

**REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
QUEZON CITY**

**SPECIAL SECOND DIVISION**

**SUMISETSU  
INC.,**

**PHILIPPINES,**

**CTA CASE NO. 8062**

Petitioner,

Members:

- versus -

**CASTAÑEDA, JR.,** Chairperson,  
**CASANOVA,** and  
**MINDARO-GRULLA, JJ.**

**COMMISSIONER OF INTERNAL  
REVENUE,**

Promulgated:

Respondent.

MAY 26 2015

*1:05 p.m.*

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**DECISION**

**CASTAÑEDA, JR., J.:**

**STATEMENT OF THE CASE**

This Petition for Review filed by Sumisetsu Philippines, Inc., seeks for the refund or issuance of a tax credit certificate in the amount of ₱39,355,139.27, representing its alleged creditable Input Value Added Tax attributable to effectively zero-rated sales for the taxable year 2008.

**THE FACTS**

Petitioner is a corporation duly organized under Philippine laws, with principal office at the 8<sup>th</sup> Floor GC Corporate Plaza, 150 Legaspi *gc*

Street, Legaspi Village, Makati City.<sup>1</sup> It is a VAT registered entity with Certificate of Registration No. 8RC0000019261,<sup>2</sup> engaged in the business of providing electrical and mechanical services for electrical transmission and distribution systems, air conditioning and ventilation systems, telephone and communications systems and other allied services.<sup>3</sup>

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), duly appointed to exercise the powers and perform the duties of her office including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the Tax Code. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its quarterly Value Added Tax (VAT) Returns for the taxable year 2008 on the following dates:<sup>4</sup>

| Exhibits | Quarter<br>(2008) | Date of Filing<br>of Return |
|----------|-------------------|-----------------------------|
| "I"      | 1 <sup>st</sup>   | April 24, 2008              |
| "J"      | 2 <sup>nd</sup>   | July 24, 2008               |
| "K"      | 3 <sup>rd</sup>   | October 23,<br>2008         |
| "L"      | 4 <sup>th</sup>   | January 26,<br>2009         |

On February 22, 2010, petitioner filed with the BIR an administrative claim for refund and/or tax credit of excess input VAT in the amount of ₱38,654,939.61, attributable to its sale of services to Philippine Economic Zone Authority (PEZA)-registered entities for the period covering January 1, 2008 to December 31, 2008.<sup>5</sup> On March 24, 2010, petitioner filed an amended claim with the BIR, increasing the amount from ₱38,654,939.61 to ₱39,355,139.27.<sup>6</sup>

However, respondent failed to act on petitioner's administrative claim. Thus, on March 31, 2010, petitioner filed the present Petition for Review. 

<sup>1</sup> Par. 2, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 109.

<sup>2</sup> Par. 4, Stipulation of Facts, JSFI, Docket, p. 109.

<sup>3</sup> Par. 1, Stipulation of Facts, JSFI, Docket, p. 108.

<sup>4</sup> Pars. 5, 7, 9 and 11, Stipulated Facts, JSFI, Docket, pp. 109-110.

<sup>5</sup> Exhibit "F"; Par. 13, Stipulated Facts, JSFI, Docket, p. 110.

<sup>6</sup> Exhibit "G"; Par. 14, Stipulated Facts, JSFI, Docket, p. 110.

In her Answer,<sup>7</sup> respondent raised the following Special and Affirmative Defenses:

**"SPECIAL AND AFFIRMATIVE DEFENSES**

11. The petition for review should be dismissed on the following grounds:

**(a) Lack of cause of action on the part of the petitioner for non-exhaustion of administrative remedies.**

Under Section 112(C) of the National Internal Revenue Code (NIRC), respondent has 120 days from the date of submission of complete documents, within which to rule on an application for tax refund or credit. And only after the lapse of this period without any action on his part or receipt of his adverse decision that the aggrieved party may, within 30 days elevate the case to the Honorable Court.

Petitioner filed its administrative claim for refund of its alleged unutilized input VAT for the four (4) quarters of 2008 in the amount of ₱39,355,139.27 on March 24, 2010. Thus, respondent had until July 22, 2010, within which to make a ruling. Thereafter, petitioner had 30 days or until August 21, 2010, to challenge his adverse ruling or inaction with the Honorable Court.

Petitioner sprinted to the Honorable Court and prematurely filed the instant Petition for Review on March 31, 2010, or before the 120-day period granted unto the respondent lapsed effectively depriving the respondent of the opportunity to rule on the claim for refund. The failure of the petitioner to exhaust all available administrative remedies, justifies the dismissal of the instant petition.

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12. Petitioner's sales of services to PEZA-registered enterprises to qualify as effectively zero-rated sales, the latter should have availed of the 5% preferential tax; *je*

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<sup>7</sup> Docket, pp. 58-64.

otherwise, they are subject to 12% VAT under Section 108 of the NIRC.

It bears stressing that under Section 23 of Republic Act No. 7916, two different fiscal incentives are granted to an ecozone enterprise, to wit:

"SEC. 23. Fiscal Incentives – Business establishments operating within the ECOZONE shall be entitled to the fiscal incentives as provided for under the Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided for under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987."

Based on the aforequoted Section 23 of Republic Act (RA) No. 7916, a PEZA registered enterprise has the option to choose between two sets of fiscal incentives. One, is that provided for under Presidential Decree No. 66, as amended, and Section 24 of RA 7916 which includes the 5% preferential tax on gross income earned which is in lieu of national and local taxes, and second, as those provided for under Book VI of Executive Order No. 226, including but not limited to an income tax holiday (ITH) of 4 to 6 years depending on whether or not an entity is registered as a pioneer or non-pioneer enterprise. If an ecozone enterprise chooses the 5% preferential tax, it is exempt from payment of all national and local taxes. However, if an ecozone enterprise chooses the income tax holiday, it is only exempt from payment of the income tax but still subject to other national internal revenue taxes including the value-added tax.

It must be pointed out that an ecozone enterprise cannot avail of these two sets of fiscal incentives at the same time. This was explained by the Bureau of Internal Revenue in VAT Ruling Nos. 037-98; 043-98; 027-99; and 063-99 (*Read-Rite Philippines, Inc. (Formerly Sunward Technologies Phils., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5659, September 29, 2000)*). Thus, if the petitioner's PEZA-registered enterprises clients have availed of the fiscal incentives under Executive Order No. 226, that is, an income tax holiday, *pe*

they are [became] (*sic*) subject to value-added tax. Therefore, petitioner's sales of goods, property and services to them shall be subject to 12% VAT.

Under Sections 4.100-3 and 4.102-2 of Revenue Regulations No. 7-95, implementing Sections 100(a)(2)(C) and 100(b)(3) of the old National Internal Revenue Code (NIRC) [now Sections 106(A)(2)(c) and 108(B)(3) of the NIRC of 1997, as amended, the term 'effectively zero-rated sale of goods, property and services' shall only apply to sales made by a VAT-registered person to a person or entity who is exempt from indirect tax, pursuant to the provisions of a special law or international agreement in which the Philippines is a signatory.

The special law in this case is R.A. No. 7916, otherwise known as the Special Economic Zone Act of 1995. There is no existing provision under this law that a PEZA-registered enterprise is exempt from indirect tax. Hence, petitioner's PEZA-registered clients are only exempt from income taxes during their Income Tax Holiday. Even after the expiration of the Income Tax Holiday, petitioner's PEZA-registered clients shall only be exempt from all national and local taxes. However, all these taxes to which petitioner's PEZA-registered clients shall enjoy exemption refer to direct taxes. On the other hand, the 12% VAT imposed on its purchases of goods, property, or services are direct taxes in the hands of the supplier (petitioner in this case) but indirect taxes in the hands of petitioner's PEZA-registered clients since the same are passed-on as part of the cost of its purchases.

Accordingly, PEZA-registered enterprises' suppliers of services (petitioner in this case) cannot qualify for zero percent (0%) VAT, hence, shall be subject to 12% VAT on their sales to such PEZA-registered enterprises pursuant to Section 108 of the NIRC of 1997.

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In support of its claim, petitioner presented the following witnesses: Leonard Lyle M. Tabalon<sup>8</sup> – petitioner's Business Control 

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<sup>8</sup> Affidavit, Docket, pp. 124-127; Minutes of the Hearing dated September 29, 2010, Docket, p. 128.

Division Assistant Manager, Marichu M. Go<sup>9</sup> – petitioner's Accounting Assistant in its Finance Department, Cecilia S. Magalona<sup>10</sup> - petitioner's Finance and Accounting Division Manager, and Antonio B. Constantino<sup>11</sup> – Court Commissioned Independent Certified Public Accountant (ICPA).

Petitioner likewise formally offered<sup>12</sup> its pieces of evidence, which were all admitted by the Court in the Resolution<sup>13</sup> dated June 1, 2011.

On the other hand, respondent's counsel submitted the case for decision due to the absence of an Investigation Report. As such, the Court directed both parties to submit their memoranda.<sup>14</sup>

Petitioner filed its Memorandum<sup>15</sup> on August 10, 2011 while respondent failed to file the same. Consequently, the case was deemed submitted for decision on August 31, 2011.<sup>16</sup>

In the Decision<sup>17</sup> dated October 11, 2011, this Court dismissed the Petition for lack of jurisdiction. The dispositive portion thereof reads:

**"WHEREFORE**, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

**SO ORDERED".**

On November 3, 2011, petitioner filed its Motion for Reconsideration<sup>18</sup> which the Court denied in the Resolution<sup>19</sup> dated December 26, 2011. The dispositive portion of the said Resolution reads: 

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<sup>9</sup> Affidavit, Docket, pp. 154-157; Minutes of the Hearing dated October 18, 2010, Docket, p. 158.

<sup>10</sup> Affidavit, Docket, pp. 163-172; Minutes of the Hearing dated November 22, 2010, Docket, p. 193.

<sup>11</sup> Affidavit of Mr. Jerome Antonio B. Constantino (In Question and Answer Form), Docket, pp. 209-218; Minutes of the Hearing dated January 26, 2011, Docket, p. 220.

<sup>12</sup> Formal Offer of Documentary Evidence, Docket, pp. 232-256.

<sup>13</sup> Docket, pp. 261-262.

<sup>14</sup> Minutes of the Hearing dated July 11, 2011, Docket, p. 264.

<sup>15</sup> Docket, pp. 265-284.

<sup>16</sup> Resolution, Docket, p. 287.

<sup>17</sup> Docket, pp. 289-301.

<sup>18</sup> Docket, pp. 304-322.

<sup>19</sup> Docket, pp. 326-331.

**"WHEREFORE**, premises considered, petitioner's **"Motion for Reconsideration"** is hereby **DENIED** for lack of merit.

**SO ORDERED".**

On January 17, 2012, petitioner elevated its case via a Petition for Review<sup>20</sup> under Rule 8, Section 3(b) of the 2005 Revised Rules of the Court of Tax Appeals, as amended, to the Court *En Banc*. In the Decision<sup>21</sup> dated May 17, 2013, the Court *En Banc* granted the Petition, the dispositive portion of which reads:

**"WHEREFORE**, premises considered, the instant *Petition for Review* is hereby **GRANTED**. The *Resolution* dated December 26, 2011 and the *Decision* dated October 18, 2011 enunciated by the Second Division of this Court, which dismissed the Petition for Review docketed as CTA Case No. 8062, are **REVERSED AND SET ASIDE**.

Accordingly, CTA Case No. 8062 is hereby **REMANDED** to the court of origin for further proceedings.

**SO ORDERED".**

Respondent filed her Motion for Reconsideration<sup>22</sup> of the aforesaid Decision, which was denied by the Court *En Banc* in the Resolution<sup>23</sup> dated November 6, 2013. The dispositive portion thereof reads:

**"WHEREFORE**, premises considered, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit.

**SO ORDERED".** *jr*

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<sup>20</sup> Docket, pp. 332-349.

<sup>21</sup> Decision dated May 17, 2013, penned by Associate Justice Amelia R. Cotangco-Manalastas, Docket, pp. 404-419.

<sup>22</sup> Docket, pp. 425-430.

<sup>23</sup> Docket, pp. 435-440.

The Decision of the Court *En Banc* became final and executory on June 5, 2013.<sup>24</sup> Thus, upon remand to this Court of the present case, the case was set for presentation of petitioner's additional evidence.<sup>25</sup> Meanwhile, upon manifestation of petitioner that it will no longer be presenting additional evidence, the Court directed the parties to submit their memoranda. Petitioner submitted its memorandum on July 23, 2014, while respondent failed to file the same. Hence, the case was submitted for decision on July 31, 2014.

Hence, this Decision.

## THE ISSUES

The parties submitted the following issues<sup>26</sup> for the consideration of this Court:

1. Whether the petition for review should be dismissed for lack of cause of action on the part of the Sumisetsu for non-exhaustion of administrative remedies by filing the instant petition before the expiration of the 120-day period as provided for under Section 112 (C) of the NIRC.
2. Whether the Honorable Court has jurisdiction over the instant petition inasmuch as there was no decision or inaction which is tantamount to denial by the Respondent Commissioner that the Court of Tax Appeals could review simply because the Respondent Commissioner was not given an opportunity to reach that decision or to act accordingly on the claim for refund within the 120-day period.
3. Whether Sumisetsu's sale of services to PEZA-registered enterprises is subject to 12% or 0% VAT.
4. Whether Sumisetsu has an unutilized input VAT in the amount of ₱39,355,139.27 for the four (4) quarters of 2008. *Je*

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<sup>24</sup> Entry of Judgment, Docket, p. 444.

<sup>25</sup> Resolution dated May 22, 2014, Docket, pp. 447-448.

<sup>26</sup> Stipulation of Issues, JSFI, Docket, pp. 111-112.

5. Whether the said unutilized input VAT for the four (4) quarters of 2008 were applied against its output taxes or carried over to the succeeding taxable quarters/years.

6. Whether Sumisetsu's claim for refund/tax credit allegedly representing unutilized input VAT for the four (4) quarters of 2008 in the total amount of ₱39,355,139.27 is substantiated by documentary evidence.

7. Whether Sumisetsu is entitled to a tax refund or a tax credit certificate for the input VAT payments attributable and allocated to services rendered to PEZA-registered entities for 2008 in the aggregate amount of ₱39,355,139.27.

### THE RULING

Petitioner's claim for refund or tax credit is anchored mainly on Section 108(B)(2) and (3) and Section 112 of the National Internal Revenue Code of 1997, as amended (NIRC of 1997, as amended), viz:

**"SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties.—**

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**(B) Transactions Subject to Zero Percent (0%) Rate.—** The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

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(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);

(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;"

**"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 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."

Section 112(A) of the NIRC of 1997, as amended, provides that in order to be entitled to a refund or tax credit of input tax payments attributable to zero-rated sales, the following requisites must be satisfied:

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

Petitioner duly proved that it is a VAT registered entity with Certificate of Registration No. 8RC0000019261.<sup>27</sup> Moreover, the timeliness of its claim is already settled in the Decision dated May 17, 2013 and the Resolution dated November 6, 2013 of the Court *En Banc*, respectively. As such, the Court shall proceed to determine whether petitioner satisfied the remaining requirements for it to be entitled to its claim for refund or issuance of tax credit.

**Petitioner’s alleged zero-rated sales**

For the taxable year 2008, petitioner declared total sales in the amount of ₱1,147,221,481.75, broken down as follows:

| Exh.  | Qtr. | Zero-rated sales | VATable sales    | Total Sales        | Output taxes    |
|-------|------|------------------|------------------|--------------------|-----------------|
| I     | 1st  | ₱ 155,026,537.33 | ₱ 93,712,283.11  | ₱ 248,738,820.44   | ₱ 11,245,474.08 |
| J     | 2nd  | 201,242,414.51   | 120,314,088.74   | 321,556,503.25     | 14,437,690.77   |
| K     | 3rd  | 181,419,294.15   | 95,415,206.33    | 276,834,500.48     | 11,449,824.75   |
| L     | 4th  | 253,784,584.17   | 46,307,073.41    | 300,091,657.58     | 5,556,848.81    |
| TOTAL |      | ₱ 791,472,830.16 | ₱ 355,748,651.59 | ₱ 1,147,221,481.75 | ₱ 42,689,838.41 |

**Petitioner’s sale of services to PEZA-registered entities**

Petitioner rendered services to the following PEZA-registered entities,<sup>28</sup> *to wit:*

|   |                               |
|---|-------------------------------|
| 1 | Atomed Cebu, Inc. (ACI)       |
| 2 | Cebu Mitsumi, Inc. (CMI)      |
| 3 | Cebu YMTechnology, Inc. (CYI) |

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<sup>27</sup> See Note 2.  
<sup>28</sup> Exhibit SS, Annex 1a8.

|    |                                                                |
|----|----------------------------------------------------------------|
| 4  | Cebu Yushin, Inc. (CYI)                                        |
| 5  | Daiho (Philippines), Inc. (DPI)                                |
| 6  | Daikoku Electronics (Philippines), Inc. (DEPI)                 |
| 9  | East Ceramic Philippines Corporation (ECPC)                    |
| 10 | EDS Manufacturing, Inc. (EDS)                                  |
| 11 | Enomoto Philippine Manufacturing, Inc. (EPMI)                  |
| 12 | Epson Precision (Philippines), Inc. (EPPI)                     |
| 13 | Epson Software Eng'g., Inc.                                    |
| 14 | First Sumiden Circuits, Inc. (FSCI)                            |
| 15 | F-Tech Philippines Manufacturing, Inc. (FPMI)                  |
| 16 | Fujisash Philippines, Inc. (FPI)                               |
| 17 | Halsangz Plating Cebu Corp. (HPCC)                             |
| 18 | Honda Parts Manufacturing Corporation (HPMC)                   |
| 19 | Ibiden Philippines, Inc. (IPI)                                 |
| 20 | International Electric Wires Phils., Inc. (IEWPC)              |
| 21 | International Wiring Systems (Phils.) Corp. (IWSPC)            |
| 22 | JAE Philippines, Inc. (JAEPI)                                  |
| 23 | Koyo Manufacturing (Philippines) Corporation                   |
| 24 | Kyocera Kinseki Philippines, Inc. (KKPI)                       |
| 25 | Laguna Dai-ichi, Inc. (LDI)                                    |
| 26 | Laguna Electronics, Inc.                                       |
| 27 | Mactan Parts Technology, Inc. (MPTI)                           |
| 28 | Mitsumi Philippines, Inc. (MPI)                                |
| 29 | Mitsuwa Philippines, Inc. (MPI)                                |
| 30 | Nanbu Philippines, Inc. (NPI)                                  |
| 31 | Nanox Philippines, Inc. (NPI)                                  |
| 32 | NEC-Tokin Electronics (Philippines), Inc. (NTEPI)              |
| 33 | NEC-Toppan Circuit Design, Inc.                                |
| 34 | NEC-Toppan Circuit Solutions Philippines, Inc. (NTCSI)         |
| 35 | Nitto Denko Philippines Corporation (NDPC)                     |
| 36 | NKC Manufacturing Philippines Corporation (NKC)                |
| 37 | N.T. Philippines, Inc. (NTPI)                                  |
| 38 | Ogami Corporation (OC)                                         |
| 39 | Penta-Shimizu-TOA Joint Venture                                |
| 40 | Philippine Tonan Corporation (PTC)                             |
| 41 | Philippines Epson Optical, Inc. (PEOI)                         |
| 42 | Rohm Electronics Philippines, Inc. (REPI)                      |
| 43 | Sanno Philippines Manufacturing Corp. (SPMC)                   |
| 44 | Sanyo Capacitor Phils. Corp.                                   |
| 45 | Sanyo Semiconductor Manufacturing Philippines Corp.<br>(SSMPC) |
| 46 | SDE (Phils.) Corp.                                             |
| 47 | Sohbi Kohgei (Phils.), Inc. (SKPI)                             |
| 48 | Taiyo Plastic Corporation of the Philippines (TPCP)            |
| 49 | Taiyo Yuden (Phils.), Inc. (TYPI)                              |
| 50 | Tamiya (Philippines), Inc. (TPI)                               |
| 51 | Tokyo Steel Philippines Corporation (TSPC)                     |
| 52 | Totoku Philippines, Inc. (TPI)                                 |
| 53 | Tsuneishi Heavy Industries (Cebu), Inc. (THICI)                |
| 54 | Tsuneishi Technical Services                                   |

*ja*

An examination of the pieces of evidence submitted by petitioner to support its zero-rated sales reveals,<sup>29</sup> however, that petitioner failed to prove that all of its above-enumerated clients are PEZA/CFZ/SBFE -registered entities for the taxable year 2008. Thus, the following entities do not qualify for zero-rating:

| Exhibit | Entity                          | Per PEZA Certification<br>(Exhibit "A")                                                     | Per Court Findings                                                                                                                    |
|---------|---------------------------------|---------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|
| X-27    | Nanox Philippines, Inc. (NPI)   | Not registered with PEZA                                                                    | Supported by<br>certified true<br>copy of Clark<br>Freeport Zone<br>Certification                                                     |
|         | NEC-Toppan Circuit Design, Inc. |                                                                                             | No supporting<br>document                                                                                                             |
| X-35    | Penta-Shimizu-TOA Joint Venture | Not registered with PEZA                                                                    | Supported by<br>facsimile (fax)<br>copy of Subic Bay<br>Freeport<br>Enterprise<br>Certificate of<br>Registration and<br>Tax Exemption |
| X-51    | Sanyo Capacitor Phils. Corp.    |                                                                                             | Supported by a<br>certified true<br>copy of<br>Certificate of<br>Registration only                                                    |
| X-52    | SDE (Phils.) Corp.              | Did not file request for<br>issuance of VAT Zero<br>Rating Certificate for<br>the year 2008 | Supported by PEZA<br>Certificate of<br>Registration<br>only, which was<br>issued in 2005                                              |

With regard to Exhibit "X-27", the Court found that it was certified as true copy of the original by a person whose authority to certify the same is unknown, i.e., whether the person is the legal custodian of the original copy of the document. Hence, the Court cannot give probative value to the same.

On the other hand, the Court found that Exhibit "X-51" is a mere photocopy of an alleged certified true copy, contrary to the testimony of the Court-commissioned ICPA that all of petitioner's pieces of evidence, including the aforesaid exhibit, are faithful

<sup>29</sup> Exhibits "A" and X-1 to X-53.

reproductions of the originals.<sup>30</sup> Thus, the Court cannot give probative value to the same without violating the *Best Evidence Rule*.<sup>31</sup>

With respect to Exhibit "X-35", the Court likewise cannot give probative value to the same for being a mere facsimile in violation of the *Best Evidence Rule*, in relation to the *Rules on Electronic Evidence*. In this regard, the Supreme Court held in the case of *MCC Industrial Corporation vs. Ssangyong Corporation*<sup>32</sup> that a facsimile is a mere scanned copy of an original copy. Without the original, there is no way to determine the genuineness and authenticity of the said document.

Lastly, the Court found that Exhibit "X-52" is a Certificate of Registration with PEZA for the year 2005. Considering that the subject of petitioner's claim covers taxable year 2008, the Court finds that it is immaterial or irrelevant to the present Petition.

Correspondingly, petitioner's sale of services that do not qualify for zero-rating amount to ₱75,979,717.53, broken down as follows:

| Date               | OR No. | Client                       | Amount         |
|--------------------|--------|------------------------------|----------------|
| <b>1st Quarter</b> |        |                              |                |
| 1/9/2008           | 2048   | Nanox Phils. Inc.            | ₱ 1,805,000.00 |
| 1/9/2008           | 2049   | Nanox Phils. Inc.            | 297,000.00     |
| 1/10/2008          | 2054   | Nanox Phils. Inc.            | 237,450.60     |
| 1/18/2008          | 2059   | SDE (Phils.) Corp.           | 682,020.00     |
| 1/31/2008          | 2060   | Sanyo Capacitor Phils. Corp. | 54,000.00      |
| 2/22/2008          | 2090   | Nanox Phils. Inc.            | 70,000.00      |
| 2/22/2008          | 2091   | Nanox Phils. Inc.            | 120,000.00     |
| 2/22/2008          | 2092   | Nanox Phils. Inc.            | 190,000.00     |

<sup>30</sup> See Note 11.

<sup>31</sup> Section 3, Rule 130 of the Revised Rules of Court, otherwise known as the *Best Evidence Rule*, provides:

Sec. 3. *Original document must be produced; exceptions.* – When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

- (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
- (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
- (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
- (d) When the original is a public record in the custody of a public officer or is recorded in a public office.

<sup>32</sup> G.R. No. 170633, October 17, 2007.

|             |      |                                 |                |
|-------------|------|---------------------------------|----------------|
| 3/3/2008    | 2119 | NEC-Toppan Circuit Design, Inc. | 9,371.00       |
| 3/26/2008   | 2123 | Nanox Phils. Inc.               | 450,000.00     |
| 3/10/2008   | 2135 | SDE (Phils.) Corp.              | 210,000.00     |
| Sub-total   |      |                                 | ₱ 4,124,841.60 |
| 2nd Quarter |      |                                 |                |
| 4/23/2008   | 2165 | Nanox Phils. Inc.               | ₱ 1,480,000.00 |
| 4/23/2008   | 2178 | Penta-Shimizu-TOA JV            | 8,555,308.02   |
| 4/23/2008   | 2179 | Penta-Shimizu-TOA JV            | 11,805,717.20  |
| 4/28/2008   | 2190 | Nanox Phils. Inc.               | 156,438.40     |
| 5/6/2008    | 2193 | Nanox Phils. Inc.               | 750,000.00     |
| 5/7/2008    | 2195 | Nanox Phils. Inc.               | 31,600.00      |
| 5/29/2008   | 2219 | Nanox Phils. Inc.               | 395,000.00     |
| 5/30/2008   | 2223 | SDE (Phils.) Corp.              | 75,780.00      |
| 6/27/2008   | 2251 | SDE (Phils.) Corp.              | 94,000.00      |
| 6/26/2008   | 2263 | Nanox Phils. Inc.               | 42,753.00      |
| Sub-total   |      |                                 | ₱23,386,596.62 |
| 3rd Quarter |      |                                 |                |
| 7/14/2008   | 2274 | NEC-Toppan Circuit Design, Inc. | ₱ 8,700.00     |
| 7/30/2008   | 2299 | Nanox Phils. Inc.               | 450,000.00     |
| 7/29/2008   | 2307 | NEC-Toppan Circuit Design, Inc. | 8,700.00       |
| 8/5/2008    | 2304 | SDE (Phils.) Corp.              | 4,500.00       |
| 8/21/2008   | 2327 | Nanox Phils. Inc.               | 15,600.00      |
| 8/21/2008   | 2328 | Penta-Shimizu-TOA JV            | 281,689.06     |
| 8/26/2008   | 2335 | Penta-Shimizu-TOA JV            | 14,904,449.05  |
| 8/29/2008   | 2336 | Sanyo Capacitor Phils. Corp.    | 1,600,000.00   |
| 9/26/2008   | 2365 | Nanox Phils. Inc.               | 23,200,000.00  |
| 9/27/2008   | 2371 | Nanox Phils. Inc.               | 1,650,000.00   |
| 9/27/2008   | 2372 | Nanox Phils. Inc.               | 900,000.00     |
| 9/27/2008   | 2373 | Nanox Phils. Inc.               | 440,000.00     |
| 9/26/2008   | 2378 | Nanox Phils. Inc.               | 4,874,741.20   |
| Sub-total   |      |                                 | ₱48,338,379.31 |
| 4th Quarter |      |                                 |                |
| 11/25/2008  | 2397 | Nanox Phils. Inc.               | ₱ 25,900.00    |
| 11/26/2008  | 2432 | Nanox Phils. Inc.               | 77,000.00      |
| 12/19/2008  | 2478 | NEC-Toppan Circuit Design, Inc. | 27,000.00      |
| Sub-total   |      |                                 | ₱ 129,900.00   |
| TOTAL       |      |                                 | ₱75,979,717.53 |

**Petitioner’s Sale of Services to  
the Embassy of Japan and for  
the construction of the Manila  
Japanese School**

To prove that its sales to the Embassy of Japan and for the construction of the Manila Japanese School, respectively, are VAT- *gc*

exempt, petitioner presented VAT Exemption Certificate No. 2006-408<sup>33</sup> and documents from the Department of Foreign Affairs (DFA).<sup>34</sup>

Based from the foregoing pieces of evidence, the Embassy of Japan, as well as the construction of the Manila Japanese School, is exempt from VAT based on the principle of reciprocity, in relation to BIR Ruling No. DA-ITAD-096-03 dated July 16, 2003 and DFA Indorsement dated November 22, 2006. Applying Section 108(B)(3) as quoted above, the Court finds that petitioner's sale of services to the Embassy of Japan and for the construction of the Manila Japanese School, qualify for zero-rating.

**Petitioner's sale of services to  
non-resident foreign  
corporations**

Petitioner likewise performed services to non-resident foreign corporations. In order for the supply of services to be VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended, the Supreme Court, in the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*<sup>35</sup> provided the following requisites, *to wit*:

- 1) the services must be other than processing, manufacturing or repacking of goods;
- 2) payment for 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.

With respect to the first requisite, the Court finds that petitioner complied thereto as the services it rendered to the following non-resident clients<sup>36</sup> are not the under the same category as "processing, manufacturing or repacking of goods":

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<sup>33</sup> Exhibit OO.

<sup>34</sup> Exhibit X-49.

<sup>35</sup> G.R. No. 153205, January 22, 2007.

<sup>36</sup> Exhibit SS, Annex 1a8.

| Non-resident Foreign Corporations |                           |
|-----------------------------------|---------------------------|
| 1                                 | Sumitomo Densetsu Co Ltd  |
| 2                                 | Misuzu Erie Corp.         |
| 3                                 | Sumitomo Heavy Industries |
| 4                                 | Taisei Corporation        |

Anent the second requisite, petitioner avers that for the services rendered for taxable year 2008, it received foreign currency payments which were accounted for in accordance with the BSP rules and regulations. These are evidenced by certification of inward remittances issued by the Bank of Tokyo-Mitsubishi UFJ<sup>37</sup> and settlement advise from the Bank of Philippine Islands (BPI),<sup>38</sup> as well as official receipts<sup>39</sup> which petitioner issued to its clients.

As per verification of petitioner’s Proof of Inward Remittances,<sup>40</sup> the Court finds that all of petitioner’s sales to Misuzu Erie Corporation for taxable year 2008 have been inwardly remitted.

With regard to the third requisite, petitioner submitted the following documents to prove that its non-resident foreign clients are doing business outside the Philippines for taxable year 2008:

| NRFCs                      | Document                                        | Exhibit |
|----------------------------|-------------------------------------------------|---------|
| Sumitomo Densetsu Co. Ltd. | SEC Certificate of Corporate Filing/Information | Y-1     |
|                            | Articles of Incorporation                       | PP-1    |
|                            | Tax Residence Certificate                       | QQ-1    |
| Misuzu Erie Corp.          | SEC Certificate of Non-Registration             | Y-2     |
|                            | Articles of Incorporation                       | PP-2    |
|                            | Tax Residence Certificate                       | QQ-2    |
| Sumitomo Heavy Industries  | SEC Certificate of Non-Registration             | Y-3     |
|                            | Purchase Order                                  | RR      |
| Taisei Corporation         | Technical Services Agreement                    | EEE     |

In *Accenture, Inc. v. Commissioner of Internal Revenue*,<sup>41</sup> the Supreme Court reiterated that “to come within the purview of Section 108(B)(2), it is not enough that the recipient of the service be proven to be a foreign corporation; rather, it must be specifically proven to be a nonresident foreign corporation”. *Je*

<sup>37</sup> Exhibits W-1 to W-3.  
<sup>38</sup> Exhibit W-4.  
<sup>39</sup> Exhibits U-1Q-1 to U-4Q-101.  
<sup>40</sup> Exhibits W-1 to W-4.  
<sup>41</sup> G.R. No. 190102, July 11, 2012.

A close scrutiny of the documents submitted by petitioner shows that only its sales to Sumitomo Densetsu Co. Ltd. and Misuzu Erie Corporation qualify for zero-rating. In other words, petitioner failed to present sufficient evidence that Sumitomo Heavy Industries and Taisei Corporation were, in fact, doing business outside the Philippines during the taxable year 2008. Sumitomo Heavy Industries' Certificate of Non-Registration and Purchase Order prove that it is not registered in the Philippines and that it had transactions with petitioner. However, the Court finds these documents as insufficient proof to show that it is doing business outside the Philippines. On the other hand, Tasei Corporation's Technical Services Agreement merely proves that it had transactions with petitioner. Hence, it does not likewise prove that it is doing business outside the Philippines.

Incidentally, upon verification of the records, the Court subscribes with the findings of the Court-commissioned ICPA<sup>42</sup> that petitioner's sale of services to Sumitomo Densetsu Co. Ltd. in the amount of ₱403,830.00, which amount is included in its zero-rated sales for the first quarter of 2008, is not properly substantiated.<sup>43</sup> Thus, the Court finds the disallowance to be in order.

Consequently, the Court finds that petitioner's alleged zero-rated sales in the amount of ₱3,101,306.86 should likewise be disallowed, detailed as follows:

| Date               | OR No. | Client                     | Amount                |
|--------------------|--------|----------------------------|-----------------------|
| <b>1st Quarter</b> |        |                            |                       |
| 1/25/2008          | 2066   | Taisei Corporation         | ₱ 1,005,192.00        |
|                    |        | Sumitomo Densetsu Co. Ltd. | 403,830.00            |
| <i>Sub-total</i>   |        |                            | ₱ 1,409,022.00        |
| <b>2nd Quarter</b> |        |                            |                       |
| 6/20/2008          | 2297   | Sumitomo Heavy Industries  | ₱ 401,519.50          |
| <i>Sub-total</i>   |        |                            | ₱ 401,519.50          |
| <b>3rd Quarter</b> |        |                            |                       |
| 9/30/2008          | 2402   | Sumitomo Heavy Industries  | ₱ 3,594.72            |
| 9/30/2008          | 2403   | Sumitomo Heavy Industries  | 864,211.14            |
| <i>Sub-total</i>   |        |                            | ₱ 867,805.86          |
| <b>4th Quarter</b> |        |                            |                       |
| 11/5/2008          | 2430   | Sumitomo Heavy Industries  | ₱ 422,959.50          |
| <i>Sub-total</i>   |        |                            | ₱ 422,959.50          |
| <b>TOTAL</b>       |        |                            | <b>₱ 3,101,306.86</b> |

*je*

<sup>42</sup> Mr. Jerome Antonio B. Constantino of Constantino Guadalquiver & Co.  
<sup>43</sup> Exhibit SS, Annex 2-1Q-6.

Furthermore, the Court found the following overstatements/understatements of zero-rated sales as reported in petitioner’s schedule/VAT returns, when compared with the corresponding official receipts:

| Exhibit     | OR No. | OR Date   | Client                     | Per OR        | Per Schedule  | (Over)/Under-statement |
|-------------|--------|-----------|----------------------------|---------------|---------------|------------------------|
| 1st Quarter |        |           |                            |               |               |                        |
| U-1Q-4      | 2025   | 1/4/2008  | Taiyo Yuden (Phils.), Inc. | ₱ 390,000.00  | ₱ 390,100.00  | ₱ (100.00)             |
| U-1Q-80     | 2155   | 3/28/2008 | Mitsumi Phils., Inc.       | 609,348.73    | 610,380.53    | (1,031.80)             |
| Sub-total   |        |           |                            | ₱ 999,348.73  | ₱1,000,480.53 | ₱ (1,131.80)           |
| 3rd Quarter |        |           |                            |               |               |                        |
| U-3Q-5      | 2256   | 7/4/2008  | Sanno Phils. Mfg. Corp.    | 846,000.00    | 848,000.00    | ₱ (2,000.00)           |
| U-3Q-53     | 2312   | 8/22/2008 | Taiyo Yuden (Phils.), Inc. | 237,900.00    | 237,600.00    | 300.00                 |
| Sub-total   |        |           |                            | ₱ 1,083,900   | ₱1,085,600.00 | ₱ (1,700.00)           |
| TOTAL       |        |           |                            | ₱2,083,248.73 | ₱2,086,080.53 | ₱ (2,831.80)           |

In sum, petitioner’s valid and substantiated zero-rated sales for the taxable year 2008 amount to ₱712,388,973.97, computed thus:

| Qtr.  | Zero-rated sales | Less: Disallowances    |                |               | Adjusted Zero-rated sales |
|-------|------------------|------------------------|----------------|---------------|---------------------------|
|       |                  | Sales to PEZA Entities | Sales to NRFCs | Overstatement |                           |
| 1st   | ₱155,026,537.33  | ₱ 4,124,841.60         | ₱1,409,022.00  | ₱ 1,131.80    | ₱ 149,491,541.93          |
| 2nd   | 201,242,414.51   | 23,386,596.62          | 401,519.50     | -             | 177,454,298.39            |
| 3rd   | 181,419,294.15   | 48,338,379.31          | 867,805.86     | 1,700.00      | 132,211,408.98            |
| 4th   | 253,784,584.17   | 129,900.00             | 422,959.50     | -             | 253,231,724.67            |
| TOTAL | ₱791,472,830.16  | ₱ 75,979,717.53        | ₱3,101,306.86  | ₱ 2,831.80    | ₱ 712,388,973.97          |

Considering that not all of petitioner’s declared zero-rated sales are properly substantiated, only a portion of the claimed input taxes attributable to the substantiated zero-sales can be refunded using the following rate:

| Qtr. | Adjusted Zero-rated sales | Zero-rated sales per VAT Returns | Rate of substantiated input taxes attributable to valid & substantiated zero-rated sales |
|------|---------------------------|----------------------------------|------------------------------------------------------------------------------------------|
| 1st  | ₱149,491,541.93           | ₱ 155,026,537.33                 | 96.43%                                                                                   |
| 2nd  | 177,454,298.39            | 201,242,414.51                   | 88.18%                                                                                   |
| 3rd  | 132,211,408.98            | 181,419,294.15                   | 72.88%                                                                                   |

|              |                        |                         |               |
|--------------|------------------------|-------------------------|---------------|
| 4th          | 253,231,724.67         | 253,784,584.17          | 99.78%        |
| <b>TOTAL</b> | <b>₱712,388,973.97</b> | <b>₱ 791,472,830.16</b> | <b>90.01%</b> |

On the other hand, the Court-commissioned independent CPA also examined petitioner’s sales subject to 12% VAT for the subject taxable year and found that the VATable sales for the year should amount to ₱356,127,061.81.<sup>44</sup> Consequently, the corresponding output taxes for the year 2008 must be adjusted to the amount of ₱42,735,247.42, thus:

| Qtr.         | VATable sales<br>per VAT Returns | Adjusted<br>VATable Sales | Adjusted Output taxes<br>(12% of Adjusted VATable Sales) |
|--------------|----------------------------------|---------------------------|----------------------------------------------------------|
| 1st          | ₱ 93,712,283.11                  | ₱ 94,076,143.40           | ₱11,289,137.21                                           |
| 2nd          | 120,314,088.74                   | 119,576,683.70            | 14,349,202.04                                            |
| 3rd          | 95,415,206.33                    | 95,865,615.19             | 11,503,873.82                                            |
| 4th          | 46,307,073.41                    | 46,608,619.52             | 5,593,034.34                                             |
| <b>TOTAL</b> | <b>₱355,748,651.59</b>           | <b>₱356,127,061.81</b>    | <b>₱42,735,247.42</b>                                    |

**The input taxes which were incurred or paid must be attributable to petitioner’s zero-rated sales**

Petitioner uses an allocation system on its purchases as shown in the Process of Attribution on Input Tax.<sup>45</sup> It states:

*"Direct Attribution of Input Tax to Zero-rated Sales*

The basis for the attribution of input tax to zero-rated sales is the List of Project Codes and Project Names. The same list also indicates the project location. xxx

For the year 2007, all invoices stamped “approved” which indicates project codes designated to PEZA-registered customers are segregated for direct attribution of input tax to zero-rated sales.”

In support thereof, petitioner submitted its Masterlist of Project Codes for the years 2007 and 2008<sup>46</sup> used in the said attribution. 

<sup>44</sup> Exhibit SS, p. 10.  
<sup>45</sup> Exhibit Z-3.  
<sup>46</sup> Exhibits Z-1 and Z-2.

For the year 2008, petitioner reported in its Quarterly VAT returns total input taxes in the amount of ₱58,286,540.34. However, the Court-commissioned ICPA’s examination based on the documents presented by petitioner covers only up to the extent of ₱58,093,557.20. Hence, the Court finds that petitioner has unaccounted input taxes in the amount of ₱192,983.14, broken down as follows:

|                                                                     | 1st Quarter    | 2nd Quarter    | 3rd Quarter    | 4th Quarter    | Total          |
|---------------------------------------------------------------------|----------------|----------------|----------------|----------------|----------------|
| Input tax per Quarterly VAT Returns                                 | ₱18,020,951.46 | ₱14,257,086.49 | ₱13,331,803.22 | ₱12,676,699.17 | ₱58,286,540.34 |
| Properly supported by VAT invoices/official receipts/BIR Form 1600: |                |                |                |                |                |
| Directly attributable to zero-rated sales (Exhibit SS, Annex 3)     | ₱10,379,754.50 | ₱ 8,605,425.41 | ₱ 6,342,950.46 | ₱ 6,623,036.21 | ₱31,951,166.58 |
| Directly attributable to VATable sales (Exhibit SS, Annex 4)        | 3,511,608.00   | 2,595,942.28   | 5,214,598.50   | 3,844,167.55   | 15,166,316.33  |
| Common input tax (Exhibit SS, Annex 5)                              | 1,255,459.09   | 1,209,204.57   | 1,031,989.61   | 621,149.06     | 4,117,802.33   |
| Subtotal                                                            | ₱15,146,821.59 | ₱12,410,572.26 | ₱12,589,538.57 | ₱11,088,352.82 | ₱51,235,285.24 |
| Exceptions noted:                                                   |                |                |                |                |                |
| Directly attributable to zero-rated sales (Exhibit SS, Annex 3)     | ₱ 1,614,298.33 | ₱ 862,751.59   | ₱ 151,136.44   | ₱ 1,004,073.36 | ₱ 3,632,259.72 |
| Directly attributable to VATable sales (Exhibit SS, Annex 4)        | 825,593.52     | 414,825.86     | 478,930.99     | 285,367.23     | 2,004,717.60   |
| Common input tax (Exhibit SS, Annex 5)                              | 433,907.19     | 389,402.54     | 112,143.27     | 285,841.64     | 1,221,294.64   |
| Subtotal                                                            | ₱ 2,873,799.04 | ₱ 1,666,979.99 | ₱ 742,210.70   | ₱ 1,575,282.23 | ₱ 6,858,271.96 |
| Total input tax examined                                            | ₱18,020,620.63 | ₱14,077,552.25 | ₱13,331,749.27 | ₱12,663,635.05 | ₱58,093,557.20 |
| Unaccounted input tax                                               | ₱ 330.83       | ₱ 179,534.24   | ₱ 53.95        | ₱ 13,064.12    | ₱ 192,983.14   |

The Court-commissioned ICPA found that for the year 2008, petitioner had input taxes directly attributable to zero-rated sales in the aggregate amount of ₱35,784,948.24 and input taxes arising from common purchases amounting to ₱5,339,096.93,<sup>47</sup> detailed as follows:

| Exh.  | Quarter | Total Input Taxes | Attributable to zero-rated sales | Common purchases |
|-------|---------|-------------------|----------------------------------|------------------|
| I     | 1st     | ₱ 18,020,951.46   | ₱ 11,994,052.80                  | ₱ 1,689,366.25   |
| J     | 2nd     | 14,257,086.49     | 9,669,698.82                     | 1,598,607.11     |
| K     | 3rd     | 13,331,803.22     | 6,494,086.79                     | 1,144,132.88     |
| L     | 4th     | 12,676,699.17     | 7,627,109.83                     | 906,990.69       |
| TOTAL |         | ₱ 58,286,540.34   | ₱ 35,784,948.24                  | ₱ 5,339,096.93   |

<sup>47</sup> Exhibit SS, p. 2.

Using the declared sales per petitioner’s Quarterly VAT Returns, the allocation rate of its zero-rated sales are as follows:

| Exh.  | Qtr. | Zero-rated sales | VATable sales    | Total Sales        | Allocation Rate of Zero-rated Sales |
|-------|------|------------------|------------------|--------------------|-------------------------------------|
| I     | 1st  | ₱ 155,026,537.33 | ₱ 93,712,283.11  | ₱ 248,738,820.44   | 62.33%                              |
| J     | 2nd  | 201,242,414.51   | 120,314,088.74   | 321,556,503.25     | 62.58%                              |
| K     | 3rd  | 181,419,294.15   | 95,415,206.33    | 276,834,500.48     | 65.53%                              |
| L     | 4th  | 253,784,584.17   | 46,307,073.41    | 300,091,657.58     | 84.57%                              |
| TOTAL |      | ₱ 791,472,830.16 | ₱ 355,748,651.59 | ₱ 1,147,221,481.75 | 68.99%                              |

Thus, petitioner’s claim of excess and unutilized input taxes of ₱39,355,139.27 is computed as follows:<sup>48</sup>

| Qtr.  | Input tax on Common Purchases | Allocation Rate of Zero-rated Sales | Input Tax Allocated to Zero-rated Sales | Input Tax Directly Attributable to Zero-rated Sales | Total Input Tax Attributable to Zero-rated Sales |
|-------|-------------------------------|-------------------------------------|-----------------------------------------|-----------------------------------------------------|--------------------------------------------------|
| 1st   | ₱ 1,689,366.25                | 62.33%                              | ₱ 1,052,897.97                          | ₱ 11,994,052.80                                     | ₱ 13,046,950.77                                  |
| 2nd   | 1,598,607.11                  | 62.58%                              | 1,000,469.75                            | 9,669,698.82                                        | 10,670,168.57                                    |
| 3rd   | 1,144,132.88                  | 65.53%                              | 749,790.14                              | 6,494,086.79                                        | 7,243,876.93                                     |
| 4th   | 906,990.69                    | 84.57%                              | 767,033.17                              | 7,627,109.83                                        | 8,394,143.00                                     |
| TOTAL | ₱ 5,339,096.93                | 68.99%                              | ₱ 3,570,191.03                          | ₱ 35,784,948.24                                     | ₱ 39,355,139.27                                  |

The Court-commissioned ICPA reported that petitioner’s properly substantiated input taxes amount to P51,235,285.24, broken down as follows:

|                                                                          | 1st Quarter    | 2nd Quarter    | 3rd Quarter    | 4th Quarter    | Total          |
|--------------------------------------------------------------------------|----------------|----------------|----------------|----------------|----------------|
| Total input tax examined by the ICPA                                     | ₱18,020,620.63 | ₱14,077,552.25 | ₱13,331,749.27 | ₱12,663,635.05 | ₱58,093,557.20 |
| Less: Exceptions noted                                                   |                |                |                |                |                |
| Directly attributable to zero-rated sales ( <i>Exhibit SS, Annex 3</i> ) | ₱ 1,614,298.33 | ₱ 862,751.59   | ₱ 151,136.44   | ₱ 1,004,073.36 | ₱ 3,632,259.72 |
| Directly attributable to VATable sales ( <i>Exhibit SS, Annex 4</i> )    | 825,593.52     | 414,825.86     | 478,930.99     | 285,367.23     | 2,004,717.60   |

<sup>48</sup> Exhibit SS, pp. 2-3.

|                                                 |                |                |                |                |                |
|-------------------------------------------------|----------------|----------------|----------------|----------------|----------------|
| Common input tax ( <i>Exhibit SS, Annex 5</i> ) | 433,907.19     | 389,402.54     | 112,143.27     | 285,841.64     | 1,221,294.64   |
| Subtotal                                        | 2,873,799.04   | 1,666,979.99   | 742,210.70     | 1,575,282.23   | 6,858,271.96   |
| Substantiated input taxes per ICPA report       | ₱15,146,821.59 | ₱12,410,572.26 | ₱12,589,538.57 | ₱11,088,352.82 | ₱51,235,285.24 |

Further, the Court-commissioned ICPA found that input taxes amounting to ₱5,698,547.51 should be reclassified from being directly attributable to zero-rated sales to VATable sales and common purchases,<sup>49</sup> thus:

| Quarter | Attributable to zero-rated sales | Attributable to VATable sales | Common purchases | Total           |
|---------|----------------------------------|-------------------------------|------------------|-----------------|
| 1st     | ₱ 10,379,754.50                  | ₱ 3,511,608.00                | ₱ 1,255,459.09   | ₱ 15,146,821.59 |
|         | (2,407,580.64)                   | 2,407,580.64                  |                  |                 |
|         | (270,019.10)                     | 270,019.10                    |                  |                 |
| 2nd     | 8,605,425.41                     | 2,595,942.28                  | 1,209,204.57     | 12,410,572.26   |
|         | (1,412,721.80)                   | 1,412,721.80                  |                  |                 |
|         | (409,650.99)                     | 409,650.99                    |                  |                 |
|         | (7,650.00)                       |                               | 7,650.00         |                 |
| 3rd     | 6,342,950.46                     | 5,214,598.50                  | 1,031,989.61     | 12,589,538.57   |
|         | (553,030.35)                     | 553,030.35                    |                  |                 |
|         | (177,367.39)                     | 177,367.39                    |                  |                 |
| 4th     | 6,623,036.21                     | 3,844,167.55                  | 621,149.06       | 11,088,352.82   |
|         | (255,591.57)                     | 255,591.57                    |                  |                 |
|         | (204,935.67)                     | 204,935.67                    |                  |                 |
| TOTAL   | ₱ 26,252,619.07                  | ₱ 20,857,213.84               | ₱ 4,125,452.33   | ₱ 51,235,285.24 |

The foregoing exceptions noted by the ICPA should be disallowed for failure to comply with the invoicing and substantiation requirements pursuant to Section 113(A) and (B) of the NIRC of 1997, as amended, quoted hereafter:

**"SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons.—**

*(A) Invoicing Requirements.—*A VAT-registered person shall issue:

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and *je*

<sup>49</sup> Exhibit SS, Annex 3 Page 3 of 7, Items v., w. and z.

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

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.*—The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided, That:*

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from value-added tax, the term **'VAT-exempt sale'** shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.* 

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

(4) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer's Identification Number (TIN) of the purchaser, customer or client." (*Underscoring supplied.*)

The foregoing provision of law is implemented by Sections 4.110-8 and 4.113-1(A) and (B) of Revenue Regulations No. 16-2005, as amended, thus:

**SEC. 4.110-8. *Substantiation of Input Tax Credits.*—**

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales or subjected to the 5% Final Withholding Vat, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

**(1) For the importation of goods – import entry or other equivalent document showing actual payment of VAT on the imported goods.**

**(2) For the domestic purchase of goods and properties – invoice showing the information required under Secs. 113 and 237 of the Tax Code.**

(3) For the purchase of real property – public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.

**(4) For the purchase of services – official receipt showing the information required under Secs. 113 and 237 of the Tax Code.** *jk*

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code.

xxx xxx xxx

**(d) Input tax from payments made to non-residents (such as for services, rentals and royalties) shall be supported by a copy of the Monthly Remittance Return of Value Added Tax Withheld (BIR Form 1600) filed by the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor. (Emphasis supplied.)**

xxx xxx xxx"

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

(A) A VAT-registered person shall issue: --

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

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

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

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

(B) Information contained in VAT invoice or VAT official receipt.—The following information shall be indicated in VAT invoice or VAT official receipt: *Je*

(1) **A statement that the seller is a VAT-registered person, followed by his TIN;**

(2) **The total amount which the purchaser pays or is obligated to pay to the seller** with the indication that such amount includes the VAT; *Provided, That:*

(a) **The amount of tax shall be shown as a separate item in the invoice or receipt;**

(b) If the sale is exempt from VAT, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) In the case of **sales in the amount of one thousand pesos (P1,000) or more** where the sale or transfer is made to a VAT-registered person, the **name, business style, if any, address and TIN of the purchaser, customer or client**, shall be indicated in addition to the information required in (1) and (2) of this Section." *(Emphasis supplied.)*

Anent the exceptions found by the Court-commissioned ICPA, petitioner asserts that input taxes in the amounts of P11,496.44 and 

₱173,119.72 under items number 26 and 27,<sup>50</sup> respectively, should not be disallowed since it has established the payment of input tax by preponderance of evidence.<sup>51</sup>

The Court is not persuaded. It bears stressing that for the same transaction, the output VAT of the seller becomes the input VAT of the buyer. Thus, the invoicing requirements under the VAT law and regulations must be strictly followed, *i.e.* the sale/purchase of services and use or lease of properties must be supported by VAT-registered official receipt while the sale/purchase of goods or properties must be supported by VAT-registered invoice, issued in accordance with Sections 113 and 237 of the NIRC of 1997, as amended.

In the case of *Panasonic Communications Imaging Corporation of the Philippines (formerly Matsushita Business Machine Corporation of the Philippines) vs. Commissioner of Internal Revenue*,<sup>52</sup> the Supreme Court explained how the output-input mechanism works under the VAT system, to wit:

"The VAT is a tax on consumption, an indirect tax that the provider of goods or services may pass on to his customers. Under the VAT method of taxation, which is **invoice-based**, an entity can subtract from the VAT charged on its sales or outputs the VAT it paid on its purchases, inputs and imports. For example, when a seller charges VAT on its sale, it issues an invoice to the buyer, indicating the amount of VAT he charged. For his part, if the buyer is also a seller subjected to the payment of VAT on his sales, he can use the invoice issued to him by his supplier to get a reduction of his own VAT liability. The difference in tax shown on invoices passed and invoices received is the tax paid to the government. In case the tax on invoices received exceeds that on invoices passed, a tax refund may be claimed."

Clearly, to ensure proper payment of taxes, the invoicing requirements under the VAT law and regulations should be strictly complied with as these were designed to create an orderly VAT system without prejudice both to the taxpayers and the government. 

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<sup>50</sup> Exhibit SS, p.23.

<sup>51</sup> Memorandum for the Petitioner, Paragraphs 4.20 to 4.26, Docket pp. 469-471.

<sup>52</sup> G .R. No. 178090, February 8, 2010.

The Supreme Court, in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*,<sup>53</sup> held that:

*"In fine, we reiterate our consistent ruling that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in strictissimi juris against the taxpayer, but also **the pieces of evidence presented entitling a taxpayer to an exemption is strictissimi scrutinized** and must be duly proven."* (Emphasis supplied.)

Petitioner argues that in the case of *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*,<sup>54</sup> the Supreme Court held that there is no law or revenue regulation that provides that failure to reflect or indicate in the invoices or receipts the TIN-V would result in the outright invalidation of these receipts or invoices.

A reading of the *Intel case*, however, shows that it is not on all fours with the present Petition. In the *Intel case*, petitioner Intel's claim for refund involves the period April 1, 1998 to June 30, 1998. At that time, it is the old Tax Code and the pertinent Revenue Regulations that were applied by the Supreme Court in deciding the case. In other words, Section 113 of the old Tax Code has not yet been amended by Republic Act No. 9337, which was enacted later in 2005.

In the present case, petitioner's claim covers the taxable year 2008 which is already governed by the provisions of the NIRC of 1997, as amended by Republic Act No. 9337, among others. Thus, as it is presently worded, the requirements under Section 113 and the above-quoted provisions of the Regulations are clearly mandatory. Failure to satisfy the above-requirements justifies the said disallowance.

Hence, the Court finds that the disallowance of input taxes domestic purchases supported by invoices with stamped/handwritten "VAT Registered" or "TIN-VAT" and official receipts with "TIN-NV" or stamped/handwritten "TIN-V", is in order. *ju*

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<sup>53</sup> G.R. No. 159490, February 18, 2008.

<sup>54</sup> G.R. No. 166732, April 27, 2007.

The Court-commissioned ICPA also examined petitioner’s input taxes on purchase of capital goods for the year 2008 amounting to ₱409,395.10. He found the following:

| Period      | Exhibit | Purchase Amount | Input VAT    |
|-------------|---------|-----------------|--------------|
| January     | TT-1    | ₱ -             | ₱ -          |
| February    | TT-2    | 25,446.43       | 3,053.57     |
| March       | I       | 355,040.26      | 42,604.85    |
| 1st Quarter |         | ₱ 380,486.69    | ₱ 45,658.42  |
| April       | TT-3    | ₱ 43,498.50     | ₱ 5,219.81   |
| May         | TT-4    | 914,529.44      | 109,743.57   |
| June        | J       | 606,713.40      | 72,805.62    |
| 2nd Quarter |         | ₱ 1,564,741.34  | ₱ 187,769.00 |
| July        | TT-5    | ₱ -             | ₱ -          |
| August      | TT-6    | 64,017.86       | 7,682.14     |
| September   | K       | 239,017.86      | 28,682.14    |
| 3rd Quarter |         | ₱ 303,035.72    | ₱ 6,364.28   |
| October     | TT-7    | ₱ 279,004.46    | ₱ 33,480.54  |
| November    | TT-8    | 530,535.72      | 63,664.29    |
| December    | L       | 353,821.43      | 42,458.57    |
| 4th Quarter |         | ₱ 1,163,361.61  | ₱ 139,603.40 |
| TOTAL       |         | ₱ 3,411,625.36  | ₱ 409,395.10 |

Petitioner can claim as credit all of the foregoing input taxes since the aggregate acquisition cost of the capital goods **during any calendar month** for the year 2008 does not exceed ₱1 million, pursuant to Section 4.110-3 of Revenue Regulations No. 16-2005, as amended by Revenue Regulations No. 4-2007. It provides:

“SEC. 4.110-3. *Claim For Input Tax On Depreciable Goods.*—Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million pesos (₱1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:

(a) xxx      xxx      xxx

(b) xxx      xxx      xxx

**Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished** *je*

**depreciable capital goods purchased or imported during any calendar month does not exceed one million pesos (P1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition."***(Emphasis supplied.)*

The supporting documents of petitioner's input taxes on purchase of capital goods for the year 2008 were reviewed and validated by the Court-commissioned ICPA together with the supporting documents for petitioner's input taxes on purchases of goods and services as shown previously.<sup>55</sup> Further, the ICPA found that purchases of capital goods were recorded in petitioner's books of accounts as fixed assets and said input taxes on capital goods were not capitalized as part of the asset.<sup>56</sup>

Further examination by the Court of petitioner's input taxes attributable to zero-rated sales reveals that the amount ₱1,608,999.80 should likewise be disallowed for the following reasons:<sup>57</sup>

| Exhibit                                                                                                                   | Invoice/OR No. | Invoice/OR Date | Supplier                                           | Input Tax   |
|---------------------------------------------------------------------------------------------------------------------------|----------------|-----------------|----------------------------------------------------|-------------|
| <b>1. Input taxes on purchases of goods supported by invoices dated outside the period of claim</b>                       |                |                 |                                                    |             |
| <u>1st Quarter</u>                                                                                                        |                |                 |                                                    |             |
| BB-1Q-176                                                                                                                 | 25977          | 04-Jan-07       | Cathay Hardware, Inc.                              | ₱ 3,710.33  |
| BB-1Q-389                                                                                                                 | 11945          | 27-Nov-07       | Jet Hardware & Electrical Supplies                 | 1,312.50    |
| BB-1Q-405                                                                                                                 | 5780           | 14-Dec-07       | Klinaire Supply Metal Fabrication                  | 2,172.86    |
| BB-1Q-1130                                                                                                                | 33837          | 11-Dec-07       | Industrial Galvanizers Corp. of the Phils.         | 22,787.14   |
| BB-1Q-1131                                                                                                                | 33838          | 11-Dec-07       | Industrial Galvanizers Corp. of the Phils.         | 23,511.43   |
| BB-1Q-2612                                                                                                                | 68892          | 13-Dec-07       | Save Money Trading, Inc.                           | 626.10      |
| BB-1Q-131                                                                                                                 | 275            | 09-Jan-07       | B & A Trading                                      | 2,951.79    |
| BB-1Q-1242                                                                                                                | 46661          | 10-Aug-07       | New Wellworth Construction & Industrial Supply     | 42.86       |
| BB-1Q-1262                                                                                                                | 450996         | 20-Dec-07       | Oriental Construction & Electrical Supply Co. Inc. | 6,101.14    |
| BB-1Q-1264                                                                                                                | 450851         | 19-Dec-07       | Oriental Construction & Electrical Supply Co. Inc. | 1,028.57    |
| Subtotal                                                                                                                  |                |                 |                                                    | ₱ 64,244.72 |
| <u>4th Quarter</u>                                                                                                        |                |                 |                                                    |             |
| EE-4Q-777                                                                                                                 | 11569          | 07-Jan-09       | Ephraim Marketing                                  | ₱ 535.71    |
| Subtotal                                                                                                                  |                |                 |                                                    | ₱ 535.71    |
| Total                                                                                                                     |                |                 |                                                    | ₱ 64,780.43 |
| <b>2. Input taxes on purchases of services supported by official receipts but VAT is not separately indicated therein</b> |                |                 |                                                    |             |
| <u>1st Quarter</u>                                                                                                        |                |                 |                                                    |             |
| BB-1Q-3                                                                                                                   | 0366           | 25-Jan-08       | B.R.E. Electropower Systems                        | ₱ 11,491.08 |
| BB-1Q-11                                                                                                                  | 149776         | 28-Jan-08       | Danao Telecom Co., Inc.                            | 650.56      |

<sup>55</sup> Exhibit SS, p. 29.  
<sup>56</sup> Exhibit SS, p. 28-29 and Annex 6a.  
<sup>57</sup> See attached Annex A for details.

|            |        |           |                                          |           |
|------------|--------|-----------|------------------------------------------|-----------|
| BB-1Q-13   | 2463   | 09-Jan-08 | Denmar Travel & Tours                    | 2,844.00  |
| BB-1Q-19   | 2479   | 31-Jan-08 | Denmar Travel & Tours                    | 3,702.00  |
| BB-1Q-14   | 2467   | 21-Jan-08 | Denmar Travel & Tours                    | 609.00    |
| BB-1Q-17   | 2474   | 31-Jan-08 | Denmar Travel & Tours                    | 4,596.63  |
| BB-1Q-18   | 2478   | 31-Jan-08 | Denmar Travel & Tours                    | 5,939.04  |
| BB-1Q-26   | 2081   | 31-Jan-08 | EZ Kleen Portalet Corporation            | 1,785.71  |
| BB-1Q-29   | 1537   | 01-Feb-08 | Global Staff Recruitment Search, Inc.    | 39,058.52 |
| BB-1Q-32   | 1564   | 15-Feb-08 | Global Staff Recruitment Search, Inc.    | 35,156.79 |
| BB-1Q-45   | 1357   | 10-Jan-08 | MC Lureñana Construction                 | 34,740.24 |
| BB-1Q-61   | 2200   | 08-Feb-08 | SOWA Construction, Inc.                  | 12,857.14 |
| BB-1Q-74   | 016838 | 08-Feb-08 | Tricom Systems (Phils.), Inc.            | 2,717.09  |
| BB-1Q-83   | 0862   | 15-Jan-08 | Cebu Industrial Park Developers, Inc.    | 1,221.06  |
| BB-1Q-91   | 44957  | 04-Mar-08 | Alesna Security & Detective Agency, Inc. | 145.88    |
| BB-1Q-134  | 0367   | 06-Feb-08 | B.R.E. Electropower Systems              | 17,357.14 |
| BB-1Q-157  | 02147  | 29-Feb-08 | CargoServ Forwarders, Inc.               | 2,082.08  |
| BB-1Q-266  | 2488   | 18-Feb-08 | Denmar Travel & Tours                    | 3,496.13  |
| BB-1Q-267  | 2504   | 19-Feb-08 | Denmar Travel & Tours                    | 840.93    |
| BB-1Q-268  | 2493   | 28-Feb-08 | Denmar Travel & Tours                    | 706.02    |
| BB-1Q-341  | 1591   | 07-Mar-08 | Global Staff Recruitment Search, Inc.    | 33,497.95 |
| BB-1Q-342  | 1587   | 29-Feb-08 | Global Staff Recruitment Search, Inc.    | 36,434.73 |
| BB-1Q-343  | 1622   | 25-Mar-08 | Global Staff Recruitment Search, Inc.    | 12,119.74 |
| BB-1Q-344  | 1623   | 25-Mar-08 | Global Staff Recruitment Search, Inc.    | 16,972.87 |
| BB-1Q-355  | 1579   | 07-Mar-08 | Hastings Motor Corporation               | 58,339.32 |
| BB-1Q-364  | 209235 | 12-Feb-08 | Innovate Communications, Inc.            | 1,151.47  |
| BB-1Q-634  | 2565   | 07-Mar-08 | Tan Delta Electric Corp.                 | 23,785.71 |
| BB-1Q-635  | 2570   | 14-Mar-08 | Tan Delta Electric Corp.                 | 15,000.00 |
| BB-1Q-699  | 3001   | 22-Feb-08 | Xelent Logistics, Inc.                   | 333.54    |
| BB-1Q-700  | 2997   | 07-Mar-08 | Xelent Logistics, Inc.                   | 1,546.97  |
| BB-1Q-712  | 1144   | 18-Feb-08 | Cebu Industrial Park Developers, Inc.    | 1,199.47  |
| BB-1Q-750  | 3114   | 31-Jan-08 | Alesna Security & Detective Agency, Inc. | 145.88    |
| BB-1Q-825  | 41307  | 14-Mar-08 | Best Travel                              | 43.61     |
| BB-1Q-1004 | 2498   | 07-Mar-08 | Denmar Travel & Tours                    | 8,653.98  |
| BB-1Q-1005 | 2506   | 07-Mar-08 | Denmar Travel & Tours                    | 7,878.04  |
| BB-1Q-1006 | 2510   | 17-Mar-08 | Denmar Travel & Tours                    | 2,920.70  |
| BB-1Q-1599 | 13930  | 30-Apr-08 | Worksavers Personnel Services, Inc.      | 41,105.59 |
| BB-1Q-1633 | 1203   | 12-Mar-08 | Cebu Industrial Park Developers, Inc.    | 1,196.66  |
| BB-1Q-1640 | 19006  | 16-Mar-09 | Fuji-Haya Electric Corp.                 | 1,607.14  |
| BB-1Q-20   | 1237   | 25-Jan-08 | DOU System Technology, Inc.              | 10,751.79 |
| BB-1Q-21   | 1238   | 25-Jan-08 | DOU System Technology, Inc.              | 3,551.79  |
| BB-1Q-28   | 0036   | 26-Jan-08 | GFR Engineering & Construction Services  | 17,196.42 |
| BB-1Q-154  | 0633   | 18-Feb-08 | Buan & Temprosa Law Offices              | 540.00    |
| BB-1Q-155  | 0635   | 19-Feb-08 | Buan & Temprosa Law Offices              | 240.00    |
| BB-1Q-329  | 000093 | 10-Mar-08 | First Phil. Power Systems, Inc.          | 9,600.00  |
| BB-1Q-664  | 231158 | 28-Mar-08 | U-Bix Corporation                        | 3,469.08  |
| BB-1Q-1704 | 396    | 29-Feb-08 | Asian Container Sales Expert             | 3,857.14  |
| BB-1Q-42   | 106    | 08-Oct-08 | JLT Travel & Tours                       | 1,157.14  |
| BB-1Q-698  | 13933  | 30-Apr-08 | Worksavers Personnel Services, Inc.      | 12,221.25 |
| BB-1Q-829  | 02261  | 25-Apr-08 | CargoServ Forwarders, Inc.               | 2,671.48  |
| BB-1Q-1007 | 2530   | 23-Apr-08 | Denmar Travel & Tours                    | 4,768.97  |

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|                    |        |           |                                              |                     |
|--------------------|--------|-----------|----------------------------------------------|---------------------|
| BB-1Q-1305         | 12260  | 02-May-08 | Phil. Transworld Shipping Corp.              | 1,563.38            |
| BB-1Q-1540         | 17257  | 29-Apr-08 | Tricom Systems (Phils.), Inc.                | 2,671.15            |
| BB-1Q-1541         | 17258  | 29-Apr-08 | Tricom Systems (Phils.), Inc.                | 2,740.26            |
| BB-1Q-1600         | 13931  | 08-Feb-08 | Worksavers Personnel Services, Inc.          | 2,414.42            |
| BB-1Q-1601         | 13935  | 30-Apr-08 | Worksavers Personnel Services, Inc.          | 6,329.58            |
| BB-1Q-1603         | 3042   | 14-Apr-08 | Xelent Logistics, Inc.                       | 360.00              |
| BB-1Q-271          | 1285   | 25-Apr-08 | DOU System Technology, Inc.                  | 53,758.93           |
| BB-1Q-1024         | 31129  | 03-Jun-08 | Edison Electric Integrated, Inc.             | 43,607.16           |
| BB-1Q-1028         | 31060  | 27-May-08 | Edison Electric Integrated, Inc.             | 13,928.57           |
| BB-1Q-1029         | 31050  | 27-May-08 | Edison Electric Integrated, Inc.             | 1,285.71            |
| BB-1Q-1031         | 31102  | 21-May-08 | Edison Electric Integrated, Inc.             | 5,785.71            |
| BB-1Q-1036         | 31157  | 17-Jun-08 | Edison Electric Integrated, Inc.             | 8,571.43            |
| BB-1Q-1668         | 0158   | 25-Apr-08 | Emertech Construction & Engineering Services | 14,866.08           |
| Subtotal           |        |           |                                              | <b>₱ 673,837.85</b> |
| <u>2nd Quarter</u> |        |           |                                              |                     |
| CC-2Q-2            | 0109   | 21-Apr-08 | Al'Save Rent A Car                           | ₱ 2,571.43          |
| CC-2Q-77           | 31009  | 12-May-08 | RTL Industries                               | 4,714.29            |
| CC-2Q-98           | 137    | 12-Jun-08 | Alliance Maxpower Enterprise                 | 1,928.57            |
| CC-2Q-99           | 137    | 12-Jun-08 | Alliance Maxpower Enterprise                 | 1,125.00            |
| CC-2Q-100          | 137    | 12-Jun-08 | Alliance Maxpower Enterprise                 | 2,892.86            |
| CC-2Q-101          | 137    | 12-Jun-08 | Alliance Maxpower Enterprise                 | 1,285.71            |
| CC-2Q-124          | 41825  | 26-May-08 | Best Travel Resources Inc.                   | 85.72               |
| CC-2Q-221          | 2542   | 09-May-08 | Denmar Travel & Tours                        | 9,279.23            |
| CC-2Q-222          | 2554   | 30-May-08 | Denmar Travel & Tours                        | 441.00              |
| CC-2Q-223          | 2555   | 30-May-08 | Denmar Travel & Tours                        | 2,446.18            |
| CC-2Q-224          | 2541   | 09-May-08 | Denmar Travel & Tours                        | 3,158.15            |
| CC-2Q-280          | 017537 | 19-Jun-08 | Tricom Systems (Phils.), Inc.                | 4,084.11            |
| CC-2Q-412          | 42177  | 27-Jun-08 | Best Travel Resources Inc.                   | 46.71               |
| CC-2Q-419          | 02347  | 27-Jun-08 | CargoServ Forwarders, Inc.                   | 610.86              |
| CC-2Q-650          | 4413   | 05-May-08 | Georgetown Electrical Systems                | 1,521.43            |
| CC-2Q-651          | 4150   | 22-Jan-08 | Georgetown Electrical Systems                | 6,085.71            |
| CC-2Q-652          | 4466   | 06-Jun-08 | Georgetown Electrical Systems                | 4,564.29            |
| CC-2Q-653          | 4434   | 21-May-08 | Georgetown Electrical Systems                | 6,085.71            |
| CC-2Q-693          | 19066  | 01-Aug-08 | Loxon Phils., Inc.                           | 1,178.57            |
| CC-2Q-737          | 159786 | 31-Jul-08 | Danao Telecom Co., Inc.                      | 442.00              |
| CC-2Q-938          | 2624   | 18-Jul-08 | Tan Delta Electric Corp.                     | 17,857.14           |
| CC-2Q-1022         | 42391  | 13-Jun-08 | Hankyu International Transport Phils.        | 732.00              |
| CC-2Q-1400         | 144    | 21-May-08 | JLT Travel & Tours                           | 310.71              |
| CC-2Q-1605         | 158217 | 30-Jun-08 | Danao Telecom Co., Inc.                      | 362.35              |
| CC-2Q-1612         | 2566   | 13-Jun-08 | Denmar Travel & Tours                        | 3,555.75            |
| CC-2Q-1613         | 2567   | 13-Jun-08 | Denmar Travel & Tours                        | 7,397.24            |
| CC-2Q-1614         | 2571   | 27-Jun-08 | Denmar Travel & Tours                        | 10,760.88           |
| CC-2Q-71           | 4218   | 28-Apr-08 | Kooler Industries                            | 495.00              |
| CC-2Q-125          | 007478 | 29-May-08 | Canon Marketing (Phils.) Inc.                | 139.82              |
| CC-2Q-288          | 245332 | 27-Jun-08 | U-Bix Corporation                            | 2,090.26            |
| CC-2Q-1004         | 245331 | 27-Jun-08 | U-Bix Corporation                            | 256.91              |
| CC-2Q-1385         | 2070   | 04-Jun-08 | IWS Cleantech, Inc.                          | 5,357.14            |
| CC-2Q-1418         | 3801   | 05-Jun-08 | Modair Manila Co. Ltd. Inc.                  | 4,575.00            |
| CC-2Q-658          | 007903 | 04-Jul-08 | Canon Marketing (Phils.) Inc.                | 913.07              |
| CC-2Q-86           | 13940  | 04-Jul-08 | Worksavers Personnel Services, Inc.          | 21,991.10           |

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|------------------------------------------------------------------------------------------|-------------------|---------------------|------------------------------------------|---------------|
| CC-2Q-87                                                                                 | 13941             | 04-Jul-08           | Worksavers Personnel Services, Inc.      | 11,640.28     |
| CC-2Q-326                                                                                | 13942             | 04-Jul-08           | Worksavers Personnel Services, Inc.      | 11,319.84     |
| CC-2Q-327                                                                                | 13939             | 04-Jul-08           | Worksavers Personnel Services, Inc.      | 29,856.01     |
| CC-2Q-365                                                                                | 0159              | 08-Jul-08           | Alliance Maxpower Enterprise             | 2,957.70      |
| CC-2Q-413                                                                                | 0490              | 23-Jul-08           | BNR Construction & Development Corp.     | 1,224.00      |
| CC-2Q-418                                                                                | 008430            | 28-Aug-08           | Canon Marketing (Phils.) Inc.            | 624.75        |
| CC-2Q-770                                                                                | 12348             | 28-Jul-08           | Phil. Transworld Shipping Corp.          | 3,652.99      |
| CC-2Q-772                                                                                | 12349             | 28-Jul-08           | Phil. Transworld Shipping Corp.          | 10,960.71     |
| CC-2Q-938                                                                                | 2624              | 18-Jul-08           | Tan Delta Electric Corp.                 | 2,321.43      |
| CC-2Q-1146                                                                               | 152               | 02-Jul-08           | JLT Travel & Tours                       | 348.00        |
| CC-2Q-1615                                                                               | 2606              | 13-Aug-08           | Denmar Travel & Tours                    | 6,985.60      |
| CC-2Q-1616                                                                               | 2589              | 18-Jul-08           | Denmar Travel & Tours                    | 8,570.33      |
| CC-2Q-1003                                                                               | 247786            | 25-Jul-08           | U-Bix Corporation                        | 2,015.35      |
| CC-2Q-1154                                                                               | 4408              | 01-Jul-08           | Kooler Industries                        | 495.00        |
| CC-2Q-1236                                                                               | 1905              | 08-Jul-08           | MMV Builders, Inc.                       | 35,891.42     |
| CC-2Q-1682                                                                               | 31295             | 28-Jul-08           | Edison Electric Integrated, Inc.         | 6,750.00      |
| CC-2Q-1690                                                                               | 31294             | 28-Jul-08           | Edison Electric Integrated, Inc.         | 15,000.00     |
| CC-2Q-1692                                                                               | 31294             | 28-Jul-08           | Edison Electric Integrated, Inc.         | 3,750.00      |
| CC-2Q-1763                                                                               | 4667              | 18-Jul-08           | First Snowden Systems & Industrial Corp. | 4,607.14      |
| Subtotal                                                                                 |                   |                     |                                          | ₱ 290,312.45  |
| 4th Quarter                                                                              |                   |                     |                                          |               |
| EE-4Q-73                                                                                 | 0090              | 31-Oct-08           | HCCT Construction Corp.                  | ₱ 61,039.27   |
| EE-4Q-102                                                                                | PWKOR000535192    | 04-Nov-08           | PLDT                                     | 457.68        |
| EE-4Q-125                                                                                | 0165              | 31-Oct-08           | System Warehouse Corp.                   | 3,023.31      |
| EE-4Q-57                                                                                 | 31883             | 16-Dec-08           | Edison Electric Integrated, Inc.         | 8,839.29      |
| EE-4Q-291                                                                                | 4834              | 12-Dec-08           | First Snowden Systems & Industrial Corp. | 2,710.71      |
| Subtotal                                                                                 |                   |                     |                                          | ₱ 76,070.26   |
| Total                                                                                    |                   |                     |                                          | ₱1,040,220.56 |
| 3. Input taxes on purchases of services supported by invoices/statements of account only |                   |                     |                                          |               |
| 1st Quarter                                                                              |                   |                     |                                          |               |
| BB-1Q-569                                                                                | 1153              | 29-Dec-07           | Say Enterprises Inc.                     | ₱ 857.14      |
| BB-1Q-705                                                                                | 3547              | 15-Jan-08           | Yamatake Philippines, Inc.               | 20,625.00     |
| BB-1Q-706                                                                                | 3548              | 15-Jan-08           | Yamatake Philippines, Inc.               | 2,946.43      |
| BB-1Q-707                                                                                | 3549              | 15-Jan-08           | Yamatake Philippines, Inc.               | 75,000.00     |
| BB-1Q-708                                                                                | 3550              | 15-Jan-08           | Yamatake Philippines, Inc.               | 10,714.29     |
| BB-1Q-1676                                                                               | 0031              | 28-Mar-08           | HCCT Construction Corp.                  | 48,214.29     |
| BB-1Q-1010                                                                               | 1266              | 21-Feb-08           | DOU System Technology, Inc.              | 2,357.14      |
| BB-1Q-1011                                                                               | 1267              | 21-Feb-08           | DOU System Technology, Inc.              | 8,785.71      |
| BB-1Q-1012                                                                               | 1265              | 21-Feb-08           | DOU System Technology, Inc.              | 6,428.57      |
| BB-1Q-1013                                                                               | 1275              | 07-Mar-08           | DOU System Technology, Inc.              | 25,039.29     |
| BB-1Q-1014                                                                               | 1277              | 12-Mar-08           | DOU System Technology, Inc.              | 1,714.29      |
| BB-1Q-1015                                                                               | 1283              | 13-Mar-08           | DOU System Technology, Inc.              | 2,367.86      |
| BB-1Q-1016                                                                               | 1285              | 13-Mar-08           | DOU System Technology, Inc.              | 109,296.48    |
| BB-1Q-1671                                                                               | 0056, 0081 & 0082 | 2/2/08 &<br>2/27/08 | GFR Engineering & Construction Services  | 15,760.72     |
| BB-1Q-1672                                                                               | 0095              | 31-Mar-08           | GFR Engineering & Construction Services  | 22,997.24     |
| Subtotal                                                                                 |                   |                     |                                          | ₱ 353,104.45  |
| 2nd Quarter                                                                              |                   |                     |                                          |               |
| CC-2Q-380                                                                                | 197836            | 30-Apr-08           | Avesco Marketing Corp.                   | ₱ 428.58      |
| CC-2Q-598                                                                                | 3805              | 30-May-08           | Yamatake Philippines, Inc.               | 1,607.14      |

|                                                                                                                                                           |             |           |                                       |              |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|-----------|---------------------------------------|--------------|
| CC-2Q-583                                                                                                                                                 | 5925        | 23-May-08 | Worksavers Personnel Services, Inc.   | 12,748.01    |
| CC-2Q-583                                                                                                                                                 | 5927        | 23-May-08 | Worksavers Personnel Services, Inc.   | 3,953.25     |
| CC-2Q-1716                                                                                                                                                | 32281       | 27-May-08 | Edison Electric Integrated, Inc.      | 9,642.86     |
| CC-2Q-1358                                                                                                                                                | 0040        | 14-Apr-08 | HCCT Construction Corp.               | 15,428.57    |
| CC-2Q-796                                                                                                                                                 | 3760        | 26-Apr-08 | Quest-Air Technology Phils., Inc.     | 6,750.00     |
| CC-2Q-797                                                                                                                                                 | 3759        | 26-Apr-08 | Quest-Air Technology Phils., Inc.     | 492.86       |
| CC-2Q-798                                                                                                                                                 | 3729        | 14-Apr-08 | Quest-Air Technology Phils., Inc.     | 14,142.86    |
| CC-2Q-799                                                                                                                                                 | 3715        | 04-Apr-08 | Quest-Air Technology Phils., Inc.     | 1,071.43     |
| CC-2Q-800                                                                                                                                                 | 3784        | 16-May-08 | Quest-Air Technology Phils., Inc.     | 16,071.43    |
| CC-2Q-801                                                                                                                                                 | 3716        | 04-Apr-08 | Quest-Air Technology Phils., Inc.     | 3,107.14     |
| CC-2Q-802                                                                                                                                                 | 3731        | 14-Apr-08 | Quest-Air Technology Phils., Inc.     | 3,750.00     |
| CC-2Q-1466                                                                                                                                                | 3702        | 01-Apr-08 | Quest-Air Technology Phils., Inc.     | 642.86       |
| CC-2Q-1467                                                                                                                                                | 3701        | 01-Apr-08 | Quest-Air Technology Phils., Inc.     | 2,357.14     |
| CC-2Q-2429                                                                                                                                                | 3823        | 20-Jun-08 | Quest-Air Technology Phils., Inc.     | 11,785.71    |
| Subtotal                                                                                                                                                  |             |           |                                       | ₱ 103,979.84 |
| <u>3rd Quarter</u>                                                                                                                                        |             |           |                                       |              |
| DD-3Q-54                                                                                                                                                  | 18932590    | 17-Jun-08 | PLDT                                  | ₱ 425.94     |
| DD-3Q-55                                                                                                                                                  | 18002940778 | 11-Jul-08 | PLDT                                  | 2,091.20     |
| Subtotal                                                                                                                                                  |             |           |                                       | ₱ 2,517.14   |
| Total                                                                                                                                                     |             |           |                                       | ₱ 459,601.43 |
| <b>4. Input taxes on purchases of services supported by official receipts but the address indicated is different from petitioner's registered address</b> |             |           |                                       |              |
| <u>3rd Quarter</u>                                                                                                                                        |             |           |                                       |              |
| DD-3Q-1485                                                                                                                                                | 647514      | 30-Sep-08 | MERALCO                               | ₱ 8,800.80   |
| DD-3Q-1633                                                                                                                                                | 620735      | 01-Sep-08 | MERALCO                               | 8,457.68     |
| Total                                                                                                                                                     |             |           |                                       | ₱ 17,258.48  |
| <b>5. Overclaimed amount of input tax on purchase of services</b>                                                                                         |             |           |                                       |              |
| <u>4th Quarter</u>                                                                                                                                        |             |           |                                       |              |
| EE-4Q-924                                                                                                                                                 | 12515       | 24-Dec-08 | Phil. Transworld Shipping Corp.       | ₱ 180.00     |
| EE-4Q-800                                                                                                                                                 | 2164        | 16-Dec-08 | Global Staff Recruitment Search, Inc. | 11.00        |
| Total                                                                                                                                                     |             |           |                                       | ₱ 191.00     |
| <b>6. Input tax on importation of goods supported by undated BOC official receipt</b>                                                                     |             |           |                                       |              |
| <u>2nd Quarter</u>                                                                                                                                        |             |           |                                       |              |
| CC-2Q-2431                                                                                                                                                | 150933431   | --        | Bureau of Customs                     | ₱ 3,010.00   |
| Total                                                                                                                                                     |             |           |                                       | ₱ 3,010.00   |
| <b>7. Input tax on purchase of goods without supporting VAT invoice</b>                                                                                   |             |           |                                       |              |
| <u>3rd Quarter</u>                                                                                                                                        |             |           |                                       |              |
| DD-3Q-21                                                                                                                                                  | 32406       | 01-Jul-08 | Edison Electric Integrated, Inc.      | ₱ 728.58     |
| Total                                                                                                                                                     |             |           |                                       | ₱ 728.58     |
| <b>8. Input tax on purchase of goods supported by invoice not duly registered with the BIR/no Authority to Print</b>                                      |             |           |                                       |              |
| <u>3rd Quarter</u>                                                                                                                                        |             |           |                                       |              |
| DD-3Q-740                                                                                                                                                 | 2928        | 19-Aug-08 | Grundfos Pumps Phils. Inc.            | ₱ 21,428.57  |
| Total                                                                                                                                                     |             |           |                                       | ₱ 21,428.57  |
| <b>9. Input tax on purchase of goods supported by invoice with serial number not within the series approved per Authority to Print</b>                    |             |           |                                       |              |
| <u>3rd Quarter</u>                                                                                                                                        |             |           |                                       |              |
| DD-3Q-772                                                                                                                                                 | 15382       | 29-Aug-08 | Kapper Philippines                    | ₱ 1,628.57   |
| Total                                                                                                                                                     |             |           |                                       | ₱ 1,628.57   |
| <b>10. Input tax on purchase of services supported by an official receipt without petitioner's TIN</b>                                                    |             |           |                                       |              |
| <u>4th Quarter</u>                                                                                                                                        |             |           |                                       |              |

|           |         |           |                        |               |
|-----------|---------|-----------|------------------------|---------------|
| EE-4Q-520 | 0578058 | 11-Dec-08 | Angeles Electric Corp. | ₱ 152.18      |
| Total     |         |           |                        | ₱ 152.18      |
| TOTAL     |         |           |                        | ₱1,608,999.80 |

To substantiate the input taxes carried over from the taxable year 2007, the ICPA examined petitioner’s input taxes attributable to VATable sales and common purchases for the second, third and fourth quarters of the same year amounting to ₱29,291,877.93. Below is the summary of his findings:<sup>58</sup>

| Findings-Taxable Year 2007                                              | 2nd Quarter   | 3rd Quarter   | 4th Quarter    | Total          |
|-------------------------------------------------------------------------|---------------|---------------|----------------|----------------|
| Properly supported by VAT invoices/official receipts/BIR Form 1600:     |               |               |                |                |
| Directly attributable to VATable sales ( <i>Exhibit SS, Annex 12</i> )  | ₱4,382,423.29 | ₱5,907,095.73 | ₱7,779,278.21  | ₱18,068,797.23 |
| Add: Reclassified from zero-rated sales ( <i>Exhibit SS, Annex 12</i> ) | 551,097.07    | 460,022.03    | 1,020,241.86   | 2,031,360.96   |
| Common input tax ( <i>Annex 13</i> )                                    | 1,084,722.66  | 1,145,157.77  | 721,517.19     | 2,951,397.62   |
| Add: Reclassified from zero-rated sales ( <i>Exhibit SS, Annex 12</i> ) | 262,660.67    | 40,557.94     | 254,944.91     | 558,163.52     |
| Subtotal                                                                | ₱6,280,903.69 | ₱7,552,833.47 | ₱9,775,982.17  | ₱23,609,719.33 |
| Exceptions noted:                                                       |               |               |                |                |
| Directly attributable to VATable sales ( <i>Exhibit SS, Annex 12</i> )  | ₱ 174,320.90  | ₱ 893,658.36  | ₱ 3,144,469.44 | ₱ 4,212,448.70 |
| Common input tax ( <i>Exhibit SS, Annex 13</i> )                        | 198,777.71    | 368,457.58    | 902,474.61     | 1,469,709.90   |
| Subtotal                                                                | ₱ 373,098.61  | ₱1,262,115.94 | ₱ 4,046,944.05 | ₱ 5,682,158.60 |
| Total input taxes examined by ICPA                                      | ₱6,654,002.30 | ₱8,814,949.41 | ₱13,822,926.22 | ₱29,291,877.93 |

The foregoing includes petitioner’s input taxes on purchase of capital goods for the subject period.<sup>59</sup>

However, taking into consideration petitioner’s output taxes for the subject taxable period as declared in its quarterly VAT returns, petitioner would not have had excess input taxes to be carried over to the taxable year 2008, as shown below:

| 2007                                                           | 2nd Quarter   | 3rd Quarter    | 4th Quarter    | Total          |
|----------------------------------------------------------------|---------------|----------------|----------------|----------------|
| Output tax per returns ( <i>Exhibits VV-1, VV-2 &amp; LL</i> ) | ₱8,679,064.15 | ₱ 8,947,248.38 | ₱15,138,268.10 | ₱32,764,580.63 |
| Total input taxes examined by ICPA                             | ₱6,654,002.30 | ₱ 8,814,949.41 | ₱13,822,926.22 | ₱29,291,877.93 |

<sup>58</sup> Exhibit SS, pp. 39-45.  
<sup>59</sup> *Ibid.*, p. 47.

|                           |               |                |                |                |
|---------------------------|---------------|----------------|----------------|----------------|
| Less: Exceptions noted    | 373,098.61    | 1,262,115.94   | 4,046,944.05   | 5,682,158.60   |
| Substantiated input taxes | ₱6,280,903.69 | ₱ 7,552,833.47 | ₱ 9,775,982.17 | ₱23,609,719.33 |
| Output tax still due      | ₱2,398,160.46 | ₱ 1,394,414.91 | ₱ 5,362,285.93 | ₱ 9,154,861.30 |

In fine, petitioner’s excess substantiated input taxes for the taxable year 2008 amount to ₱6,891,038.03, computed as follows:

|                                             | 1st            | 2nd             | 3rd            | 4th            | Total          |
|---------------------------------------------|----------------|-----------------|----------------|----------------|----------------|
| Adjusted output tax                         | ₱11,289,137.21 | ₱14,349,202.04  | ₱11,503,873.82 | ₱ 5,593,034.34 | ₱42,735,247.41 |
| Declared input taxes                        | ₱18,020,951.46 | ₱14,257,086.49  | ₱13,331,803.22 | ₱12,676,699.17 | ₱58,286,540.34 |
| Less: Unaccounted input taxes               | ₱ 330.83       | ₱ 179,534.24    | ₱ 53.95        | ₱ 13,064.12    | ₱ 192,983.14   |
| Exceptions noted by ICPA                    | 2,873,799.04   | 1,666,979.99    | 742,210.70     | 1,575,282.23   | 6,858,271.96   |
| Additional disallowances per Court findings | 1,091,187.02   | 397,302.29      | 43,561.34      | 76,949.15      | 1,608,999.80   |
| Total disallowances                         | ₱ 3,965,316.89 | ₱ 2,243,816.52  | ₱ 785,825.99   | ₱ 1,665,295.50 | ₱ 8,660,254.90 |
| Substantiated input taxes                   | ₱14,055,634.57 | ₱12,013,269.97  | ₱12,545,977.23 | ₱11,011,403.67 | ₱49,626,285.44 |
| Excess substantiated input tax              | ₱ 2,766,497.36 | ₱(2,335,932.07) | ₱ 1,042,103.41 | ₱ 5,418,369.33 | ₱ 6,891,038.03 |

**The input taxes were not applied against any output VAT liability**

It was established that the substantiated excess input taxes of ₱6,891,038.03 were not applied against any output tax in the subsequent quarters as shown by petitioner’s Quarterly VAT Returns for the taxable year 2009<sup>60</sup> until the first quarter of 2010.<sup>61</sup>

Thus, petitioner has sufficiently proven its entitlement to a refund or issuance of TCC pertaining to its excess and unutilized input taxes attributable to zero-rated sales for the taxable year 2008. However, petitioner is entitled to its claim only to the extent of ₱6,891,038.03.

**WHEREFORE**, in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, let a tax refund or a tax credit certificate be issued in favor of petitioner in the amount of ₱6,891,038.03 representing petitioner’s excess and unutilized input taxes attributable to zero-rated sales for the taxable year 2008. *je*

<sup>60</sup> Exhibits “M”, “N”, “O” and “P”.  
<sup>61</sup> Exhibits JJ-1 and KK-1.

**SO ORDERED.**

  
**JUANITO C. CASTAÑEDA, JR.**  
Associate Justice

WE CONCUR:

  
**CAESAR A. CASANOVA**  
Associate Justice

  
**CIELITO N. MINDARO-GRULLA**  
Associate Justice

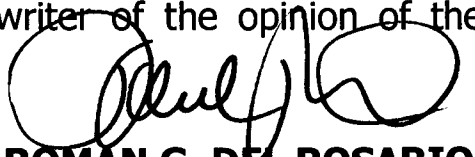
**ATTESTATION**

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.**  
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.

  
**ROMAN G. DEL ROSARIO**  
Presiding Justice