REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

VESTAS SERVICES PHILIPPINES, INC., Petitioner,	**CTA CASE NO. 9382**
	Members:
	DEL ROSARIO, *P.J., Chairperson,* **UY,** and **MINDARO-GRULLA,** *JJ.*
- versus -	
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, Respondent.	MAY 09 2018 8:25 am

x- -x

DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review[1] filed on July 7, 2016 by Vestas Services Philippines, Inc. seeking the refund or issuance of a tax credit certificate (TCC) in the amount of Fourteen Million Five Hundred Sixty-Five Thousand One Hundred Forty and 54/100 Pesos (₱14,565,140.54), representing its accumulated and unutilized input Value-Added Tax (VAT) for the first (1st) quarter of calendar year (CY) 2014.

THE PARTIES

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal office at 12th floor, Five E-com, Harbor Drive, Mall of Asia Complex, Pasay City.[2]

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[1] Dated July 7, 2016; CTA Docket pp. 10-37.
[2] Paragraph 1, Petition for Review, CTA Docket, p. 10; Exhibit "P-1", CTA Docket, p. 99; Exhibit "P-2", CTA Docket, p. 123.

Respondent Commissioner of Internal Revenue (CIR) is empowered by law to act upon and approve claims for refund or tax credit. He is represented by his counsel from the Legal Division, Bureau of Internal Revenue (BIR) Revenue Region 8 (Makati City), with office address at the BIR Revenue Regional Office Building, No. 313 Gil Puyat Ave., Makati City.[3]

THE FACTS OF THE CASE

Petitioner was incorporated on December 14, 2009.[4] It is engaged in the business of installation and construction services (except contracts for the construction of locally funded public works and contracts for the construction of defense related structures), including entering into subcontracting arrangements, and service of wind power systems (i.e. wind turbine generators, spare parts, and activities related thereto). It also acts as a business development and information technology center that provides services to its affiliates in the Asia Pacific Region.[5] It is registered with the BIR for VAT purposes, with Certificate of Registration No. OCN9RC0000382508.[6]

Petitioner filed with the BIR its Amended Quarterly VAT Return for the 1st quarter of CY 2014 on August 18, 2014.[7]

On March 31, 2016, petitioner filed with the Revenue District Office (RDO) No. 50 its administrative claim for refund or issuance of TCC representing its excess and/or unutilized input VAT for the 1st quarter of CY 2014 in the amount of ₱14,565,140.54.[8]

On June 7, 2016, petitioner received a Letter dated June 1, 2016, signed by Revenue District Officer Rosita U. Meniano, denying its aforesaid administrative claim for refund or issuance of TCC.[9]

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[3] Par. 1.3, I. Stipulation of Facts, Joint Stipulation of Facts and Issue (JSFI), CTA Docket, p. 516.
[4] *Supra*, note 2.
[5] Par. 1.1, I. Stipulation of Facts, JSFI, CTA Docket, p. 515.
[6] Par. 1.2, I. Stipulation of Facts, JSFI, CTA Docket, p. 515; Exhibit "P-3", CTA Docket, p. 134.
[7] Exhibit "P-6", CTA Docket, pp. 825-826.
[8] Par. 1.4, I. Stipulation of Facts, JSFI, CTA Docket, p. 516; Exhibits "P-4" and "P-5", CTA Docket, pp. 135 and 136.
[9] Paragraph 15, I. Statement of Facts, Petition for Review, CTA Docket, p. 13; Exhibit "P-26".

In view of the denial of its administrative claim, petitioner filed the present Petition for Review before the Court on July 7, 2016.[10]

On July 29, 2016, respondent posted his Answer,[11] interposing the following special and affirmative defenses: (i) petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected; (ii) taxes are presumed to have been paid and collected in accordance with laws and regulations, hence, not refundable; (iii) it is incumbent upon petitioner to show that it has complied with Section 204(C), in relation to Section 229, of the National Internal Revenue Code (NIRC) of 1997, as amended; (iv) petitioner's claim for refund or issuance of TCC in the amount of ₱14,565,140.54 representing alleged unutilized input VAT paid on purchases of goods and services attributable to its zero-rated sales for the 1st quarter of CY 2014 was not fully substantiated by proper documents, such as sales invoices, official receipts and others; (v) in a claim for tax refund or TCC, the taxpayer must prove not only its entitlement to the grant of the claim under substantive law but it must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for refund or TCC; and, (vi) claims for refund are construed strictly against the claimant as the same partake the nature of tax exemption which is looked upon with disfavor.

On September 28, 2016, respondent filed his Pre-Trial Brief[12] while petitioner filed its Pre-Trial Brief on November 21, 2016.[13] On November 24, 2016, the Pre-Trial Conference was held.[14] On December 12, 2016, the parties filed their Joint Stipulation of Facts and Issue[15], which the Court approved in the Resolution dated December 22, 2016.[16] The same Resolution terminated the pre-trial and directed the issuance of a Pre-Trial Order. On January 11, 2017, the Court issued the Pre-Trial Order.[17]

During trial, only petitioner presented testimonial and documentary evidence,[18] while respondent manifested that he will no longer present any evidence.[19] Petitioner's documentary evidence

[10] *Supra*, note 1.
[11] CTA Docket, pp. 41-44.
[12] CTA Docket, pp. 48-50.
[13] CTA Docket, pp. 479 – 497.
[14] CTA Docket, pp. 507-508.
[15] CTA Docket, pp. 515-520.
[16] CTA Docket, p. 522.
[17] CTA Docket, pp. 541-548.
[18] Formal Offer of Documentary Evidence, CTA Docket, pp. 762-786;
[19] Order dated June 20, 2017, CTA Docket, pp. 755-756.

were admitted in the Resolutions dated September 14, 2017 and January 9, 2018, *save* for certain exhibits which were denied admission for petitioner's failure to present the original for comparison.[20]

On January 23, 2018, the case was submitted for decision[21] after noting the filing of the Memorandum for Respondent on October 18, 2017[22] and petitioner's Memorandum on January 17, 2018.[23]

ISSUE

The parties agreed that the sole issue to be resolved in this case is:

> Whether petitioner is entitled to a refund or to the issuance of a TCC in the amount of ₱14,565,140.54, representing its excess and/or unutilized input VAT attributable to its zero-rated sales of goods or services for the 1st quarter of CY 2014.

THE COURT'S RULING

Petitioner cites Section 112(A), in relation to Section 112(C), of the NIRC of 1997, as amended, in claiming a refund or issuance of a TCC of its input VAT which are allegedly attributable to its zero-rated sales, *viz.*:

> "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

[20] CTA Docket, pp. 1099 – 1101 and pp. 1192 – 1194.
[21] Resolution dated January 23, 2018, CTA Docket, p. 1218.
[22] CTA Docket, pp. 1181-1183.
[23] CTA Docket. pp. 1195-1216.

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.

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 with the Court of Tax Appeals."

Based on the aforequoted provisions of law, a claimant must satisfy the following requisites in order to be entitled to a refund or tax credit of unutilized input VAT attributable to zero-rated sales:

1. The administrative and judicial claims were filed within the prescribed period.

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

3. The input VAT were incurred or paid;

4. The input VAT are attributable to zero-rated or effectively zero-rated sales; and,

5. The input VAT were not applied against any output VAT liability.

Timeliness of the filing of the administrative and judicial claims

Before delving into the merits and substantiation of petitioner's claim for refund or issuance of TCC, the Court shall make a determination on the timeliness of the filing of petitioner's administrative and judicial claims.

Anent the petitioner's administrative claim, Section 112 (A) of the NIRC of 1997, as amended, specifically requires that the taxpayer's application for refund or issuance of TCC of unutilized and/or excess input VAT arising from its domestic purchases of services and importation of goods other than capital goods, which are attributable to its zero-rated sales, must be made within two years after the close of the taxable quarter when the sales were made.

Since the present claim covers the 1st quarter of CY 2014, petitioner had two (2) years after the close of the taxable quarter on March 31, 2014 or until **March 31, 2016** within which to file its claim for refund. Petitioner's administrative claim for refund or issuance of TCC for the 1st quarter of CY 2014 was filed on March 31, 2016, thus, the same was timely filed.

The Court shall proceed to determine whether petitioner's judicial claim for refund or issuance of TCC was timely filed. Section 11 of Republic Act No. (RA) 1125,[24] as amended by RA No. 9282,[25] provides the period of limitation within which to appeal before this Court, *viz.*:

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* - **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision** or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

[24] An Act Creating the Court of Tax Appeals.
[25] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, otherwise known as the law creating the Court of Tax Appeals, and for Other Purposes.

Appeal should be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days from the receipt of the decision** or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. xxx" *(Boldfacing supplied)*

As aforementioned, on March 31, 2016, petitioner filed with RDO No. 50 its administrative claim for refund or issuance of TCC representing its excess and/or unutilized input VAT for the 1st quarter of CY 2014 in the amount of P14,565,140.54. Within the 120-day period to act on petitioner's administrative claim for refund, the CIR, through Revenue District Officer Rosita U. Meniano denied petitioner's administrative claim in a Letter dated June 1, 2016.

The authority of Revenue District Officer Meniano to issue the denial letter finds basis in Revenue Memorandum Circular (RMC) No. 054-14, pertinent parts of which state:

"II. Filing and Processing of Administrative Claims —

The application for VAT refund/tax credit must be accompanied by complete supporting documents as enumerated in Annex "A" hereof. In addition, the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents (Annex "B"). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (i.e., at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.

Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. **The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant.**

III. Mandatory 120+30 Day Period —

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 (120) day-period, **appeal the decision or the**

on

> **unacted claim with the CTA**. Verily, a judicial claim must be filed with the CTA within 30 days from the receipt of the Commissioner's decision denying the administrative claim or from the expiration of the 120-day period without any action from the Commissioner, as the case may be. In this regard, the taxpayer/claimant is required to observe the 120+30 day rule before lodging a petition for review with the CTA.
>
> In sum, the taxpayer can file the appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period." *(Boldfacing supplied)*

Clearly, Revenue District Officer Meniano's Letter dated June 1, 2016 denying petitioner's administrative claim is the "Denial Letter" contemplated in RMC 054-14 which is appealable to this Court. Since petitioner received the aforesaid Letter on June 7, 2016, petitioner had thirty (30) days from said date or until July 7, 2016 within which to appeal to the CTA. The Petition for Review which was filed on July 7, 2016 was filed within the reglementary period to appeal. Thus, the Court has jurisdiction to take cognizance of the Petition for Review.

Petitioner's zero-rated sales

Anent the **second requirement**, petitioner alleges that for the 1st quarter of CY 2014, it derived gross receipts from sale of services to Bayview Technologies, Inc. (Bayview), EDC Burgos Wind Power Corporation (EDC Burgos), and Vestas Wind System A/S (Vestas Denmark), in the amount of ₱1,107,422,089.20, as declared in petitioner's Quarterly VAT Return for the same period.[26]

Details of petitioner's gross receipts as broken down in the Schedule of Zero-Rated, Taxable and Exempt Sales are shown hereunder:[27]

Registered Customer Name	Amount of Gross Sales in Php	Amount of Zero-Rated Sales in Php
Bayview Technologies, Inc.	4,198,848.54	4,198,848.54
EDC Burgos Wind Power Corporation	343,189,262.71	343,189,262.71
EDC Burgos Wind Power Corporation	698,855,733.24	698,855,733.24
Vestas Wind System AS	61,178,244.71	61,178,244.71
TOTAL	**1,107,422,089.20**	**1,107,422,089.20**

[26] *Supra note* 7.
[27] Exhibit "P-7", CTA Docket, p. 827.

(i) Sales to EDC Burgos

Petitioner maintains that its sales to EDC Burgos are subject to zero percent (0%) VAT, pursuant to Section 15(g) of Republic Act (RA) No. 9513 or the Renewable Energy Act of 2008, in relation to Sections 106(A)(2)(c), 110, and 112(A), of the NIRC of 1997, as amended.

The Court agrees with petitioner.

Section 15(g) of RA No. 9513 pertinently provides:

> **"Section 15. *Incentives for Renewable Energy Projects and Activities.*** - RE developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:
>
> xxx xxx xxx
>
> (g) Zero Percent Value-Added Tax Rate. - The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall **be subject to zero percent (0%) value-added tax (VAT)**, pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.
>
> **All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.**
>
> **This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors.**" *(Boldfacing supplied)*

The Implementing Rules and Regulations (IRR) of RA No. 9513 further clarifies the zero-rated nature of the transaction, *viz.*

> "G. Zero Percent Value-Added Tax Rate
>
> **The following transactions/activities shall be subject to zero percent (0%) value-added tax (VAT)**, pursuant to the

National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337:

xxx xxx xxx

(b) Purchase of local goods, properties and services needed for the development, construction, and installation of the plant facilities of RE Developers; and

(c) **Whole process of exploration and development of RE sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors.**" (Emphasis supplied)

Pursuant to the aforecited law and rules, the whole process of exploration and development of renewable energy sources up to its conversion into power, including the services performed by contractors or subcontractors is a zero-rated transaction. Moreover, the provision is categorical in stating that RE Developers are entitled to zero-rated VAT on their purchases of **local** supply of goods, properties and services needed for the development, construction and installation of its plant facilities.

In the case at bar, petitioner's rendition of services for the engineering, procurement and construction of a wind power plant for EDC Burgos, a registered RE developer of wind resources as evidenced by its Certificate of Registration issued by the Department of Energy on February 4, 2011[28] and Certificate of Registration issued by the BOI on June 29, 2011,[29] may be treated as part of the whole process of exploration and development of renewable energy sources. As a local supplier of services needed for the development, construction and installation of EDC Burgos' facilities, the services rendered by petitioner to EDC Burgos qualify as zero-rated under Section 15(g) of RA No. 9513.

In the above-mentioned Schedule of Zero-Rated, Taxable and Exempt Sales,[30] petitioner's zero-rated sale of services to EDC Burgos amount to ₱343,189,262.71 and ₱698,855,733.24, or a total of ₱1,042,044,995.95. Substantiation of VAT official receipts of the foregoing zero-rated sale of services is indispensable pursuant to Sections 113 and 237 of the NIRC of 1997, as amended, which provide:

[28] Exhibit "P-9", CTA Docket, p. 141.
[29] Exhibit "P-9", CTA Docket, p. 142.
[30] *Supra, note 22.*

"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.

xxx xzx xxx."

"SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.*

All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: Provided, however, That in the case of sales, receipts or transfers in the amount of One Hundred Pesos (PI00) or more, regardless of amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations, or fees, receipt or quantity, unit cost and description of merchandise or nature of service: Provided, however, That in the case of sales, receipts or transfers in the amount of One Hundred Pesos (P100) or more, regardless of amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, conu11issions, compensations, or fees, receipt or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer, or client: Provided, further, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number of the purchaser. xxx xxx xxx."

Records show that petitioner presented the following official receipts and sales invoices as proof that it rendered services to EDC Burgos, *viz.*:

Official Receipts

Exhibit Reference	Client Name	Document Number	Document Date	Amount
P-38	EDC Burgos Wind Power Corporation	019	March 27, 2014	P12,046,743.86
P-39	EDC Burgos Wind Power Corporation	020	March 27, 2014	$1,175,369.43
P-40	EDC Burgos Wind Power Corporation	022	March 27, 2014	$1,246,594.97

Sales Invoices

Exhibit Reference	Client Name	Document Number	Document Date	Amount
P-41	EDC Burgos Wind Power Corporation	00003	March 20, 2014	P59,190,462.57
P-42	EDC Burgos Wind Power Corporation	00004	March 20, 2014	$130,318.79
P-43	EDC Burgos Wind Power Corporation	00005	March 20, 2014	P94,361,461.77
P-44	EDC Burgos Wind Power Corporation	00006	March 20, 2014	P33,028,303.32
P-45	EDC Burgos Wind Power Corporation	00007	March 20, 2014	$588,958.49
P-46	EDC Burgos Wind Power Corporation	00008	No date indicated	P45,379,354.63
P-47	EDC Burgos Wind Power Corporation	00009	No date indicated	P4,460,953.34
P-48	EDC Burgos Wind Power Corporation	00010	March 20, 2014	$601,626.00
P-49	EDC Burgos Wind Power Corporation	00011	March 20, 2014	P7,767,427.00
P-50	EDC Burgos Wind Power Corporation	00012	March 20, 2014	$340,415.00

An evaluation of the abovementioned evidence shows that the amounts in Exhibits "P-39", "P-40", "P-42", "P-45", "P-47", "P-48", and "P-50" are in US Dollar currency. There is nothing in the Court records, however, that supports petitioner's use of the appropriate foreign exchange rate. Thus, the Court cannot reasonably determine and/or validate the correct amount of zero-rated sales as evidenced by the said exhibits, *vis-a-vis* the amount of zero-rated sales reflected in petitioner's Amended 1st Quarter VAT Return for the CY2014, which amount is indicated in Philippine Pesos.

Moreover, as shown below, Exhibit "P-46" bears no date when the sales invoice was issued. For this reason, the Court cannot validate if it pertains to a sale made by petitioner to EDC Burgos during the 1st quarter of CY 2014:

Vestas Services Philippines, Inc.
31F Tower II, RCBC Plaza, Ayala Avenue
cor. Sen Gil Puyat, Makati City 1226

Vestas

Tel. Nos.: 784-5711; 784-5831
Fax No.: 784-5701
VAT Reg. TIN : 007-533-154-000

SALES INVOICE

SOLD TO: EDC Burgos Wind Power Corporation
TIN No.:
Business Style:
ADDRESS:

Date:
P.O. No.:
Terms:
Reference:

ITEM NO.	DESCRIPTION	QUANTITY	UNIT PRICE	AMOUNT

EXHIBIT "P-46"
PETITIONER

FAITHFUL REPRODUCTION OF THE ORIGINAL

VATable Sale		Total Sales (VAT Inclusive)	
VAT-Exempt Sale		Less: VAT	
VAT Zero Rated Sale		Total	
VAT - 12%		Less: SC/PWD-Discount	
		Total Amount Due	

TERMS AND CONDITIONS:
Check payment should be made crossed check to **Vestas Services Philippines, Inc.** All payments made by checks will not be considered as actual payments until the cash has been collected.
Service Fees shall be subject to monthly (5%) penalty fee in case payment is not made on Due Date.

Prepared by:	Approved by:	Received by: Date:

Printer's Accreditation No. PROVAN002161
Date Issued: February 14, 2013

10 Bkts. (50x3) 00001-00500
BIR Authority to Print No. OCN8AU0003068454
Date Issued: Oct. 22, 2013 Valid Until: Oct. 21, 2018
MINUTEMAN PRINTERS, INC. TIN: 004-476-675-000 VAT
G4 & G5 Valero Plaza Condo, 124 Valero St., Salcedo Village, Makati City

Nº

From the foregoing, only the following zero-rated sales to EDC Burgos have been properly substantiated by petitioner:

Exhibit	Type	Amount in Php
P-38	Official Receipt	12,046,743.86
P-41	Sales Invoice	59,190,462.57
P-43	Sales Invoice	94,361,461.77
P-44	Sales Invoice	33,028,303.32
P-49	Sales Invoice	7,767,427.00
TOTAL		**196,394,398.52**

(ii) Sales to Bayview

Petitioner posits that the rental fees it derived from subleasing an office space to Bayview, a CEZA-registered enterprise, are subject to zero percent (0%) VAT pursuant to the Cagayan Economic Zone Authority (CEZA) Certification issued in favor of Bayview.

To prove that Bayview is registered with CEZA as a Cagayan Special Economic Zone and Freeport (CSEZFP) enterprise, and that petitioner's sublease of its office space to Bayview is subject to zero percent (0%) VAT, petitioner presented the following: (i) Sublease Agreement executed by petitioner and Bayview in May 2013 *(Exhibits "P-16")*; (ii) Renewal Agreement executed by petitioner and Bayview in December 2013 *(Exhibit "P-17")*; and, (iii) Certificate of Registration with CSEZFP Enterprise No. CF-006 issued by CEZA to Bayview on December 1, 2011 *(Exhibit "P-18")*.

The Court could not, however, consider Exhibits "P-16", "P-17" and "P-18" in resolving whether or not petitioner's gross receipts derived from subleasing an office space to Bayview qualify for VAT zero-rating as the aforesaid Exhibits were denied admission in evidence in the Resolution dated September 14, 2017[31] for petitioner's failure to present the originals for comparison. It is settled that any evidence that has not been admitted cannot be given weight in resolving a controversy.

Considering the Court's denial of the admission of aforesaid Exhibits, and petitioner's failure to present any other document to prove that Bayview is indeed a CEZA-registered enterprise, petitioner's gross receipts from the rental fees it earned from Bayview cannot be treated as subject to zero percent (0%) VAT.

[31] CTA Docket, pp. 1099-1101.

(iii) Sales to Vestas Denmark

Petitioner avers that its gross receipts from Vestas Denmark, a person engaged in business conducted outside the Philippines, are subject to zero percent (0%) VAT. Petitioner claims that it rendered information technology (IT) services to Vestas Denmark for which it was paid in acceptable foreign currency.

Section 108(b)(2) of the NIRC of 1997, as amended, provides:

> "(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 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 Bangko Sentral ng Pilipinas (BSP).**

In *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,*[32] the Supreme Court had the occasion to discuss that in order for the supply of services to be VAT zero-rated under the above-mentioned provision, the following requisites must be met:

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

2. the payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and, ᴍ

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[32] G.R. No. 190021, October 22, 2014.

3. the recipient of such services is doing business outside the Philippines.

With regard to the first requisite, petitioner presented the Service Agreement it executed with Vestas Denmark as Exhibit "P-12". In the Resolution dated September 14, 2017,[33] the Court denied admission of Exhibit "P-12" for petitioner's failure to present the original for comparison. The Court is precluded from considering Exhibit "P-12" in determining whether or not petitioner rendered services to Vestas Denmark and whether said services are other than processing, manufacturing or repacking of goods.

In addition to the Service Agreement, petitioner presented VAT Official Receipt No. 014 (Exhibit "P-54") to substantiate its sales to Vestas Denmark but the same does not reflect the nature of services rendered by petitioner. Thus, in the absence of any other evidence offered by petitioner to prove that it rendered services other than processing, manufacturing or repacking of goods to Vestas Denmark, the alleged gross receipts from Vestas Denmark may not be considered as subject to zero percent (0%) VAT.

Input VAT paid or incurred by petitioner which are attributable to its zero-rated sales

Having resolved that petitioner had VAT zero-rated receipts for the 1st quarter of taxable year 2014 in the amount of ₱196,394,398.52, arising from its transaction with EDC Burgos, the Court shall proceed to determine petitioner's compliance with the **third requirement** - - the amount of input VAT incurred or paid by petitioner.

For the 1st quarter of taxable year 2014, petitioner reported a total amount of ₱14,565,140.54 input VAT arising from its importation of goods other than capital goods and domestic purchases of services,[34] detailed as follows:

1st Quarter of 2014	Amount in Php
Importation of Goods Other than Capital Goods	4,879,037.00
Domestic Purchase of Services	9,686,103.54
TOTAL	14,565,140.54

OM

[33] *Supra, note 26.*
[34] *Supra, note* 21.

To substantiate its input VAT in the total amount of ₱14,565,140.54 as reflected in its Amended Quarterly VAT Return for the 1st quarter of CY 2014, petitioner submitted purchase transaction and imports transaction – reconciliation of listing for enforcement for the 1st quarter of CY 2014, various suppliers' official receipts, Bureau of Customs (BOC) Import Entries and Internal Revenue Declarations (IEIRDs), Bank of the Philippine Islands Statements of Accounts, billing statements, collection receipts, and statements of account.[35]

Upon verification of the aforesaid documents, the Independent Certified Public Accountant (ICPA), Ms. Krista Bambao, found that out of petitioner's reported input VAT of ₱14,565,140.54, only the total amount of ₱6,605,380.00 is properly substantiated, detailed as follows:[36]

Nature	Exhibit No.	Amount in Php
1. Purchases of Services/Rent properly substantiated for VAT purposes by VAT Reg. TIN ORs	"P-62" to "P-84"	1,753,389.00
2. Importations of Goods substantiated by Import Entry and Internal Revenue Declaration with BPI system generated proof of VAT payment	"P-85" to "P-93"	138,260.00
3. Importations of Goods substantiated by Import Entry and Internal Revenue Declaration with BPI system generated proof of VAT payment but with unreadable IEIRD serial number	"P-94" to "P-99"	1,083,281.00
4. Importations of Goods substantiated by BPI system generated proof of VAT payment but photocopied Import Entry and Internal Revenue Declaration	"P-100" to "P-111"	3,630,450.00
TOTAL		**6,605,380.00**

Anent the remaining input VAT, the ICPA found the amount of ₱7,959,724.73 as *input VAT with exceptions*, as follows:

[35] Exhibits "P-60", 'P-61", "P-62" to "P-98", "P-100" to "P-111", "P-114" to "P-117", "P-121" to "P-136", "P-138" to "P-140", "P-142" to "P-152", "P-160" to "P-167".
[36] Exhibit "P-28", ICPA Report.

Nature	Exhibit No.	Amount in Php
1. Purchases of services/rent substantiated by photocopied VAT Reg. TIN ORs	"P-112" to "P-113"	24,413.96
2. Unsupported local purchases & importation of non-capital goods		1,086,923.56
3. Input taxes claimed supported by VAT Registered TIN ORs dated outside the covered period of the claim	"P-114" to "P-120"	5,628,192.86
4. Input taxes from purchases of services supported by documents other than VAT Registered TIN ORs	"P-121" to "P-137"	61,949.72
5. Input VAT substantiated by invalid ORs (not valid for claiming input tax)	"P-138"	3,211.20
6. Input taxes claimed supported by VAT Registered TIN ORs in which VATable or VAT amount not properly indicated	"P-139" to "P-141"	593,165.71
7. Input taxes from purchase of goods but reported under "Domestic Purchase of Services" in the VAT returns	"P-142" to "P-143"	7,251.86
8. Input taxes claimed supported by VAT Registered TIN ORs with incomplete name of Petitioner	"P-144"	15,840.00
9. Input taxes claimed supported by VAT Registered TIN ORs with no/incorrect TIN of Petitioner	"P-145" to "P-159"	438,866.18
10. Input taxes claimed supported by VAT Registered TIN ORs with no/incorrect/incomplete address of petitioner	"P-160" to "P-168"	99,909.68
TOTAL		**7,959,724.73**

As borne by the records, in the Resolution dated September 14, 2017, the Court denied the admission of Exhibits "P-112", "P-113", "P-118", "P-119", "P-120", "P-137", "P-141", "P-153", "P-154", "P-155", "P-156", "P-157", "P-158", "P-159" and "P-168" for failure of petitioner to present the originals for comparison. As a consequence, the following input VAT should be *disallowed for not being substantiated by VAT invoices or official receipts*:

Exhibit No.	Input VAT Amount in Php
P-99	24,860.00
P-112	7,285.71
P-113	17,128.25
P-118	578.57
P-119	1,897,672.75
P-120	3,720,360.00
P-137	370.08
P-141	1,326.75
P-153	642.75
P-154	53.57
P-155	53.57
P-156	53.57
P-157	126,794.70
P-158	101,606.36
P-159	195,646.45
P-168	14,764.06
TOTAL	**6,109,197.14**

In addition to the disallowed input VAT of ₱6,109197,14, the Court, after considering the exceptions noted by the ICPA, finds that the following input VAT should likewise be disallowed for not being substantiated with valid VAT invoices or official receipts in accordance with Sections 110(A), 113, 237 and 238 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of Revenue Regulations (RR) No. 16-2005, as amended:

Exhibit No.	Input VAT Amount in Php
P-114	1,261.68
P-115	67,100.04
P-116	5,399.99
P-117	5,152.00
P-121	4,648.32
P-122	1,710.00
P-123	1,710.00
P-124	2,928.00
P-125	1,902.86
P-126	8,164.29
P-127	10,928.57
P-128	7,625.74
P-129	6,883.93
P-130	7,028.57
P-131	6,198.00
P-132	370.08
P-133	370.08
P-134	370.08
P-135	370.08
P-138	3,211.20
P-139	136,187.39
P-140	455,651.57
P-142	7,177.50
P-143	74.36

P-144	15,840.00
P-145	156.00
P-146	4,143.12
P-147	4,459.40
P-148	578.57
P-149	1,197.05
P-150	282.10
P-151	606.85
P-152	2,582.12
P-160	2,689.29
P-161	3,085.71
P-162	20,430.00
P-163	600.85
P-164	1,178.57
P-165	105.60
P-166	14,815.38
P-167	42,240.22
TOTAL	**857,425.16**

The Court notes that there were transactions which were considered as unsubstantiated by the ICPA but upon further scrutiny, the Court finds the same to be properly substantiated by VAT invoices or official receipts, in accordance with Sections 110 (A), 113, 237, and 238 of the NIRC of 1997, as follows:

Exhibit No.	Supplier	VATable Amount in Php	Input VAT Amount in Php	Remarks
P-139	SL Temps, Inc.	1,134,894.92	136,187.39	VAT amounts properly indicated in OR
P-140	RCBC Realty Corp.	3,797,096.42	455,651.57	VAT amounts properly indicated in OR
P-146	ISS Facility Services, Inc.	34,526.00	4,143.12	TIN of petitioner indicated
P-147	ISS Facility Services, Inc.	37,161.67	4,459.40	TIN of petitioner indicated
TOTAL		**5,003,679.01**	**600,441.48**	

With regard to Exhibits "P-139" to "P-141", the ICPA noted that the VATable or VAT amounts are not properly indicated in the ORs but a careful scrutiny of the ORs reveals otherwise. Said ORs are shown below:

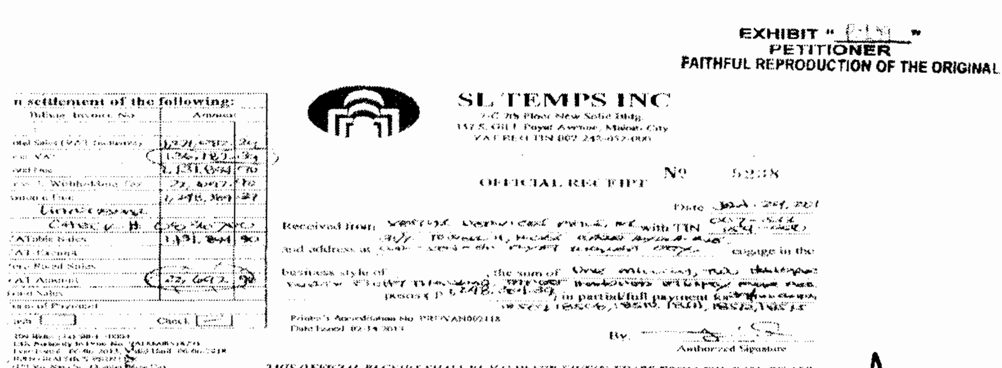
EXHIBIT "______"
PETITIONER
FAITHFUL REPRODUCTION OF THE ORIGINAL

SL TEMPS INC

OFFICIAL RECEIPT

In settlement of the following:

Authorized Signature

RCBC Realty Corporation

Official Receipt

№ 40028

RCBC PLAZA 6819 AYALA AVENUE, MAKATI CITY 1200
VAT REG. TIN 005-029-187-000

DATE: 1/10/14

RECEIVED from: Vestas Services Philippines Inc.
Address:
Bus. Style:
TIN
The sum of Pesos: Four million eighty [illegible] thousand five hundred fifteen and [illegible] only

IN SETTLEMENT OF THE FOLLOWING	AMOUNT
	P
BS # [illegible] rental [illegible]	
vat	
wtx	
BS # [illegible] maintenance fee [illegible]	
vat	
wtx	
VATABLE SALES	
ZERO RATED SALES	
VAT	
TOTAL	

Cash	
Check No.	

Payment received by

Cashier

"THIS OFFICIAL RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF ATP"

Printer's Accreditation No. [illegible]
Date Issued: [illegible]

EXHIBIT " [illegible] "
PETITIONER

EXHIBIT " [illegible] "
PROVISIONAL MARKING

DSV

DSV Air & Sea Inc.
2A Johannes St., Sto. Niño, Parañaque City, Philippines
Tel: +63 (2) 852-0250 * Fax: +63 (2) 852-8306
VAT Reg. TIN 000-417-927-000

OFFICIAL RECEIPT

№ 22334 A

Date 01/30/14

Received from Vestas Services Phils Inc.
with TIN 007-534-154 and address at 31 F [illegible] RCBC Plaza Makati City.
engaged in the business style of
the sum of fifty three thousand two hundred [illegible] 33/100 only pesos
(P 53,[illegible].33) in partial/full payment for [illegible]

In settlement of the following:

Particulars	Amount
Sales (VAT inclusive)	
VAT	
SC/PWD Discount	
Due	
Withholding Tax	
Due	
Sales	
Exempt Sales	
Rated Sales	
Amount	
Sales	

Form of Payment:
Check / Cash

Sr. Citizen TIN
OSCA/PWD ID No. / Signature

By

Cashier/Authorized Representative

"THIS OFFICIAL RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF ATP"

As regards Exhibits "P-145" to "P-159", which are found by the ICPA to have been supported by VAT Registered official receipts with no/incorrect Tax Identification Number (TIN) of petitioner, the Court has determined that Exhibit "P-147" indicates the correct TIN of petitioner as reflected in its Certificate of Registration,[37] which is 007-533-154-000, as shown below:

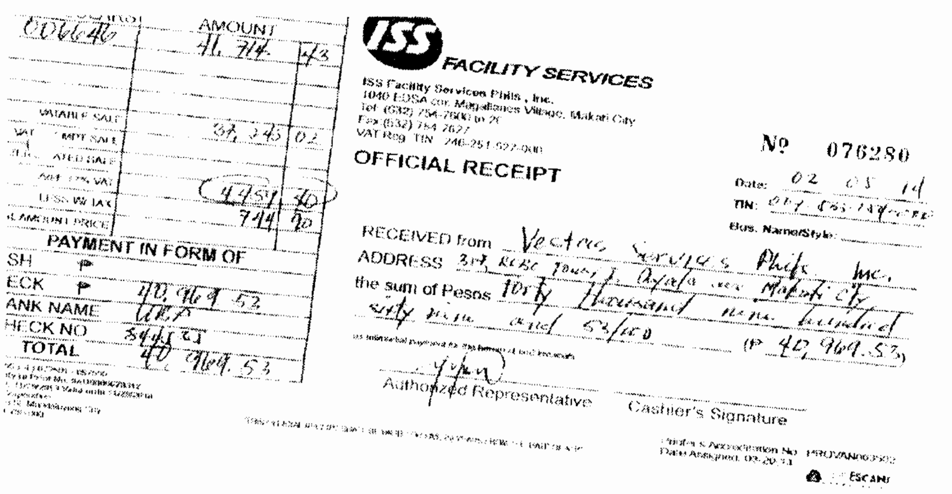

EXHIBIT "P-147"
PETITIONER

FAITHFUL REPRODUCTION OF THE ORIGINAL

Prescinding from the foregoing, out of petitioner's total input VAT of ₱14,565,140.54, only the amount of ₱7,176,828.36 is properly substantiated by VAT invoices or official receipts:

Exhibit No.	Amount in Php
"P-62" to "P-84"	1,753,389.00
"P-85" to "P-93"	138,260.00
"P-94" to "P-98"	1,058,421.00
"P-100" to "P-111"	3,630,450.00
"P-139" to "P-140"	591,838.96
"P-147"	4,459.40
TOTAL	**7,176,818.36**

Petitioner's substantiated input VAT allocated to its zero rated sales and sales that did not qualify as zero-rated

Relative to petitioner's compliance with the **fourth requirement**, the Court notes that petitioner's Amended 1st Quarterly VAT Return for CY 2014[38] shows that it did not have sales that are

[37] Exhibit "P-3", CTA Docket, p. 134.
[38] Supra, *note* 7.

subject to VAT at the rate of 12%. This, notwithstanding, the entire amount of substantiated input VAT of ₱7,176,818.36 is not *ipso facto* refundable to petitioner.

The Court has to determine the allocation of validly substantiated input VAT payments to petitioner's duly supported zero-rated sales, taking into consideration the Court's finding that petitioner's sales to Bayview and Vestas Denmark could not qualify as zero-rated and that only petitioner's sales to EDC Burgos in the amount of ₱196,394,398.52 qualifies as zero-rated.

The percentage of validly supported zero-rated sales of ₱196,394,398.52 to total sales of ₱1,107,422,089.20 as declared in petitioner's Amended 1st Quarterly VAT Return is 17.73%. Allocating the substantiated input VAT of ₱7,176,818.36 to the percentage of the zero-rated sales over total sales as declared in petitioner's Amended 1st Quarterly VAT Return for CY 2014, the amount of input VAT that is attributable to petitioner's duly substantiated zero-rated sales is ₱1,272,449.90 only, computed as follows:

		Amount (Php)
Total valid zero-rated sales for the 1st quarter of CY 2014 divided by total sales		196,394,398.52
for the 1st quarter of 2014		1,107,422,089.20
Percentage of valid zero-rated sales over total sales	=	17.73%
Multiplied with: valid input VAT for the 1st quarter of CY 2014		7,176,818.36
Valid Input VAT attributable to zero-rated sales for the 1st quarter of CY 2014	=	**1,272,449.90**

Petitioner's input VAT was not applied against any output VAT liability in the present and succeeding quarters

With regard to the **fifth requirement**, to prove that petitioner did not carry-over and utilize the input VAT for the present and succeeding quarters, petitioner presented its Quarterly VAT Returns for the 1st to 4th quarters of CY 2014,[39] 1st to 4th quarters of CY 2015,[40] and 1st and 2nd quarter of CY 2016.[41]

[39] Exhibits "P-6", "P-21-1", "P-21-2", and "P-21-3", CTA Docket, pp. 825-826, 871-876.
[40] Exhibits "P-22-1", "P-22-2", "P-22-3", and "P-22-4", CTA Docket, pp. 877-887.
[41] Exhibits "P-23-1", and "P-23-2", CTA Docket, pp. 889-890, 892-893.

An examination of said documents reveals that, indeed, petitioner did not carry-over the input VAT incurred during the 1st quarter of CY 2014 in the amount of ₱14,565,140.54 to succeeding quarters or applied the same against any output VAT for subsequent taxable quarters until the claim was filed on June 30, 2016.[42]

*** *** ***

In fine, petitioner has sufficiently proven its entitlement to a refund or issuance of a TCC in the amount of ₱1,272,449.90, representing its unutilized input VAT incurred for the 1st quarter of taxable year 2014, attributable to its zero-rated receipts for the same period.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent **COMMISSIONER OF INTERNAL REVENUE** is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner **VESTAS SERVICES PHILIPPINES, INC.** in the reduced amount of **One Million Two Hundred Seventy-Two Thousand Four Hundred Forty-Nine and 90/100 Pesos (₱1,272,449.90)**, representing petitioner's unutilized excess input VAT attributable to its zero-rated sale of services for the 1st quarter of CY 2014.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

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

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42 Exhibits "P-21-1", "P-21-2", "P-21-3", "P-22-1", "P-22-2", "P-22-3", "P-22-4", "P-23-1", and "P-23-2", CTA Docket, pp. 871-887, 889-890, 892-893.

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice