REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1534 (CTA CASE No. 8713)
	Present: DEL ROSARIO, *P.J,* CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
-versus-	
SONY MOBILE COMMUNICATIONS INTERNATIONAL AB (formerly known as SONY ERICSSON MOBILE COMMUNICATIONS INTERNATIONAL AB), *Respondent.*	Promulgated: FEB 01 2018 4:10 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under *Section 4(b), Rule 8*[1] *of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended,* of the Decision dated July 13, 2016[2] and the

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[1] SEC. 4. *Where to appeal; mode of appeal. –*

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(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.

Resolution dated September 28, 2016[3] rendered by the Third Division of this Court, the dispositive portions of which, respectively, read as follows:

Decision dated July 13, 2016:

"**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Respondent is hereby **ORDERED to REFUND AND/OR to ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **THREE MILLION FOUR HUNDRED SIXTEEN THOUSAND SIX HUNDRED FIFTY-EIGHT and 65/100 PESOS (Php3,416,658.65).**

SO ORDERED."

Resolution dated September 28, 2016:

"**WHEREFORE,** premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit. Accordingly, the Decision dated July 13, 2016 is hereby **AFFIRMED** and **UPHELD**.

SO ORDERED."

The facts of the case, as recited by the Third Division in its Decision,[4] are as follows:

"On June 7, 2006, petitioner and Sony Ericsson Mobile Communications AB ("SEMCAB") entered into a Sales Promotion and Marketing Services Agreement effective January 1, 2006, wherein petitioner bound itself, along and through its branch office, to market, promote, and develop the full sales potential of the products of SEMCAB in the Philippines.

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[3] Penned by Associate Justice Lovell R. Bautista, concurred in by Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban, *En Banc* Docket, pp. 49-51.
[4] *Supra* note 2.

Petitioner is a VAT-registered entity with TIN/VAT No. 219-660-821-000 and Certificate of Registration OCN 3RC000059890315, issued on June 19, 2013 and registered since August 28, 2002. xxx

Petitioner filed its Quarterly VAT Returns or BIR Form No. 2550Q for calendar year ("CY") 2011, as follows:

Quarter	Date Filed	Exhibit	Date Filed Amended Return	Exhibit
1st Quarter	4/25/2011	"P-20"	N/A	N/A
2nd Quarter	7/20/2011	"P-21"	10/16/2011 12/07/2011 7/03/2012	"P-22" "P-23" "P-24"
3rd Quarter	10/25/2011	"P-25"	7/03/2012	"P-26"
4th Quarter	1/25/2012	"P-27"	7/03/2012 1/28/2013	"P-28" "P-29"

Petitioner also filed its Quarterly VAT Returns or BIR Form No. 2550Q for CY 2012 and 2013 on the following dates:

Quarter	Date Filed	Exhibit	Date Filed Amended Return	Exhibit
2012				
1st Quarter	4/25/2011	"P-30"	5/07/2012 7/03.2012 1/28/2013	"P-31" "P-32" "P-33"
2nd Quarter	7/20/2011	"P-34"	1/28/2013	"P-35"
3rd Quarter	10/23/2011	"P-36"	1/28/2013	"P-37"
4th Quarter	1/25/2012	"P-38"	N/A	N/A
2013				
1st Quarter	4/24/2013	"P-39"	N/A	N/A
2nd Quarter	7/23/2013	"P-40"	N/A	N/A
3rd Quarter	10/01/2013	"P-41"	11/22/2013	"P-42"

On March 27, 2013, respondent received petitioner's request, through its counsel BDB Law, for VAT refund for the 1st to 4th quarters of 2011, with attached Application for Tax Credits/Refunds or BIR Form No. 1914 filed on even date, claiming a tax refund of Six Million One Hundred Sixty-Seven Thousand Nineteen and 74/100 Pesos (Php6,167,019.74), allegedly incurred on purchases attributable to zero-rated sales/receipts, which were not fully utilized in the same quarter and were not likewise used against its output taxes in the

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subsequent periods. The total claim is broken down as follows:

2011	Input Tax
1st Quarter	Php 2,115,516.39
2nd Quarter	1,302,595.02
3rd Quarter	1,245,766.66
4th Quarter	1,503,141.67
Total	**Php 6,167,019.74**

On April 23, 2013, respondent wrote to petitioner's counsel informing it that a Letter of Authority SN:201100027885 (LOA-43A-2013-00000147) ("LOA") dated April 8, 2013 for mandatory audit claim for VAT refund was issued and served to petitioner's former address. In the same letter, respondent invited petitioner's counsel to secure the original copy of the LOA from the office of BIR Revenue Region ("RR") No. 7, Revenue District Office ("RDO") No. 43A East Pasig. Attached to the letter are the First Request for Presentation of Records dated April 17, 2013, a photocopy of the LOA and proof that all these were sent *via* registered mail on April 24, 2013.

On May 9, 2013, petitioner's counsel submitted additional documents to RDO No. 43A.

On October 1, 2013 and claiming no action from respondent on its application for VAT refund, petitioner filed the instant Petition for Review.

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Petitioner alleges that it has fully complied with all the requirements under Section 112(A) of the 1997 NIRC; that it filed its judicial claim within the two (2)-year period prescribed by law, which commenced to run after the close of the taxable quarter when the sales were made; that it is a VAT-registered entity; that it is engaged in zero rated or effectively zero-rated sales; that the input taxes being claimed were duly paid and have not been applied against output taxes during the succeeding quarters; and that its claim is substantiated by documentary evidence.

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> On the other hand, respondent counter-argues that petitioner's judicial claim refund is not valid due to its failure to prove the submission of complete documents in support of its administrative claim for refund; that it was prematurely filed since the one hundred twenty (120)-day period has yet to commence since petitioner did not submit additional documents; that petitioner failed to observe the strict substantiation requirements for VAT-registered entities; and that tax credit or refund, like tax exemption, is strictly construed against the taxpayer."

The Third Division ruled that it has jurisdiction over the case based on Section 112(A)[5] of the 1997 National Internal Revenue Code (NIRC) of 1997, which states that Sony Mobile Communications International AB (SMCIAB) had two (2) years from the close of the taxable quarter when the sales were made to file its administrative claim. SMCIAB had until March 31, June 30, September 30, and December 31, 2013, within which to file its administrative claims for the 1st, 2nd, 3rd and 4th quarters, respectively, of 2011. It filed its administrative claim for refund for all the taxable quarters of 2011 on March 27, 2013, thus complying with the two (2)-year prescriptive period. Upon ruling of the Third Division that SMCIAB was able to send supporting documents on May 9, 2013, the thirty days (30 days) from the lapse of one hundred twenty (120) days, from the date of submission of the complete documents in support of the administrative claim for refund, to file its judicial claim with the Court[6] has been complied with.

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[5] Section 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, xxx"

[6] Section 112. Refunds or Tax Credits of Input Tax. –

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> "(C) Period within which Refund or Tax Credit of Input Taxes shall be Made. - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

Also, the Third Division ruled that SMCIAB was able to comply with the requisites for a refund/tax credit. SMCIAB was able to comply with the provisions of Section 112(A) of the NIRC as to the claim for refund/tax credit of its unutilized input VAT, to wit:

1. There must be zero-rated or effectively zero-rated sales;

2. The input taxes were incurred or paid;

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

4. The input taxes were not applied against any output tax liability; and

5. The claim for refund was filed within the two (2)-year prescriptive period.

With the jurisdiction of the Court being settled, SMCIAB was able to prove that there were zero-rated sales to SEMCAB, being a non-resident foreign corporation doing business outside the Philippines, and the input taxes were attributable thereto. In a detailed discussion, the Third Division ruled that out of the ₱82,147,983.83 sales of services, the amount of ₱1,600,000.00 is VATable, thus the remaining constitutes 98.0523% as zero-rated percentage allocation.

Upon presentation of invoices, official receipts, BIR Form 1600 and other documents[7] examined by an

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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.

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[7] Records Attached to the ICPA Report (*Division Docket*, Vol. I, pp.566-615), Exhibits "P-79" to "P-854-a."

independent certified public accountant (ICPA) through her ICPA report,[8] from the claimed amount of ₱6,167,019.74, the amount of ₱2,144,473.84 was disallowed due to non-compliance with the substantiation requirements, while the Court excluded an additional amount of ₱346,019.12, leaving a balance of ₱3,676,526.78. From this amount, an output VAT incurred during the 2nd Quarter CY 2011 in the amount of ₱192,000.00 was deducted, and the above-mentioned 98.0523% allocation was applied. Thus, the Court granted SMCIAB's petition in the reduced amount of ₱3,416,658.65.

CIR's Motion for Reconsideration[9] filed on August 2, 2016 was denied *via* the assailed Resolution, hence, this Petition.

CIR's sole argument in his Petition for Review is that SMCIAB failed to substantiate its claim for refund/tax credit of its unutilized input VAT for failure to comply with the invoicing requirements under Revenue Memorandum Circular (RMC) No. 42-2003,[10] Sections 113[11] and 237[12] of the NIRC

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[8] *Division Docket*, Vol. I, Exhibit"P-46," ICPA Report, pp. 566-615.
[9] *Division Docket*, Vol. I, pp. 1031-1037.
[10] Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters.

[11] 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.
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> In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
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> > (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.
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[12] 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

of 1997. According to the CIR, it was not shown in the Decision that the sales invoices and/or official receipts fully complied with the substantiation requirements.

We rule to DENY the Petition for Review.

A perusal of CIR's Petition for Review shows that the argument raised therein has been fully addressed and discussed in the assailed Decision and Resolution. Nevertheless, contrary to the CIR's allegation, the Decision was able to explain in detail, through the ICPA report, as well as the additional disallowances provided for by this Court, the official receipts and invoices that were not able to comply with the substantiation requirements for refund/tax credit. The tables from pages 26 and 27[13] of the assailed

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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.

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[13] In support of its claim, petitioner presented various invoices and official receipts issued by its suppliers, BIR Form 1600, and other documents, which were all examined by the ICPA, Atty. Chua. The latter had the following findings, which this Court finds in order:

1st Quarter			Exh. Ref.
A.	Purchases and importation with appropriate supporting documents (No exceptions noted)	1,638,803.02	P-79 to P-192 and P-813 to P-819-a
B.	Exceptions Noted		
	1. Summary of input VAT from local purchases without proper supporting documents	1,005,909.62	P-193 to P-305
	2. Summary of input VAT from importations without proper supporting documents	4,668.00	P-836 to P-836-a
	3. Summary of input VAT from local purchases where the TIN of the customer is not indicated in the supporting documents or the TIN indicated is incorrect.	23,944.68	P-306 to P-351
	4. Summary of Input VAT where there are noted alterations in the supporting documents	40,565.40	P-352 to P-358
	5. Summary of input VAT where the amount indicated in the schedule of purchases is different from the amount in the supporting documents.	86,400.00	P-359 to P-360
	6. Summary of input VAT outside the period of claim	133,769.54	P-361 to P-384

2nd Quarter		
A. Purchases and importation with appropriate supporting documents (No exceptions noted)	1,287,802.69	P-385 to P-459
B. Exceptions Noted		
1. Summary of input VAT from local purchases without proper supporting documents	74,344.47	P-460 to P-481
2. Summary of input VAT from importations without proper supporting documents	20,827.03	P-837 to P-838-a
3. Summary of input VAT from local purchases where the TIN of the customer is not indicated in the supporting documents or the TIN indicated is incorrect.	4,548.59	P-482 to 493
4. Summary of Input VAT where the name of the company is not indicated	18,833.23	P-494 to P-526
5. Summary of input VAT where the amount indicated in the schedule of purchases is different from the amount in the supporting documents	20,922.23	P-527 to P-536
6. Summary of input VAT outside the period of claim	3,237.78	P-537 to P-539
7. Summary of input VAT where the amount in words is not indicated	2,050.93	P-540 to P-541
8. Summary of input VAT where the address of the company is not indicated	2,040.00	P-542 to P-543
3rd Quarter		
A. Purchases and importation with appropriate supporting documents (No exceptions noted)	856,144.71	P-544 to P-579 and P-820 to P-828-a
B. Exceptions Noted		
1. Summary of input VAT from local purchases without proper supporting documents	123,598.04	P-580 to P-603
2. Summary of input VAT from importations without proper supporting documents	78,663.00	P-839 to P-843-a
3. Summary of input VAT from local purchases where input VAT in the supporting documents are not separately shown.	11,169.90	P-604 to P-627
4. Summary of input VAT from local purchases where the TIN of the customer is not indicated in the supporting documents or the TIN indicated is incorrect.	171,755.63	P-628 to P-661
5. Summary of input VAT where the amount indicated in the schedule of purchases is different from the amount in the supporting documents	9,246.30	P-662 to P-671
6. Summary of input VAT outside the period of claim	3,642.86	P-672
4th Quarter		
A. Purchases and importation with appropriate supporting documents (No exceptions noted)	1,143,264.73	P-673 to P-741 and P-829 to P835-a
B. Exceptions Noted		
1. Summary of input VAT from local purchases without proper supporting documents	4,554.29	P-742 to P747
2. Summary of input VAT from importations without proper supporting documents	128,310.35	P-844 to P-854-a
3. Summary of input VAT from local purchases where input VAT in the supporting documents are not separately shown.	69,801.83	P-748 to P-779
4. Summary of input VAT from local purchases where the TIN of the customer is not indicated in the supporting documents or the TIN indicated is incorrect.	29,013.81	P-780 to P-794
5. Summary of input VAT where the amount indicated in the schedule of purchases is different from the amount in the supporting documents	27,875.44	P-795 to P-810
6. Summary of input VAT outside the period of claim	44,780.89	P-811 to P-812

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Upon further verification and examination by the Court of the evidence presented, input VAT of Php346,019.12 shall be disallowed for petitioner's failure to meet the substantiation requirements, under Sections 110(A) and 113(A)(B) of the 1997 NIRC, as amended, in relation to Sections 4.110-2, 4.110-3, 4.110-8 and 4.113-1 of RR No. 16-05, detailed below:

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Decision provided for the summary of input VAT from local purchases without proper supporting documents, summary of input VAT from importations without proper supporting documents, summary of input VAT from local purchases where the TIN of the customer is not indicated in the supporting documents or the TIN indicated is incorrect, summary of Input VAT where there are noted alterations in the supporting documents, summary of input VAT where the amount indicated in the schedule of purchases is different from the amount in the supporting documents, summary of input VAT outside the period of claim, summary of input VAT where the name of the company is not indicated, summary of input VAT where the amount in words is not indicated, summary of input VAT where the address of the company is not indicated, summary of input VAT from local purchases where input VAT in the supporting documents are not separately shown, those which are supported by Non-VAT official receipts, supported by official receipts instead of invoices, supported by official receipts with pre-printed VAT exempt, supported with official receipts with pre-printed "Not Eligible for Input Tax," supported by mere acknowledgement receipts, and those official receipts with unauthorized signatures. As stated in the assailed Resolution

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Supplier's Name	Input	Exh.	Reasons
CARFIELD TOURIST TRANSPOR	600.00	P-86	VAT not Indicated
D AND S PRINT	4,467.86	P-87	VAT not Indicated
DHL EXPRESS PHILIPPINES C	376.96	P-89	VAT not Indicated
GLOBALINK EMPLOYMENT SERV	381.03	P-99	VAT not Separately indicated
UNIMAX ADVERTISING	3,492.86	P-118	Supported by Non-VAT OR
GLOBAL VENTURE PROMOTION	148,608.96	P-407	VAT not Indicated
GLOBAL VENTURE PROMOTION	148,563.59	P-408	VAT not Indicated
MICROBASE INCORPORATED	685.71	P-421	Supported by Official Receipt instead on Invoice
UYB PRINTING CORPORATION	530.36	P-429	Supported by Official Receipt instead on Invoice
UYB PRINTING CORPORATION	1,414.29	P-430	Supported by Official Receipt instead on Invoice
UYB PRINTING CORPORATION	1,928.57	P-431	Supported by Official Receipt instead on Invoice
DHL GLOBAL FORWARDING PHI	1,092.00	P-560	Supported by OR with pre-printed VAT Exempt
DHL GLOBAL FORWARDING PHI	1,092.00	P-674	Supported by OR with pre-printed VAT Exempt
CABLE ACCESS TECHNOLOGIES	10,928.57	P-692	Supported with OR with pre-printed "Not Eligible for Input Tax"
VILLARUZ VILLARUZ AND CO	2,820.00	P-708	Supported by Acknowledgement Receipt
STRATEGIC ORGANIZATIONAL	13,636.36	P-736	OR without Authorized Signature
STRATEGIC ORGANIZATIONAL	1,800.00	P-737	OR without Authorized Signature
STRATEGIC ORGANIZATIONAL	1,800.00	P-738	OR without Authorized Signature
STRATEGIC ORGANIZATIONAL	1,800.00	P-739	OR without Authorized Signature
TOTAL	₱346,019.12		

of the Motion for Reconsideration of the CIR raising the very same argument:

> "Contrary to respondent's asseveration that the Assailed Decision did not show that the sales invoices and/or official receipts fully complied with the requirements, the Decision listed in detail all the evidence that did not comply with the substantiation requirements under *Sections 110(A) and 113(A)(B) of the 1997 NIRC,* in relation to *Sections 4.110-2, 4.110-3, 4.110-8 and 4.113-1 of R.R. No. 16-05*. This just shows that the Court has exhaustively examined each and every evidence submitted before it." (Italics in the Original.)

With no other points of error alleged in the Petition for Review, there is no reason for this Court to disturb the findings of the Third Division.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Decision and Resolution dated July 13, 2016 and September 28, 2016 respectively are hereby **AFFIRMED**.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc.*

ROMAN G. DEL ROSARIO
Presiding Justice