REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION
****

BW SHIPPING PHILIPPINES, INC., Petitioner,	**CTA Case No. 9660**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** OCT 07 2020 12:20 p.m.

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DECISION

UY, *J.*:

Before this Court is a Petition for Review filed by BW Shipping Philippines, Inc., petitioner, against the Commissioner of Internal Revenue, respondent, praying for the refund and/or issuance of Tax Credit Certificate representing unutilized input taxes attributable to its zero-rated sales for the taxable year (TY) 2015 in the amount of ₱4,953,983.07, pursuant to Sections 112(A) in relation to Sections 110(B) and 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended.

THE FACTS

Petitioner BW Shipping Philippines, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal address at 5/F Goodland Building, 377 Sen. Gil Puyat Ave. Makati City and registered with the

Securities and Exchange Commission (SEC) with Company Registration No. 145414.[1]

Pursuant to its Amended Articles of Incorporation, the primary purpose of petitioner's business is as follows:

> "To engage in overseas shipping business for the carriage of passengers, freight, mail, livestock, goods and lawful merchandise of every kind and description, by oceans, seas, canals, rivers, and other waterway, between any and all parts of the world by means of vessels and other modes of transportation used in the business of overseas shipping which may either be owned by the corporation or by other shipping Corporation, and for such purpose, to hire, purchase, charter, owe or otherwise acquire and work ships and vessels of any class, to establish and maintain lines or regular services of ships or other vessels between any part of the world, to engage in manning and crewing of vessels, and generally to carry on the business of shipping."[2]

Petitioner is registered with the Bureau of Internal Revenue (BIR) as a Value Added Tax (VAT) taxpayer with BIR Certificate off Registration No. OCN 9RC0000426666 and Taxpayer's Identification Number (TIN) 000-160-779-000.[3]

Respondent Commissioner of Internal Revenue (CIR) is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office, including, among other, the duty to act on and approve claims for refund or tax credit as provided by law. He may be served with summons, notices and other court processes at his office at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.[4]

Petitioner filed through the Electronic Filing and Payment System (EFPS) its Quarterly VAT returns for the year 2015 on the following dates:

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[1] Par. 2, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket – Vol. 2, p. 644.
[2] Exhibit "P-1", Amended Articles of Incorporation, Docket – Vol. 2, p. 944.
[3] Par. 3, Admitted Facts, JSFI, Docket – Vol. 2, p. 645; Exhibit "P-2", Docket – Vol. 2, p. 953.
[4] Par. 4, Petition for Review, Docket – Vol. 1, pp. 13 vis-à-vis Par. 1, Answer, Docket – Vol. 1, 96.

Period (2015)	VAT Return	Date of Filing	Exhibit
1st Quarter	Original Quarterly VAT Return	April 22, 2015	Exhibit P-8[5]
	1st Amended Quarterly VAT Return	July 27, 2015	Exhibit P-9[6]
	2nd Amended Quarterly VAT Return	November 18, 2016	Exhibit P-10[7]
2nd Quarter	Original Quarterly VAT Return	July 27, 2015	Exhibit P-16[8]
	1st Amended Quarterly VAT Return	August 17, 2015	Exhibit P-17[9]
	2nd Amended Quarterly VAT Return	November 18, 2016	Exhibit P-18[10]
3rd Quarter	Original Quarterly VAT Return	October 26, 2015	Exhibit P-23[11]
	1st Amended Quarterly VAT Return	November 18, 2016	Exhibit P-24[12]
4th Quarter	Original Quarterly VAT Return	January 26, 2016	Exhibit P-29[13]
	1st Amended Quarterly VAT Return	April 22, 2016	Exhibit P-30[14]
	2nd Amended Quarterly VAT Return	November 18, 2016	Exhibit P-31[15]

On March 27, 2017, petitioner filed an *Application for Tax Credits/Refund (BIR Form No. 1914)*[16], together with the *Checklist of Mandatory Requirement for Claims for VAT Credit/Refund*,[17] for its alleged unutilized input taxes attributable to its zero-rated sales for the first to fourth quarters of TY 2015 in the total amount of

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[5] Docket – Vol. 2, pp. 967 to 969.
[6] Docket – Vol. 2, pp. 970 to 972.
[7] Docket – Vol. 2, pp. 973 to 975.
[8] Docket – Vol. 2, pp. 991 to 993.
[9] Docket – Vol. 2, pp. 994 to 996.
[10] Docket – Vol. 2, pp. 997 to 999.
[11] Docket – Vol. 3, pp. 1012 to 1014.
[12] Docket – Vol. 3, pp. 1015 to 1017.
[13] Docket – Vol. 3, pp. 1030 to 1032.
[14] Docket – Vol. 3, pp. 1033 to 1035.
[15] Docket – Vol. 3, pp. 1036 to 1038.
[16] Exhibits "P-33", Docket – Vol. 3, p. 1041.
[17] Exhibits "P-32" to "P-32-2", Docket – Vol. 3, pp. 1039 to 1040.

₱4,953,983.07 with the BIR, Revenue District Office (RDO) No. 049, Makati North District Office, Makati City.

Due to respondent's alleged inaction on petitioner's application for tax credits/refund, petitioner filed the present *Petition for Review* on August 23, 2017.[18]

Respondent filed his *Answer* on October 13, 2017,[19] interposing the following special and affirmative defenses, to wit:

(1) petitioner's alleged claim for refund or issuance of tax credit certificate is still subject to administrative investigation/examination by the BIR;

(2) taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;

(3) petitioner's claim for refund or issuance of tax credit certificate in the amount of ₱4,953,983.07 representing alleged excess and unutilized input VAT for TY 2015 were not fully substantiated by proper documents, such as sales invoices and official receipts, pursuant to Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code;

(4) in an action for refund/credit, the burden of proof is on the petitioner to establish its right to claimed refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit;

(5) it is incumbent upon the petitioner to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code and its failure to prove the same is fatal to its claim for refund; and

(6) claims for refund are construed strictly against petitioner since the same partakes the nature of exemption from taxation.

After the Pre-Trial Conference on March 6, 2018,[20] the parties filed their *Joint Stipulation of Facts and Issues* (JSFI) on March 21, 2018.[21] Thereafter, the Court issued a *Pre-Trial Order* on April 17, 2018.[22]

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[18] Docket – Vol. 1, pp. 12 to 34.
[19] Docket – Vol. 1, pp. 96 to 97.
[20] Minutes of Hearing and Order dated March 6, 2018, Docket – Vol. 2, p. 641 to 643.
[21] Docket – Vol. 2, pp. 644 to 649.
[22] Docket –Vol. 2, pp. 659 to 665.

Thereafter, petitioner filed a *Motion to Avail of the Provisions of Rule 13 of the Revised Rules of the Court of Tax Appeals* on August 1, 2018.[23] The motion was granted by the Court and Enrico T. Pizarro of ETP and Associates, was commissioned as the independent certified public accountant (ICPA) for the instant case on August 6, 2018.[24]

During trial, petitioner presented three (3) witnesses, Enrico T. Pizarro,[25] Herminia Dela Pena,[26] and Carmencita Escalante.[27]

On February 1, 2019 petitioner filed its *Formal Offer of Evidence*.[28] In the Resolution dated May 27, 2019, this Court admitted most of petitioner's documentary evidence, except for the following: (1) Exhibits "P-32-2" and "P-71", for failure to submit the originals for comparison; (2) Exhibits "P-82", "P-83", "P-84", "P-90", P-102", "P-106", "P-107", "P-108", "P-109" and "P-123.2", for failure to correspond with the documents actually marked; (3) Exhibits "P-126.2.110", "P-128.2" and "P-128.4", for not being found in the records.[29]

On June 14, 2019, petitioner filed a *Motion for Reconsideration (with Motion to Defer Filing of Memorandum)*[30] praying for the admission of the denied exhibits and deferral of the filing of the parties' memoranda until resolution of the instant motion. The Court granted petitioner's *Motion for Reconsideration* and admitted Exhibits "P-32-2", "P-82", P-83", "P-84", "P-90", "P-102", "P-106", "P-107", "P-108", "P-109" and "P-123.2", on September 11, 2019.[31]

On the part of respondent, no evidence was presented in the instant case[32] Thus, the parties were given a period of thirty (30) days to submit their respective memoranda.[33]

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[23] Docket –Vol. 2, pp. 696 to 700.
[24] Minutes of the Hearing and Order dated August 6, 2018, Docket –Vol. 2, pp. 720 and 722 to 723; Oath of Commission dated August, 6, 2018, Docket – Vol. 2, p. 721.
[25] Exhibit "P-160", Docket – Vol. 2, pp. 846 to 875; Exhibit "P-97", Docket – Vol. 2, pp. 705 to 711.
[26] Exhibit "P-98", Docket – Vol. 1, pp. 152 to 173; Minutes of the Hearing and Order dated August 6, 2018, Docket – Vol. 2, pp. 720 and 722 to 723.
[27] Docket – Vol. 1, pp. 331 to 343; Minutes of the Hearing and Order dated July 2, 2018, Docket – Vol. 2, pp. 694 to 695.
[28] Docket – Vol. 2, pp. 907 to 939.
[29] Docket – Vol. 3, pp. 1397 to 1400.
[30] Docket – Vol. 3, pp. 1401 to 1408.
[31] Docket – Vol. 3, pp. 1413 to 1416.
[32] Minutes of the Hearing and Order dated December 6, 2018, Docket – Vol. 2, pp. 898 to 900.
[33] Resolution dated September 11, 2019, Docket – Vol. 3, pp. 1413 to 1416.

Respondent filed a *Memorandum for Respondent* on October 14, 2019,[34] while petitioner filed its *Memorandum* on October 23, 2019.[35] Consequently, this case was submitted for decision on November 7, 2019.[36]

Hence, this Decision.

THE ISSUE

As stipulated by the parties, the sole issue for this Court's resolution, is as follows:

> "Whether Petitioner is entitled to refund in the amount of Four Million Nine Hundred Fifty-Three Thousand Nine Hundred Eighty-Three and 7/100 Pesos (₱4,953,983.07) representing unutilized input taxes related to zero-rated sales/receipts for the taxable year 2015."[37]

Petitioner's arguments:

Petitioner contends that it has sufficiently proven its entitlement of refund or issuance of a Tax Credit Certificate (TCC) representing its unutilized input VAT attributable to its zero-rated sales. In support thereof, petitioner avers the following:

1. Petitioner is VAT registered;

2. Petitioner's sale of service to foreign shipping companies located and doing business outside the Philippines is a transaction subject to zero percent (0%) VAT;

3. The input taxes attributable to petitioner's zero-rated sales/receipts for TY 2015 were not utilized against output taxes. Neither were these utilized in the subsequent quarters and the said unutilized input taxes were deducted and claimed as tax refund/tax credit certificate;

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[34] Docket – Vol. 3, pp. 1417 to 1423.
[35] Docket – Vol. 3, pp. 1425 to 1456.
[36] Resolution dated November 7, 2019, Docket – Vol. 3, p. 1458.
[37] Issue, JSFI, Docket – Vol. 2, p. 645.

4. The input taxes being claimed are attributable to zero-rated sales;

5. Petitioner was paid in acceptable foreign currencies and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP) as consideration for the services performed by petitioner for foreign affiliates;

6. The input taxes were proportionately allocated on the basis of the sales;

7. The administrative claim was filed within two years after the close of the taxable quarter when the sales were made;

Respondent's counter-arguments:

Respondent counter-argues that petitioner's alleged claim for issuance of refund or issuance of TCC is still subject to administrative routinary investigation/examination by the respondent

Allegedly, taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.

According to respondent, petitioner's claim is not fully substantiated by proper documents, such as sales invoices, official receipts pursuant to RR No. 7-95, in relation to Sections 113 and 237 of the 1997 Tax Code.

In an action for refund, the burden of proving entitlement to a refund lies with the claimant.

Allegedly, the recipients of services rendered by petitioner were entities doing business in the Philippines. As the requirement for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended, is that the recipient of the services must be other person doing business outside the Philippines, services rendered by petitioner to its customers do not qualify for VAT zero-rating.

THE COURT'S RULING

The instant Petition for Review is partly meritorious.

Requisites for the grant of refund or issuance of tax credit certificate under the law

In an action for the refund or issuance of tax credit certificate for input taxes, Section 112 of NIRC of 1997, as amended, pertinently provides as follows:

> **"SEC. 112. Refunds or Tax Credits of Input Tax. –**
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> *(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 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.
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> xxx xxx xxx
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> *(B) 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."

Further, the Supreme Court jurisprudentially specified certain requisites for compliance by the taxpayer-applicant to successfully obtain a credit/refund of input VAT. These requisites are categorized as follows:

<u>Timeliness of the filing of the administrative and judicial claims:</u>

1. the claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[38]

2. that in case of full or partial denial of the refund claim, or the failure on the part of the CIR to act on the said claim within a period of 120 days, the judicial claim must be filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[39]

<u>Taxpayer's registration with the BIR:</u>

3. the taxpayer is VAT registered;[40]

<u>Taxpayer's output VAT:</u>

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[38] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc.*, G.R. No. 182364, August 3, 2010.

[39] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue,* G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14,2015.

[40] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[41]
5. for zero-rated sales under Section 106(A)(2)(a)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[42]

<u>*Taxpayer's input VAT being refunded:*</u>

6. the input taxes are due or paid;[43]

7. the input taxes are not transitional input taxes;[44]

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[45] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[46]

The Court shall now determine whether petitioner has complied with the above-mentioned requisites.

Petitioner timely filed its administrative and judicial claims within the period prescribed by law.

Pursuant to Section 112(A) of the NIRC of 1997, as amended, the administrative claim for the issuance of a TCC or refund of input VAT must be filed within two (2) years after the close of the taxable

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[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.
[46] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.

quarter when the zero-rated or effectively zero-rated sales were made.

In the instant case, petitioner's claim covers four (4) quarters of 2015. Thus, counting two (2) years from the close of each quarter, petitioner had until March 31, 2017, June 30, 2017, September 30, 2017, and December 31, 2017, respectively, within which to file its administrative claims for issuance of a TCC or refund for its input VAT, to wit:

Taxable Quarter	Close of Taxable Quarter	Last Day of Filing of Administrative Claim	Administrative Claim Filed
1st Quarter (Jan. to Mar. 2015)	March 31, 2015	March 31, 2017	March 27, 2017
2nd Quarter (Apr. to Jun. 2015)	June 30, 2015	June 30, 2017	March 27, 2017
3rd Quarter (Jul. to Sep. 2015)	September 30, 2015	September 30, 2017	March 27, 2017
4th Quarter Oct. to Nov. 2015)	December 31, 2015	December 31, 2017	March 27, 2017

Hence, petitioner's administrative claim[47] for refund was timely filed on March 27, 2017.

As to the timeliness of petitioner's judicial claim, Section 112(C) of the NIRC of 1997, as amended, provides that the judicial claim must be filed within thirty (30) days from receipt of the CIR's decision or after the expiration of the one-hundred twenty (120) day period in case of inaction. Further, said provision emphasizes the 120+30 mandatory and jurisdictional periods. Considering that there is no indication that respondent issued a decision relative to petitioner's administrative claim, the determination of the 120+30-day periods, as applied to this case, is shown as follows:

Date of Filing of Administrative Claim	End of 120 days for the CIR to decide the claim	End of 30 days from expiration of the 120 days
March 27, 2017	July 25, 2017	August 24, 2017

Accordingly, petitioner had until August 24, 2017 to file its judicial claim. It appearing that the instant *Petition for Review* was filed on August 23, 2017,[48] petitioner's judicial claim was likewise filed on time.

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[47] Exhibits "P-32", "P-32-2" and "P-33", Docket – Vol. 3, pp. 1039 to 1041.
[48] Docket – Vol. 1, pp. 12 to 34.

Petitioner is VAT registered.

Anent the *third* requisite, petitioner presented its *Certificate of Registration* issued by the BIR, indicating it is a VAT taxpayer, with Certificate of Registration No. OCN 9RC0000426666 and TIN 000-160-779- 000.[49] Thus, this requisite has been complied with.

Petitioner is engaged in zero-rated sales which were paid for in acceptable foreign currency duly accounted for in accordance with BSP rules and regulations.

The *fourth and fifth* requisites, respectively, require that the taxpayer is engaged in zero-rated or effectively zero-rated sales; and that for zero rated sales under Section 106(A)(2)(a)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations.

In this case, petitioner claims that its sale of services to foreign shipping companies located and doing business outside the Philippines is a transaction subject to 0% VAT pursuant to Section 108(B)(2) of the NIRC of 1997, as amended, which reads:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.-*
>
> 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.
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> xxx xxx xxx
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> (2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conduced outside the Philippines or to a non-resident person not engaged in business who is

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[49] Exhibit "P-2", Docket – Vol. 2, p. 953.

> 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);"

In *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc. (Burmeister case),*[50] the Supreme Court held that in order that the supply of services may be VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended, the following requisites must be met:

1. the services must be other than processing, manufacturing or repacking of goods;

2. the recipient of such services is doing business outside the Philippines; and

3. payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations.

<u>Services must be other than processing, manufacturing or repacking of goods</u>

Records show that in petitioner's Amended Articles of Incorporation,[51] its primary purpose is "*to engaged in overseas shipping business for the carriage of passengers, freight, mail, livestock, goods and lawful merchandise of every kind and description, by oceans, seas, canals, rivers, and other waterway, between any and all parts of the world by means of vessels and other modes of transportation used in the business of overseas shipping xxx, and for such purpose, to hire, purchase, charter, owe or otherwise acquire and work ships and vessels of any class, to establish and maintain lines or regular services of ships or other vessels between any part of the world, to engage in manning and crewing of vessels, and generally to carry on the business of shipping*".

Clearly, the nature of services being rendered by petitioner falls within the scope of "services other than processing, manufacturing or

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[50] G.R. No. 153205, January 22, 2007.
[51] Exhibit "P-1", Amended Articles of Incorporation, Docket – Vol. 2, p. 944.

repacking of goods" contemplated under Section 108(B)(2) of the NIRC of 1997, as amended.

Recipients of such services are doing business outside the Philippines

In the case of *Accenture, Inc. vs. Commissioner of Internal Revenue (Accenture case),*[52] the Supreme Court held that it is not enough that the recipient of the service be shown to be a foreign corporation, it must likewise be established that the said recipient is a non-resident foreign corporation doing business outside the Philippines.

In order to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by **both** SEC certificate of non-registration of corporation/partnership **and** proof of incorporation, association or registration in a foreign country, and that there is no indication that said foreign corporation is doing business in the Philippines.

In the instant case, to prove that it rendered services to non-resident foreign corporations doing business outside the Philippines, petitioner presented the Certificates of Non-Registration of Company issued by the Securities and Exchange Commission (SEC), Certificates of Registration, Articles of Association and Memorandum of Association, summarized as follows:

Registered Name	SEC Certificate Of Non-Registration	Certificate of Registration	Articles of Association	Memorandum of Association
BW Gas Foreign Manning AS	P-120.2	P-120.1	-	-
BW Offshore Global Manning PTE. LTD.	P-121.2	-	P-121.1	
BW Maritime Pte. Ltd.	P-122.2	-	P-122.1	P-122.1
Berge Bulk Maritime Pte. Ltd.	P-123.2	-	P-123.1	P-123.1
BW Fleet Management AS	P-124.2	P-124.1	-	-
BW Fleet Management PTE. LTD.	P-125.2	-	P-125.1	P-125.1

[52] G.R. No. 190102, July 11, 2012.

However, respondent argues that the recipients of services/customers of petitioner are entities doing business in the Philippines, because of the appointment of petitioner as "agent" of its customers, acting as "principal" for purposes of recruiting Filipino seamen or crew members for employment on board the vessels managed by the said principal, as stated in the Crew Agency Agreements. Respondent further argues that the said agreements were executed as early as 2008 which implies continuity of conduct and intention to establish a continuous business in the Philippines on the part of petitioner and its customers.

We do not agree.

In *MR Holdings, Ltd. vs. Sheriff Carlos P. Bajar et al., (MR Holdings case),*[53] the Supreme Court clarified what constitutes "doing business in the Philippines" on the part of a foreign corporation, to wit:

> "Batas Pambansa Blg. 68, otherwise known as the 'The Corporation Code of the Philippines', is silent as to what constitutes 'doing' or 'transacting' business in the Philippines. Fortunately, jurisprudence has supplied the deficiency and has held that the term 'implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object for which the corporation was organized.' In *Mentholatum Co., Inc. vs. Mangaliman,*[54] this Court laid down the test to determine whether a foreign company is 'doing business', thus:
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>> 'xxx xxx **The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another.** (*Traction Cos. vs. Collectors of Int. Revenue* [C.C.A., Ohio], 223 F. 984,987.).'

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[53] G.R. No. 138104, April 11, 2002.
[54] 72 Phil. 524 (1941).

Applying the foregoing guideline in the instant case, the question is whether or not petitioner, acting as an agent of its foreign principals, is continuously performing the body or substance of the business or enterprise for which the latter was organized.

To resolve the foregoing question, We look into the Service Agreements entered into between petitioner and its different foreign client. Relative thereto, records show that petitioner presented several service agreements, identified by its witness Carmencita Escalante, to establish that petitioner rendered services to foreign shipping companies, namely:

Customer Name	Service Agreements	Exhibit No.
BW Gas Foreign Manning AS	Consularized Manning Agreement between BW Gas Foreign Manning AS (as Principal) and BW Shipping Philippines INC. (as Agent) dated January 2, 2008	"P-70"[55]
Berge Bulk PTE LTD	Consularized Manning Agreement between Burge Bulk (Singapore) PTE LTD (as Principal) and BW Shipping Philippines, INC. (as Agent) dated February 7, 2012	"P-72"[56]
BW Offshore Global Manning PTE LTD	Consularized Manning Agreement between BW Offshore Global Manning PTE LTD (as Principal) and BW Shipping Philippines INC. (as Agent) dated March 14, 2008	"P-73"[57]
BW Fleet Management PTE LTD	Purchasing and Infrastructure Support Agreement between BW Fleet Management PTE LTD (as Principal) and BW Shipping Philippines INC. (as Agent) dated January 1, 2013	"P-74"[58]
BW Fleet Management AS	Purchasing & Infrastructure Support Agreement between BW Fleet Management AS (as Principal) and BW Shipping Philippines INC (as Agent) dated January 1, 2013.	"P-75"[59]

Upon perusal of the said service agreements entered into by petitioner, the alleged "agency" between petitioner and its customers is limited to the following purposes: 1) recruitment of Filipino seamen for employment on board such vessels managed by the foreign shipping companies acting as principals; and 2)

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[55] Docket – Vol. 3, pp. 1137 to 1145.
[56] Docket – Vol. 3, pp. 1167 to 1175.
[57] Docket – Vol. 3, pp. 1182 to 1190.
[58] Docket – Vol. 3, pp. 1194 to 1205.
[59] Docket – Vol. 3, pp. 1206 to 1217.

providing information technology and purchasing support services for its clients' vessels.

On the basis of the "true test" referred to in the *MR Holdings* case, the service agreements with petitioner show no indication that as an "agent", petitioner was continuing the body or substance of its clients' shipping activities.

Hence, the foreign clients of petitioner cannot be considered as doing business in the Philippines.

Payment for such services must be in acceptable foreign currency

Before We look into the manner by which payment was received by petitioner, it is necessary that petitioner show full compliance with the provisions of 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. Said provisions require 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;" (*Emphasis supplied)*

"SEC. 4.113-1. *Invoicing Requirements.* –

(A) ***A VAT-registered person shall issue.*** –

xxx xxx xxx

(2) A **VAT official receipt** for every lease of goods or properties, and for every sale, barter or exchange of services.

Only VAT-registered persons are required to print their **TIN followed by the word 'VAT' in their invoice** or official receipts. Said documents shall be considered as a 'VAT Invoice' or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) ***Information contained in the 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 sales'** shall be written or printed prominently on the invoice or receipt;" (*Emphasis supplied)*

We shall now determine petitioner's compliance with the foregoing requisites.

As indicated in petitioner's Amended Quarterly VAT returns for the taxable year 2015, petitioner declared zero-rated sales in the total amount of ₱162,198,495.10, detailed as follows:

Period Covered (2015)	Zero-Rated Sales	Exhibit
1Q 2015	₱31,111,287.72	"P-10"
2Q 2015	41,074,007.54	"P-18"
3Q 2015	43,374,982.97	"P-24"
4Q 2015	46,638,216.87	"P-31"
TOTAL	**₱162,198,495.10**	

In his ICPA Report, the court commissioned ICPA, Enrico T. Pizarro concluded that out of the declared zero-rated sales of ₱162,198,495.10, only ₱150,778,813.73 qualify as zero-rated sales[60].

We agree with the conclusion of ICPA Pizarro and thus, adopt his findings that the zero-rated sales amounting to ₱11,419,681.37 (₱162,198,495.10 less ₱150,778,813.73) did not meet the necessary invoicing and other legal requirements. Thus, said amount must be denied.

Moreover, upon further verification by the Court of the official receipts supporting petitioner's zero-rated sales, the additional amount of ₱41,807,449.29 shall also be disallowed for the following reasons:

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[60] Independent Certified Public Accountant Report, Exh. "P-154" Docket, Vol. II pp. 752-840, at p. 761

a. Customer's name/registered name is NOT the same with the one reflected in the Articles of Association, Certificate of Registration, SEC Certificate of Non- Registration;

b. The amount in the official receipts was NOT reflected as "Zero-Rated Sales";

c. Noted erasures in the official receipts without countersignature.

The details of the transactions are as follows:

Customer	Zero-Rated Sales		Exhibit	Reason
	USD	PHP		
BW Foreign Manning AS	64,934.00	2,867,355.57	P-127.1	a
BWG Foreign Manning AS	65,506.00	2,927,463.14	P-127.2	a
BWG Foreign Manning AS	66,942.00	2,960,443.01	P-127.3	a
BWG Foreign Manning AS	71,542.00	3,197,211.98	P-127.4	a
BWG Foreign Manning AS	67,510.00	3,047,603.93	P-127.5	a
BWG Foreign Manning AS	71,318.00	3,234,199.98	P-127.6	a
BWG Foreign Manning AS	233,494.00	10,948,533.66	P-127.7	a
BWG Foreign Manning AS	164,502.00	7,803,152.37	P-127.8	a
Berge Bulk Maritime Pte. Ltd.	40,653.50	1,837,741.47	P-127.31	b
BWG Foreign Manning AS	65,382.00	2,897,337.95	P-127.36	a
BW Fleet Management AS	772.50	35,745.89	P-127.81	b
PMS Fleet Management AS	1,070.50	50,660.34	P-127.105	a & c
TOTAL	**913,626.50**	**41,807,449.29**		

As regards the requirement that payment for such services must be in acceptable foreign currency duly accounted for in accordance with the rules and regulations of the BSP for the four quarters of taxable year 2015 in the amount of ₱162,198,495.10, petitioner submitted documents such as, Summary of the Result of the Examination of Inward Remittances,[61] Certificate of Inward Remittances issued by Bank of Philippine Islands,[62] List of Official Receipts,[63] Bank Credit Memos for Inward Remittances,[64] and Official Receipts.[65]

In his ICPA Report, the Court commissioned ICPA, Enrico T. Pizarro summarized his findings as follows:

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[61] Exhibit "P-126".
[62] Exhibit "P-126.1".
[63] Exhibit "P-127.
[64] Exhibits "P-126.2.1" to "P-126.2.132".
[65] Exhibits "P-127.1" to "P-127.148". ᴹᴼ

Customer's Name	Exhibit	Amount in USD	Amount in Peso
BW Global Foreign Manning AS	P-127.1 to 8, Binder 3	805,748.00	36,985,963.64
BW Offshore Global Manning Pte Ltd	P-127.9 to 17; Binder 3	221,544.50	10,045,391.87
BW Maritime Pte. Ltd.	P-127.18 to 25; Binder 3	536,920.00	24,749,998.59
Berge Bulk Maritime Pte. Ltd.	P-127.26 to 34; Binder 3	385,001.00	17,463,797.96
BW Fleet Management AS	P-127.35 to 115; Binder 3	901,241.60	41,060,859.46
BW Fleet Management Pte. Ltd.	P-127.116 to 148; Binder 3	445,908.50	20,472,802.21
TOTAL		**$3,296,363.60**	**P150,778,813.73**

Upon verification, the Court adopts the findings of ICPA Enrico T. Pizarro that petitioner had valid VAT zero-rated sales for TY 2015 in the amount of **₱108,971,364.44** (₱150,778,813.73 less ₱41,807,449.29).

Petitioner incurred unutilized input VAT attributable to its zero-rated sales.

The Court shall jointly determine whether petitioner complied with the following remaining requisites:

a. *Sixth requisite:* the input taxes are due or paid

b. *Seventh requisite:* the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of the sales volume; and

c. *Eight requisite:* the input taxes have not been applied against output taxes during and in the succeeding quarters.

In its Amended Quarterly VAT Returns for TY 2015,[66] petitioner declared excess and unutilized input VAT of ₱4,970,062.74 on its domestic purchases of capital goods exceeding ₱1 Million and importation of goods other than capital goods as well as the amortization of capital goods, of which the amount of ₱4,953,983.07 is the subject of the present claim, as shown below:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	TOTAL
Input Tax Deferred on Capital Goods Exceeding 1Million from Previous Quarter	4,091,299.84	4,092,235.69	4,201,753.11	3,950,737.91	16,336,026.55
Add: Input Tax on Purchases of Capital Goods during the period of Claim, Exceeding 1Million	230,661.57	348,902.54	-	360,612.74	940,176.85
Less: Input Tax on Purchases of Capital Goods Exceeding 1Million Deferred for the Succeeding Period	4,092,235.69	4,201,753.11	3,950,737.91	4,054,325.23	16,299,051.94
Amortization of Input Tax on Capital Goods Exceeding 1Million	229,725.72	239,385.12	251,015.20	257,025.42	977,151.46
Input Tax on Importation of Goods	883,353.76	-	-	-	883,353.76
Input Tax on Purchases of Goods	-	1,237,293.26	949,604.13	922,660.13	3,109,613.52
Input Tax	1,113,079.48	1,476,678.38	1,200,619.33	1,179,685.55	4,970,062.74
Less: Output Tax	16,079,.67	-	-	-	16,079.67
CLAIMED INPUT TAX	**1,096,999.81**	**1,476,678.38**	**1,200,619.33**	**1,179,685.55**	**4,953,983.07**

It is noted that in the ICPA Report, it is stated therein that petitioner's input VAT claim in the amount of ₱127,097.96 must be disallowed for not being properly substantiated by VAT invoices or official receipts as prescribed under Sections 110(A) and 113(A) and

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[66] Exhibits "P-10", "P-18", "P-24" and "P-31".

(B) of the NIRC, in relation to Sections 4.110-2, 4.110-3, 4.110-8 and 4.113-1 of RR No. 16-05. The findings[67] are as follows:

Particular	Reference	Input VAT
Input VAT on domestic purchase of service with incomplete company name, no company's TIN, no company's address, incorrect vatable Amount	Exhibit P-137; Binder 5	302.40
Input VAT on domestic purchase of services with incomplete/incorrect company address	Exhibit P-138; Binder 5	5,423.18
Input VAT on domestic purchase of services with incomplete/incorrect company's address, incorrect VATable amount and incorrect VAT amount	Exhibit P-139, Binder 5	226.80
Input VAT on domestic purchase of services with incomplete/incorrect company's address and overclaim	Exhibit P-140, Binder 5	901.09
Input VAT on domestic purchase of services with incorrect company's TIN	Exhibit P-141, Binder 5	29,618.67
Input VAT on domestic purchase of services with incorrect company's TIN and incomplete/incorrect company's address	Exhibit P-142, Binder 5	594.30
Input VAT on domestic purchase of services with incorrect VATable amount	Exhibit P-143, Binder 5	1,607.14
Input VAT on domestic purchase of services with no company's address incorrect vatable amount and incorrect VAT amount	Exhibit P-144, Binder 5	226.80
Input VAT on domestic purchase of services with no company's TIN and incomplete/incorrect company's address	Exhibit P-145, Binder 5	5,182.96
Input VAT on domestic purchase of services not within taxable period	Exhibit P-146, Binder 5	10,201.19

[67] ICPA Report, Exh. "154" Docket, Vol. II, pp. 752-840 at pp. 769-770

Input VAT on domestic purchase of services VATable amount not indicated	Exhibit P-147, Binder 5	20,069.46
Excess claimed input VAT on purchase of services against actual input VAT as per supporting documents	Exhibit P-148, Binder 5	13,480.42
Input VAT on domestic purchase of services supporting document not found	Exhibit P-149, Binder 5	14,290.42
Input VAT on domestic purchase of goods VATable amount not indicated	Exhibit P-150, Binder 5	4,178.57
Input VAT on domestic purchase of goods with invalid supporting documents	Exhibit P-151, Binder 5	20,590.56
Input VAT on domestic purchase of capital goods exceeding 1M with noted alteration	Exhibit P-152, Binder 5	204.00
TOTAL		**127,097.96**

Upon scrutiny of the ICPA Report with the other submitted documentary evidence, the Court finds that an additional amount of ₱91,596.76 shall likewise be disallowed for failure to meet the substantiation requirements, as listed below:

Customer's Name	Input VAT	Exhibit	Reason
PLDT	482.59	P-134.6	Handwritten addition in a computerized OR without countersignature
PLDT	4,315.20	P-134.7	Handwritten addition in a computerized OR without countersignature
PLDT	151.09	P-134.8	Handwritten addition in a computerized OR without countersignature
PLDT	152.18	P-134.9	Handwritten addition in a computerized OR without countersignature
PLDT	154.09	P-134.10	Handwritten addition in a computerized OR without countersignature
PLDT	169.09	P-134.11	Handwritten addition in a computerized OR

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			without countersignature
PLDT	151.09	P-134.12	Handwritten addition in a computerized OR without countersignature
PLDT	3,814.81	P-134.13	Handwritten addition in a computerized OR without countersignature
PLDT	151.09	P-134.14	Handwritten addition in a computerized OR without countersignature
PLDT	455.73	P-134.15	Handwritten addition in a computerized OR without countersignature
PLDT	179.31	P-134.16	Handwritten addition in a computerized OR without countersignature
PLDT	184.36	P-134.17	Handwritten addition in a computerized OR without countersignature
PLDT	151.09	P-134.18	Handwritten addition in a computerized OR without countersignature
PLDT	184.36	P-134.19	Handwritten addition in a computerized OR without countersignature
Prudential Guarantee	2,811.41	P-134.26	Alteration/Erasures in the OR without countersignature
PLDT	152.59	P-134.30	Handwritten addition in a computerized OR without countersignature
PLDT	151.09	P-134.31	Handwritten addition in a computerized OR without countersignature
PLDT	151.09	P-134.32	Handwritten addition in a computerized OR without countersignature
PLDT	169.09	P-134.33	Handwritten addition in a computerized OR without countersignature
PLDT	151.09	P-134.34	Handwritten addition in a computerized OR without countersignature
PLDT	7,327.85	P-134.35	Handwritten addition in a computerized OR without countersignature
PLDT	151.09	P-134.36	Handwritten addition in a computerized OR without countersignature
PLDT	169.09	P-134.37	Handwritten addition in a computerized OR without countersignature
PLDT	159.82	P-134.38	Handwritten addition in a computerized OR without countersignature
PLDT	193.37	P-134.39	Handwritten addition in a computerized OR without countersignature

PLDT	184.37	P-134.40	Handwritten addition in a computerized OR without countersignature
Marriott Hotel	7,614.00	P-134.51	Incorrect VAT Amount
PLDT	155.46	P-134.62	Handwritten addition in a computerized OR without countersignature
PLDT	156.69	P-134.63	Handwritten addition in a computerized OR without countersignature
PLDT	169.09	P-134.64	Handwritten addition in a computerized OR without countersignature
PLDT	151.09	P-134.65	Handwritten addition in a computerized OR without countersignature
PLDT	151.09	P-134.66	Handwritten addition in a computerized OR without countersignature
PLDT	374.07	P-134.67	Handwritten addition in a computerized OR without countersignature
PLDT	183.01	P-134.68	Handwritten addition in a computerized OR without countersignature
PLDT	184.37	P-134.69	Handwritten addition in a computerized OR without countersignature
PLDT	502.57	P-134.70	Handwritten addition in a computerized OR without countersignature
PLDT	152.29	P-134.86	Handwritten addition in a computerized OR without countersignature
PLDT	153.27	P-134.87	Handwritten addition in a computerized OR without countersignature
PLDT	151.09	P-134.88	Handwritten addition in a computerized OR without countersignature
PLDT	169.09	P-134.89	Handwritten addition in a computerized OR without countersignature
PLDT	151.09	P-134.90	Handwritten addition in a computerized OR without countersignature
PLDT	4,199.96	P-134.91	Handwritten addition in a computerized OR without countersignature
PLDT	151.09	P-134.92	Handwritten addition in a computerized OR without countersignature
PLDT	221.73	P-134.93	Handwritten addition in a computerized OR without countersignature
PLDT	182.24	P-134.94	Handwritten addition in a computerized OR

			without countersignature
PLDT	184.92	P-134.95	Handwritten addition in a computerized OR without countersignature
PLDT	151.09	P-134.96	Handwritten addition in a computerized OR without countersignature
PLDT	283.79	P-134.97	Handwritten addition in a computerized OR without countersignature
PLDT	151.09	P-134.125	Handwritten addition in a computerized OR without countersignature
PLDT	151.09	P-134.126	Handwritten addition in a computerized OR without countersignature
PLDT	169.09	P-134.127	Handwritten addition in a computerized OR without countersignature
PLDT	4,280.13	P-134.128	Handwritten addition in a computerized OR without countersignature
PLDT	151.09	P-134.129	Handwritten addition in a computerized OR without countersignature
PLDT	178.09	P-134.130	Handwritten addition in a computerized OR without countersignature
PLDT	159.00	P-134.131	Handwritten addition in a computerized OR without countersignature
PLDT	159.09	P-134.132	Handwritten addition in a computerized OR without countersignature
PLDT	227.46	P-134.133	Handwritten addition in a computerized OR without countersignature
PLDT	151.09	P-134.134	Handwritten addition in a computerized OR without countersignature
PLDT	184.37	P-134.135	Handwritten addition in a computerized OR without countersignature
ABS-CBN	672.00	P-134.143	VAT not Separately Indicated
PLDT	153.82	P-134.158	Handwritten addition in a computerized OR without countersignature
PLDT	151.09	P-134.159	Handwritten addition in a computerized OR without countersignature
PLDT	169.09	P-134.160	Handwritten addition in a computerized OR without countersignature
PLDT	6,283.51	P-134.161	Handwritten addition in a computerized OR without countersignature
PLDT		P-134.162	Handwritten addition in a

	151.09		computerized OR without countersignature
PLDT	361.65	P-134.163	Handwritten addition in a computerized OR without countersignature
PLDT	151.09	P-134.164	Handwritten addition in a computerized OR without countersignature
PLDT	184.92	P-134.165	Handwritten addition in a computerized OR without countersignature
PLDT	151.09	P-134.166	Handwritten addition in a computerized OR without countersignature
PLDT	184.37	P-134.167	Handwritten addition in a computerized OR without countersignature
PLDT	151.69	P-134.185	Handwritten addition in a computerized OR without countersignature
PLDT	151.69	P-134.186	Handwritten addition in a computerized OR without countersignature
PLDT	151.69	P-134.187	Handwritten addition in a computerized OR without countersignature
PLDT	169.09	P-134.188	Handwritten addition in a computerized OR without countersignature
PLDT	5,735.74	P-134.189	Handwritten addition in a computerized OR without countersignature
PLDT	151.09	P-134.190	Handwritten addition in a computerized OR without countersignature
PLDT	171.14	P-134.191	Handwritten addition in a computerized OR without countersignature
PLDT	159.19	P-134.192	Handwritten addition in a computerized OR without countersignature
PLDT	151.09	P-134.193	Handwritten addition in a computerized OR without countersignature
PLDT	151.09	P-134.194	Handwritten addition in a computerized OR without countersignature
PLDT	184.17	P-134.195	Handwritten addition in a computerized OR without countersignature
PLDT	151.09	P-134.220	Incorrect TIN
PLDT	153.82	P-134.221	Incorrect TIN
PLDT	236.59	P-134.222	Incorrect TIN
PLDT	169.09	P-134.223	Incorrect TIN

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PLDT	5,813.46	P-134.224	Incorrect TIN
PLDT	151.09	P-134.225	Incorrect TIN
PLDT	377.86	P-134.226	Incorrect TIN
PLDT	553.09	P-134.227	Incorrect TIN
PLDT	165.27	P-134.228	Incorrect TIN
PLDT	186.55	P-134.229	Incorrect TIN
PLDT	151.09	P-134.230	Incorrect TIN
PLDT	151.09	P-134.231	Incorrect TIN
PLDT	184.36	P-134.232	Incorrect TIN
PLDT	115.62	P-134.241	Handwritten addition in a computerized OR without countersignature
PLDT	151.09	P-134.250	Handwritten addition in a computerized OR without countersignature
PLDT	151.09	P-134.286	Incorrect TIN
PLDT	156.00	P-134.287	Incorrect TIN
PLDT	158.59	P-134.288	Incorrect TIN
PLDT	169.09	P-134.289	Incorrect TIN
PLDT	5,271.30	P-134.290	Incorrect TIN
PLDT	151.09	P-134.291	Incorrect TIN
PLDT	179.59	P-134.292	Incorrect TIN
PLDT	154.09	P-134.294	Incorrect TIN
PLDT	184.37	P-134.295	Incorrect TIN
PLDT	151.09	P-134.296	Incorrect TIN
PLDT	151.09	P-134.297	Incorrect TIN
PLDT	184.37	P-134.298	Incorrect TIN
PLDT	151.09	P-134.329	Incorrect TIN
PLDT	157.11	P-134.330	Incorrect TIN
PLDT	167.59	P-134.331	Incorrect TIN
PLDT	169.09	P-134.332	Incorrect TIN
PLDT	5,249.42	P-134.333	Incorrect TIN

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PLDT	151.09	P-134.334	Incorrect TIN
PLDT	169.09	P-134.335	Incorrect TIN
PLDT	169.09	P-134.337	Incorrect TIN
PLDT	220.23	P-134.338	Incorrect TIN
PLDT	331.09	P-134.339	Incorrect TIN
PLDT	151.09	P-134.341	Incorrect TIN
PLDT	184.37	P-134.342	Incorrect TIN
PLDT	151.69	P-134.357	Incorrect TIN
PLDT	153.28	P-134.359	Incorrect TIN
PLDT	170.59	P-134.360	Incorrect TIN
PLDT	169.09	P-134.361	Incorrect TIN
PLDT	4,972.27	P-134.362	Incorrect TIN
PLDT	151.09	P-134.363	Incorrect TIN
PLDT	169.09	P-134.364	Incorrect TIN
PLDT	163.09	P-134.366	Incorrect TIN
PLDT	187.65	P-134.367	Incorrect TIN
PLDT	151.09	P-134.368	Incorrect TIN
PLDT	151.09	P-134.369	Incorrect TIN
PLDT	184.37	P-134.370	Incorrect TIN
Microphase Corporation	120.00	P-136.23	Invoice not Readable
Microphase Corporation	122.50	P-136.24	Invoice not Readable
Microphase Corporation	1,372.50	P-136.25	Invoice not Readable
TOTAL	**91,596.76**		

Thus, out of petitioner's claimed input VAT of ₱4,953,983.07 for the TY 2015, only the amount of ₱4,735,288.35 represents substantiated input VAT, computed as follows:

Claimed Input VAT		4,953,983.07
Less: Disallowances		
Per ICPA	127,097.96	
Per Court's Verification	91,596.76	218,694.72
Substantiated Input VAT		**4,735,288.35**

Consequently, only the excess valid input VAT of ₱4,735,288.35 can be attributed to the total zero-rated sales declared by petitioner in the amount of ₱162,198,495.10, and only the input VAT of **₱3,181,354.01** is attributable to the valid zero-rated sales of ₱108,971,364.44, computed below as follows:

Substantiated Input VAT	4,735,288.35
Divided by Declared Zero Rated Sales	162,198,495.10
Multiply by Valid Zero-Rated Sales	108,971,364.44
Excess Input VAT Attributable	
to Valid Zero-Rated Sales	3,181,354.01

Petitioner's input taxes were more than enough to cover its output VAT liability and the claimed input taxes were not carried-over to the succeeding quarters.

This Court finds that petitioner complied with the final requisite. Petitioner has shown that the excess input taxes amounting to ₱3,181,354.01 were more than enough to cover its output VAT liability of ₱16,079.67.

Although the claimed input VAT was carried-over by petitioner in its succeeding Quarterly VAT Returns for taxable year 2016,[68] the same remained unutilized until it was deducted as "**VAT Refund/TCC Claimed**" in its Quarterly VAT Return for the 1st Quarter of taxable year 2017;[69] thus, preventing the carry-over or application of the claimed input VAT in the next taxable periods.

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[68] Exhibits "P-38", "P-44", "P-50", "P-54", Docket – Vol. 3. pp. 1054 to 1055, 1071 to 1072, 1089 to 1090, 1101 to 1102.

[69] Exhibit "P-58", Line 23D, Docket – Vol. 3, p. 1112.

In sum, petitioner has sufficiently proven its entitlement to the refund or issuance of TCC in the amount of **₱3,181,354.01** representing unutilized excess input VAT attributable to its zero-rated sales for the four quarters of 2015.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the total amount of **₱3,181,354.01**, representing its excess and unutilized input VAT attributable to its zero-rated sales for the four quarters of taxable year 2015.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice