REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

SUTHERLAND GLOBAL SERVICES PHILIPPINES, INC., Petitioner,	CTA CASE NO. 8180
	Members:
-versus-	BAUTISTA, *Chairperson* FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 13 2014 4:10 p.m.

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DECISION

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

The instant Petition for Review dated October 15, 2010 pertains to petitioner Sutherland Global Services Philippines, Inc.'s claim for refund of ₱12,147,471.73, allegedly representing erroneously paid income tax for the fiscal year July 1, 2007 to June 30, 2008.

Petitioner Sutherland Global Services Philippines, Inc. is an existing, non-pioneer Information Technology (IT) locator enterprise registered as an ECOZONE IT Enterprise by virtue of the Philippine Economic Zone Authority (PEZA) Certificates of Registration Nos. 05-10-IT and 06-90-IT.[1] It is also registered with the Clark Development Corporation (CDC)[2] prior to the proclamation of the Clark Special Economic Zone as a PEZA Special Economic Zone.

[1] Exhibits "A" and "B".
[2] Exhibits "E" to "E-8".

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), with authority to act on claims for refund or tax credit of overpaid or erroneously paid or collected internal revenue taxes, with office at the BIR National Office Building, Diliman, Quezon City.

On December 20, 2006, a Registration Agreement[3] dated November 22, 2006 was executed authorizing the petitioner to conduct and operate its business inside the Clark Special Economic Zone (CSEZ). Under the Agreement, PEZA also granted petitioner tax incentives under Republic Act (RA) No. 7916[4], as amended, more particularly, to "pay 5% tax on gross income, in lieu of all national and local taxes, subject to PEZA and BIR rules and regulations" and "Tax and duty exemption on importation of capital equipment, raw materials and supplies".[5]

On January 18, 2007, the PEZA Board passed Resolution No. 07-037 approving the grant of full PEZA Incentives to CSEZ export-oriented and IT locator enterprises that registered with CDC after the proclamation of CSEZ as a PEZA Special Economic Zone.

On February 2, 2007, a Supplemental Agreement[6] was executed which formed part of the original Agreement, entitling petitioner to a four (4)-year Income Tax Holiday (ITH) under non-pioneer status. Upon the expiration of the ITH incentive, petitioner shall enjoy 5% gross income tax (GIT) incentive and other incentives under the PEZA Law.

On March 20, 2007, Republic Act No. 9400[7] was enacted, Section 7 thereof states:

> SECTION 7. Business enterprises presently registered and granted with tax and duty incentives by the Clark

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[3] Exhibits "E" to "E-8".
[4] The Special Economic Zone Act of 1995.
[5] Par. 5, Admissions, Joint Stipulation of Facts and Issues (JSFI), docket, p. 82.
[6] Exhibits "F" to F-2".
[7] An Act Amending Republic Act No. 7227, as amended, otherwise known as The Bases Conversion and Development Act of 1992, and for other purposes; took effect on April 19, 2007.

> Development Corporation (CDC), Poro Point Management Corporation (PPMC), JHMC, and Bataan Technological Park Incorporated (BTPI), including such governing bodies, shall be entitled to the same incentives until the expiration of their contracts entered into prior to the effectivity of this Act.

In relation to the foregoing, petitioner claims that during fiscal year July 1, 2007 to June 30, 2008, it had erroneously paid 5% preferential tax granted to it under the Registration Agreement on its gross income in the total amount of ₱12,147,471.73 [8] instead of the ITH given under the Supplemental Agreement.

On October 12, 2010, petitioner filed an administrative claim for refund[9] with respondent through BIR Revenue Region No. 8.

On October 15, 2010,[10] or three (3) days after the filing of its administrative claim, petitioner filed the instant Petition for Review with this Court claiming inaction on the part of respondent.

On December 3, 2010, respondent filed her Answer[11] essentially stating that petitioner must first prove its entitlement to the claim for refund/tax credit. In any event, petitioner failed to exhaust administrative remedies having filed the instant Petition for Review only three (3) days after it lodged its administrative claim virtually depriving respondent of the opportunity to determine the merits of its claim.

After the pre-trial conference or on February 25, 2011, the parties filed their Joint Stipulation of Facts and Issues.[12]

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[8] Exhibits "I" to "I-1".
[9] Exhibits "J" to "J-26".
[10] Docket, pp. 1-37; Exhibit "S".
[11] Docket, pp. 48-50.
[12] Docket, pp. 81-84.

Petitioner presented its Tax Manager **Alteza Alindogan Dy** who testified that petitioner was organized under the laws of Cayman Islands. It was registered with the Securities and Exchange Commission (SEC) on May 27, 2005 for the purpose of establishing a branch office in the Philippines.

Petitioner is into consulting services, account management services, technical support/help desk services, customer care services, and back office processing center. It is a non-pioneer Information Technology (IT) locator enterprise registered as an Ecozone IT Enterprise by virtue of PEZA Certificate of Registration No. 05-10-IT and as a Clark Special Economic Zone by virtue of PEZA Certificate of Registration No. 06-90-IT. It is also registered with the BIR.

On December 20, 2006, petitioner entered into a Registration Agreement with PEZA entitling it to operate its business inside the Clark Special Economic Zone. The same Agreement granted petitioner tax incentives under Republic Act (R.A.) 7916, as amended, and under the PEZA IT Guidelines. The tax incentives allow petitioner to pay 5% tax on gross income in lieu of all national and local taxes, subject to PEZA and BIR rules and regulations, and tax and duty exemption on importation of capital equipment, raw materials and supplies.

A Supplemental Registration Agreement was executed on February 2, 2007 which entitled petitioner to a four (4) year Income Tax Holiday (ITH) under its non-pioneer status. Upon the expiration of the 4 year ITH, petitioner shall be entitled to the 5% gross income incentive in lieu of all tax incentives.

Petitioner commenced its commercial operations on August 9, 2006. For fiscal year July 1, 2007 to June 30, 2008, it erroneously paid and remitted to the BIR the five percent (5%) preferential tax rate on its gross income in the amount of P12,147,471.73, as indicated in its Annual Income Tax Return and Amended Income Tax Return for the said fiscal year. This payment was erroneous since under the Supplemental Agreement, petitioner is entitled to a 4-year ITH and would only be liable for 5% gross income tax upon the expiration of the 4-year ITH. Hence, on October 12, 2009, it filed an administrative claim for refund with the BIR.

In the Resolution[13] of July 19, 2011, petitioner was deemed to have rested its case.

During the presentation of evidence for respondent, her counsel manifested that no investigation and final report on the administrative claim was submitted, hence, respondent would not present any.[14]

After the case was deemed submitted for decision,[15] the Court in the Resolution[16] dated June 7, 2012, granted petitioner's Motion for Leave to Admit Reply Memorandum[17] and Motion to Re-Open the Case to Present Additional Evidence.

During the reopening of the case, petitioner recalled its Tax Manager, Alteza Alindogan Dy. She testified that the P12,147,471.73 representing the 5% gross income tax erroneously remitted to the BIR subject of the instant claim for refund, was derived from the total taxable income from petitioner's PEZA registered activities conducted inside the Clark Special Economic Zone as indicated in its Amended Annual Income Tax Return for fiscal year July 1, 2007 to June 30, 2008 and a document denominated as Electronic Breakdown showing the list of petitioner's total revenue from its business conducted in the CSEZ in connection with its PEZA registered activities.

Petitioner also presented **Abbet R. Barce**, the Court-commissioned Independent Certified Public Accountant (ICPA), who identified his Final Report[18] submitted to the Court on October 31, 2012. The Final Report states that the 5% gross income tax paid by petitioner for the taxable year 2008, which was in lieu of all national and local taxes subject to PEZA and BIR rules and regulations and subject of

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[13] Docket, pp. 358-359.
[14] Minutes of the hearing dated August 22, 2011, docket p. 361.
[15] Docket, p. 387.
[16] Docket, pp. 444-447.
[17] Docket, pp. 392-401.
[18] Exhibit "R-1".

the claim for refund, consist of 2% taxes due to the Local Government Unit (LGU), and 3% to the BIR. It also states that the amount of the claim as declared in the instant Petition matches the amount as declared in petitioner's Income Tax Return (ITR).

He further testified that the total revenue reported by petitioner under the 5% Special Rate in the amount of P1,167,424,834.69 was substantiated by documents showing that the same were earned by petitioner from its PEZA registered activities. From the said amount was the income tax erroneously paid to the BIR in the amount of P12,086,926.52 properly supported by proof of tax payments.

After the parties filed their respective memoranda, the case was deemed submitted for decision. [19]

The parties submitted the following issues[20] for the resolution of the Court:

> I. Whether or not Petitioner is entitled to the refund of the amount of Twelve Million one hundred forty seven thousand four hundred seventy one pesos and 73/100 (Php12,147,471.73) representing erroneously paid income tax for the period of 1 July 2007-30 June 2008.
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> II. Whether or not the Petition should be dismissed for lack of merit on the failure of the petitioner to exhaust administrative remedies.

RULING OF THE COURT

The Court will address first the question of the alleged non-exhaustion of administrative remedies, in relation to the

[19] Docket, pp. 631-649.
[20] Joint Stipulation of Facts and Issues, docket, p. 83.

timeliness of the institution of the instant Petition for Review.

Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, allow the taxpayer a period of two (2) years from the date of payment of the tax or penalty within which to file a suit or proceeding to recover any erroneously paid or illegally collected tax, regardless of any supervening cause that may exist after payment, thus:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may -
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund. *(Emphasis supplied)*
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> SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of

> any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
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> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment;** *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. *(Emphasis supplied)*

Settled in this jurisdiction that Sections 204(C) and 229 govern all kinds of refund of internal revenue taxes - those taxes imposed and collected pursuant to the NIRC.[21] Section 204(C) applies to administrative claims filed with the BIR, while Section 229 refers to judicial actions for the recovery of the tax. However, both the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period from the *date of payment of the tax.*

For actions for refund of erroneously or excessively paid corporate income tax, the Supreme Court ruled that the two-year prescriptive period should be counted from the filing of the final adjustment return (FAR) or annual income tax return, because it is only during that date that the exact tax liability or refundability of the tax can be determined.[22]

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[21] *Commissioner of Internal Revenue vs. Central Azucarera Don Pedro*, G.R. No. L-28467, February 28, 1973, citing *Commissioner of Internal Revenue vs. Insular Lumber Co.*, 21 SCRA 1237.

[22] *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Appeals*, G.R. No. 83736, dated January 15, 1992; *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991.

When the two-year period is about to prescribe and the claim for refund has not been acted upon by respondent, for the protection of his interest, the taxpayer should file a Petition for Review with this Court within the said two-year period; otherwise, if the decision of the Commissioner is adverse to the taxpayer and it was made after the lapse of the two-year period, he can no longer appeal the same to this Court.[23]

Thus, it is not necessary for respondent to render an adverse decision before the Court may acquire jurisdiction in view of the positive requirement of Section 229 and the doctrine that delay of respondent in rendering decision in the claim for refund does not extend the peremptory period fixed by the statute. Neither is it legally required that the claim for refund be filed at the earliest instance in order to give respondent an opportunity to rule on it and the Court to review her ruling on appeal. The law fixed the same period of two years for filing a claim for refund with respondent, and for filing suit in Court[24] and as long as these two acts fall within this period then, there is no legal impediment to the judicial claim for refund.[25]

Corollary to the foregoing is Section 77(B) and (C) of the NIRC of 1997, as amended, which provides as follows:

> SEC. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* -
>
> xxx xxx xxx
>
> (B) *Time of Filing the Income Tax Return.* - The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first

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[23] *Commissioner of Internal Revenue vs. Hitachi Computer Products (Asia) Corporation*, CA-G.R. SP No. 63340, February 7, 2002, citing *Gibbs vs. Collector of Internal Revenue and Court of Tax Appeals*, 107 Phil. 232, *Johnson Lumber Co. vs. Court of Tax Appeals*, 101 Phil. 151.

[24] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands, as Liquidator of Paramount Acceptance Corporation and the Court of Tax Appeals*, CA G.R. SP No. 34102, September 19, 1994.

[25] *Manila Electric Company vs. The Commissioner of Internal Revenue*, CTA Case No. 5091, October 2, 1997.

> three (3) quarters of the taxable year. **The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.**
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> (C) *Time of Payment of the Income Tax.* - The income tax due on the corporate quarterly returns and the final adjustment income tax returns computed in accordance with Sections 75 and 76 shall be paid at the time the declaration or return is filed in a manner prescribed by the Commissioner. *(Emphasis supplied)*

The instant claim pertains to income tax for the fiscal year ending June 30, 2008 for which petitioner filed its original[26] and amended[27] Annual Income Tax Returns on October 15, 2008 and November 28, 2008, respectively, and paid the corresponding income taxes totaling ₱12,147,471.73, broken down as follows:

Tax Payments for the First Three Quarters		
1st Quarter (Exhibit "CC-1")	₱ 2,589,737.00	
2nd Quarter (Exhibit "CC-2")	3,890,921.73	
3rd Quarter (Exhibit "CC-3")	1,863,524.00	₱ 8,344,182.73
Tax Paid Per Original Annual Income Tax Return (Exhibit "H")		3,789,812.00
Tax Paid Per Amended Annual Income Tax Return (Exhibit "I")		13,477.00
Total Income Tax Paid for FY ending June 30, 2008		**₱12,147,471.73**

Counting from October 15, 2008, the date when petitioner filed its original Annual Income Tax Return for fiscal year ending June 30, 2008, and taking into account the 2-year prescriptive period in Sections 204 and 229 of the NIRC, as amended, petitioner had until October 15, 2010 within which to file its claim both in the administrative and

[26] Exhibit "H".
[27] Exhibit "I".

judicial levels. Therefore, the formal claim filed with respondent on October 12, 2010[28] and the subsequent appeal before this Court via the instant Petition for Review filed on October 15, 2010 were both well within the two-year prescriptive period and are deemed seasonably instituted.

But was the income tax in the amount of ₱12,147,471.73, subject of the instant claim, erroneously paid?

For entitlement for tax incentives, petitioner invokes the Registration Agreement and Supplemental Agreement it executed with PEZA, which expressly provide, among others, a grant of a four (4)-year ITH and a rate of 5% gross income tax. Petitioner claims that since the two tax regimes are incompatible and cannot be availed of simultaneously, the ITH should be given preference since it came from the Supplemental Agreement which is a more recent contract executed between the parties. Petitioner opines that it is absurd to conclude that PEZA intended petitioner to enjoy a 5% preferential tax treatment, and then a four-year ITH after a year of operation, then again a 5% preferential tax treatment.

Respondent however counters that since petitioner was operating in the CSEZ and Clark Freeport Zone (CFZ), it is covered by Republic Act No. 7227,[29] as amended by Republic Act No. 9400. Section 7 of Republic Act No. 9400 provides that "Business enterprises presently registered and granted with tax and duty incentives by the Clark Development Corporation (CDC), Poro Point Management Corporation (PPMC), JHMC, and Bataan Technological Park Incorporated (BTPI), including such governing bodies, shall be entitled to the same incentives until the expiration of their contracts entered into prior to the effectivity of this Act."

Respondent points out that Section 7 names Clark Development Corporation (CDC), Poro Point Management Corporation (PPMC), JHMC, and Bataan Technological Park Incorporated (BTPI) only as among those entitled to the same incentives without mentioning CSEZ or CFZ to which

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[28] Exhibit "J".
[29] Bases Conversion and Development Act of 1992.

petitioner belongs. In other words, petitioner is not included among those entitled to ITH. Besides, petitioner failed to comply with requirements under Revenue Memorandum Circular No. 15-2007 for it to continue enjoyment of the incentives legally granted to it as a PEZA-registered enterprise.

Record shows that on December 6, 2006,[30] petitioner was registered with the Philippine Economic Zone Authority as an ECOZONE IT Enterprise at the Clark Special Economic Zone. Petitioner executed a Registration Agreement with PEZA entitling it to conduct and operate its business inside the CSEZ. On top of this, petitioner was granted tax incentives under Republic Act No. 7916, as amended, and the PEZA IT Guidelines, more particularly, "5% tax on gross income, in lieu of all national and local taxes, subject to PEZA and BIR rules and regulations", and "tax and duty exemption on importation of capital equipment, raw materials and supplies."[31]

However, on February 2, 2007, a Supplemental Agreement[32] was executed between the same parties which provided as follows:

> 1. The REGISTRANT shall be entitled to four (4) years Income Tax Holiday (ITH) under non-pioneer status and upon the expiration of the ITH incentive, the REGISTRANT shall be entitled to 5% gross income tax (GIT) incentive and to other incentives under the PEZA law.
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> 2. The REGISTRANT shall automatically revert to the enjoyment of incentives for CSEZ once the pertinent law is enacted by Congress.
>
> 3. Nothing herein contained shall be construed as amending or modifying any of the terms and conditions of the Original

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[30] Exhibit "B".
[31] Par. 5, Admissions, JSFI, docket, p. 82.
[32] Exhibit "F-1"; Par. 6, Admissions, JSFI, docket, p. 82.

> Contract except as herein expressly provided.
>
> 4. This Agreement shall form an integral part of the Original Contract.

Evident from the foregoing that petitioner is entitled to the ITH incentive for four (4) years under non-pioneer status and only upon the expiration of the four (4) year ITH incentive that it will be subject to the 5% gross income tax incentive.

Petitioner's entitlement to the aforesaid incentives finds legal basis on Section 23 of RA No. 7916 (PEZA Law), as amended by RA No. 8748, which reads, thus:

> SECTION 23. *Fiscal Incentives.* - **Business establishments operating within the ECOZONES shall be entitled to the fiscal incentives** as provided for under the Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987. *(Emphasis supplied)*

The fiscal incentives referred to under Presidential Decree (PD) No. 66, the law creating the Export Processing Zone Authority or EPZA (now PEZA) include the 5% preferential tax rate on gross income earned in lieu of national and local taxes as provided for under Section 24 of RA No. 7916, as amended, to wit:

> SECTION 24. *Exemption from National and Local Taxes.* - Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all

> business enterprises within the ECOZONE shall be paid and remitted as follows:
>
> (a) Three percent (3%) to the National Government;
>
> (b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located.

On the other hand, the fiscal incentives granted under Book VI of Executive Order (E.O.) No. 226, otherwise known as the Omnibus Investments Code of 1987, include income tax holiday for four (4) to six (6) years, depending on whether the enterprise is registered as pioneer or non-pioneer as stated in Title III, Article 39(a)(1) thereof, to wit:

> TITLE III
> *Incentives to Registered Enterprises*
>
> ARTICLE 39. *Incentives to Registered Enterprises*. - All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment;
>
> (a) *Income Tax Holiday*. -
>
> (1) For six (6) years from commercial operation for pioneer firms and four (4) years for non-pioneer firms, new registered firms shall be fully exempt from income taxes levied by the National Government, xxx

It bears stressing that these two sets of fiscal incentives are in the alternative hence, cannot be availed of at the same time by a PEZA- registered enterprise.[33]

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[33] *Hitachi Computer Products (Asia) Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 5943, August 6, 2001.

As earlier stated, petitioner was granted an ITH incentive for a period of four (4) years starting from its commercial operations on August 9, 2006.[34] Thus, petitioner had until August 9, 2010 within which to enjoy such incentive and thereafter petitioner shall be entitled to the 5% gross income tax incentive provided that it complies with the conditions as set forth by the PEZA Law.

However, although the said ITH incentive allows petitioner exemption from payment of income taxes, such is not absolute. The exemption applies only to income derived from petitioner's registered activities as provided under Part VII of Rule XIII of the Rules and Regulations to Implement Republic Act No. 7916 (PEZA Rules), thus:

> Part VII
> *Incentives to ECOZONE Enterprises*
>
> RULE XIII
> *Application and Entitlement*
>
> xxx xxx xxx
>
> SECTION 5. *Limitation of Entitlement to Incentives*. - Incentives granted by the PEZA shall apply **only to registered operations of the ECOZONE Enterprises** and only during the period of its registration with PEZA. *(Emphasis supplied)*

Petitioner was registered with PEZA as an ECOZONE IT Enterprise at the CSEZ to engage in process consulting, technology support services, account management services, technical support/help desk services, customer care services and back office processing for operating call center and the importation of raw materials, machinery, equipment, tools, goods, wares, articles, or merchandise directly used in its registered operations at CSEZ.[35] In fine, petitioner must establish that its income relating to the subject tax refund

[34] Exhibit "L".
[35] Exhibit "E-1", Article II, Scope of Registrant's Registered Activity.

was actually earned or received by it in relation to the conduct of said registered business activities within the CSEZ.

On this regard, petitioner's amended Annual Income Tax Return[36] for the fiscal year ending June 30, 2008 has the following entries:

	EXEMPT	TAXABLE	
		Special Rate	Regular Rate
Sales/Revenues/Receipts/Fees	₱1,206,186,619.00	₱1,173,272,664.00	₱ 46,943,363.00
Less: Cost of Sales/Services	879,999,275.00	768,356,940.00	51,731,880.00
Gross Income from Operation	326,187,344.00	404,915,724.00	(4,788,517.00)
Add: Non-Operating & Taxable Other Income	-	-	197,438.00
Total Gross Income	326,187,344.00	404,915,724.00	(4,591,079.00)
Less: Deductions	370,869,392.00	-	10,128,063.00
Taxable Income	-	**₱404,915,724.00**	**₱(14,719,142.00)**
Tax Rate		5%	35%
Income Tax		**₱ 20,245,786.00**	-
Less: Share of Other Agencies		8,098,314.00	
Aggregate Income Tax Due		**₱ 12,147,472.00**	
Less: Tax Credits/Payments			
Tax Payments for the First Three Quarters		8,344,183.00	
Tax Paid in Return Previously Filed		3,789,812.00	
Total Tax Credits/Payments		12,133,995.00	
Tax Payable/(Overpayment)		₱ 13,477.00	

Based on the Independent CPA Report[37], the total amount of ₱2,426,402,646.00[38] revenue declared by petitioner in its amended FY 2008 Annual Income Tax Return was generated by its various facilities in different locations with the following assigned business unit codes:

Business Unit Code per Site	Location
PHL01	ExportBank Plaza Building, Makati City
PHL02	Clark Special Economic Zone
PHL03	Burgundy Corporate Tower, Makati City
PHL04	Camarines Sur Information Technology

[36] Exhibits "I" and "I-1".
[37] Exhibit "R-1", pp. 4 and 5.
[38] The sum of ₱1,206,186,619.00, ₱1,173,272,664.00 and ₱46,943,363.00.

	Park
PHL05	Davao City – TESDA
PHL06	Luisa Avenue Square IT Park, Davao City

Note that the assigned business unit code for petitioner's facility located at the CSEZ is PHL02. The ICPA accounted for and compared petitioner's total revenues for FY 2008, as reflected in its Breakdown of Total Revenues per Site[39] and as declared in its amended Annual Income Tax Return, as follows:

	EXEMPT	**SPECIAL RATE**	**REGULAR RATE**
	(Site: PHL01, PHL03, PHL04, PHL06)	(Site: PHL02)	(Site: PHL05)
Revenue per Breakdown of Revenues per Site	₱1,206,186,614.08	₱1,173,272,664.27	₱46,943,362.65
Revenue per Amended 2008 Annual Income Tax Return	1,206,186,619.00	1,173,272,664.00	46,943,363.00
Difference	**(₱4.92)**	**₱0.27**	**(₱0.35)**

Based on the above table, petitioner's reported "EXEMPT" revenue in the amount of ₱1,206,186,619.00 was earned by its business facilities located in: (a) Exportbank Plaza Building, Makati City; (b) Burgundy Corporate Tower, Makati City; (c) Camarines Sur Information Technology Park; and (d) Luisa Avenue Square IT Park, Davao City with the corresponding business unit codes of PHL01, PHL03, PHL04, and PHL06, respectively. Petitioner submitted the related Registration Agreement[40] and Supplemental Agreements[41] it executed with PEZA, and the Certification from PEZA[42] to prove that these business facilities were granted ITH incentives for four (4) years including the subject FY 2008.

[39] Exhibit "Y".
[40] Exhibit "DD-1".
[41] Exhibits "DD-2", "DD-3", and "DD-4".
[42] Exhibit "HH".

On the other hand, petitioner's reported revenue in the amount of ₱46,943,363.00, which was subjected to the regular income tax rate of thirty-five percent (35%), pertained to its business facility located in Davao City-TESDA (PHL05) that was not covered by a PEZA registration.[43]

As regards petitioner's reported revenue in the amount of ₱1,173,272,664.00 which was generated by its CSEZ facility (PHL02) and on which a 5% gross income tax was paid, petitioner submitted to the Court various computer-generated billing invoices[44], debit memo[45], Breakdown of Time and Cost Charges[46], and Schedule of Revenue for the Company's facility in the CSEZ[47] to prove that the said revenue was actually derived from its PEZA-registered business activities within the CSEZ. Upon examination of these documents, the Court-commissioned ICPA noted the following exceptions[48]:

Nature	**Reference (Exh. "R-1")**	**Amount**
Revenues generated from the Company's registered activities within the CSEZ reported in the 2008 Audited Financial Statements (Exhibit "X") and reported under the 5% Special Rate per Amended 2008 Annual Income Tax Return (Exhibit "T") which are supported with computer-generated billing invoices not dated within the period July 1, 2007 to June 30, 2008 issued by the Company to non-resident customers (Exhibit "GG")	Annex D, Page 21	₱ 3,872,713.58
Documents not available during the time of review		1,975,116.00
Total		**₱5,847,829.58**

Out of the ₱1,173,272,664.27 revenue, only the amount of ₱1,167,424,834.69 was verified by the ICPA to have been earned by petitioner from its PEZA-registered

[43] Exhibit "R-1", Findings and Observations, No. 6, p. 6.
[44] Exhibits "AA" and "GG", inclusive of sub-markings.
[45] Exhibit "EE".
[46] Exhibit "FF", inclusive of sub-markings.
[47] Exhibit "Z".
[48] Exhibit "R-1", p. 8.

activities within the CSEZ for the period July 1, 2007 to June 30, 2008. Below is the breakdown of the amount of ₱1,167,424,834.69[49]:

Nature	**Reference (Exh. "R-1)**	**Amount**
Revenues generated from the Company's registered activities within the CSEZ reported in the 2008 Audited Financial Statements (Exhibit "X") and reported under the 5% Special Rate per Amended 2008 Annual Income Tax Return (Exhibit "T") which are supported with computer-generated billing invoices dated within the period July 1, 2007 to June 30, 2008 issued by the Company to non-resident customers (Exhibit "AA")	Annex A, Page 18	₱ 1,150,343,972.51
"Inter-unit Revenues" generated from the Company's registered activities within the CSEZ reported in the 2008 Audited Financial Statements (Exhibit "X") and reported under the 5% Special Rate per Amended 2008 Annual Income Tax Return (Exhibit "T") which are supported with computer-generated debit notes dated within the period July 1, 2007 to June 30, 2008, issued by the Company to its non-resident affiliates (Exhibit "EE")	Annex B, Page 19	651,699.49
Revenues generated from the Company's registered activities within the CSEZ reported in the 2008 Audited Financial Statements (Exhibit "X") and reported under the 5% Special Rate per Amended 2008 Annual Income Tax Return (Exhibit "T") which are supported with Breakdown of Time and Cost Charges (Exhibit "FF") for non-resident customers covering the period July 1, 2007 to June 30, 2008	Annex C, Page 20	16,429,162.69
Total		**₱1,167,424,834.69**

However, the Court finds that out of the ₱1,167,424,834.69 revenue recommended by the ICPA as pertaining to petitioner's PEZA-registered activities within the CSEZ, the amount of ₱16,429,162.69 that was supported with Breakdown of Time and Cost Charges[50] should be disallowed. The Court cannot give credence to the Breakdown of Time and Cost Charges as it merely shows

[49] Exhibit "R-1", p. 8.
[50] Exhibit "FF", inclusive of sub-markings.

computations and does not establish that a particular amount was actually billed to a certain customer for services rendered by petitioner within the CSEZ.

In fine, out of the ₱1,173,272,664.00 total revenue subjected to 5% gross income tax, only the amount of ₱1,150,995,672.00 (₱1,167,424,834.69 less ₱16,429,162.69) was actually proved to have been earned by petitioner from its PEZA-registered activities within the CSEZ for the FY ending June 30, 2008. But since petitioner is exempt from payment of income tax on income earned from its PEZA-registered activities within the CSEZ for the FY ending June 30, 2008, only the amount of ₱11,916,827.02 representing the 5% income tax for its CSEZ revenue of ₱1,150,995,672.00 for FY 2008 constitutes erroneously paid tax, which is the proper subject for refund pursuant to Sections 204(C) and 229 of the NIRC of 1997, as amended. Below is the computation of the erroneous income tax payment of ₱11,916,827.02:

Income Tax Claimed For Refund	₱ 12,147,471.73
Multiplied by: Allocation Factor	
Validly Substantiated CSEZ Revenues	₱1,150,995,672.00
Total Revenues Subjected to 5% Special Rate	1,173,272,664.00
Allocation Factor	0.9810129455
Refundable Erroneously Paid Income Tax	**₱ 11,916,827.02**

Well settled is the rule that the taxpayer needs to establish not only that the refund is justified under the law, but also the correct amount that should be refunded. If the latter requisite cannot be ascertained with particularity, there is cause to deny the refund, or allow it only to the extent of the sum that is actually proven as due. Tax refunds partake the nature of tax exemptions and are thus construed *strictissimi juris* against the person or entity claiming the exemption. The burden in proving the claim for refund necessarily falls on the taxpayer.[51] Petitioner in this case has only substantiated the amount of P11,916,827.02,

[51] Far East Bank and Trust Company As Trustee of Various Retirement Present: Funds vs. Commissioner of Internal Revenue and The Court of Appeals, G.R. NO. 138919, May 02, 2006.

hence, is only entitled to the refund of such amount it has sufficiently proved.

WHEREFORE, the instant Petition for Review dated October 15, 2010 filed by petitioner Sutherland Global Services Philippines, Inc., is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the amount of **₱11,916,827.02**, representing its erroneously paid 5% gross income tax for the fiscal year ending June 30, 2008.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
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