REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

HARTE-HANKS PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8234

Members :

Bautista, *Chairperson, and*
Cotangco-Manalastas, *JJ.*

Promulgated:

NOV 4 2013
11:38 a.m.

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DECISION

BAUTISTA, J.

The Case

This is a claim for refund or issuance of a Tax Credit Certificate ("TCC") in the amount of Two Million Seventy-Eight Thousand Twenty-Six and 78/100 Pesos (Php2,078,026.78), representing petitioner's excess and unutilized input value-added tax ("VAT") on purchases of goods and services attributable to its zero-rated sales of services for the third quarter of calendar year 2008, or from July 1, 2008 to September 30, 2008.[1]

The Parties[2]

Petitioner Harte-Hanks Philippines, Inc., is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at 4/F Market! Market! Building, Bonifacio Global City, Taguig City.

[1] *Records*, CTA Case No. 8234, pp. 1-63; with Annexes.
[2] *Id.*, pp. 150-151.

Respondent is the duly appointed Commissioner of Internal Revenue, empowered to perform the duties of the said office including, among others, the power to decide, approve, and grant refunds or tax credits of erroneously or excessively paid taxes, as provided by law.

The Facts

As related in the Joint Stipulation of Facts and Issues[3] filed by the parties on December 19, 2011, the facts leading to the case are as follows:

> "4. Petitioner was incorporated on November 3, 2005 with the primary purpose of providing outsourcing customer relationship management solutions by rendering inbound or outbound call services to its customers.
>
> 5. On September 21, 2010, [p]etitioner filed with the Revenue District Office (RDO) No. 44 of the BIR a written application for the refund or issuance of a Tax Credit Certificate (TCC) and an Application for Tax Credits/Refunds (BIR Form No. 1914) of input VAT for the third quarter of CY 2008 in the amount of Php2,078,026.78;
>
> 6. On October 27, 2008, [p]etitioner filed with the BIR, through the Electronic Filing and Payment System (EFPS) its Original Quarterly VAT Return for the third quarter of CY 2008; and
>
> 7. Petitioner filed, through the EPPS, an Amended Quarterly VAT Return for the third quarter of CY 2008 on June 2, 2009."

Since petitioner filed its administrative claim on September 21, 2010, the 120-day period given to respondent to act on the administrative claim expired on January 19, 2011.[4] In accordance with

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[3] *Id.*, pp. 150-154.
[4] *Id.*, p. 7.

Section 112(C), petitioner filed a Petition for Review[5] on February 18, 2011, to preserve its right to judicially claim the refund of its excess and unutilized input VAT for the third quarter of CY 2008.[6]

On August 31, 2011, respondent filed her Answer,[7] stating the following Special and Affirmative Defenses, as follows:

> "**SPECIAL AND AFFIRMATIVE DEFENSES**
>
> 3. The instant case should be dismissed on the ground that the petition for review already time-barred. The judicial claim for refund or for issuance of a tax credit certificate for the creditable input VAT payment made by petitioner Harte Hanks Philippines, Inc. filed on February 18, 2011 was filed beyond the period provided by law for such claim.
>
> Petitioner anchors its claim for refund or the issuance of a tax credit certificate under Section 112(A) [and] (C) of the Tax Code 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: *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

[5] Petitioner initially filed its Petition for Review on September 28, 2010 but withdrew it to comply with the ruling in the case of Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010, 632 SCRA 422.
[6] *Records*, CTA Case No. 8234, p. 7.
[7] *Id.*, pp. 101-107.

> 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, its shall be allocated proportionately on the basis of the volume of sales.
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (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 enacted claim with the Court of Tax Appeals. xxx xxx'
> (Emphasis/Underlining supplied)

Pursuant to the aforequoted provision, a VAT registered taxpayer whose sale is zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for a refund or the issuance of tax credit certificate of its creditable input tax due or paid attributable to such sales.

The Honorable Supreme Court in the recent case of *Commissioner of Internal Revenue vs. Mirant Pagbilao*

Corporation has already put to rest the issue on the reckoning of the prescriptive period on claims for refund of input VAT attributable to zero-rated or effectively zero-rated sales, as follows:

> 'The claim for refund or tax credit for the creditable input VAT payment made by MPC embodied in OR No. 0189 was filed beyond the period provided by law for such claim. Sec. 112 (A) of the NIRC pertinently reads:
>
> > (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:...(Emphasis ours.)
>
> The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due to the taxpayer **must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not**. As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112 (A). '[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued.' Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for

> refund or tax credit of the unutilized creditable input VAT. **The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid.** Be that as it may, and given that the last creditable input VAT due for the period covering the progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input VAT refund or tax credit for said quarter prescribed two years after September 30, 1996 or, to be precise, on September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed.'

From the foregoing, it is clear that the two-year prescriptive period provided in Section 112(A) of the Tax Code of 1997, as amended, should be reckoned not from the payment of the tax, but from the close of the taxable quarter when the sales were made.

In this case, petitioner is claiming for refund or the issuance of a tax credit certificate of its alleged unutilized input VAT paid on domestic purchases of goods or services allegedly attributable to its zero-rated sales of goods or services for the 3rd Quarter of 2008, hence, the two (2) year prescriptive period should be reckoned from September 30, 2008, the close of the taxable 3rd quarter. Accordingly, petitioner had until September 30, 2010 (3rd quarter claim for refund), within which to file its claim both in the administrative and judicial levels.

Records show that while the administrative claim for refund or the issuance of a tax credit certificate filed by petitioner on September 21, 2010 falls within the two (2) -year prescriptive period; however, the Petition for Review filed before this Honorable Court on February 18, 2011 is beyond the two (2)-year period prescribed by law. Thus petitioner is barred from claiming refund of the alleged unutilized input taxes for the 3rd quarter of 2008 in the amount of P2,078,026.78.

It is the respondent's humble submission that the two-year period is a limitation of action not only in submitting the written claim for refund or issuance of tax credit certificate to the Commissioner of Internal Revenue, but likewise in instituting an action with the Court of Tax Appeals. A different interpretation would necessarily allow an extension of the two-year prescriptive period, for as long as the 120-day period had not elapsed from the filing of the administrative claim for refund.

Notably, nowhere in Section 112 is it stated nor implied, that the periods under paragraphs (A) and (B) thereof, are limited to administrative claims only, while it is more evident that the periods (120 days and 30 days) mentioned in paragraph (C) thereof, are provided for the taxpayer's guidance in the exhaustion of administrative remedies. Clearly, the mandate to act on claims for refund or issuance of tax credit certificate of creditable input VAT due within the 120-day period mentioned under the first paragraph of Section 112(C) is addressed to the Commissioner of Internal Revenue, while the second paragraph of the same Section is an optional recourse given to the taxpayer-claimant, should there be a denial of the refund claim, or inaction on the part of the Commissioner on the claim for 120 days.

In the case of **Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.), supra**, the Supreme Court held that Section 112 of the NIRC clearly provides in no uncertain terms that an unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years **reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless whether said tax was paid or not**. The Supreme Court further said the prescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued. Thus, when a zero-rated VAT taxpayer pays input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid.

Additionally, Section 112(C) grants the Commissioner a **120-day period** from submission of complete documents in support of the administrative claim within which to act on claims for refund/application for issuance of the tax credit certificate, and upon denial of such claim or upon expiration thereof, the taxpayer only has a **30-day period** within which to appeal said adverse decision or unacted claim before the Court of Tax Appeals. Thus, it becomes incumbent upon the taxpayer-claimant to adjust the dates of filing of its administrative claims, to ensure compliance not only with the 120-day and 30-day periods, but prior to the lapse of the two-year prescriptive period, which is appealable to both administrative and judicial claims.

While the respondent agrees that it is only upon full or partial denial of the claim for tax refund or tax credit, or failure of the Commissioner to act on the application within the prescribed 120-day period, may the taxpayer-claimant seek judicial recourse, within the 30-day period from submission of complete documents in support of said application, however, it is the respondent's humble opinion that in the observance of the 120-day and 30-day periods mentioned in Section 112, the two-year prescriptive period from the close of the taxable quarter when the sales were made for seeking judicial recourse must not be disregarded. And as mentioned earlier, it is the taxpayer-claimant's duty to monitor the dates of tiling of its administrative claims up ensure compliance, not only with the 120-day and 30-day periods, but also with the two-year prescriptive period, in filing both its administrative and judicial claims.

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

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

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

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

8. Petitioner's claim for refund or issuance of tax credit certificate in the amount of Php2,078,026.78, as alleged unutilized input VAT paid on purchases of goods and services attributable to its zero-rated sales for the 3rd Quarter of 2008 was not fully substantiated by proper documents, such as sales invoices, official receipts and others.

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

10. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (*Commissioner of internal Revenue vs. Ledesma*, 37 SCRA 95) and as such, they are looked upon with disfavor. (*Western Minolco Corp. vs. Commissioner of Internal Revenue*, 124 SCRA 121)."

On December 19, 2011, the parties filed their Joint Stipulation of Facts and Issues.[8]

On July 26, 2012, petitioner filed its Formal Offer of Evidence,[9] which was admitted by the Court through a Resolution dated August 24, 2012.[10] On the other hand, respondent manifested that she will not present evidence.[11]

[8] *Id.*, pp. 150-156.
[9] *Id.*, pp. 235-253, with Annexes.
[10] *Id.*, pp. 481-482.
[11] *Id.*, p. 484.

On October 18, 2012, respondent filed through registered mail her Memorandum,[12] while petitioner filed its Memorandum on November 9, 2012.[13] Thus, on November 13, 2012, the Court promulgated a Resolution submitting the case for decision.[14]

Hence, this Decision.

The Issues

As stipulated in the Joint Stipulation of Facts and Issues filed by the parties on December 19, 2011,[15] the issue to be resolved is:

> "WHETHER PETITIONER IS ENTITLED TO THE REFUND OF OR ISSUANCE OF A TAX CREDIT CERTIFICATE (TCC) IN THE AMOUNT OF PHP2,078,026.78 REPRESENTING PETITIONER'S EXCESS AND UNUTILIZED ALLEGED INPUT VAT PAID AND INCURRED ON ITS PURCHASES OF GOODS AND SERVICES ATTRIBUTABLE TO ITS ZERO-RATED SALES OF SERVICES FOR THE THIRD QUARTER OF CY 2008."

The parties broke down the main issue into the following sub-issues, as enumerated:

> "10.1 Whether [p]etitioner has input VAT paid and incurred on its domestic purchases of goods and services for the third quarter of 2008 amounting to Php2,078,026.78;
>
> 10.2 Whether [p]etitioner's excess and unutilized input VAT for the third quarter of CY 2008 amounting to Php2,078,026.78 is substantiated by documentary evidence such as invoices and official receipts;
>
> 10.3 Whether the input VAT paid and incurred by [p]etitioner on its domestic purchases of goods and services for the third quarter of CY 2008 was attributable

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[12] *Id.*, pp. 490-495.
[13] *Id.*, pp. 498-523.
[14] *Id.*, p. 535.
[15] *Id.*, pp. 152-153.

to its zero-rated sales of services for the third quarter of CY 2008;

10.4 Whether [p]etitioner's unutilized input VAT for the third quarter of CY 2008 amounting to Php2,078,026.78 was applied or credited against any output VAT of the [p]etitioner in the same quarter and subsequent quarter or quarters;

10.5 Whether, for the third quarter 2008, [p]etitioner rendered services in the Philippines to persons engaged in business conducted outside of the Philippines, paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* and subject to VAT at zero percent; and

10.6 Whether [p]etitioner has complied with the requirements of Section 112(A) and (C) of the 1997 Tax Code."

The Ruling of the Court

The 1997 National Internal Revenue Code (NIRC), as amended, provisions pertinent to a claim for issuance of tax credit certificate or refund of unutilized input VAT attributable to zero-rated or effectively zero-rated sales are Sections 108(B), 110, and 112(A), which provide:

"SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.-*

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:

xxx *xxx* *xxx*

(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.* –

xxx *xxx* *xxx*

(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. Any input tax attributable to the purchase of capital goods or 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 of 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: x x x"

Based on Section 112(A) of the NIRC of 1997, as amended, in order to be entitled to a refund or tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1. that there must be zero-rated or effectively zero-rated sales;

2. that input taxes were incurred or paid;

3. that such input taxes are attributable to zero-rated or effectively zero-rated sales;

4. that the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and

5. that the claim for refund was filed within the two-year prescriptive period.

Before delving on the merits of petitioner's claimed input VAT of Php2,078,026.78 the Court finds it appropriate to address first the fifth requisite pertaining to the timeliness of the filing of petitioner's administrative and judicial claim.

Pursuant to Section 112(A) of the NIRC of 1997, as amended, 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 tax credit certificate is petitioner's unutilized creditable input VAT attributable to its alleged zero-rated sales for the third quarter of taxable year 2008. Counting from September 30, 2008, the close of the third quarter, petitioner had until September 30, 2010, within which to file its administrative claim with respondent.

Evidently, petitioner timely filed its administrative claim when it filed on September 21, 2010.

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

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* -
>
> *xxx* *xxx* *xxx*
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (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."

Thus, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the decision or from inaction of the Commissioner of Internal Revenue after the lapse of the one hundred twenty (120)-day period *via* a Petition for Review.

In *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.* ("*Aichi case*"), the Supreme Court emphasized that failure to await the decision of the Commissioner or the lapse of 120-day period prescribed in Section 112(D) [now Section 112(C)] of the NIRC of 1997 amounts to a premature filing of a judicial claim. And the premature filing of a claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.

Since petitioner's administrative claim for refund was filed on September 21, 2010, the 120-day period enunciated under Section 112(C) ended on January 19, 2011. Petitioner, therefore, may appeal within 30 days, or until February 18, 2011, which in this case petitioner did.

The Court now proceeds to determine petitioner's compliance with the other requisites.

There must be zero-rated or effectively zero-rated sales

As to the first requisite, petitioner's amended VAT Return for the 3rd quarter of taxable year 2008[16] reflected a total input tax of Php2,078,026.78, broken down as follows:

Domestic Purchases of Goods other than Capital Goods	Php	157,092.09
Domestic Purchase of Services		1,920,934.69
TOTAL	**Php**	2,078,026.78

Petitioner asserts that it rendered services to its non-resident client, Harte-Hanks Response Management/Austin, Inc. ("HHRM"), which was subsequently merged with HH Austin Merger, Inc. ("HAMI").

For these services, petitioner received payment in US dollars ("USD"), which were accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas ("BSP"). Therefore, it qualifies as VAT zero-rated sales under Section 108(B)(2) of the NIRC of 1997, as amended.

[16] *Exhibit* "G-1."

In the case of *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,*[17] the Supreme Court held that in order for the supply of services to be VAT zero-rated, the following requisites must be met: (1) the services must be other than processing, manufacturing or repacking of goods; (2) payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and (3) the recipient of such services is doing business outside the Philippines. The pertinent portion of the said Decision reads:

> "The Tax Code not only requires that the services be other than 'processing, manufacturing or repacking of goods' and that payment for such services be in acceptable foreign currency accounted for in accordance with BSP rules. Another essential condition for qualification to zero-rating under Section 102(b)(2) is that the recipient of such services is doing business outside the Philippines. While this requirement is not expressly stated in the second paragraph of Section 102(b), this is clearly provided in the first paragraph of Section 102(b) where the listed services must be 'for other persons doing business outside the Philippines.' The phrase 'for other persons doing business outside the Philippines' not only refers to the services enumerated in the first paragraph of Section 102(b), but also pertains to the general term 'services' appearing in the second paragraph of Section 102(b). In short, services other than processing, manufacturing, or repacking of goods must likewise be performed for persons doing business outside the Philippines."

Petitioner is duly registered with the BIR as a VAT taxpayer[18] and the services it performs in the Philippines, which is to engage in the business of outsourcing customer relationship management solutions by rendering inbound or outbound call services,[19] are not the same category as "**processing, manufacturing or repacking of goods.**"

Given these parameters, it is clear that petitioner was able to fully comply with the first requirement.

[17] G.R. No. 153205, January 22, 2007, 512 SCRA 124.
[18] *Exhibit* "B."
[19] *Records*, p. 21.

Input taxes were incurred or paid

To substantiate the second requisite, petitioner submitted official receipts[20] and invoices,[21] issued to its client HAMI, credit advices,[22] bank statements,[23] and certification from JP Morgan Chase Bank, N.A.,[24] proving that payment for the said services was paid for in acceptable foreign currency, and was accounted for in accordance with the BSP rules and regulations. Thus, petitioner was able to comply with the second requisite.

Input taxes are attributable to zero-rated or effectively zero-rated sales

As for the third requisite, petitioner was able to establish that HAMI, to whom it rendered services to, is a non-resident foreign corporation or foreign corporation not engaged in business in the Philippines, by providing the following documentary evidence:

1. SEC Certifications of Non-Registration of Company issued by the Securities and Exchange Commission;[25] and

2. Certificate of Authentication from Foreign Service of the Philippines, Embassy of the Philippines, Washington D.C., USA on the Certificate of Incorporation and Certificate of Merger of HHRM and HAMI.[26]

As reflected in its VAT Return,[27] petitioner reported no zero-rated sales for the third quarter of taxable year 2008. However, in the case of *Southern Philippines Power Corporation v. Commissioner of Internal Revenue*,[28] the Supreme Court ruled that:

> "The Court finds that SPP failed to indicate its zero-rated sales in its VAT returns. But this is not sufficient reason to deny it its claim for tax credit or refund when

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[20] *Exhibits* "V1a" and "V1a1."
[21] *Exhibit* "V1."
[22] *Exhibits* "V1b" and "V1b1."
[23] *Exhibits* "V1c" and "V1c1."
[24] *Exhibit* "KK."
[25] *Exhibits* "E" and "F."
[26] *Exhibits* "C" and "D."
[27] *Exhibits* "G-1", Line 17.
[28] G.R. No. 179632, October 19, 2011, 658 SCRA 759.

> there are other documents from which the CTA can determine the veracity of SPP's claim.
>
> xxx xxx xxx
>
> ...the omission does not furnish ground for the outright denial of the claim for tax credit or refund if such claim is in fact justified."

In the present case, petitioner submitted its schedule of zero-rated sales and collections from HAMI[29] which were duly supported by zero-rated official receipts,[30] credit advices,[31] bank statements,[32] and a certification from JP Morgan Chase Bank, N.A.[33] to prove that it actually generated zero-rated sales in the third quarter of taxable year 2008.

Considering that petitioner's call center services qualify for VAT zero-rating, its alleged unapplied input VAT may be a proper subject of a claim for refund.

As to whether or not petitioner's claimed input VAT attributable to its zero-rated receipts for the third quarter of taxable year 2008 are duly supported by pertinent documents, petitioner submitted the Reports of the Independent CPA (ICPA), Ms. Milagros Padernal of Uy Singson Abella & Co., dated April 3, 2012,[34] and April 16, 2012,[35] with Schedule of Input Taxes on Domestic Purchases,[36] together with the related suppliers' invoices/official receipts.[37]

The ICPA summarized her findings as follows:

Exhibit No.	Particulars	Amount
	Purchases of Services	
W	**a)** Supported by original VAT ORs in the Petitioner's name	
	1) Dated in the current quarter	₱ 1,880,464.05

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[29] *Exhibit* "V"
[30] *Exhibits* "V1a" and "V1a1."
[31] *Exhibits* "V1b" and "V1b1."
[32] *Exhibits* "V1c" and "V1c1."
[33] *Exhibit* "KK."
[34] *Exhibit* "OO."
[35] *Exhibit* "PP."
[36] *Exhibit* "OO", pp. 4-5.
[37] *Exhibits* "W1" to "W41"; "Y-1" to "Y-5"; "Z1" to "Z30"; and "AA1" to "AA2."

	2) Dated within the fourth quarter of taxable year 2008 (not claimed as input tax in the quarter when these were incurred)	732.38
		1,881,196.43
X	b) Not supported by VAT ORs	17,631.04
Y	c) ORs still being located by the Petitioner	
	1) Original VAT ORs were subsequently presented as per Exhibit "PP"	21,920.58
	2) No supporting ORs	186.64
		22,107.22
	Total Purchases of Services	**₱ 1,920,934.69**
	Purchases of Goods Other than Capital Goods	
Z	**d)** Supported by original VAT invoices in the Petitioner's name	
	1) Dated in the current quarter	₱ 92,983.90
	2) Dated in the second quarter of taxable year 2008 (not claimed as input tax in the quarter when these were incurred)	31,655.04
	3) Dated within the fourth quarter of taxable year 2008 (not claimed as input tax in the quarter when these were incurred)	17,216.68
		141,855.62
AA	**e)** Supported by original VAT invoices in the Petitioner's name with no BIR permit to Print - dated in the current quarter	1,121.78
BB	**f)** Not Supported by VAT invoices	14,114.69
	Total Purchases of Goods other than Capital Goods	**157,092.09**
	TOTAL DOMESTIC PURCHASES	**₱ 2,078,026.78**

Based from the above findings, a total of ₱82,658.25 should be deducted from petitioner's input VAT claim for the third quarter of taxable 2008, as determined below, for petitioner's failure to meet the substantiation requirements under Sections 110(A)[38] and 113,[39] in

[38] SEC. 110. *Tax Credits.* -
A. Creditable Input Tax. -
(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:
(a) Purchase or importation of goods:

relation to Sections 237[40] and 238[41] of the NIRC of 1997, as amended by RA 9337, and as implemented by Sections 4.110-2[42] and 4.113-1[43] of Revenue Regulations No. 16-05:

(i) For sale; or
(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
(iii) For use as supplies in the course of business; or
(iv) For use as materials supplied in the sale of service; or
(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code, except automobiles, aircraft and yachts.

(b) Purchase of services on which a value-added tax has been actually paid.

(2) The input tax on domestic purchase of goods or properties shall be creditable:
(a) To the purchaser upon consummation of sale and on importation of goods or properties; and
(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

However, in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

(3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows:
(a) Total input tax which can be directly attributed to transactions subject to value-added tax; and
(b) A ratable portion of any input tax which cannot be directly attributed to either activity.

The term 'input tax' means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.

The term 'output tax' means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code.

[39] 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.
(B) Accounting Requirements. - Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance.

[40] SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* - All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: Provided, however, That in the case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or regardless of the amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: Provided, further, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious cases, exempt any person subject to internal revenue tax from compliance with the provisions of this Section.

[41] SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* - All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

Exhibit No.	Particulars	Amount
	Purchases of Services	
W	a) Supported by original VAT ORs in the Petitioner's name	
	2) Dated within the fourth quarter of taxable year 2008 (not claimed as input tax in the quarter when these were incurred)	₱ 732.38
X	b) Not supported by VAT ORs	17,631.04
Y	c) ORs still being located by the Petitioner	
	2) No supporting ORs	186.64
	Total Purchases of Services	**₱ 18,550.06**

All persons who print receipt or sales or commercial invoices shall maintain a logbook/register of taxpayers who availed of their printing services. The logbook/register shall contain the following information:

(1) Names, Taxpayer Identification Numbers of the persons or entities for whom the receipts or sales or commercial invoices were printed; and
(2) Number of booklets, number of sets per booklet, number of copies per set and the serial numbers of the receipts or invoices in each booklet.

[42] SEC. 4.110-2. *Persons Who Can Avail of the Input Tax Credit.* -- The input tax credit on importation of goods or local purchases of goods, properties or services by a VATregistered person shall be creditable:
(a) To the importer upon payment of VAT prior to the release of goods from customs custody;
(b) To the purchaser of the domestic goods or properties upon consummation of the sale; or
(c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee.

[43] SEC. 4.113-1. Invoicing Requirements. --
(A) A VAT-registered person shall issue: --
(1) A VAT invoice for every sale, barter or exchange of goods or properties; and
(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:
(a) The amount of tax shall be shown as a separate item in the invoice or receipt;
(b) If the sale is exempt from VAT, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;
(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;
(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.
(3) In the case of sales in the amount of one thousand pesos (P1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section.

	Purchases of Goods Other than Capital Goods	
Z	**d)** Supported by original VAT invoices in the Petitioner's name	
	2) Dated in the second quarter of taxable year 2008 (not claimed as input tax in the quarter when these were incurred)	₱ 31,655.04
	3) Dated within the fourth quarter of taxable year 2008 (not claimed as input tax in the quarter when these were incurred)	17,216.68
		48,871.72
AA	**e)** Supported by original VAT invoices in the Petitioner's name with no BIR permit to Print - dated in the current quarter	1,121.78
BB	**f)** Not Supported by VAT invoices	14,114.69
	Total Purchases of Goods other than Capital Goods	**64,108.19**
	TOTAL DOMESTIC PURCHASES	**₱ 82,658.25**

However, further verification of the supporting official receipts and invoices reveals that the following additional input taxes of ₱235,413.00 should be disallowed for the amount of tax was not shown as a separate item in the official receipts and/or invoices, in violation of Section 113(B)[44] of the NIRC of 1997, as amended by R.A. No. 9337, and as implemented by Section 4.113-1(B)(2)(a)[45] of RR No. 16-2005:

Supplier's Name	Exhibit No.	Input Tax
Business Process Outsourcing	"W1"	₱ 720.00
CWC International, Inc.	"W2"	5,035.71
Daniel Palentinos	"W3"	1,684.29
Donaldson Call Center	"W4"	7,300.80
Environment & General Services	"W5"	9,911.03
Environment & General Services	"W6"	10,424.88
Asalus Corporation	"W7"	557.72
Asalus Corporation	"W8"	693.41
Hoffsman Systematic Design	"W9"	5,067.86

[44] *See* Note 32.
[45] *See* Note 36.

Ksearch and Consulting	"W10"	26,400.00
Modern Signs Ads	"W11"	1,350.00
Modern Signs Ads	"W12"	1,350.00
PLDT	"W13"	311.17
PLDT	"W14"	4,735.25
PLDT	"W15"	15,261.02
Q2 Search Inc.	"W16"	19,620.14
Rentokil Initial	"W17"	360.00
Rentokil Initial	"W18"	3,500.97
Rentokil Initial	"W19"	5,329.77
Ricoh Philippines	"W20"	79.92
Ricoh Philippines	"W21"	732.37
Ricoh Philippines	"W22"	978.43
RSSJ Construction	"W24"	257.14
SAB Installation	"W25"	7,500.00
Salvador, Guevarra & Associates	"W26"	31,606.80
Salvador, Guevarra & Associates	"W27"	36,984.00
Shooter Security Services	"W28"	1,895.40
Shooter Security Services	"W29"	3,363.94
Tronix Master, Inc.	"W39"	75.00
Tronix Master, Inc.	"W40"	246.43
Motorist' Haven	"Z1"	4,626.86
Compuwell Controll System	"Z2"	2,196.43
Compuwell Controll System	"Z3"	2,196.43
CWC International	"Z9"	20,892.86
LY Enterprises	"Z12"	24.11
Mediavision Digital	"Z17"	2,142.86
TOTAL		**₱ 235,413.00**

On the other hand, scrutiny of the invoice, in support of the input VAT amounting to ₱482.14[46] previously disallowed by the ICPA, reveals that it has BIR authority to print, thus the same should not be disallowed.

Considering the above findings and exceptions, petitioner's substantiated input VAT for the period third quarter of taxable year 2008 attributable to its zero-rated sales amounts to **₱1,760,437.67**, computed as follows:

[46] *Exhibit* "AA2."

Claimed Input VAT		₱ 2,078,026.78
Less: Disallowances		
per ICPA Report	82,658.25	
per this Court's Findings	235,413.00	318,071.25
Total		₱ 1,759,955.53
Add: Adjustment to the ICPA disallowances		482.14
Substantiated Input VAT		**₱ 1,760,437.67**

Input taxes were not applied against any output VAT liability during and in the succeeding quarters

Petitioner was also able to establish that the claimed input taxes were not applied against any output VAT liability during the period of claim and in the succeeding quarters since there is no output VAT liability for the period covered July 2008 to June 2010[47] from which the input taxes may be credited or applied.

Although petitioner carried over the said input VAT to the succeeding fourth quarter of taxable year 2008 until the second quarter of 2010, the same was deducted as "VAT Refund/TCC Claimed"[48] in the same second quarter of 2010. In other words, the input tax of ₱1,737,043,.86[49] as of the end of second quarter of 2010 carried over to the third quarter of 2010[50] was no longer included the claimed input VAT.

In sum, the Court finds that the claim for refund or issuance of credit filed by petitioner has merit, and that it has complied with the requirements under the law, except for the disallowance of Php318,071.21 which was verified by the ICPA Report and the Court's findings.

WHEREFORE, in view of the foregoing, the Court hereby **PARTLY GRANTS** the Petition for Review. Accordingly respondent is hereby **ORDERED** to **REFUND** or **ISSUE** a **TAX CREDIT CERTIFICATE** in favor of petitioner Harte-Hanks Philippines, Inc. in

[47] Exhibits "G-1" to "N."
[48] Part of the Php2,309,382.10 "VAT Refund/TCC Claimed;" the remaining Php231,355.32 accounts for the deferred input tax on capital goods exceeding Php1,000,000.00.
[49] *Exhibit* "N", Line 29.
[50] *Exhibit* "O."

reduced amount of **₱1,760,437.67**, representing its unutilized input VAT for the 3rd quarter of taxable year 2008.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

I CONCUR:

AMELIA R. COTANGCO-MANALASTAS
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, and the Division's Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice