REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

MACQUARIE OFFSHORE SERVICES PTY LTD.- PHILIPPINE BRANCH, Petitioner,	CTA CASE NO. 8337
	Members:
-versus-	BAUTISTA, *Chairperson* FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 15 2015 12:42 p.m.

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DECISION

***Fabon-Victorino, J.*:**

In its Petition for Review dated September 9, 2011, petitioner Macquarie Offshore Services Pty Ltd. - Philippine Branch prays for the refund or issuance of tax credit certificate of its alleged excess and unutilized input value-added tax (VAT) paid for the fiscal year covering the period of April 1, 2009 to March 31, 2010 in the amount of P10,359,678.44.

Petitioner is a foreign corporation registered with the Securities and Exchange Commission (SEC) on April 10, 2008 to operate as a Regional Operating Headquarters (ROHQ) pursuant to the Omnibus Investments Code of 1987, as amended by Republic Act No. 8756, and its implementing rules and regulations. It is authorized to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services, research and development services and product development; technical support and maintenance; data processing and communication; and business development.[1] Its principal place of business is at 30th Floor, Tower 1, The Enterprise Center, Ayala Avenue, Makati City.[2] Petitioner is also registered with the Bureau of Internal Revenue (BIR) as a VAT entity with Certificate of Registration No. OCN 9RC0000266681.[3]

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR), empowered to act on and approve claims for refund or tax credit as provided by law. She holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

As an ROHQ, petitioner provides qualifying services to its affiliates and related parties in the Asia-Pacific Region and other foreign markets as stated in the SEC Certificate of Registration No. FS200805155.[4]

Petitioner claims that for the four quarters of fiscal year 2010, it generated VAT zero-rated sales of services to a foreign affiliate engaged in business conducted outside the Philippines for which services it was paid in Australian dollars (AUD) inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).[5]

Petitioner filed its original Quarterly VAT Returns for the four quarters of fiscal year 2010 on the following dates:

EXHIBIT	QUARTER	PERIOD	DATE FILED
"C"	1st	April to June 2009	July 24, 2009
"D"	2nd	July to September 2009	October 23, 2009
"E"	3rd	October to December 2009	January 25, 2010
"F"	4th	January to March 2010	April 26, 2010

On April 26, 2011, petitioner filed with the BIR Revenue District Office No. 47 an Application for Tax Credit/Refund[6], in the amount of P10,359,678.44, allegedly representing excess and unutilized input VAT attributable to its zero-rated

[1] Exhibit "A".
[2] Par. 1, Parties, Petition for Review, docket, p. 6.
[3] Par. 3, Joint Stipulation of Facts and Issue, docket, p. 426; Exhibit "B".
[4] Exhibit "A"; Par. 1.1, Joint Stipulation of Facts and Issue, docket, pp. 425-426.
[5] Par. 9, Facts, Petition for Review, docket, p. 10.
[6] Exhibit "K".

sales for the period covering April 1, 2009 to March 31, 2010.

On September 21, 2011[7], petitioner filed the instant Petition for Review alleging inaction on the part of respondent on its administrative application for refund/tax credit.

In her Answer[8], respondent mainly avers that petitioner has the burden of proving its entitlement to the claim for refund, especially in light that tax refunds are construed strictly against the taxpayer.

On December 2, 2011, petitioner filed a Reply.

In support of its allegations, petitioner presented its Division Director and resident agent Garry Taylor[9] and the Court-commissioned Independent Certified Public Accountant (ICPA) Jerome Antonio B. Constantino[10], as its witnesses.

Witness **Garry Taylor** testified[11] that petitioner is a licensed ROHQ providing qualifying services to its affiliates and related parties in the Asia-Pacific Region and in other foreign markets. It is registered with the BIR. Petitioner has only two clients to which it renders services on a regular basis, namely, Macquarie Financial Holdings Limited (MFHL) and Macquarie Group Services Australia Pty. Ltd. (MGSA) with most transactions with the former. Both are foreign corporations not registered in the Philippines and doing business outside of the country. For services rendered, these clients pay petitioner in Australian Dollars inwardly remitted and accounted for in accordance with the rules of the Bangko Sentral ng Pilipinas. As a matter of practice, petitioner issues invoices for services rendered on a monthly basis and sends them to the clients in Australia. The latter however usually lump together their payments for a number of billings covered by different sales invoices then remit payment to petitioner in Australian dollars.

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[7] Par. 5, Joint Stipulation of Facts and Issue, docket, p. 426.
[8] Docket, pp. 148-152.
[9] Minutes of Hearing, docket, p. 476.
[10] Minutes of Hearing, docket, p. 2034; Minutes of Hearing, docket, p. 2460.
[11] See Minutes of the hearing dated October 15, 2012, docket p. 476

In connection with its business, petitioner made input VAT payments for domestic purchases of goods and services and capital goods for the fiscal year covering the period from April 1, 2009 to March 31, 2010. As petitioner had only VAT zero-rated sales and no sales subject to VAT which would otherwise result in output VAT payable, its input VAT remained unutilized.

Witness Taylor further testified that on April 26, 2011, petitioner applied for refund/tax credit of its unutilized input taxes with BIR Revenue District Office No. 47. However, the BIR failed to act on the said application, hence, the instant Petition for Review.

ICPA **Jerome Antonio B. Constantino**,[12] testified that he audited and evaluated petitioner's documents and records in support of its claim for VAT refund for fiscal year 2010. The said audit reveals that petitioner's input VAT mainly came from its domestic purchases of goods other than capital goods, domestic purchases of services, domestic purchases of capital goods exceeding P1 million, and input tax deferred on capital goods exceeding P1 million from previous quarters. He capped his testimony with the finding that petitioner properly substantiated its unutilized input tax but in the reduced amount of P6,497,786.82.

On recall,[13] the ICPA testified that petitioner submitted additional documents to substantiate its claim thereby increasing the amount of unutilized input tax for refund from P6,497,786.82 to P7,943,615.96.

After its second witness, petitioner rested its case.[14] Despite the opportunity granted, respondent did not present any evidence,[15] hence, the case was submitted for decision on July 31, 2014.[16]

The lone issue for the Court's resolution is whether petitioner is entitled to refund or issuance of a tax credit certificate for its unutilized/excess input VAT payments for

[12] See Minutes of hearing dated April 29, 2013, docket p. 2034
[13] See Minutes of the hearing dated November 7, 2013, docket p. 2460
[14] Resolution, docket, pp. 2494-2495
[15] See Minutes of the hearing dated March 3, 2014, docket p. 2496
[16] Resolution dated July 31, 2014, docket p. 2529

the 1st to 4th Quarters of fiscal year 2010 amounting to Php10,359,678.44.[17]

DISCUSSION/RULING

Petitioner claims refund/tax credit in the total amount of P10,359,678.44, allegedly representing its excess and unutilized input VAT paid for the four quarters of fiscal year 2010, broken down as follows:[18]

PERIOD	INPUT TAX CREDITS
1st Quarter	P 1,350,606.90
2nd Quarter	2,068,335.71
3rd Quarter	2,574,156.16
4th Quarter	4,367,008.23
Total	10,360,107.00
Less: Output VAT on sales of scrap reported in the 4th Quarter (**Exhibit XX-18)**	428.57
Total Input Tax Credits	**P10,359,678.43***
*Per Petition for Review, total amount of claim is P10, 359,678.44, noted immaterial difference of P.01 is due to rounding off.	

Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, reads:

> "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

[17] Joint Stipulation Of Facts And Issue dated July 5, 2012, docket p. 427
[18] Independent CPA Report, docket, p. 521.

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 sales 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: *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."

Thus, to be entitled to the relief sought, the following requisites must be satisfied, to wit:

1) the taxpayer must be VAT-registered;
2) the taxpayer must be engaged in zero-rated or effectively zero-rated sales;
3) the claim must be filed within two years after the close of the taxable quarter when the relevant sales were made; and
4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.[19]

Paramount in cases of this nature is the timeliness of the filing of the claim.

Under Section 112(A) of the NIRC of 1997, as amended, a VAT-registered person whose sales are zero-rated or effectively zero-rated may apply for refund/tax credit of creditable input tax due or paid attributable to such sales within two years after the close of the taxable quarter when the relevant sales were made.

[19] Silicon Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 172378, January 17, 2011

Corollarily, Section 112(C) of the NIRC of 1997, as amended, expressly grants the taxpayer a thirty (30)-day period to appeal to this Court the decision or inaction of respondent, to wit:

> "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." *(Emphasis supplied)*

The dates pertinent to this petition are summarized below:

PERIOD COVERED (FY 2010)	CLOSE OF THE TAXABLE QUARTER	LAST DAY OF THE 2-YEAR PRESCRIPTIVE PERIOD TO FILE ADMINISTRATIVE CLAIM	DATE OF ADMINISTRATIVE CLAIM	LAST DAY OF THE 120-DAY PERIOD	LAST DAY OF THE 30-DAY PERIOD TO JUDICIALLY APPEAL	JUDICIAL CLAIM
1st Quarter	6/30/2009	6/30/2011	4/26/2011	8/24/2011	9/23/2011	9/21/2011
2nd Quarter	9/30/2009	9/30/2011				
3rd Quarter	12/31/2009	12/31/2011				
4th Quarter	3/31/2010	3/31/2012				

In the instant case, the claim for refund pertains to the four quarters of fiscal year 2010, April 1, 2009 to March 31, 2010. The dates of the close of the four (4) quarters of fiscal year 2010 are June 30, 2009, September 30, 2009, December 31, 2009 and March 31, 2010. Petitioner had a period of two years after the close of each taxable quarter or until June 30, 2011, September 30, 2011, December 31, 2011 and March 31, 2012, respectively, within which to request for refund at the administrative level. Petitioner filed the same on April 26, 2011, which is well within the two-year prescriptive period, and hence timely filed.

Thereafter, respondent had 120 days from April 26, 2011 or until August 24, 2011 within which to act on the administrative claim. However, since respondent failed to act on the matter, petitioner had 30 days from the lapse of the 120-day period or until September 23, 2011, within which to appeal the inaction to this Court. Evidently, the instant Petition for Review was as well seasonably filed on September 21, 2011.

The Court will now proceed with the other requisites.

In its Quarterly VAT Returns, petitioner reported the following zero-rated sales:

EXHIBIT	PERIOD COVERED FY 2010	AMOUNT
"C"	1st Quarter	P 61,913,339.95
"D"	2nd Quarter	74,958,221.29
"E"	3rd Quarter	97,514,333.46
"F"	4th Quarter	147,984,025.89
TOTAL		**P382,369,920.59**

In Fiscal year 2010, petitioner rendered services mainly to Macquarie Financial Holdings Limited (MFHL). Petitioner's services, though rendered in the Philippines, were for the exclusive benefit of MFHL, which is domiciled in Australia and were paid in AUD via remittances to petitioner's bank account in the Philippines. As such, these sales are VAT zero-rated pursuant to Section 108(B)(2) of the NIRC of 1997, as amended, which reads as follows:

"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:

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Services other than those mentioned in the preceding paragraph 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);"

For the supply of services to be VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended, the following requisites must be satisfied:

1. the services must be other than processing, manufacturing or repacking of goods;
2. the 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 must be doing business outside the Philippines.[20]

[20] See Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 153205, January 22, 2007.

Corollary to the second requisite, Sections 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(2), (B)(1) and (2)(c) of Revenue Regulations (RR) No. 16-05, provide that a VAT taxpayer, like herein 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;
>
> xxx xxx xxx

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

"SECTION 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)*

In accordance with the foregoing provisions, the foreign currency remittances referred to under Section 108(B)(2) of the NIRC of 1997, as amended, must be supported by VAT zero-rated official receipts.

Petitioner has complied with this requisite. Records confirm that petitioner is duly registered with the BIR as a VAT taxpayer.[21] The services it performs in the Philippines as ROHQ include general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services, research and development services and product development; technical support and maintenance; data processing and communication; and business development.[22] Such services are not in the same category as "processing, manufacturing or repacking of goods."

For services rendered to its client, petitioner received foreign currency payments in Australian dollars, which were accounted for in accordance with the BSP rules and regulations for services rendered for fiscal year 2010. This is evidenced by the service invoices and official receipts[23] issued by petitioner to its non-resident foreign client and the various inward remittances certifications[24] by HSBC.

For fiscal year 2010, petitioner mainly rendered services to Macquarie Financial Holdings Limited (MFHL) under the Service Agreement dated April 1, 2009.[25]

To establish that MFHL is doing business outside the Philippines, petitioner presented the following documents:

1. SEC Certification of Non-Registration of Company;[26]

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[21] Par. 3, Joint Stipulation of Facts and Issue, docket, p. 426; Exhibit "B".
[22] Exhibit "A".
[23] Exhibits "BB", "CC", "DD", and "EE".
[24] Exhibits "MM", "NN", "OO", "PP", "QQ", "RR", "SS", "TT", "UU", and "VV".
[25] Exhibit "XX-4".

2. Australian Securities and Investments Commission (ASIC) Certificate of Registration of Macquarie Group Holdings No. 2 Ltd.;[27]
3. Australian Securities and Investments Commission Certificate of Registration of Change of Name (Macquarie Group Holdings No. 2 Ltd. to Macquarie Financial Holdings Limited);[28]
4. Constitution of Macquarie Financial Holdings Limited;[29] and
5. Consularized ASIC Company Extract (Macquarie Financial Holdings Limited).[30]

To be considered as a non-resident foreign corporation doing business outside the Philippines, the SEC Certificate of Non-Registration of Corporation/Partnership and the Certificate/Articles of Foreign Incorporation/Association must be adduced in evidence.[31]

In this case, the SEC Certification of Non-Registration of Company that was presented refers to the non-registration in the country of Macquarie Financial Holdings and not to the non-registration of Macquarie Financial Holdings Limited (MFHL). It is MFHL which must be proved to be only doing business outside the country by presenting SEC certificate of non-registration. That being the case, it cannot be considered as referring to MFHL, which is a different entity altogether. Put differently, the Court cannot consider the said certification as evidence that Macquarie Financial Holdings Limited only does business outside of the country and not here in the Philippines.

Further, the other documents presented by petitioner, *i.e.*, the Australian Securities and Investments Commission (ASIC) Certificate of Registration of Macquarie Group Holdings No. 2 Ltd., the Australian Securities and Investments Commission Certificate of Registration of Change of Name (Macquarie Group Holdings No. 2 Ltd. to Macquarie Financial Holdings Limited), the Constitution of

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[26] Exhibit "HH".
[27] Exhibit "JJ".
[28] Exhibit "II".
[29] Exhibit "KK".
[30] Exhibit "LL".
[31] Deutsche Knowledge Services, Pte. Ltd. vs. Commissioner of Internal Revenue, CTA Case No. 8443, July 7, 2014.

Macquarie Financial Holdings Limited, and the Consularized ASIC Company Extract (Macquarie Financial Holdings Limited) only show that MFHL is registered and does business in Australia. However, they are inconclusive proof that it does not do business in the Philippines.

In fine, petitioner failed to establish that the services it rendered to MFHL are VAT zero-rated transactions under Section 108(B)(2) of the NIRC of 1997. Consequently, petitioner was not able to comply with all the requisites for it to be entitled to a refund or tax credit of unutilized input VAT in the amount of P10,359,678.44, representing alleged excess and unutilized input VAT paid for the four quarters of fiscal year 2010.

Settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.[32]

WHEREFORE, the Petition For Review dated September 9, 2011 filed by Macquarie Offshore Services Pty Ltd. - Philippine Branch, is hereby **DENIED.**

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

Ma. Belen

LOVELL R. BAUTISTA	MA. BELEN M. RINGPIS-LIBAN
Associate Justice	Associate Justice

[32] Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue, G.R. No. 193301, March 11, 2013 and Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue, G.R. NO. 194637.

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
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice