REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

SONY ERICSSON MOBILE COMMUNICATIONS INTERNATIONAL AB,
Petitioner,

CTA Case No. 8059

- versus-

Members:

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JUN 11 2013
11:59 a.m.

x- x

DECISION

COTANGCO-MANALASTAS, *J.*:

STATEMENT OF THE CASE

This case is a claim for refund or issuance of tax credit certificate filed by Sony Ericsson Mobile Communications International AB in the amount of ₱12,632,258.26, allegedly representing unutilized input value-added tax (VAT) on purchases of goods and services and importation of goods attributable to zero-rated sales for the period covering January 1, 2008 to December 31, 2008.

STATEMENT OF FACTS

Petitioner Sony Ericsson Mobile Communications International AB is a branch office duly registered with and licensed by the Securities and Exchange Commission to do business in the Philippines, with principal office address at 7th Floor Octagon Building, San Miguel Avenue, Ortigas Complex, San Antonio, Pasig City.[1] It is also a VAT-registered entity as evidenced by its Bureau of Internal Revenue (BIR) Certificate of Registration No. OCN3R0000172137 and was assigned a Taxpayer's Identification Number (TIN) 219-660-821-000.[2]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner filed its Quarterly VAT Returns for the first quarter[3], second quarter[4], third quarter[5], and fourth quarter[6] of taxable year 2008, broken down as follows:

EXHIBIT	YEAR 2008	ZERO-RATED SALES/RECEIPTS	INPUT VAT
D	1st Quarter	₱ 29,060,379.43	₱ 3,460,297.47
E	2nd Quarter	38,523,884.61	2,510,522.72
F	3rd Quarter	35,965,980.50	2,714,357.33
G	4th Quarter	45,673,301.26	3,947,080.74
TOTAL		**₱ 149,223,545.80**	**₱ 12,632,258.26**

Petitioner filed its application for refund or issuance of tax credit certificate for its alleged unutilized input VAT in the amount of ₱12,632,258.26, along with all supporting documents, on March 30, 2010 with Revenue District Office No. 43-Pasig.[7]

On March 31, 2010, a day after petitioner filed its administrative claim for refund with respondent, petitioner filed the instant Petition for Review with the Court of Tax Appeals.

On April 27, 2010, respondent filed her answer[8] stating the following special and affirmative defenses:

[1] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 74.
[2] Par. 3, Summary of Admitted Facts, JSFI, docket, p. 74; Exhibit "A".
[3] Exhibit "D".
[4] Exhibit "E".
[5] Exhibit "F".
[6] Exhibit "G".
[7] Exhibits "C" and "C-1".
[8] Docket, pp. 28-30.

"6. The claim for refund is still under examination by the respondent's Bureau;

7. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund;

8. The grant of a claim for refund [sic] tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;

9. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same."

On June 8, 2010, respondent filed her Pre-Trial Brief[9]; while petitioner filed its Pre-Trial Brief[10] on June 15, 2010. After submission thereof, the Court issued a Resolution[11] on September 3, 2010 giving both parties a period of fifteen (15) days within which to file their Joint Stipulation of Facts and Issues. In compliance thereof, the parties filed their Joint Stipulation of Facts and Issues[12] on September 22, 2010. Thereafter, the Court issued a Pre-Trial Order[13] on September 28, 2010 declaring, among others, that the pre-trial is terminated.

On December 16, 2010, respondent filed a Motion to Dismiss[14], claiming that this Court has no jurisdiction to act upon the instant petition since the same was prematurely filed. Petitioner filed a Comment (On Respondent's Motion to Dismiss)[15], contesting, among others, that respondent's motion was filed out of time and that respondent failed to set the motion for hearing. On February 16, 2011, the Court issued a Resolution[16] denying respondent's Motion to Dismiss.

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[9] Docket, pp. 33-34.
[10] Docket, pp. 41-51.
[11] Docket, p. 61.
[12] Docket, pp. 74-79.
[13] Docket, pp. 81-86.
[14] Docket, pp. 102-106.
[15] Docket, pp. 117-141.
[16] Docket, pp. 145-148.

On August 11, 2011, petitioner filed its Motion to Avail the Provisions of Rule 13 of the Revised Rules of the Court of Tax Appeals[17], praying for the appointment of Atty. Clifford Chua as an Independent Certified Public Accountant (CPA). During the hearing on August 15, 2011[18], the Court granted petitioner's motion and directed the Independent CPA to submit his report within 45 days. On September 30, 2011, the Independent CPA submitted his report[19] in compliance with the Court's Order.

On April 12, 2012, petitioner filed its Formal Offer of Evidence[20], offering Exhibits "A" to "DD-1", inclusive of sub-markings. Respondent filed her Comment[21] on April 23, 2012, stating that she has no objection to the admission of said exhibits, except Exhibits "A", "B", "B-1", and "B-2" for being mere photocopies. The Court then issued a Resolution[22] on May 7, 2012, admitting most of the exhibits offered and denying the rest for not being found in the case records.

Subsequently, petitioner filed a Motion for Partial Reconsideration (On Petitioners Formal Offer of Evidence)[23], reasoning that some of the exhibits not found by the Court were used by the Independent CPA in his report and were confirmed to be part of the exceptions noted, hence, petitioner found it unnecessary to submit the same. Petitioner prayed that it be given an additional fifteen (15) days to submit the rest of the missing exhibits. On June 13, 2012, petitioner filed its Compliance/Submission (On Petitioner's Formal Offer of Evidence)[24], submitting the exhibits in connection with its Motion for Partial Reconsideration. Petitioner also filed a Manifestation[25] on August 17, 2012, stating that upon consultation with the Independent CPA, the original copies of Exhibits "V-939" and "AA-1" cannot be produced and therefore prays that the rest of the exhibits previously submitted be admitted. On September 14, 2012, the Court issued a Resolution[26] partially granting the Motion for Partial Reconsideration.

[17] Docket, pp. 198-201.
[18] Minutes of the hearing held on August 15, 2011, docket, p. 206.
[19] Docket, pp. 216-257.
[20] Docket, pp. 346-352.
[21] Docket, pp. 501-504.
[22] Docket, pp. 506-507.
[23] Docket, pp. 508-511.
[24] Docket, pp. 516-518.
[25] Docket, pp. 573-574.
[26] Docket, pp. 577-578.

During the November 15, 2012 hearing[27], the counsel for respondent manifested that respondent will no longer present any evidence. Accordingly, the Court ordered both parties to submit within thirty (30) days their Memoranda.

On January 11, 2013, the case was submitted for decision, considering respondent's Memorandum[28] submitted on December 14, 2012 and petitioner's Memorandum[29] filed on January 9, 2013.[30]

STATEMENT OF ISSUES

The issues[31] stipulated by the parties for this Court's resolution are as follows:

> "A. WHETHER OR NOT PETITIONER'S SALES OF SERVICES TO ITS AFFILIATE COMPANIES LOCATED OUTSIDE THE PHILIPPINES ARE ZERO-RATED SALES.
>
> B. WHETHER OR NOT PETITIONER HAS UNUTILIZED INPUT VAT FOR THE FOUR QUARTERS OF TAXABLE YEAR 2008 ATTRIBUTABLE TO ITS SALES OF SERVICES TO ITS AFFILIATE COMPANIES LOCATED OUTSIDE THE PHILIPPINES IN THE TOTAL AMOUNT OF ₱12,632,258.26.
>
> C. WHETHER OR NOT PETITIONER'S SALES OF SERVICES TO ITS AFFILIATE COMPANIES LOCATED OUTSIDE THE PHILIPPINES FOR THE FOUR QUARTERS OF TAXABLE YEAR 2008 ARE PROPERLY SUBSTANTIATED BY INVOICES AND OFFICIAL RECEIPTS.
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> D. WHETHER OR NOT THE UNUTILIZED CREDITABLE INPUT VAT OF THE PETITIONER FOR THE FOUR QUARTERS OF TAXABLE YEAR 2008,

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[27] Minutes of the hearing held on November 15, 2012, docket, p. 580.
[28] Docket, pp. 581-590.
[29] Docket, pp. 603-621.
[30] Resolution dated January 11, 2013, docket, p. 625.
[31] Docket, pp. 77-78.

IN THE TOTAL AMOUNT OF ₱12,632,258.26, WERE NOT UTILIZED IN THE SUCCEEDING TAXABLE QUARTER(S) OR APPLIED AGAINST ANY OUTPUT VAT LIABILITY OF THE PETITIONER.

E. WHETHER OR NOT THE PETITIONER SEASONABLY FILED ITS ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND.

F. WHETHER OR NOT PETITIONER IS ENTITLED TO A TAX CREDIT/REFUND FOR ITS UNUTILIZED CREDITABLE INPUT VAT FOR THE FOUR QUARTERS OF TAXABLE YEAR 2008 IN THE TOTAL AMOUNT OF ₱12,632,258.26."

The above-enumerated issues can be summarized as follows:

Whether or not petitioner is entitled to the issuance of a tax credit certificate or refund of its purported unutilized input VAT for the four quarters of taxable year 2008 in the total amount of ₱12,632,258.26.

DISCUSSION/RULING

The National Internal Revenue Code (NIRC) provision pertinent to a claim for issuance of tax credit certificate or refund of unutilized input VAT attributable to zero-rated or effectively zero-rated sales is Section 112(A) of the NIRC of 1997, as amended, which provides:

"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 sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *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."

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

1. that there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes are attributable to zero-rated or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and
5. that the claim for refund was filed within the two-year prescriptive period.

Before delving on the merits of petitioner's claimed input VAT of ₱12,632,258.26, the Court finds it appropriate to address first the fifth requisite pertaining to the timeliness of the filing of petitioner's administrative claim.

Pursuant to Section 112(A) of the NIRC of 1997, as amended, a taxpayer must file an application for refund or tax credit of unutilized or excess creditable input VAT attributable to its zero-rated sales within two (2) years after the close of the taxable quarter when the sales were made.

In the instant petition, the subject of the claim for refund or issuance of tax credit certificate is petitioner's unutilized creditable input VAT attributable to its alleged zero-rated sales for the four quarters of taxable year 2008. Counting from March 31, 2008, June 30, 2008, September 30, 2008, and December 31, 2008, the close of the first, second, third, and fourth quarters, respectively, petitioner had until March 31, 2010, June 30, 2010, September 30, 2010, and December 31, 2010, respectively, within which to file its administrative claim with respondent. Evidently, petitioner timely filed its administrative claim for the period covering January 1, 2008 to December 31, 2008 on March 30, 2010[32].

As to petitioner's judicial claim, the applicable provision is Section 112(C) of the NIRC of 1997, as amended by Republic Act (R.A.) No. 9337, which reads as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.*
> –
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, **the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim**

[32] Par. 5, Summary of Admitted Facts, JSFI, docket, p. 75.

> **with the Court of Tax Appeals.**" *(Emphasis supplied)*

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

In *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc. (Aichi)*[33], the Supreme Court emphasized that failure to await the decision of the Commissioner or the lapse of 120-day period prescribed in Section 112(D) [now Section 112(C)] of the NIRC of 1997 amounts to a premature filing of a judicial claim. And the premature filing of a claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.

Since petitioner's administrative claim for refund was filed on March 30, 2010, the 120-day period enunciated under Section 112(C) ended on July 28, 2010. Petitioner, therefore, may appeal within 30 days or until August 27, 2010 with this Court.

In the instant case, however, petitioner worked against time and filed its Petition for Review on **March 31, 2010**, without waiting for the 120-day period to lapse. Apparently, petitioner failed to exhaust the administrative remedies available under the law.

However, in the recent Supreme Court decision in the case entitled *Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation and Philex Mining Corporation*[34], the High Tribunal provided for an exception to the application of the 120+30 day mandatory and jurisdictional periods based on equitable estoppel, *to wit*:

> "To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT

[33] G.R. No. 184823, October 6, 2010.
[34] G.R. Nos. 187485, 196113, and 197156, dated February 12, 2013.

System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the *Atlas* doctrine, **except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was adopted**, which again reinstated the 120+30 day periods as mandatory and jurisdictional."

xxx xxx xxx

BIR Ruling No. DA-489-03 does provide a valid claim for equitable estoppel under Section 246 of the Tax Code. BIR Ruling No. DA-489-03 *expressly* states that the "**taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review**." Prior to this ruling, the BIR held, as shown by its position in the Court of Appeals, that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed.

There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. The second exception is where the Commissioner, *through a general interpretative rule* issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.

xxx xxx xxx

> BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was in fact asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period. Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional." *(Emphasis supplied)*

To reiterate, petitioner filed its judicial claim on March 31, 2010, ***after*** the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 and ***before*** October 6, 2010 when the *Aichi doctrine* was adopted. BIR Ruling No. DA-489-03 expressly states that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review". Petitioner can thus claim the benefit of BIR Ruling No. DA-489-03, which shields the filing of its judicial claim from the vice of prematurity.

Therefore, petitioner can file its judicial claim without waiting for the 120-day period to expire. Clearly, the judicial claim for refund was also seasonably filed on March 31, 2010.

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

As regards the first requisite, petitioner asserts that its sale of services to its affiliate abroad is zero-rated pursuant to

Section 108(B)(1) and (2) of the NIRC of 1997, which is quoted hereunder for ready reference:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> > (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
> >
> > (2) **Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed,** the consideration for which is **paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)**;" *(Emphasis supplied)*

The Supreme Court held in the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[35] that in order for the supply of services be VAT zero-rated under Section 102(b)(2) [now Section 108(B)(2)] of the NIRC, as amended, the following requisites must be satisfied: /

[35] G.R. No 153205, January 22, 2007.

1. The services must be other than processing, manufacturing or repacking of goods;
2. Payment of such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and
3. The recipient of such services is doing business outside the Philippines.

In the same case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[36], the Supreme Court further elaborated that:

> "The Tax Code not only requires that the services be other than 'processing, manufacturing or repacking of goods' and that payment for such services be in acceptable foreign currency accounted for in accordance with BSP rules. Another essential condition for qualification to zero-rating under Section 102(b)(2) is that the **recipient of such services is doing business *outside* the Philippines**. While this requirement is not expressly stated in the second paragraph of Section 102(b), this is clearly provided in the first paragraph of Section 102(b) where the listed services must be **'for other persons doing business outside the Philippines.'** The phrase 'for other persons doing business outside the Philippines' not only refers to the services enumerated in the first paragraph of Section 102(b), but also pertains to the general term 'services' appearing in the second paragraph of Section 102(b). In short, services other than processing, manufacturing, or repacking of goods must likewise be performed for persons doing business outside the Philippines.
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> xxx xxx xxx
>
> Thus, when Section 102(b)(2) speaks of **'[s]ervices other than those mentioned in the preceding subparagraph,'** the legislative intent is that only the services are different between subparagraphs 1 and 2. The requirements for zero-rating, including the essential condition that the

[36] *Ibid.*

> recipient of services is doing business outside the Philippines, remain the same under both subparagraphs.
>
> Significantly, the amended Section 108(b) [previously Section 102(b)] of the present Tax Code clarifies this legislative intent. Expressly included among the transactions subject to 0% VAT are '[s]ervices other than those mentioned in the [first] paragraph [of Section 108(b)] rendered to a **person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines** when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP."

This Court finds that petitioner complied with the first requirement. Petitioner is primarily engaged in providing marketing services to its affiliate company, Sony Ericsson Mobile Communications AB, which is located outside the Philippines, by organizing promotional events to launch new products and services under the brand name of "Sony Ericsson" in the local market.[37] The Sales Promotion and Marketing Services Agreement[38] between petitioner and Sony Ericsson Mobile Communications AB provides that the local branch shall perform sales promotion services, implementation of marketing strategies and other related services collectively set out in *Appendix A* of said agreement. Clearly, such marketing services are not in the same category as "processing, manufacturing or repacking of goods".

Likewise, the second requisite was also complied with. For services rendered for the year 2008, petitioner received foreign currency payments which were accounted for in accordance with the BSP rules and regulations as evidenced by official receipts[39] issued by petitioner and by bank statements[40].

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[37] Judicial Affidavits of Christian M. Cantera, Exhibits "I", "Q" and "DD".
[38] Exhibit "J".
[39] Exhibits "Y-1" to "Y-23".
[40] Exhibits "Y-1-A" to "Y-23-A".

Furthermore, a scrutiny of petitioner's Summary of Zero-Rated Sales of Services[41] and supporting VAT official receipts[42] shows that petitioner's sales of services in the aggregate amount of ₱149,223,545.80 to Sony Ericsson Mobile Communications AB, its sole non-resident foreign client/affiliate, are properly supported by valid VAT zero-rated official receipts[43], qualifying it for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

With regard to the third requisite, this Court also finds that petitioner has sufficiently established that services were rendered to a non-resident person not engaged in trade or business in the Philippines. As shown in the records, during the period of January 1 to December 31, 2008, petitioner rendered services to Sony Ericsson Mobile Communications AB. It is a non-resident foreign corporation engaged in business conducted outside the Philippines, as indicated in the Certification of Non-Registration[44] of Sony Ericsson Mobile Communications AB issued by the Philippine Securities and Exchange Commission, as well as the Certificate of Registration[45] of Sony Ericsson Mobile Communications AB issued by Bolagsverket Swedish Companies Registration Office. Petitioner likewise presented the Articles of Association[46] of its head office, "Sony Ericsson Mobile Communications *International* AB", to prove that its head office and Sony Ericsson Mobile Communications AB are two separate entities.

Anent the second requisite for the entitlement to a refund of input VAT, petitioner reported input VAT for the four quarters of 2008 in the aggregate amount of ₱12,632,258.26, details of which are as follows:

Exhibit	Year 2008	Purchases of Goods Other than Capital Goods	Importation of Goods Other than Capital Goods	Purchase of Services	Input VAT
D	1st Quarter	₱ 197,075.46	₱ 1,009,766.00	₱ 2,253,456.01	₱ 3,460,297.47
E	2nd Quarter	7,294.98	449,757.00	2,053,470.74	2,510,522.72
F	3rd Quarter	170,045.69	468,284.00	2,076,027.64	2,714,357.33
G	4th Quarter	231,763.70	772,383.00	2,942,934.04	3,947,080.74
				Total	**₱ 12,632,258.26**

[41] Exhibits "W-1-A", "W-2-A", "W-3-A", and "W-4-A".
[42] *Supra*, Note 39.
[43] *Ibid.*
[44] Exhibit "L".
[45] Exhibit "K".
[46] Exhibit "H".

The Independent CPA, Mr. Clifford E. Chua, summarized the results of his verification of the claimed input VAT of petitioner in the amount of ₱12,638,459.15[47], as follows:[48]

Total amount of input VAT being claimed during the year				₱ 12,638,459.15
	Exceptions noted	**Exhibit**	**Amount**	
A.	Certain local purchases of services were not supported by VAT official receipts	V-1 to V-5	₱ 2,311.58	
B.	Certain local purchases of goods were not supported by VAT invoices	V-6 to V-7	36,520.72	
C.	Certain invoices and official receipts were dated outside the year of claim	V-8 to V-50	202,139.84	
D.	Certain invoices and official receipts did not show the TIN of the Company	V-51 to V-64	153,978.76	
E.	Certain invoices and official receipts did not show the address of the Company	V-65 to V-67	15,803.02	
F.	Certain invoices and official receipts contain erroneous VAT computation	V-68 to V-87	56,807.95	
G.	Certain invoices and official receipts with no separate VAT computation	V-88 to V-120	64,958.22	
H.	Importations supported by Import Entry and Internal Revenue Declaration which are dated outside the year of claim	V-121 to V-126	32,190.00	
I.	Importations with no supporting documents	V-127 to V-221	1,646,085.00	
J.	Local purchases with no documents	V-222 to V-884	5,081,071.81	
K.	Excess amount of input VAT between the VAT claimed per Petition and input VAT per return		6,200.89	7,298,067.79
	Amount of Input VAT without exceptions	**V-885 to V-1405**		**₱ 5,340,391.36**

It must be emphasized that the Independent CPA's findings under "Exceptions noted" are disallowed for failure to meet the substantiation requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, and as implemented by Sections 4.110-1, 4.110-8, and 4.113-1 of Revenue Regulations No. 16-2005. Hence, total disallowances per Independent CPA report amounted to ₱7,298,067.79.

However, the amount of ₱5,340,391.36 noted by the Independent CPA as without exceptions includes the amount of ₱24.64[49], which should be deducted since the supporting

47 Difference of ₱6,200.89 per Petition for Review; taken up by Independent CPA as ₱12,638,459.15 but also included in his report as exceptions noted (K. Excess amount of input VAT between the VAT claimed per Petition and input VAT per return), Exhibit "AA".

48 Exhibit "AA".

49 Exhibit "V-939".

document cannot be found in the records of this case. Therefore, the total of petitioner's substantiated input taxes for the four quarters of 2008 is ₱5,340,366.72[50].

Petitioner likewise complied with the third requisite that the input taxes are attributable to its zero-rated sales. It was ascertained that the purchases of goods and services were used in connection with services rendered to Sony Ericsson Mobile Communications AB.[51] Moreover, records show that petitioner's revenues for 2008 were generated solely from services rendered to Sony Ericsson Mobile Communications AB.

As to the fourth requisite, it was likewise sufficiently established that petitioner's claimed input taxes were not applied against any output VAT liability during the period of claim and in the succeeding quarters since there is no output VAT for the period from January 2008 to December 2010[52] from which the input taxes may be credited or applied. Even though petitioner carried over the said input VAT to the succeeding first quarter of taxable year 2009 until the third quarter of taxable year 2010, the same remained unutilized until it was fully deducted as "VAT Refund/TCC Claimed"[53] in the third quarter of taxable year 2010. Stated otherwise, the input tax of ₱15,370,774.84[54] as of the end of third quarter of taxable year 2010 carried over to the last quarter of that same year,[55] no longer included the claimed input VAT.

In sum, the Court finds that petitioner has sufficiently proven its entitlement to a refund or issuance of tax credit certificate for its unutilized input VAT attributable to zero-rated sales for the year 2008, but in the reduced amount of ₱5,340,366.72.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of ₱5,340,366.72 in favor of petitioner, representing petitioner's

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[50] ₱5,340,391.36 less ₱24.64.
[51] Independent CPA Report, p. 7, Exhibit "AA".
[52] Exhibits "D", "E", "F", "G", "M", "N", "O", "P", "P-1", "R", "S", "T", "T-1", and "U" .
[53] Line 23D, Exhibit "T-1" and Exhibit "Z-1".
[54] Line 29, Exhibit "T-1" and Exhibit "Z-1".
[55] Line 20A, Exhibit "U" and Exhibit "Z-2".

unutilized input VAT attributable to its zero-rated sales for the period covering January 1, 2008 to December 31, 2008.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CONCURS:

LOVELL R. BAUTISTA
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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