on purchases of goods supported by invoices dated outside the period of claim and wherein the amount of input VAT were not separately indicated	115,281.31
3	Input VAT on purchases of goods supported by invoices wherein the amount of input VAT were not separately indicated	21,956.84
4	Input VAT on purchases of services supported by OR dated outside the period of claim	529,827.08

5	Input VAT on purchases of services supported by OR dated outside the period of claim and wherein the amount of input VAT were not separately indicated	393,410.91
6	Input VAT on purchases of services supported by OR wherein the amount of input VAT were not separately indicated	4,490,869.15
7	Input VAT on purchase of services supported by documents other than VAT OR	3,477,697.40
8	Input VAT on purchases of services supported by documents imprinted with the statement "This document is not a valid source of input tax"	794,303.25
9	Over-claimed input VAT on purchases of services	87,920.61
10	Input VAT on purchase of services supported by VAT Zero-rated OR	1,679.46
11	Input VAT on purchase of goods supported by invoices without BIR Authority to Print	66,859.74
12	Without supporting documents	3,529,526.80
	TOTAL	**14,068,220.19**

Thus, only the remaining amount of Php19,022,808.03 represents petitioner's valid input VAT for the fourth quarter of taxable year 2009.

After applying petitioner's valid input VAT of Php19,022,808.03 against its output VAT of Php1,353,651.47 for the subject period of claim, there remains an excess input VAT of Php17,669,156.56 which can be attributed to the entire zero-rated sales/receipts declared by petitioner in the amount of Php1,782,873,522.27. Accordingly, only the input VAT of Php15,859,091.24 is attributable to the valid zero-rated sales of Php1,600,232,233.09, as computed below:

Input VAT claimed for refund		Php 34,107,284.30
Less: Disallowances		
Unamortized Input VAT on Capital Goods exceeding P1M	Php 1,016,256.08	
Input VAT on purchases of goods and services other than capital goods (Annex A of this Court's Report)	14,068,220.19	15,084,476.27
Valid Input VAT		**Php 19,022,808.03**
Less: Output VAT		1,353,651.47
Valid Excess Input VAT		**Php 17,669,156.56**

Valid Zero-Rated Sales/Receipts	Php 1,600,232,233.09
Divided by Total Reported Zero-Rated Sales/Receipt	1,782,873,522.27
Multiply by Valid Excess Input VAT	17,669,156.56
Excess Input VAT attributable to the Valid Zero-Rated Sales/Receipts	**Php 15,859,091.24**

Although the claimed input VAT was carried over by petitioner in the succeeding Quarterly VAT Returns,[32] the same remained unutilized until it was deducted[33] from petitioner's total available input tax in the 3rd quarter of taxable year 2011. Consequently, the subject claim no longer formed part of the excess input VAT of Php249,773,658.54[34] as of the 3rd quarter of taxable year 2011 which was carried over/applied to the succeeding 4th quarter of taxable year 2011.[35]

As to the timeliness of the petitioner's administrative claim, pursuant to the provision of Section 112(A) of the 1997 NIRC, a taxpayer must file an application for refund or tax credit of unutilized or excess creditable input VAT attributable to its zero-rated sales within two (2) years after the close of the taxable quarter when the sales were made.

In the instant petition, the subject of the claim for refund or issuance of a tax credit certificate is petitioner's unutilized creditable input VAT attributable to its zero-rated sales for the 4th quarter of taxable year 2009. Hence, counting from December 31, 2009, the close of the 4th quarter of taxable year 2009, petitioner had until December 31, 2011 within which to file its administrative claim with respondent. Therefore, petitioner seasonably filed its administrative claim for the period covering 4th quarter of taxable year 2009 when it filed on August 3, 2011.[36]

As for petitioner's judicial claim, the pertinent provision is Section 112(C) of the 1997 NIRC, which reads as follows:

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

[32] *Exhibits* "D-1" to "D-8."
[33] Line 23D of *Exhibit* "D-8."
[34] Line 29 of *Exhibit* "D-8."
[35] Line 20E, *Exhibit* "D-9."
[36] *Exhibits* "E" and "E-1."

> *(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 Subsections (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 tax payer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Based on the foregoing, the 120-day period ended on December 1, 2011 reckoned from August 3, 2011, the date when petitioner filed its administrative claim and presumably submitted its complete documents in support of its application for refund. Counting therefrom, petitioner may appeal its claim for refund to the Court of Tax Appeals within 30 days or until December 31, 2011. Thus, the present Petition for Review filed on December 28, 2011 is also well within the period prescribed by law.

WHEREFORE, in view of the foregoing, the Petition for Review by petitioner Deutsche Knowledge Services, Pte Ltd. is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to refund to petitioner or issue a tax credit certificate in its favor the amount of Php15,859,091.24 representing the latter's unutilized input VAT attributable to its zero-rated sales for the fourth quarter of taxable year 2009.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice