REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

DAICOLOR PHILIPPINES, INC.,
Petitioner,

C.T.A. CASE NO. 7629

- versus -

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

ONE-STOP-SHOP INTER-AGENCY TAX CREDIT AND DUTY DRAWBACK CENTER, DEPARTMENT OF FINANCE (OSS-DOF) and COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

DEC 0 3 2009
4:07 p.m.

x- x

DECISION

CASTAÑEDA, JR., *J.*:

This case involves a claim for refund or issuance of a tax credit certificate in the amount of **TWO MILLION SIX HUNDRED TWELVE THOUSAND SEVEN HUNDRED FIFTEEN PESOS AND 07/100 (P2,612,715.07)**, allegedly representing petitioner's unutilized input value-added tax (VAT) arising from its zero-rated transactions covering the period January 2005 to December 2005.

1341

Daicolor Philippines, Inc. (Petitioner) is a corporation duly existing under the laws of the Philippines with Securities and Exchange Commission (SEC) Registration No. A1997-16078 dated February 25, 1999 and with business address at Lot 7 D-8 Canlubang, Industrial Estate Canlubang, Calamba City, Laguna.[1] Petitioner is a Board of Investments (BOI)-registered company, with BOI Certificate of Registration No. EP 97-208 dated September 25, 1997.[2] It is duly registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, with Taxpayer Identification No. 005-303-840.[3]

Respondent is the duly created One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (OSS-DOF) with authority, among others, to accept applications for tax credits and/or duty drawbacks and evaluate and grant the same.[4]

Respondent Commissioner of Internal Revenue (CIR) is the duly appointed officer 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. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[5]

Petitioner filed its Quarterly VAT Returns for the four quarters of taxable year 2005 on the following dates:

---

[1] Par. 3, Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), *rollo,* p. 148.
[2] Exhibit "C".
[3] Exhibit "A".
[4] Par. 1, Facts Admitted, JSFI, *rollo,* p. 147.
[5] Par. 2, Facts Admitted, JSFI, *rollo,* p. 147.

2005	Date of Filing	Exhibit
First Quarter	April 25, 2005	"N"
Second Quarter	July 25, 2005	"M"
Third Quarter	October 20, 2005	"L"
Fourth Quarter	January 20, 2006	"K"

On April 25, 2007, petitioner filed its administrative claim with the OSS-DOF for the refund or issuance of tax credit certificate for its alleged excess input tax for taxable year 2005 in the amount of P2,612,715.07.[6]

On the same day, the instant *Petition for Review* was filed before this Court. In the said *Petition*, petitioner alleged, *inter alia*, that "the OSS-DOF has failed to act on the administrative claim for refund or the application for the issuance of TCC".[7]

By way of *Answer*[8] filed on July 12, 2007, respondent CIR alleged the following Special and Affirmative Defenses:

> "5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue (BIR);
>
> 6. The amount of P2,612,715.07 being claimed by petitioner as alleged unutilized input VAT arising from its zero-rated transaction covering the period January to December 2005 is not properly documented;
>
> 7. Petitioner must prove that it has complied with the provisions of Sections 112 (A) and (D) and 229 of the National Internal Revenue Code of 1997 (1997 Tax Code) on the prescriptive period for claiming tax refund/credit;
>
> 8. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98, **otherwise there would be no sufficient compliance with the filing of administrative claim for refund, the administrative claim thereof being mere pro-forma, which is a condition sine qua non prior to the filing of judicial claim** in accordance with the provision of Section 229 of the 1997 Tax Code.

[6] Exhibit "Z".
[7] Par. 8, Petition for Review, *rollo*, p. 3.
[8] *Rollo*, pp. 36 to 41.

9. Petitioner must prove that it has complied with the invoicing requirements mentioned in Sections 110 and 113 of the 1997 Tax Code, as amended, in relation to the provisions of Revenue Regulations 7-95.

10. In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit **(Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil. 670);**

11. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and** as such; they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).**

SPECIAL AND AFFIRMATIVE DEFENSE

12. The Court of Tax Appeals has no jurisdiction to entertain the instant petition for review for failure on the part of the petitioner to comply with the provision of Section 112 (D) of the 1997 Tax Code which provides, thus:

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

> 13. As stated in the petition, petitioner filed the administrative claim for refund with the Bureau of Internal Revenue on April 25, 2007. On the same date, the instant petition was filed. Obviously the 120 days given to the Commissioner to decide on the claim has not yet lapsed when the petition was filed. The petition was prematurely filed, hence it must be dismissed for lack of jurisdiction."

For its part, respondent OSS-DOF filed its *Answer*[9] on August 29, 2007 and alleged the following affirmative defenses:

> "***Affirmative Allegations and Defenses***
>
> **VIII.**
>
> Petitioner has never filed a claim for tax credit and has, accordingly, never complied with the substantial and procedural requirements for filing a claim for tax credit. One such requirement is the payment of filing fee under Department of Finance (DOF) Department Order No. 49-2000 which provides in part:
>
> xxx xxx xxx
>
> Petitioner has never paid any filing fee mandated under the said DOF Department Order No. 49-2000 in connection with its alleged claim for tax credit covering the quarterly periods January to December 2005. For this reason, the alleged claim for tax credit for the period January to December 2005 is not considered filed.
>
> Notwithstanding a letter dated 4 May 2007 from the Respondent advising the petitioner of its documentary deficiencies for filing a claim, Petitioner failed to comply therewith.
>
> **IX.**
>
> Before a party may seek the intervention of the court, he should first avail of all the means afforded him by administrative processes.
>
> The doctrine of exhaustion of administrative remedies requires that when an administrative remedy provided by law, relief must be sought by exhausting this remedy before the

9 *Rollo*, pp. 60 to 72.

courts will act. No recourse can be had until all such remedies have been exhausted and special civil actions against administrative officers should not be entertained if superior administrative officers could grant relief. In ***Hon. Carale v. Hon Abarintos***, the Court enunciated the reasons for the doctrine, thus,

> Observance of the mandate regarding exhaustion of administrative remedies is a sound practice and policy. It ensures an orderly procedure which favors a preliminary sifting process, particularly with respect to matters peculiarly within the competence of the administrative agency, avoidance of interference with functions of the administrative agency by withholding judicial action until the administrative process had run its course, and prevention of attempts to swamp the courts by a resort to them in the first instance. The underlying principle of the rule rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly. There are both legal and practical reasons for this principle. The administrative process is intended to provide less expensive and more speedy solutions to disputes. Where the enabling statute indicates a procedure for administrative review, and provides a system of administrative appeal, or reconsideration, the courts, for reasons of law, comity and convenience, will not entertain the case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum.
>
> Accordingly, the party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court.

The Petition does not state a cause of action since, Petitioner has never filed any claim for tax credit which may be the basis of a right violated by an act or omission on the part of the Respondent. For failure of the petitioner to exhaust the doctrine of administrative remedies, the instant petition lacks cause of action.

X.

For a judicial claim for refund to prosper, however, the [taxpayer] must not only prove it is a VAT registered entity and that it filed its claims within the prescriptive period. It must substantiate the input VAT paid by purchase invoices or official receipts.

In this case, Petitioner merely submitted the letter dated 20 April 2007 but failed to submit the files mentioned therein as attached thereto. For this reason alone, Petitioner failed to present evidence of legal and factual bases for its claim for tax credit.

Even if the files purportedly attached to the Petitioner's April 20, 2007 letter were indeed submitted, the claim must still be denied for lack of sufficient evidence. 'Annex A' of Revenue Audit Memorandum Order No. 2-93 specifies the documents needed to support a claim for VAT credit applications. Among these are the following: (a) photocopies of invoices, import declaration, import entry document, official receipt or confirmation receipt evidencing payment of VAT; and (b) photocopies of export documents. These documents, however, are conspicuously absent in the list of files mentioned in the said April 20, 2007 letter as being attached thereto.

XI.

Granting without admitting that the Petitioner filed an administrative claim for tax credit on 25 April 2007, the filing thereof with respect to the portion of the claim covering the period January to March 2005 has already prescribed pursuant to Section 112 of the National Internal Revenue Code (NIRC), to wit:

> SEC. 112. Refunds or Tax Credits of Input. —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sale.* — <u>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,</u> 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 the output tax: xxx' (Underscoring supplied)

As a general rule, the intent of the legislature to be ascertained and thereafter given effect is the intent expressed in the language of the statute. If a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. The result rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent or will and preclude the court from construing it differently.

Therefore, the claim covering the period January to March 2005 should have been filed not later than 30 March 2007, which is the end of the two-year period after the close of the taxable quarter when the sales were made.

XII.

Input taxes subject of a claim for tax credit under Section 112 of the NIRC are not taxes which are illegally or erroneously collected for which the right of action, as provided under Section 229 of the NIRC, prescribes in two years beginning from the date of payment of the taxes erroneously or illegally collected.

The 2-year prescriptive period is intended to apply to suits or proceedings for the recovery of taxes, penalties or sums erroneously, excessively, illegally or wrongfully collected (Sec. 229, NIRC, as amended); accordingly, a claim for tax credit, authorized by law, would instead prescribe in ten (10) years under Art. 1144 of the Civil Code except when otherwise expressed by the Tax Code itself such as in value-added taxes in respect to the claim or application for tax refund or credit.

XIII.

Thus, the Petition is premature. Pursuant to Section 112 of the NIRC, the Petitioner's right to institute an action in court with respect to refunds or credit of input tax prescribes in 30 days reckoned from the denial or inaction on the part of the Commissioner of Internal Revenue, thus:

> (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 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, <u>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.</u>

Since there is clearly no decision to speak of which denies the Petitioner's claim, and since there was no claim filed which may the basis of inaction, Petitioner's right of action has therefore not yet accrued.

Granting without admitting that Petitioner has validly filed a claim for tax credit, still, no inaction may be attributed to the Respondent(s) since the 120-day period within which the Respondent(s) are required to act is reckoned from the date of submission of complete documents. As previously stated, Petitioner, failed to submit the invoices evidencing its input taxes paid as well as other documentary requirements.

XIV.

Section 7(a)(1) and (2) of Republic Act No. 1125, as amended, provides:

> SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal as herein provided:
>
> 1. **<u>Decisions</u>** of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>
> 2. **<u>Inaction</u>** by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal

> Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; (Emphasis supplied.)

To reiterate, Petitioner did not file a valid claim which may be the subject of a decision or inaction by the Commissioner of Internal Revenue. Accordingly, in the absence of a decision or inaction on the part of the Commissioner of Internal Revenue, the Court cannot acquire jurisdiction over the case.

XV.

Claims for tax refund/tax credit are construed in *'strictissimi juris'* against the taxpayer. This is due to the fact that claims for refund/credit partake the nature of an exemption from tax. Thus, it is incumbent upon the taxpayer to prove that it is indeed entitled to the refund/credit sought.

XVI.

Moreover, if indeed Petitioner filed a claim for tax credit on 25 April 2007 before respondent OSS-DOF, therefore, Petitioner's filing of the petition for review before this Honorable Court on the same day, 25 April 2007, constitutes forum-shopping which is in violation of the Rules of Court.

The essence of forum-shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, to secure a favorable judgment. Forum-shopping is present when in the two or more cases pending, there is identity of parties, rights of action and reliefs sought. It is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. It degrades the administration of justice and adds to the already congested court dockets.

To stamp out this abominable practice of trifling with the administration of justice, the Supreme Court promulgated Administrative Circulars 28-91 and 04-94, which are now embodied as Section 5 of Rule 7 of the Rules of Court, which provides:

xxx xxx xxx

Violation of the forum-shopping prohibition, by itself, is a ground for dismissal of the instant Petition." (*Citations omitted*)

The parties' *Joint Stipulation of Facts and Issues* filed on December 4, 2007 was approved, per this Court's *Resolution* dated January 9, 2008.

The trial on the merits then proceeded.

At the hearing held on October 20, 2008, counsel for respondents manifested that respondents are waiving their right to present evidence and moved for the filing of their memorandum within thirty (30) days from such date. The parties then were ordered to file their respective memorandum until November 19, 2008.[10]

On November 18, 2008, respondents filed a *First Motion for Extension of Time to File Memorandum*, which was granted by this Court via an *Order* dated November 19, 2008. This Court gave them until December 19, 2008 to file their memorandum.

On December 23, 2008, the case was submitted for decision, considering petitioner's *Memorandum* filed on November 19, 2008 and respondents' *Memorandum* filed on December 19, 2008.

STATEMENT OF ISSUES

The issues to be resolved as stipulated by the parties[11] are as follows:

> "1. Whether or not the instant petition for review is prematurely filed.
>
> 2. Whether or not Petitioner filed a valid administrative claim for refund.
>
> 3. Whether or not Petitioner's administrative claim for refund has already prescribed.
>
> 4. Whether or not Petitioner has unutilized input VAT in the amount of P2,612,715.07 for taxable year 2005.

[10] Resolution dated October 20, 2008, *rollo*, p. 620.
[11] Issues to be Resolved, JSFI, *rollo*, p. 148.

5. Whether or not Petitioner's alleged unutilized input VAT for taxable year 2005 have been applied against its output taxes.

6. Whether or not Petitioner's sales to PEZA-registered clients are considered as forming part of Petitioner's zero-rated sales.

7. Whether or not Petitioner is entitled to a refund in the amount of P2,612,715.07 as alleged unutilized input VAT on its alleged input VAT arising from its zero-rated transaction for the January 2005 to December 2005."

The above-enumerated issues can be summarized into a single issue, to wit:

"Whether or not petitioner is entitled to a refund of or issuance of tax credit certificate for its alleged unutilized input VAT in the amount of P2,612,715.07, covering the period of January 1, 2005 to December 31, 2005."

Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, lays down the requisites for claims for issuance of tax credit certificate or refund of input tax attributable to zero-rated or effectively zero-rated sales, which reads as follows:

"**SEC. 112. Refunds or Tax Credits of Input Tax. -**

(A) Zero-rated or Effectively Zero-rated Sales. - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the 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 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."

Based on the foregoing, petitioner must comply with the following requisites to be entitled to a refund:

1. 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; and
5. that the claim for refund was filed within the two-year prescriptive period.

On the issue of prescription, Section 112(A) of the NIRC of 1997 requires that the taxpayer's application for refund of unutilized or excess creditable input VAT, arising from its domestic purchases of goods and services subject to VAT which are attributable to its VAT zero-rated sales, must be made within two years after the close of the taxable quarter when the sales were made.

In the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*[12], the Honorable Supreme Court elucidated that the reckoning frame would always be the end of the quarter when the pertinent sale or transaction was made, regardless when the input VAT was paid.

The earliest period involved in the present judicial claim for refund or tax credit is the first quarter of 2005. Considering that the last day for the first

[12] G.R. No. 172129, September 12, 2008.

quarter of 2005 was March 31, 2005, it is from this date that the two-year prescriptive period commenced to run with respect to the administrative and judicial claim for refund. Petitioner therefore had until March 31, 2007, within which to file the administrative and judicial claims for refund or tax credit. Since the claim for refund was filed with the Department of Finance[13] and the *Petition for Review* with this Court only on April 25, 2007, the claim for the first quarter of 2005 fell outside the two-year prescriptive period required by law. Evidently, the claimed excess and unutilized creditable input taxes for the first quarter of 2005 is barred by prescription; while the claims for refund for the second, third, and fourth quarters fall within the two-year prescriptive period.

As regards the first requisite, petitioner's VAT Returns for the first to fourth quarters of taxable year 2005 reflected, out of the total sales of P716,245,494.41, zero-rated sales/receipts in the amount of P715,550,615.81, broken down as follows:

Exhibit No.	2005	Zero-Rated Sales	VAT Sales	Total Sales
"HH"	1st Quarter	P 138,503,722.43	P 23,988.70	P 138,527,711.13
"KK"	2nd Quarter	184,784,317.64	287,314.25	185,071,631.89
"NN"	3rd Quarter	206,279,743.17	242,780.00	206,522,523.17
"QQ"	4th Quarter	185,982,832.57	140,795.65	186,123,628.22
		P715,550,615.81	**P694,878.60**	**P716,245,494.41**

Petitioner's sales to Philippine Economic Zone Authority (PEZA)-registered enterprises may qualify for VAT zero-rating, pursuant to Section 106(A)(2)(a)(5) of the NIRC of 1997 and Section 3(2)(a) and (3) of Revenue Memorandum Circular No. 74-99, which provide:

> **"SEC. 106. Value-added Tax on Sale of Goods or Properties. -**

---

[13] Exhibit "Z".

(A) Rate and Base of Tax. -

xxx xxx xxx

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) Export Sales. - The term *'export sales'* means:

(5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws."

"**SECTION 3. Tax Treatment Of Sales Made By A VAT Registered Supplier From The Customs Territory, To A PEZA Registered Enterprise. -**

xxx xxx xxx

(2) If Buyer is a PEZA registered enterprise which is not embraced by the 5% special tax regime, hence, subject to taxes under the NIRC, e.g., Service Establishments which are subject to taxes under the NIRC rather than the 5% special tax regime:

(a) Sale of goods (i.e., merchandise). - This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916 in relation to ART. 77(2) of the Omnibus Investments Code.

xxx xxx xxx

(3) In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to ART. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the 'Cross Border Doctrine' of the VAT system.

> This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of the issuance of this Circular."

However, Section 106(A)(2)(a)(5) of the NIRC of 1997 should not be read in isolation but in conjunction with Section 113 of the same Code and as implemented by Section 4.108-1 of Revenue Regulations No. 7-95, which prescribes that a VAT-registered person shall for every sale, issue an invoice or 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, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
>
> **(1)** A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and
>
> **(2)** The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax."
>
> "**SECTION 4.108-1. Invoicing Requirements. –** All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:
>
> 1. the name, TIN and address of seller;
> 2. date of transaction;
> 3. quantity, unit cost and description of merchandise or nature of service;
> 4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
> 5. the word 'zero-rated' imprinted on the invoice covering zero-rated sales; and
> 6. the invoice value or consideration. Jr

xxx xxx xxx

> Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or receipts and this shall be considered as a 'VAT Invoice'. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax.
>
> If the taxable person is engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A 'VAT Invoice' shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the Code.

xxx xxx xxx"

Such invoice or receipt must be duly registered with the Bureau of Internal Revenue as prescribed under Section 237, in relation to Section 238 of the NIRC of 1997, to wit:

> "**SEC. 237. Issuance of Receipts or Sales or Commercial Invoices.** - All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service. xxx"
>
> "**SEC. 238. Printing of Receipts or Sales or Commercial Invoices.** - All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

xxx xxx xxx"

Clearly, from the foregoing provisions, it is imperative that the sales invoices supporting the export sales must comply with the invoicing requirements under the law and regulations, *i.e.*, they must be duly registered with the BIR and contain all the required information, such as (1) the imprinted word "zero-rated" and (2) the taxpayer's TIN-VAT number.

As verified by the Court-commissioned Independent Certified Public Accountant (CPA), Ms. Myra Celeste Dabalos, the zero-rated sales/receipts reported in petitioner's VAT Returns pertain to export sales and sales to PEZA-registered enterprises. In support thereof, petitioner submitted in evidence its List of Customers/Clients[14] and PEZA Certification[15] to prove that its clients are PEZA-registered enterprises, as well as the invoices marked as "Zero-Rated Sales for delivery to PEZA"[16].

The Court finds that out of the P715,550,615.81 reported zero-rated sales, the amount of P138,503,722.43 pertaining to the first quarter zero-rated sales shall be denied due to prescription. In addition, for the second to fourth quarters of taxable year 2005, the amount of P16,415,887.09[17] shall also be disallowed for the supporting invoices do not bear the word "zero-rated sales" thereon, which showed that the same did not comply with the invoicing requirements provided for under Section 4.108.1 of Revenue Regulations No. 7-95.

Likewise, petitioner had export sales to its clients outside the Philippines which include, among others, Western Japan Trading Co., Ltd.,

---

[14] Exhibit "RR".
[15] Exhibit "SSS".
[16] Exhibits "YY-1-1" to "YY-12-160".
[17] Item No. 1, Annex "A' of this Decision.

Leadence HK Ltd., Dainichiseika Color and Chemical FG., Co. Ltd., Dainichi Color (Thailand) Co., Ltd., Kuraray Trading Co., Ltd., and Seiko Epson Corporation[18]. While direct export sales are subject to zero percent (0%) VAT under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, nevertheless, the said alleged sales shall be disallowed for petitioner's failure to present in evidence export documents such as bills of lading/airway bills, export declarations, and proofs of receipt of foreign currency payments thereof. To reiterate, petitioner's disallowed export sales amounts to P200,725,096.74[19]. Consequently, petitioner's total substantiated zero-rated sales amounted only to P359,905,909.55, as computed below:

Declared zero-rated sales		P 715,550,615.81
Less: Disallowed zero-rated sales		
Barred by prescription	P138,503,722.43	
Supporting invoices not duly stamped with the word "zero-rated sales"	16,415,887.09	
Direct export sale not duly supported by export documents and the supporting invoices do not bear the word "zero-rated sales" thereon	P200,725,096.74	355,644,706.26
Substantiated Zero-Rated Sales		**P 359,905,909.55**

In view of this, only the portion of the input VAT claim attributable to the substantiated zero-rated sales of P359,905,909.55 will be considered for refund.

The Court proceeds to determine the amount of unutilized input VAT attributable thereto.

Petitioner's declared input VAT from domestic goods and services for the first quarter to the fourth quarter of 2005 amounted to P2,623,243.44, broken down as follows:

---

[18] Exhibit "RR".
[19] Item No. 2, Annex "A" of this Decision.

Period Covered (2005)	Input VAT
First Quarter	P 555,756.82
Second Quarter	519,075.93
Third Quarter	694,324.39
Fourth Quarter	854,086.30
TOTAL	**P 2,623,243.44**

As earlier mentioned, the input VAT pertaining to the first quarter in the amount of P555,756.82 shall be disallowed due to prescription.

Upon verification of the submitted documents, the Independent CPA noted that out of the total input VAT of P2,623,243.44, only the amount of P2,303,481.00 is duly substantiated, as computed below:

Amount of Input Tax			P 2,623,243.44
Less:	Disallowable input Taxes per Exhibit "XX"	P244,161.25	
	Unsubstantiated Input Taxes Recorded in the General Journal	75,601.19	319,762.44
Input Tax Validly Substantiated			**P 2,303,481.00**

The disallowable input taxes consist of the following:

	Nature	Reference	Amount
1	Input VAT on purchases of services without supporting documents.	XX-1	P 99,936.99
2	Input VAT on purchases of goods without supporting documents.	XX-2	258.78
3	Input VAT on purchases of services claimed outside the quarter when the supporting VAT ORs are dated.	XX-3	56,529.73
4	Input VAT on purchases of goods claimed outside the quarter when the supporting VAT invoices are dated.	XX-4	70,773.11
5	Input VAT on purchases of services supported by VAT ORs stamped/marked zero-rated.	XX-5	6,724.71
6	Input VAT on purchases of goods supported by VAT invoices stamped/marked zero-rated.	XX-6	2,220.10
7	Input VAT on purchases of goods supported by invoices without the BIR's "authority to print"	XX-7	1,982.28
8	Input VAT on purchase of services supported by Non VAT ORs.	XX-8	3,000.00
9	Input VAT on purchase of goods supported by Non VAT invoices.	XX-9	354.55
10	Input VAT on purchase of services supported by official receipts without the BIR's "authority to print".	XX-10	2,381.00
	Total Disallowed Input Tax		**P244,161.25**

Out of the total input VAT exceptions of P244,161.25 on petitioner's purchases of goods and services, the input VAT of P32,350.05[20], as shown below, pertains to the first quarter of 2005.

	Nature	Exhibit Ref.	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Total
1	Input VAT on purchases of services without supporting documents.	XX-1	7,125.68	24,220.35	5,710.68	62,880.28	99,936.99
2	Input VAT on purchases of goods without supporting documents.	XX-2	-	258.78	-	-	258.78
3	Input VAT on purchases of services claimed outside the quarter when the supporting VAT ORs are dated.	XX-3	-	12,718.90	1,648.91	42,161.92	56,529.73
4	Input VAT on purchases of goods claimed outside the quarter when the supporting VAT invoices are dated.	XX-4	20,634.73	1,432.73	43,719.98	4,985.67	70,773.11
5	Input VAT on purchases of services supported by VAT ORs stamped/marked zero-rated.	XX-5	-	681.82	6,011.07	31.82	6,724.71
6	Input VAT on purchases of goods supported by VAT invoices stamped/marked zero-rated.	XX-6	288.18	1,094.64	837.28	-	2,220.10
7	Input VAT on purchases of goods supported by invoices without the BIR's "authority to print"	XX-7	1,920.46	61.82	-	-	1,982.28
8	Input VAT on purchase of services supported by Non VAT ORs.	XX-8	-	-	3,000.00	-	3,000.00
9	Input VAT on purchase of goods supported by Non VAT invoices.	XX-9	-	354.55	-	-	354.55
10	Input VAT on purchase of services supported by official receipts without the BIR's "authority to print".	XX-10	2,381.00	-	-	-	2,381.00
	Total		**P32,350.05**	**P40,823.59**	**P60,927.92**	**P110,059.69**	**P244,161.25**

Deducting the amount of P32,350.05 from the amount of P244,161.25, the resulting difference in the amount of P211,811.20 would pertain to the second, third, and fourth quarters of 2005. Moreover, a comparison of the total amount of input VAT as reflected in the Quarterly VAT Returns and the amount of claim per Petition for Review discloses an unreconciled discrepancy of P10,528.37 (P2,623,243.44 less P2,612,715.07), thus should

[20] Details of quarterly exceptions are found in Annex "B" of this Decision.

be disallowed. Accordingly, the substantiated input VAT amounts to P1,769,545.86, computed as follows:

Amount of Input Tax			P 2,623,243.44
Less:	Input VAT barred due to prescription	P 555,756.82	
	Per CPA's findings pertaining to 2nd, 3rd and 4th quarters of 2005	211,811.20	
	Unsubstantiated Input Taxes Recorded in the General Journal	75,601.19	
	Unreconciled Discrepancy	10,528.37	853,697.58
Substantiated Input VAT			**P 1,769,545.86**

However, a portion of the afore-mentioned substantiated input VAT shall be applied against petitioner's reported output VAT liability covering the second, third, and fourth quarters of 2005 in the amount of P64,477.06. Hence, only the remaining input VAT of P1,705,068.80 can be attributed to the entire zero-rated sales declared by petitioner in the amount of P715,550,615.81, and only the input VAT of P857,611.36 is attributable to the substantiated zero-rated sales of P359,905,909.55, as computed below:

Substantiated Input VAT	P 1,769,545.86
Less: Output VAT	64,477.06
Excess Input VAT	**P 1,705,068.80**

Substantiated Zero-rated Sales	P359,905,909.55
Divided by Total Reported Zero-Rated Sales	÷715,550,615.81
Multiplied by Substantiated Excess Input VAT	x 1,705,068.80
Excess Input Tax Attributable to Substantiated Zero-Rated Sales	**P 857,611.36**

As evidenced by its Quarterly VAT Returns[21] from the first quarter to the fourth quarter of 2005, petitioner was able to prove that the input VAT of P857,611.36 was not applied against any output VAT in the succeeding quarters. *Jc*

[21] Exhibits "HH", "KK", "NN", and "QQ".

In sum, the Court finds petitioner entitled to the refund of its unutilized input VAT for the four quarters of taxable year 2005, but in the reduced amount of P857,611.36.

WHEREFORE, premises considered, the instant *Petition for Review* is hereby **PARTLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **EIGHT HUNDRED FIFTY SEVEN THOUSAND SIX HUNDRED ELEVEN PESOS AND 36/100 (P857,611.36)** in favor of petitioner, representing its unutilized input VAT for the second, third, and fourth quarters of taxable year 2005.

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.

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

ERNESTO D. ACOSTA
Presiding Justice