REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

KELPHIL, INC., *Petitioner,*	**C.T.A. CASE NO. 7427**
	Members:
-versus-	CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	JUN 1 1 2008 11:00 a.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

A VAT registered taxpayer rendering engineering and design work services to non-resident foreign clients, the consideration of which are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP, may claim for refund or issuance of tax credit certificates of its duly substantiated excess or unutilized input taxes attributable to such zero-rated or effectively zero-rated sales, pursuant to *Section 112 of the NIRC of 1997, as amended,* However, 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 Kelphil, Inc. (hereafter "petitioner") praying for the refund of the amount of P3,514,301.22, representing the excess or unutilized input value-added tax (VAT) on domestic purchases of goods and services attributable to petitioner's zero-rated sales of services for taxable years 2004 and 2005.

THE PARTIES

Kelphil, Inc. is a domestic corporation duly organized and existing under Philippine laws, with principal office and place of business at the 28th Floor, Antel Global Corporate Center, 3 Doña Julia Vargas Ave., Ortigas Center, Pasig City. Petitioner is a VAT-registered taxpayer as evidenced by its Certificate of Registration No. OCN 3RC0000174570 (BIR Form No. 2303), as of January 1, 1997.

Respondent, on the other hand, is the public official charged with the administration and enforcement of the national internal revenue laws, including the granting of refund or credit of taxes erroneously or illegally collected, and other refundable or creditable taxes under the provisions of

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the National Internal Revenue Code (NIRC), with office at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.

THE FACTS

In their "Joint Stipulation of Facts and Issues", the parties stipulated as follows:

> "1. Petitioner is a domestic corporation duly organized and existing under Philippines laws, with principal office and place of business at the 28th floor, Antel Global Corporate Center 3 Dona Julia Vargas Avenue, Ortigas Center, Pasig City, while Respondent is the public official charged with the administration and enforcement of the national internal revenue laws, including the granting of refund or tax credit of taxes erroneously or illegally collected, and other refundable or creditable taxes under the provisions of the Tax Code, with office address at the BIR National Office Building, Diliman, Quezon City, where he may serve with summons.
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> 2. Petitioner is a VAT-registered taxpayer as evidenced by its Certificate of Registration No. OCN 3R0000174570 (BIR Form No. 2003) as of 01/01/1997.
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> 3. For the 1st, 2nd, 3rd, and 4th quarters of the year 2004, Petitioner filed its quarterly VAT Returns within the periods prescribed by law, namely, on April 20, 2004, July 21, 2004, October 20, 2004, and January 20, 2005, respectively.
>
> 4. On March 28, 2006, Petitioner amended the said quarterly VAT returns for the year 2004, and filed the amended returns on the same date with the Revenue District Office (RDO) No. 43, Pasig City.

5. For the 1^{st}, 2^{nd}, 3^{rd}, and 4^{th} quarters of the year 2005, Petitioner filed the corresponding quarterly VAT returns within the periods prescribed by law, namely, on April 20, 2005, July 20, 2005, October 20, 2005, and January 20, 2006, respectively.

6. On March 27, 2006, Petitioner amended the said quarterly VAT returns for the year 2005, and filed the amended returns on the same date with RDO No. 43, Pasig City.

7. On March 28, 2006, petitioner filed with the respondent, through RDO No. 43, Pasig City, separate claims for refund, together with BIR Form No. 1914 (Application for Tax Credits/Refunds), covering the excess input taxes for the four quarters of 2004 and the four quarters of 2005.

8. That based on Petitioner's Article of Incorporation that was duly registered and approved by the Philippine Securities and Exchange Commission on July 9, 1987, the principal purpose for which Petitioner is formed is: 'To produce drafts, designs and drawings, by Philippine Nationals, of civil structures, offshore structures, bridges, buildings, piping, plants and other works or installation of whatever kind, for companies in Japan and other countries.'

9. That as stated in the amended VAT returns that Petitioner filed for the 1^{st}, 2^{nd}, 3^{rd}, and 4^{th} quarters of 2004 (Annexes 'F', 'G', 'H', and 'I' of the Petition) Petitioner had no taxable sales or receipts and had no output tax due for the four (4) taxable quarters of 2004, as borne out by Lines 19, 19A, and 19B of the returns.

10. That as stated in the same amended VAT Returns for the 1^{st}, 2^{nd}, 3^{rd}, and 4^{th} quarters of 2004, Petitioner had 'Zero-Rated Sales/Receipts,' total purchases of goods and services, and input VAT paid, as follows: *gal*

	Zero-Rated Sales/Receipts	Domestic Purchases	Input VAT
Q1'04	12,136,073.49	3,428,301.92	342,830.19
Q2'04	20,326,432.24	8,256,022.02	825,602.21
Q3'04	15,575,973.99	5,043,215.85	504,321.57
Q4'04	18,752,499.95	3,851,617.89	385,161.78
TOTAL	66,790,979.67	20,579,157.68	2,057,915.75

11. That as stated in the amended VAT returns filed for the 1st and 3rd quarters of 2005, Petitioner had no taxable sales or receipts, and had no output tax due. (Annexes 'N' and "P' of the Petition). However, as stated in the amended VAT returns for the 2nd and 4th quarters of 2005, (Annexes 'O" and "Q" of the Petition), Petitioner had taxable sales or receipts of P80,814.63 and P303,840.89 and corresponding output taxes due of P8,081.46 and P30,384.09, respectively.

12. That as stated in the same amended VAT returns for the 1st, 2nd, 3rd, and 4th quarters of 2005, Petitioner had 'zero-rated sales/receipts', total purchases of goods and services, and input tax paid, as follows:

	Zero-Rated Sales/Receipts	Domestic Purchases	Input VAT
Q1'05	17,726,984.58	3,602,140.68	360,214.10
Q2'05	18,383,360.45	5,001,471.69	500,147.14
Q3'05	17,960,865.79	4,485,464.34	448,546.45
Q4'05	16,389,194.16	1,768,283.37	176,828.29
TOTAL	70,460,404.98	14,857,360.08	1,485,735.98

13. That as shown or indicated in the amended VAT returns for the 1st, 2nd, 3rd, and 4th quarters of 2004 the input taxes therein were not credited or applied against output tax in said year, there having been no output tax liabilities during the said year.

14. That as shown or indicated in Line 25A in the amended VAT returns for the four (4) quarters of 2004 (Annexes 'F', 'G', 'H' and 'I' of the Petition), the excess input taxes per quarter were deducted as 'VAT Refund/TCC

Claimed' from the total available input taxes shown in Line 24 of said quarterly VAT returns of 2004.

15. That as shown or indicated in the amended VAT returns for the 1st and 3rd quarters of 2005 (Annexes 'N' and "P" of the Petition), the input taxes therein were not credited or applied against output tax in said quarters, there being no output tax liabilities in the said taxable quarters.

16. That as shown or indicated in Line 25A in the amended VAT returns for the 1st and 3rd quarters of 2005, (Annexes 'N' and 'P' of the Petition), the excess input taxes per quarter were deducted as 'VAT Refund/TCC Claimed' from the total available input taxes shown in Line 24 of said 1st and 3rd quarterly VAT returns.

17. That as shown or indicated in the amended VAT return for the 2nd quarter of 2005 (Annex 'O' of the Petition), of the total input tax of P500,147.14, the amount of P8,081.63 was applied or credited against the output tax due for the quarter. However, the balance or excess input tax of P492,065.51 was deducted as 'VAT Refund/TCC Claimed' as shown or indicated in Line 25A of the said return.

18. That as shown or indicated in the amended VAT return for the 4th quarter of 2005 (Annex 'Q' of the Petition), of the total input tax of P176,828.29, the amount of P21,268.86 was credited or applied against 70% of the P30,384.09 output tax due for the quarter. However, the balance or excess input tax of P155,559.43 was deducted as 'VAT Refund/TCC Claimed' as shown or indicated in Line 25A of the said return.

19. The administrative claims for refund that Petitioner filed on March 28, 2006 with RDO No. 43, Pasig City, covering the excess input taxes for the four quarters of 2004 and the four quarters of 2005, were filed within the two-year period prescribed by law, particularly Sec. 112 of the Tax Code.

20. The Petition for Review covering the said claims for refund, having been filed on March 31, 2006, was filed within the two-year period prescribed by law.

21. The Respondent has not yet granted above mentioned Petitioner's claims for refund."

In her Answer, respondent alleged by way of special and affirmative defenses that the claim for refund is still under examination by the respondent's Bureau; the burden of proof is upon the petitioner to prove that it is entitled to the claim for refund or issuance of tax credit certificate; and the taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same.

Petitioner presented Albert G. Alba, the Court-Commissioned Independent CPA, and Joey Calma, as witnesses, and documentary evidence, marked as *Exhibits "A" to "R"*, inclusive of their submarkings, which were all admitted by the Court in a Resolution dated May 23, 2007, after petitioner filed a "Motion For Partial Reconsideration (of Resolution on Petitioner's Formal Offer of Evidence)".

On the other hand, respondent submitted the case for decision, without presenting any evidence.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice.

Only petitioner filed its "Memorandum For the Petitioner" on February 20, 2008, and the case was deemed submitted for decision on February 29, 2008.

Hence, this decision.

ISSUES

As stipulated upon by the parties, the issues for this Court's consideration are:

I

WHETHER THE AMOUNTS THAT PETITIONER REPORTED AS ZERO-RATED SALES/RECEIPTS IN ITS QUARTERLY VAT RETURNS FOR TAXABLE YEARS 2004 AND 2005 WERE ITS COMPENSATION FOR SERVICES IT RENDERED TO ITS NON-RESIDENT FOREIGN CLIENTS.

II

WHETHER SAID RECEIPTS OR COMPENSATION WERE PAID FOR IN ACCEPTABLE FOREIGN CURRENCY AND ACCOUNTED FOR IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE *BANGKO SENTRAL NG PILIPINAS*.

III

WHETHER PETITIONER'S DOMESTIC PURCHASES OF GOODS AND SERVICES, FOR WHICH IT PAID INPUT TAX, ARE ATTRIBUTABLE TO ITS ZERO-RATED RECEIPTS FOR THE PERIOD IN QUESTION.

IV

WHETHER SAID DOMESTIC PURCHASES OF GOODS AND SERVICES ARE DULY SUPPORTED BY ACCEPTABLE DOCUMENTARY EVIDENCE.

V

WHETHER THE ACCUMULATED OR EXCESS INPUT TAXES FOR THE PERIOD IN QUESTION WAS UTILIZED OR APPLIED AGAINST OUTPUT TAXES DURING THE SAME PERIOD OR IN THE SUCCEEDING PERIODS.

VI

WHETHER PETITIONER IS ENTITLED TO THE REFUND OF EXCESS INPUT TAXES IN THE AMOUNT OF P2,057,915.75 FOR TAXABLE YEAR 2004 AND IN THE AMOUNT OF P1,456,385.49 FOR TAXABLE YEAR 2005.

Principal Issue

All of the above issues boil down to the principal issue of whether or not petitioner is entitled to the refund of the amount of P3,514,301.22, representing unutilized input VAT paid on domestic purchases of taxable

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goods and services attributable to its zero-rated sales/receipts for taxable years 2004 and 2005.

THE RULING OF THE COURT

The petition is partly meritorious.

Section 112(A) of the NIRC of 1997, as amended 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."

Pursuant to the afore-quoted provision, in order for a taxpayer to be entitled to a refund or issuance of a tax credit certificate of its unutilized input VAT, the following requisites must be satisfied:

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

Anent the first requisite, petitioner maintains that it rendered engineering, drawing, and design services to its non-resident foreign client, JFE SEKKEI Ltd. The services performed by petitioner for JFE SEKKEI Ltd. are classified as zero-rated under *Section 4.102-2(b) of Revenue Regulations No. 7-95, as amended* by *Section 3(b)(2) of Revenue Regulations No. 6-97*, which provides:

> "**SEC. 3.** ***Zero-Rating.*** — xxx
>
> (b) *Transaction 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) xxx
>
> (2) Services other than processing, manufacturing or repacking for other persons doing business outside the Philippines of goods which are subsequently exported, as well as services by a resident to a non-resident foreign client, such as project studies, information services, engineering and architectural designs and other similar services, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP."

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In his report, the Court-Commissioned Independent CPA, Albert G. Alba, noted that petitioner's zero-rated receipts and corresponding bank remittances for the years ended December 31, 2004 and 2005 consisted of fees for architectural and structural design services rendered to non-resident foreign clients and to JPMED Asian Pacific, Inc. (JPMED). The zero-rated sales and bank remittances are summarized as follows:

	2004 - Exhibit G		2005 - Exhibit H	
Period	In US $	In Peso	In US $	In Peso
Non-resident foreign clients:				
	$	₱	$	₱
First quarter	216,271.44	12,136,073.49	322,492.05	17,726,984.58
Second quarter	362,536.64	20,326,432.24	332,180.91	18,383,360.45
Third quarter	278,573.58	15,575,973.99	298,127.75	16,736,865.79
Fourth quarter	333,391.01	18,752,499.95	303,142.21	16,389,194.16
	$ 1,190,772.67	66,790,979.67	$ 1,255,942.92	69,236,404.98
JPMED	--	--	--	
Third quarter				1,224,000.00
	$ 1,190,772.67	66,790,979.67	$ 1,255,942.92	70,460,404.98

Petitioner also presented numerous documents, such as service agreements, schedule of zero-rated receipts and bank remittances, VAT official receipts, entries in US$ passbooks, and bank certificates of export remittances, to prove that it actually generated revenues in the aggregate amount of P136,027,384.65 (P66,790,979.67 plus P69,236,404.98) for rendering certain engineering and design work services to non-resident

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foreign clients during the subject periods. The foreign proceeds from the said sales in the aggregate amount of US$2,446,715.59 (US$1,190,772.67 plus US$1,255,942.92) were inwardly remitted and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP).

Petitioner further claims that its sales of services during the 3rd quarter of taxable year 2005 to JPMED, a PEZA-registered entity, for which it received a fee of P1,224,000.00 are also zero-rated, pursuant to *BIR Revenue Memorandum Circular No. 74-99*, dated October 15, 1999.

Thus, petitioner's sales of services for taxable years 2004 and 2005 amounting to P137,251,384.65 qualify as zero-rated sales under *Section 108(B)(1) and (2) of the NIRC of 1997, as amended*, which reads:

> "**SEC. 108.** ***Value-added Tax on Sale of Services and Use or Lease of Properties*** . —
>
> (A) 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

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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)."

As regards the second requisite, petitioner claims that it paid input VAT in the aggregate amount of P3,514,301.22, which is allegedly attributable to its zero-rated sales for taxable years 2004 and 2005. To prove its claim, petitioner presented various documentary evidence, such as its schedules of input taxes claimed from 1st quarter of taxable year 2004 to 4th quarter of taxable year 2005 and the related suppliers' invoices/official receipts.

Upon examination and verification of the above-mentioned documentary evidence, in his amended Report dated November 10, 2006, the Court-Commissioned Independent CPA noted the following findings:

	FOR THE YEAR ENDED DECEMBER 31, 2004				
Findings	**1st Qtr Exhibit J**	**2nd Qtr Exhibit K**	**3rd Qtr Exhibit L**	**4th Qtr Exhibit M**	**Total**
Purchase of services supported by:	*(J-1 to J-53)*	*(K-1 to K-82)*	*(L-1 to L-88)*	*(M-1 to M-90)*	
VAT official receipts in petitioner's name	P 230,786.27	P 769,883.08	P 393,069.35	P 337,824.43	P1,731,563.13
Not in petitioner's name	-	-	185.45	21.82	207.27
Non VAT receipts	14,828.23	61.27	9,875.89	12,264.45	37,029.84
No supports presented	29,939.32	2,359.75	1,596.38	9,640.65	43,536.10
Negative input VAT	-	(14,280.71)	-	-	(14,280.71)
Purchases of goods supported by:	*(J-54 to J-79)*	*(K-83 to K-107)*	*(L-89 to L-124)*	*(M-91 to M-105)*	
VAT invoices in the petitioner's name	64,726.65	67,694.22	99,070.71	27,874.31	259,365.89
Non VAT invoices	286.09	-	545.45	10.91	842.45
No supports presented	2,263.63	-	-	-	2,263.63

Negative input VAT	-	(115.40)	(21.66)	(2,474.79)	(2,611.85)
TOTAL	P 342,830.19	P 825,602.21	P 504,321.57	P 385,161.78	P2,057,915.75

Findings	FOR THE YEAR ENDED DECEMBER 31, 2005 1st Qtr Exhibit N	2nd Qtr Exhibit O	3rd Qtr Exhibit P	4th Qtr Exhibit Q	Total
Purchase of services supported by:	*(N-1 to N-103)*	*(O-1 to O-120)*	*(P-1 to P-117)*	*(Q-1 to Q-113)*	
VAT official receipts in petitioner's name	P 311,508.53	P 456,377.71	P 426,917.74	P 345,516.87	P1,540,320.85
Not in petitioner's name	268.18	3,678.95	43.64	-	3,990.77
Non VAT receipts	208.18	251.91	180.93	802.07	1,443.09
No supports presented	681.82	-	-	101.74	783.56
Purchases of goods supported by:	*(N-104 to N-135)*	*(O-121 to O-146)*	*(P-118 to P-136)*	*(Q-114 to Q-137)*	
VAT invoices in the petitioner's name	47,547.39	39,114.39	20,849.69	28,931.32	136,442.79
Non VAT invoices	-	724.18	554.45	-	1,278.63
Negative input VAT	-	-	-	(198,523.71)	(198,523.71)
TOTAL	P 360,214.10	P 500,147.14	P 448,546.45	P 176,828.29	P1,485,735.98

Based on the above-quoted findings of the Court-Commissioned Independent CPA, the Court finds that out of the total input VAT of P3,543,651.73, only the amount of P3,452,276.39 is duly substantiated, as follows:

		2004	2005	Total
Purchase of services supported by VAT OR in the petitioner's name		P 1,731,563.13	P 1,540,320.85	P 3,271,883.98
Purchase of goods supported by VAT invoices in the petitioner's name		259,365.89	136,442.79	395,808.68
Total		P 1,990,929.02	P 1,676,763.64	P 3,667,692.66
Less:	Negative Input VAT on purchase of services	P 14,280.71	-	P 14,280.71
	Negative Input VAT on purchase of goods	2,611.85	P 198,523.71	201,135.56
		P 16,892.56	198,523.71	P 215,416.27
Properly substantiated Input VAT		P 1,974,036.46	P 1,478,239.93	P 3,452,276.39

The remaining amount of P91,375.34 is hereby disallowed for the following reasons:

	Findings (Hereto attached as *Annex "A"*)	2004	2005	Total
1	Purchase of service supported by Non-VAT Ors	P 36,549.83	P 749.86	P 37,299.69
2	Purchase of service supported by documents other than VAT ORs	480.01	483.91	963.92
3	Input VAT on purchase of services with no supporting documents	43,536.10	1,035.47	44,571.57
4	Purchase of service supported by document not in the company's name	207.27	311.82	519.09
5	Purchase of service supported by ORs not duly registered with the BIR		3,636.36	3,636.36

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6	Purchase of goods supported by documents other than VAT Invoices	842.45	1,278.63	2,121.08
7	Input VAT on purchase of goods with no supporting documents	2,263.63	-	2,263.63
	Total	P 83,879.29	P 7,496.05	P 91,375.34

However, after further examination of the records, out of the substantiated input VAT of P3,452,276.39, as noted by the Court-Commissioned Independent CPA, the Court finds that P1,337,520.61 of said input taxes claimed should be disallowed for the following reasons:

1.) The aggregate input taxes of **P416,709.33** (out of the P259,365.89 and P1,731,563.13 input VAT included in the findings of the ICPA) on purchases of goods and services for taxable year 2004 supported by VAT invoices and official receipts in the name of petitioner, which are not dated within the taxable year (hereto attached as ***Annex "B"***).

2.) The aggregate input taxes of **P401,387.29** (out of the P136,442.79 and P1,540,320.85 input VAT included in the findings of the ICPA) on purchases of goods and services for taxable year 2005 supported by VAT invoices and official receipts in the name of petitioner, which are not dated within the taxable year (hereto attached as ***Annex "C"***).

3.) Input taxes amounting to **P558.86** supported by official receipts which are not dated (hereto attached as ***Annex "D")***.

4.) Over-claimed Input VAT for the taxable year 2004 amounting to **P179,922.99** due to erroneous computation *(Exhibit "F", p. 7)*.

5.) Over-claimed Input VAT for the taxable year 2005 amounting to **P1,827.99** due to erroneous computation *(Exhibit "F", p. 8)*.

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6.) The input taxes of **P16,335.61** (out of the P1,731,563.13 input VAT included in the findings of the ICPA) on purchases of services for taxable year 2004 supported by VAT official receipts in the name of the petitioner, which are supported by documents other than VAT ORs (*e.g.*, machine validated receipts) *(Exhibit "F", p. 9)*.

7.) The input taxes of **P25,248.63** (out of the P1,540,320.85 input VAT included in the findings of the ICPA) on purchases of services for taxable year 2005 supported by VAT official receipts in the name of the petitioner, which are supported by documents other than VAT ORs (*e.g.*, machine validated receipts) *(Exhibit "F", pp. 10-11)*.

8.) The input taxes in the amount of **P295,529.91** (out of the P1,540,320.85 input VAT included in the findings of the ICPA) supported by official receipts with BIR permit dated December 2, 2005 issued by JPMED for payments of input taxes prior to December 2, 2005. Petitioner alleged that the said VAT ORs were issued as replacements to Non-VAT ORs previously issued erroneously to petitioner. However, the veracity of replacement cannot be ascertained since the alleged cancelled ORs were not presented before the Court *(Exhibit "F", pp. 11-12)*.

Therefore, petitioner was able to substantiate with valid VAT invoices or receipts only the input VAT of P2,114,755.78, computed hereunder:

Reported Input VAT		P 3,543,651.73
Less: Disallowances		
Per CPA Report	P 91,375.34	
Per this Court's Findings	1,337,520.61	1,428,895.95
Substantiated Claim		**P 2,114,755.78**

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As regards the third requisite, the Court-Commissioned Independent CPA found that petitioner had taxable receipts (which are supported with VAT official receipts); thus, not all of the substantiated input VAT of P2,114,755.78 is attributable to zero-rated sales. In its Schedule of Taxable Receipts for the Taxable Year 2005 (*Exhibit "I"*), petitioner had taxable sales of P384,655.52 with the corresponding output VAT of P38,465.55. Hence, only the net input VAT of P2,076,290.23 (P2,114,755.78 less P38,465.55) directly pertains to petitioner's zero-rated sales of P137,251,384.65.

As to the fourth requisite, petitioner deducted the claimed excess input VAT for each quarter as "any VAT Refund/TCC Claimed" in the corresponding amended quarterly VAT return for the taxable years 2004 and 2005 (*Annexes "F" to "I" and Annexes "N" to "Q" of Petition*). Thus, petitioner has established that no amount of the claimed excess input VAT was carried-over or applied against any output tax in the succeeding taxable quarters.

Finally, petitioner complied with the fifth requisite. It filed its administrative and judicial claims for refund on March 28, 2006 and March 31, 2006, respectively, within the two-year prescriptive period, pursuant to *Section 112 of the NIRC of 1997, as amended,* reckoned from

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April 20, 2004, the date of filing of the earliest quarter covered by the instant claim.

WHEREFORE, premises considered, the Petition For Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** to the petitioner the reduced amount of **TWO MILLION ONE HUNDRED FOURTEEN THOUSAND SEVEN HUNDRED FIFTY FIVE AND 78/100 PESOS (P2,114,755.78)**, representing excess or unutilized input VAT attributable to zero-rated sales for taxable years 2004 and 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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice

Annex "A"

KELPHIL, INC.
DISALLOWANCES OF INPUT VAT
FOR THE TAXABLE YEARS 2004 AND 2005

Findings	Invoice/OR No.	Input VAT 2004	Input VAT 2005
A. Purchase of service supported by Non-VAT Ors			
Japan-PNB Leasing	10542	1,096.30	
Japan-PNB Leasing	11782	1,085.44	
BOT Lease & Finance Phils.	029352	6,359.67	
BOT Lease & Finance Phils.	29534	6,138.45	
Wallgraphic Advertising	0027	1,590.91	
JPMED Asian Pacific, Inc.	00103	2,380.00	
JPMED Asian Pacific, Inc.	00695	5,106.27	
JPMED Asian Pacific, Inc.	0694	637.44	
JPMED Asian Pacific, Inc.	00104	2,380.00	
JPMED Asian Pacific, Inc.	00105	2,380.00	
JPMED Asian Pacific, Inc.	00727	3,028.22	
JPMED Asian Pacific, Inc.	00106	2,380.00	
JPMED Asian Pacific, Inc.	00750	1,987.13	
F.G. Gutson Billiards	2293		42.59
Aling Tonya's Seafood	1378		707.27
Sub-total		**36,549.83**	**749.86**
B. Purchase of service supported by documents other than VAT Ors			
Kodak Express	24481	32.73	
Kodak Express	24716	9.82	
Kodak Express	25333	94.91	
Kodak Express	25262	10.91	
Kodak Express	25888	61.27	
Kodak Express	27161	21.82	
Kodak Express	27246	27.27	
Kodak Express	27247	10.91	
Floro Blue Printing	74275	77.27	
Kodak Express	27788	13.09	
Kodak Express	28101	10.91	
Kodak Express	29080	21.82	
Kodak Express	29037	54.55	
Kodak Express	28695	32.73	
Kodak Express	29738		10.91
P Byte Computers, Inc.	5526		47.73
Compex Sales Corp.	42501		26.36
Kodak Express	30281		21.82
Kodak Express	30596		27.27
3N Copy Systems	183487		70.45
Kodak Express	30632		3.64

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Kodak Express	34905		10.91
Kodak Express	34919		21.82
Kodak Express	35282		4.36
Kodak Express	35337		27.27
3N Copy Systems	102223		34.75
Kodak Express	35361		10.91
Kodak Express	35374		10.91
Kodak Express	35379		3.64
Kodak Express	35384		7.27
Kodak Express	35779		49.09
Kodak Express	35148		3.64
Kodak Express	35637		13.25
Kodak Express	35898		33.82
Kodak Express	35902		32.73
Kodak Express	35931		9.09
Kodak Express	36191		2.27
Sub-total		**480.01**	**483.91**
C. Input VAT on purchase of services with no supporting documents presented			
Adriano Magcalas	AR	29,089.32	
AHM Properties, Inc.	0270	850.00	
Innove Communications	8	145.34	
Innove Communications	9	173.86	
Innove Communications	10-11	416.02	
Innove Communications	12	151.77	
AHM Properties, Inc.		850.00	
Globe Telecom		622.76	
*No specific source document, claimed as a whole		1,596.38	
Belize Homes		1,333.33	
Republic Courier Service	209852	125.50	
I-Merge Online, Inc.	00427	8,181.82	
Asia Solution Philippines, Inc.			681.82
Kodak Express	33711		21.82
Kodak Express	33563		3.64
Kodak Express	33565		10.91
Kodak Express	33668		33.45
Premiere Oriental Pacific, Inc.	2734		182.09
Kodak Express			101.74
Sub-total		**43,536.10**	**1,035.47**
D. Purchase of service supported by document not in the company's name			
Floro Blue Printing	74442	185.45	
Kodak Express	29137	21.82	
Kodak Express	29537		10.91
Kodak Express	29826		16.36
MIB Exterminator	3052		109.09
Motorcity Autoshop Corp.	0414		131.82
Kodak Express	35063		10.91
Upstart Ventures, Inc.	19868		10.91
Upstart Ventures, Inc.	19869		10.91

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Upstart Ventures, Inc.	19871		10.91
Sub-total		**207.27**	**311.82**
E. Purchase of service supported by ORs not duly registered with the BIR			
Angelo Trading	0669		3,636.36
Sub-total		-	**3,636.36**
F. Purchase of goods supported by documents other than VAT Invoices			
Data Computer Forms, Inc.	029068	286.09	
POD Designfab, Inc.	001	545.45	
PC Live Enterprise	048846	10.91	
Power Telecom Shop Corp.	1391		65.45
Laden Table Food Services	3896		595.09
5th Avenue Telecom	5972		63.64
Kobee Corp.	1876		354.55
Pilipinas Macro, Inc.	12230659		199.90
Sub-total		**842.45**	**1,278.63**
G. Input VAT on purchase of goods with no supporting documents presented			
3N Copy Systems		27.27	
Canon Marketing		2,236.36	
Sub-total		**2,263.63**	-
TOTAL		**83,879.29**	**7,496.05**

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Annex "B"

KELPHIL, INC.
DISALLOWANCES OF INPUT VAT
INPUT VAT NOT WITHIN THE PERIOD OF CLAIM
FOR THE TAXABLE YEAR 2004

Findings	Exhibit No.	Input VAT
Asia Solution Phils.	J-44	44,244.69
City Travel & Tours Corp.	J-45	8,096.55
Hooven Phils., Inc.	J-46	8,479.60
City Travel & Tours Corp.	J-47	13,145.26
Globe Telecom	J-48	307.55
Innove Communications	J-49	1,052.73
Innove Communications	J-50	339.77
Asia Solution Phils.	J-51	18,935.11
Asia Solution Phils.	J-52	27,637.09
Uy Singson Abella	J-53	2,212.50
Republic Courier Service, Inc.	J-54	208.00
Polar Catering & Food Services	K-73	7,181.82
Globe Telecom	K-74	1,195.91
DHL Worldwide Express	K-75	86.29
Innove Communications	K-76	304.93
Innove Communications	K-77	341.02
Innove Communications	K-78	1,251.77
Asia Solution Phils.	K-79	54,143.78
City Travel & Tours Corp.	K-80	11,042.98
RCW Construction & Development	K-81	79,940.91
Uy Singson Abella	K-82	2,600.00
Timothy School & Office Supply	K-107	766.84
Innove Communications	L-1	293.55
Globe Telecom	L-83	1,161.04
Innove Communications	L-84	323.84
Republic Courier Service, Inc.	L-85	576.00
Asia Solution Phils.	L-86	27,618.18
City Travel & Tours Corp.	L-87	1,347.27
Asia Solution Phils.	L-88	29,890.91
Innove Communications	M-1	462.91
IML Asia Pacific, Inc.	M-2	27,500.00
Foodlink Resource	M-3	13.18
Premiere Oriental Pacific	M-4	382.30
Globe Telecom	M-83	1,152.10
City Travel & Tours Corp.	M-84	8,281.21
Innove Communications	M-85	1,045.60
Innove Communications	M-86	395.45
Innove Communications	M-87	402.60
Republic Courier Service, Inc.	M-88	639.00

Asia Solution Phils.	M-89	25,800.00
Asia Solution Phils.	M-90	5,909.09
TOTAL		**416,709.33**

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Annex "C"

KELPHIL, INC.
DISALLOWANCES OF INPUT VAT
INPUT VAT NOT WITHIN THE PERIOD OF CLAIM
FOR THE TAXABLE YEAR 2005

Findings	Exhibit No.	Input VAT
Spice Worx Consultancy	N-86	14,800.00
Hooven Phils., Inc.	N-87	8,869.92
SGV & Co.	N-88	5,000.00
Globe Telecom	N-89	1,118.21
Republic Courier, Inc.	N-90	283.50
City Travel & Tours Corp.	N-91	9,631.68
Discovery Tour, Inc.	N-92	3,068.64
N.P. Ganzon, Corp.	N-93	8,272.73
Innove Communications	N-94	417.76
Innove Communications	N-95	375.89
Innove Communications	N-96	1,231.45
Innove Communications	N-97	144.81
City Travel & Tours Corp.	N-98	1,637.36
Asia Solution Phils., Inc.	N-99	19,295.60
Spice Worx Consultancy	N-100	7,112.82
AHM Properties, Inc.	N-101	850.00
Asia Solution Phils., Inc.	N-102	4,090.91
Asia Solution Phils., Inc.	N-103	26,147.49
JPMED Asian Pacific, Inc.	O-1	11,175.55
J & G Isono, Inc.	O-2	474.28
Bistro Austriliano Corp.	O-3	545.45
Smart Communications	O-4	184.35
Republic Courier, Inc.	O-109	5,112.62
JPMED Asian Pacific, Inc.	O-110	22,768.25
Innove Communications	O-111	440.58
Innove Communications	O-112	149.40
Innove Communications	O-113	563.25
Innove Communications	O-114	1,329.13
Asia Solution Phils., Inc.	O-115	41,156.16
Globe Telecom	O-116	943.82
Spice Worx Consultancy	O-117	600.00
City Travel & Tours Corp.	O-118	13,675.73
Republic Courier, Inc.	O-119	148.50
Bright-Link Office Specialist	O-121	8,001.45
Winchap Enterprises Corp.	P-1	72.73
Golden Gorilla Food Corp.	P-2	119.82
Cantinela Food Services	P-3	120.59
Business Options	P-105	2,500.00
Asia Solution Phils., Inc.	P-106	52,063.81
Discovery Tour, Inc.	P-107	3,166.10
City Travel & Tours Corp.	P-108	14,251.14
Innove Communications	P-109	418.74
Globe Telecom	P-110	785.71
Innove Communications	P-111	421.48
Innove Communications	P-112	1,123.36
Republic Courier, Inc.	P-113	232.00

Spice Worx Consultancy	P-114	600
Asia Solution Phils., Inc.	P-115	5,909.09
Asia Solution Phils., Inc.	P-116	36,000.00
Innove Communications	Q-1	1,481.11
Trinity Marketing, Inc.	Q-2	3,409.09
Asia Solution Phils., Inc.	Q-3	5,909.09
Carolina's Lace Shoppe	Q-4	13,117.44
Winchap Enterprises Corp.	Q-5	107.27
Roque S. Fado	Q-6	500.00
IML Asia Pacific Inc.	Q-7	30,000.00
Beijing Treasure Foods Corp.	Q-8	318.50
Sun East Continental Food	Q-9	280.13
Philippine Pizza Inc.	Q-10	67.61
Philippine Pizza Inc.	Q-11	43.39
Max's Sta. Mesa Inc.	Q-12	137.73
Gold Treat Foods, Inc.	Q-13	53.50
City Travel & Tours Corp.	Q-108	783.10
Discovery Tour, Inc.	Q-109	3,034.38
Globe Telecom	Q-110	797.74
Republic Courier, Inc.	Q-111	911.35
Platon Martinez Florez	Q-112	3,034.00
TOTAL		**401,387.29**

Annex "D"

KELPHIL, INC.
DISALLOWANCES OF INPUT VAT
INPUT VAT SUPPORTED BY OFFICIAL RECEIPTS WHICH ARE NOT DATED
FOR THE TAXABLE YEAR 2005

Findings	Exhibit No.	Input VAT
Burgoo Restaurant	O-120	363.64
Cas Food & Ice Cream Corp.	P-117	33.00
Innove Communications	Q-113	162.22
TOTAL		**558.86**

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