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SECOND DIVISION

[G.R. Nos. 226548 & 227691. February 15, 2023]

COMMISSIONER OF INTERNAL REVENUE, *Petitioner, v.* **DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD.,** *Respondent.*

[G.R. Nos. 226682-83. February 15, 2023]

DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD., *Petitioner, v.* **COMMISSIONER OF INTERNAL REVENUE,** *Respondent*.

D E C I S I O N

M. LOPEZ, *J.*:

Before the Court are consolidated petitions for review on *certiorari*[1] under Rule 45 of the Rules of Court assailing the Court of Tax Appeals (CTA) *En Banc*'s Decision[2] dated February 17, 2016, and Resolution[3] dated August 12, 2016, in CTA EB Nos. 1266 & 1267. In the assailed issuances, the CTA *En Banc* affirmed the CTA Division's Decision[4] dated September 16, 2014, and

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1 *Rollo* (G.R. Nos. 226548 & 227691), pp. 11–30 and *rollo* (G.R. Nos. 226682–83), pp. 12–37.

2 *Rollo* (G.R. Nos. 226548 & 227691), pp. 39–60 and *rollo* (G.R. Nos. 226682–83), pp. 46–67. Penned by Associate Justice Caesar A. Casanova, with the concurrence of Associate Justices Juanito C. Castaneda, Jr., Loven R. Bautista, Erlinda P. Uy, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis-Liban. Presiding Justice Roman G. Del Rosario with Concurring Opinion, *rollo* (G.R. Nos. 226548 & 227691), pp. 61–64 and *rollo* (G.R. Nos. 226682–83), pp. 68–71.

3 *Rollo* (G.R. Nos. 226548 & 227691), pp. 66–69 and *rollo* (G.R. Nos. 226682–83), pp. 72–75.

4 *Rollo* (G.R. Nos. 226548 & 227691), pp. 169–187. Penned by Associate Justice Lovell R. Bautista, with the concurrence of Associate Justices Esperanza R. Fabon-Victorino and Ma. Belen M. Ringpis-Liban.

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Resolution[5] dated January 6, 2015, in CTA Case No. 8402, that partly granted Deutsche Knowledge Services, Pte. Ltd.'s (DKS) claim for a refund or the issuance of a tax credit certificate (TCC) in the reduced amount of PHP 15,856,069.97,[6] representing DKS's unutilized input value-added tax (VAT) attributable to zero-rated sales for the fourth quarter of the taxable year 2009.

ANTECEDENTS

DKS is the Philippine branch of a multinational company organized and existing under the laws of Singapore. It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer and is licensed by the Securities and Exchange Commission (SEC) to operate as a regional operating headquarter (ROHQ) in the Philippines that provides the following services: general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services; research and development services and product development; technical support and maintenance; data processing and communication; and business development.

On August 3, 2011, DKS filed with the BIR a claim for a refund or the issuance of a TCC of its unutilized input VAT for the purchase of goods and services attributable to zero-rated sales for the fourth quarter of the taxable year 2009 in the amount of PHP 34,107,284.30,[7] broken down as follows:[8]

Purchase of Capital Goods not exceeding 1 Million	PHP 21,696.22
Purchase of Capital Goods exceeding 1 Million	1,048,052.79
Domestic Purchases of Goods Other than Capital Goods	1,079,423.29

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5 *Rollo* (G.R. Nos. 226548 & 227691), pp. 188-203.

6 See *CTA Division rollo,* Vol. 2, p. 1048.

7 *CTA Division rollo,* Vol. 1, pp. 264–268.

8 *Id.* at 269.

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Domestic Purchase of Services	30,916,434.79
Services Rendered by Non-Residents	1,041,677.21
Total Input VAT	PHP 34,107,284.30

Thereafter, DKS filed a judicial claim with the CTA on December 28, 2011, docketed as CTA Case No. 8402.[9]

The Ruling of the CTA Division

On September 16, 2014, the CTA Division rendered its Decision[10] partly granting DKS's claim in the reduced amount of PHP 15,859,091.24. In arriving at the refundable amount, the CTA Division denied for VAT zero-rating sales in the amount of PHP 182,641,289.18[11] for DKS's failure to present the corresponding official receipts or documents proving that the service recipients were non-resident foreign corporations doing business outside the Philippines. Accordingly, only €23,266,744.75 with peso equivalent of PHP 1,600,232,233.09[12] qualify as VAT zero-rated sales under Section 108 (B) (2)[13] of the 1997 National Internal Revenue Code, as amended (Tax Code).[14]

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[9] *Id.* at 6–12.

[10] *Rollo* (G.R. Nos. 226548 & 227691), pp. 169–187 and *CTA Division rollo,* Vol. 2, pp. 885–903. The dispositive portion of the Decision reads:

> **WHEREFORE,** in view of the foregoing, the Petition for Review by petitioner Deutsche Knowledge Services, Pte Ltd. is hereby **PARTIALLY GRANTED**. Accordingly, [the Commissioner of Internal Revenue] is hereby **ORDERED** to refund to petitioner [DKS] or issue a tax credit certificate in its favor the amount of Php15,859,091.24 representing the latter's unutilized input VAT attributable to its zero-rated sales for the fourth quarter of taxable year 2009.
>
> **SO ORDERED**. (Emphasis in the original)

[11] Out of PHP 1,782,873,522.27 zero-rated sales reported in the 4th Quarter VAT Return; see *CTA Division rollo,* Vol. 2, p. 897.

[12] *CTA Division rollo,* Vol. 2, pp. 896–897.

[13] SEC. 108. Value-added Tax on Sale of Services ... — xxx

> (B) Transactions Subject to Zero Percent (0%) Rate. —The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> x x x
>
> (2) Services other than those mentioned in the preceding paragraph

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Meanwhile, out of the PHP 34,107,284.30 input VAT claimed for refund, the CTA Division disallowed the amounts of PHP 1,016,256.08[15] representing the unamortized input VAT on capital goods exceeding PHP 1 million and PHP 14,068,220.19[16] for non-compliance with the substantiation requirements under Sections 110(A)[17] and 113(A)[18] and (B)[19] of the Tax Code, as implemented

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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); xxx.

[14] TAX REFORM ACT OF 1997; RA No. 8424; approved on December 11, 1997.

[15] *CTA Division rollo,* Vol. 2, pp. 898–899.

[16] *Id.* at 899–900.

[17] SEC. 110. Tax Credits. —

(A) Creditable input Tax. —

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax: xxx

[18] 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

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

[19] As newly introduced under Republic Act No. 9337, entitled "AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, l08, l09, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237, AND 288 OF THE NIRC OF 1997, AS AMENDED, AND FOR OTHER PURPOSES"; approved on May 24, 2005. SEC. 113. Invoicing and Accounting Requirements for VAT-registered Persons. —

(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:

(l) 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;

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by Revenue Regulations (RR) No. 16-2005.[20] Consequently, only PHP 19,022,808.03 can be considered valid input VAT.

The CTA Division found that **the PHP 34,107,284.30 amount was carried over in the succeeding quarterly VAT returns and deducted from DKS's total unutilized input VAT during the third quarter of 2011**.[21] Thus, the refundable input VAT of PHP 15,859,091.24 was computed as follows:[22]

Input VAT claimed for refund		PHP 34,107,284.30
Less: Disallowances		
Unamortized Input VAT on Capital Goods exceeding ₱1M	PHP 1,016,256.08	
Input VAT on purchases of goods and services other than capital goods	14,068,220.19	PHP 15,084,476.27

(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 break-down 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 (₱1,000) or more where the sale or transfer is made to a VAT-registercd person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.

[20] CONSOLIDATED VALUE-ADDED TAX REGULATIONS OF 2005, September 1, 2005.

[21] *CTA Division rollo,* Vol. 2, p. 901.

[22] *Id.* at 900–901.

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Valid Input VAT		**PHP 19,022,808.03**
Less: Output VAT		1,353,651.47[23]
Valid Excess Input VAT		**PHP 17,669,156.56**
Valid Zero-Rated Sales/ Receipts		1,600,232,233.09
Divided by Total Reported Zero-Rated Sales/Receipt		1,782,873,522.27[24]
Multiply by Valid Excess Input VAT		17,669,156.56
Excess Input VAT attributable to the Valid Zero-Rated Sales/Receipts		**PHP 15,859,091.24**

Lastly, the CTA Division held that DKS timely filed its administrative and judicial claims for refund or the issuance of TCC on August 3, 2011, and December 28, 2011, respectively.

On October 9, 2014, the Commissioner of Internal Revenue (CIR) moved for reconsideration, asseverating that the tax court had no jurisdiction over the case because DKS failed to substantiate its administrative claim for a refund. On even date, DKS filed an Omnibus Motion asking the CTA to (1) reconsider the disallowed zero-rated sales and input tax on the purchase of capital goods exceeding PHP 1 million and its ruling charging against the output VAT the validated input VAT to determine the refundable unutilized input VAT from zero-rated sales; (2) re-open the trial of the case to allow DKS to present additional evidence; and (3) clarify the specific documentary evidence it allegedly failed to comply with substantiating the claimed input VAT.

On January 6, 2015, the CTA Division issued a Resolution[25] denying the CIR's motion for reconsideration. It ruled that although the submission of complete supporting documents is necessary for favorable consideration of the administrative claim for refund, it does not preclude a taxpayer from filing a judicial claim after the denial or lapse of the 120 days for the CIR to decide.

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[23] See *CTA Division rollo,* Vol. 1, p. 269.

[24] See *Id.* at 269.

[25] *Rollo* (G.R. Nos. 226548 & 227691), pp. 188–203 and *CTA Division rollo,* Vol. 2, pp. 1033–1048.

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The CTA Division partly granted DKS's Omnibus Motion. Anent the motion for reconsideration, the CTA observed that the pieces of evidence submitted to support the disallowed zero-rated sales were either not part of DKS's Formal Offer of Evidence (FOE) and were merely annexed to the Omnibus Motion (O.R. Nos. 542 to 546, 601, and 618), or not compliant with Section 4.113-1[26] of RR No. 16-2005 (O.R. No. 606[27]).[28] The CTA Division reduced the allowable input VAT on capital goods exceeding PHP 1 million to PHP 28,430.61[29] because the purchase of service

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[26] SECTION 4.1 13-1. Invoicing Requirements.— xxx

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

(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; xxx.

[27] Official Receipt No. 606 submitted to prove sales made to DB Vienna AG BR failed to indicate the amount of VAT in the transaction; see *CTA Division rollo,* Vol. 2, p. 1036.

[28] See *CTA Division rollo,* Vol. 2, p. 1036. The evidence submitted revealed the following:

DKS client	OR No.	Provisional Receipt	Exhibit No.	Remarks	Inward Remittance Exhibit No.	Remarks
DB AG, Inlandsbank	601		M-55.2	Missing	M-55.3	OK
DB Vienna AG BR	606		M-60.1	OK	M-60.2	OK
DB AG Singapore	542	48	M-1.1	Missing OR; OK	M-1.2	OK
DB (Suisse) SA	543	49	M-2.1	Missing OR; OK	M-2.2	OK
Rued, Blass & Cie AG	544	50	M-3.1	Missing OR; OK	M-3.2	OK
Rued, Blass & Cie AG	545	51	M-4.1	Missing OR; OK	M-4.2	OK
DB AG Asia Pacific HO	546	52	M-5.1	Missing OR; OK	M-5.2	OK
DB AG Hongkong	618				M-72.1	OK

[29] From PHP 31,796.71.

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of PHP 11,040.00 initially included in the computation was found to be supported by a sales invoice and not an official receipt. Lastly, it held that the input VAT for the fourth quarter should be applied against the output VAT in computing the amount of refundable input VAT because DKS failed to substantiate its excess input tax carried over from the previous quarters.

The CTA Division denied DKS's request to re-open the trial and allow it to submit O.R. Nos. 542 to 546, 601, and 618 to prove the zero-rated sales, reasoning that DKS was already given sufficient time to present evidence to substantiate its claim for a refund. Finally, the CTA Division granted DKS's prayer for clarificatory judgment and listed the documents which failed to comply with the substantiation requirements under the Tax Code.

The CTA Division disposed, *viz*.:

WHEREFORE, in view of the foregoing, the Court (sic) Motion for Partial Reconsideration (Re: Decision promulgated on 16 September 2014) filed by [the CIR] is hereby **DENIED,** while the Omnibus Motion filed by [DKS] is resolved, as follows:

1. Motion for Partial Reconsideration is hereby **DENIED** for lack of merit. However, the dispositive portion of the Decision dated September 16, 2014 is hereby modified as to the amount granted for the issuance of tax credit certificate to **Php15,856,069.97**;

2. Motion to Reopen Trial for Presentation of Supplemental Evidence is hereby **DENIED**.

3. Motion for Clarification is hereby **GRANTED**.

SO ORDERED. (Emphasis in the original.)

Unsatisfied with the CTA Division's Resolution, the CIR and DKS separately filed petitions for review before the CTA *En Banc,* docketed as CTA EB No. 1266 and CTA EB No. 1267, respectively. The two petitions were consolidated in a Minute Resolution dated February 18, 2015.

In the petition, the CIR repeated that the CTA had no jurisdiction over the case since no valid administrative claim for refund or credit was filed by DKS when it did not submit complete

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documents required under Revenue Memorandum Order (RMO) No. 53-98,[30] in relation to Section 112 (C)[31] of the Tax Code. Further, DKS failed to prove that the recipient of its services was doing business outside the Philippines. Meanwhile, DKS reiterated the same arguments raised in its Omnibus Motion and added that the CTA Division erroneously denied its motion to re-open the trial.

The Ruling of the CTA En Banc

On February 17, 2016, the CTA *En Banc* issued the assailed Decision[32] denying the CIR and DKS's petitions for lack of merit.

In CTA EB No. 1266, the CTA *En Banc* held that the issue on the submission of complete documents enumerated in RMO No. 53-98 for a grant of a refund or the issuance of TCC of input VAT had been settled by this Court in *Commissioner of Internal Revenue v. Team Sual Corporation (formerly Mirant Sual Corporation)*.[33] Since the CIR did not request the submission of

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[30] Entitled CHECKLIST of DOCUMENTS TO BE SUBMITTED BY A TAXPAYER UPON AUDIT OF HIS TAX LIABILITIES AS WELL AS OF THE MANDATORY REPORTING REQUIREMENTS TO BE PREPARED BY A REVENUE OFFICER, ALL OF WHICH COMPRISE A COMPLETE TAX DOCKET, June 1, 1998.

[31] SEC. 112. Refunds or Tax Credits of Input Tax. — xxx

(C) Period within which Refund or Tax Credit of Input Taxes shall be Made. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

[32] *Rollo* (G.R. Nos. 226548 & 227691), pp. 39–60 and *rollo* (G.R. Nos. 226682–83), pp. 46–67. See also *CTA En Banc rollo,* Vol. 2, pp. 170–191. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the present Petitions for Review are hereby **DENIED,** for lack of merit.

SO ORDERED. (Emphasis in the original.) *Id.* at 189.

[33] 739 Phil. 215, 227 (2014) [Per *J*. Carpio, Second Division].

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additional documents, the presumption is that DKS submitted complete documents when it filed its administrative claim on August 3, 2011. The CTA *En Banc* affirmed the CTA Division's finding that the recipients of PHP 1,600,232,233.09 DKS's services are all non-resident foreign corporations doing business outside the Philippines.

In CTA EB No. 1267, the CTA *En Banc* ruled that although the VAT is not required to be indicated on O.R. No. 606, the sale covered by it in the amount of PHP 62,471.42 must still be disallowed because the DB AG Vienna Branch was not among those proven to be a non-resident foreign corporation doing business outside the Philippines. Concerning O.R. No. 601 marked as Exhibit No. 55.2, the CTA *En Banc* observed that the evidence could not be found in the records; hence, the CTA Division correctly disallowed the amount of PHP 165,723,203.44 as part of DKS's zero-rated sales. Furthermore, the CTA *En Banc* affirmed the CTA Division's finding that input VAT on capital goods exceeding PHP 1 million should be limited to PHP 28,430.61 and the CTA Division's conclusion that DKS's valid input VAT for the fourth quarter shall be applied against the output VAT for the same quarter. Lastly, the CTA *En Banc* agreed with the CTA Division that there was no well-grounded reason to re-open the case. The proposed additional pieces of documentary evidence were already available during the trial, but DKS failed to include them as part of its FOE. Thus, DKS had no one to blame but itself.

Undaunted, the CIR and DKS separately moved for reconsideration, but the CTA *En Banc* denied both motions on August 12, 2016.[34]

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[34] *Rollo* (G.R. Nos. 226548 & 227691), pp. 66–69 and *rollo* (G.R. Nos. 226682-83), pp. 72–75. See also *CTA En Banc rollo,* Vol. 2, pp. 283–286. The dispositive portion of the Resolution reads:

> **WHEREFORE**, the Motion for Reconsideration, filed by Commissioner of Internal Revenue, on March 7, 2016, as well as the Motion for Reconsideration (Re: Decision dated February 17, 2016), filed by Deutsche Knowledge Services, PTE Ltd., on March 9, 2016, are hereby **DENIED** for lack of merit.
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> **SO ORDERED**. (Emphasis in the original.) *Id*. at 285.

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Hence, the instant petitions.

The Present Petitions

G.R. Nos. 226548 & 227691

The CIR, through the Office of the Solicitor General (OSG), argues in the main that the CTA had no jurisdiction to entertain DKS's application for a refund because DKS failed to file a valid administrative claim. The CIR points out that DKS submitted three (3) documents supporting its application: 1) Application for Refund (BIR Form No. 1914); 2) Letter Request dated August 2, 2011; and 3) Quarterly VAT Return (BIR Form No. 2550-Q). No single VAT invoice or official receipt was attached to the application. Thus, consistent with this Court's ruling in *Hedcor, Inc. v. Commissioner of Internal Revenue*[35] (*Hedcor*), DKS's application filed on August 3, 2011 is a mere scrap of paper and the CIR had no discretion to act on it. Corollary, the tax court cannot assume jurisdiction over DKS's claim. The CTA, therefore, erred in receiving evidence to prove DKS's application for refund and in granting the refund or issuance of TCC in the amount of PHP 15,856,069.97.

In its Comment,[36] DKS counters that the CTA has jurisdiction to take cognizance of its claim despite the alleged failure to submit a complete set of documents listed in RMO No. 53-98. Besides, the taxpayer and not the CIR determines what constitutes "complete documents" in support of the application for a tax refund under Section 112 (C) of the Tax Code.

G.R. Nos. 226682-83

In the other petition, DKS insists that it is entitled to a full refund of PHP 34,107,284.30.

First, while DKS admits that O.R. No. 601 was not part of the records, the official receipt was examined by the court-commissioned Independent Certified Public Accountant (ICPA)

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[35] 764 Phil. 161 (2015) [Resolution].

[36] *Rollo* (G.R. Nos. 226548 & 227691), pp. 300–317.

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and made part of its ICPA Report. The ICPA Report was duly offered as part of DKS's evidence. Thus, the sale of services covered by O.R. No. 601 in the peso equivalent of PHP 165,723,203.44 should not have been disregarded. Likewise, the sale of services covered by O.R. No. 606 should have been considered since DKS was able to establish its existence.

Second, DKS likewise admits that O.R. Nos. 542, 543, 544, 545, 546, and 618 were not marked as DKS's exhibits but explained that it was due to oversight or excusable negligence. Nonetheless, the official receipts were examined by the ICPA and formed part of Annex "C" of the ICPA Report. In any case, DKS begs the Court's indulgence to allow the re-opening of the trial of the case in the interest of justice. The re-opening of the case would enable DKS to present: 1) O.R. Nos. 542, 543, 544, 545, 546, and 618 to prove the existence of PHP 16,795,907.97 zero-rated sales, and 2) the Quarterly VAT Return for the third quarter of 2009 to prove that it had input VAT carried over from the previous period in the amount of PHP 320,171,664.12 and excess input VAT for the third quarter of PHP 41,565,615.81, which are sufficient to cover its output VAT liability for the third and fourth quarters of 2009.

Third, DKS insists that the input VAT on the purchase of capital goods exceeding PHP 1 million should be amortized over 48 months as indicated in its Quarterly VAT Return for the fourth quarter. Thus, the allowable input VAT on these capital goods should be PHP 65,503.30.

Lastly, DKS questions the ruling of the CTA in (1) charging against the output VAT for the fourth quarter the validated input VAT in arriving at the refundable input VAT from zero-rated sales and (2) requiring DKS to prove the existence of input VAT carried-over from the previous quarters to prove entitlement to a claim for a refund for being contrary to law and prevailing jurisprudence.

In its Comment,[37] the CIR avers that DKS did not offer any reasonable justification or plausible reason for its failure to mark and offer O.R. Nos. 542, 543, 544, 545, 546, 601 and 618. As for

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[37] *Rollo* (G.R. Nos. 226682–83), pp. 131–139.

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O.R. No. 606, the CTA *En Banc* correctly disregarded the amount covered by it since DB AG Vienna Branch was not among those proven to be non-resident foreign corporations doing business outside the Philippines. Likewise, the CTA *En Banc* correctly ruled that the input VAT on the purchase of capital goods exceeding PHP 1 million should be amortized over a 60-month period following Section 4.110-3[38] of RR No. 16-2005 and considering that DKS's company policy provides an estimated useful life of ten (10) years for its purchased equipment.

Finally, the CTA *En Banc* properly charged against DKS's output VAT the validated input VAT. DKS failed to show that it had excess input VAT carried over from the previous quarters. Mere declaration in the fourth quarter VAT Return the amount of input tax carried-over without further supporting invoices and/or official receipts to substantiate the claim is insufficient.

ISSUES

The issue/s raised by the parties are summarized as follows:

G.R. Nos. 226548 & 227691

1. Whether the CTA has jurisdiction to take cognizance of DKS's judicial claim for a refund for the fourth quarter of 2009.

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[38] SECTION 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) If the estimated useful life of a capital good is five (5) years or more — The input tax shall be spread evenly over a period of sixty (60) months and the claim for input tax credit will commence in the calendar month when the capital good is acquired. The total input taxes on purchases or importations of this type of capital goods shall be divided by 60 and the quotient will be the amount to be claimed monthly.

(b) If the estimated useful life of a capital good is less than five (5) years — The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of the capital good. The claim for input tax credit shall commence in the calendar month that the capital goods were acquired.

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G.R. Nos. 226682-83

1. Whether the CTA *En Banc* properly disallowed the sales covered by O.R. Nos. 542 to 546, 601, 606, and 618 in the equivalent peso amount of PHP 182,581,582.83[39] for VAT zero-rating;

2. Whether the CTA *En Banc* properly disallowed the input VAT on the purchase of capital goods exceeding PHP 1 million in the amount of PHP 37,072.69[40];

3. Whether the CTA *En Banc* properly applied against the output VAT the validated input VAT for the fourth quarter in computing the refundable amount of input VAT from zero-rated sales; and

4. Whether the CTA *En Banc* properly denied DKS's request to reopen the trial and be allowed to present supplemental evidence.

RULING

We shall first resolve the issue raised by the CIR in G.R. Nos. 226548 & 227691 on whether the CTA had jurisdiction to take cognizance of DKS's judicial claim for a refund for the fourth quarter of 2009. A determination of the CTA's jurisdiction is crucial in resolving DKS's petition for review in G.R. Nos. 226682-83 because lack of jurisdiction will render the proceeding before the CTA void. We have repeatedly held that a judgment rendered by a court without jurisdiction is a void judgment and has no legal and binding effect.

The CTA acquired jurisdiction over DKS's judicial claim for a refund.

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[39] See *rollo* (G.R. Nos. 226682–83), p. 20. *N.B.* The CTA Division disallowed a total of PHP 182,641,289.18 (PHP 1,782,873,522.27 less PHP 1,600,232,233.09), see *CTA Division rollo,* Vol. 2, pp. 896–897.

[40] PHP 65,503.30 (claimed input VAT on purchases of capital goods exceeding PHP 1 Million) less PHP 28,430.61 (allowable input VAT per CTA Division's Resolution dated January 6, 2015).

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Section 112(C)[41] of the Tax Code gives the CIR 120 days from the date of submission of complete documents to decide a claim for a refund or the issuance of TCC for creditable input taxes from zero-rated sales. If the CIR denies the administrative claim, or if it remains unresolved after 120 days, the law allows the taxpayer to file a judicial claim before the CTA within 30 days from receipt of the denial or the lapse of the 120-day period.

The CIR contends that the 120-day period did not commence because DKS failed to submit complete documents supporting its application. The CIR opines that the taxpayer-claimant must attach supporting documents as a pre-condition for the validity of the administrative claim.

We do not agree.

The issue of submission of "complete documents" that would commence the 120-day period for the CIR to decide has long been settled by this Court in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[42] (*Pilipinas Total*). The Court emphasized that the taxpayer determines the completeness of submission of documents from which the 120 days will be reckoned. Thus:

> x x x for purposes of determining ***when*** the supporting documents have been completed — *it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period.* After all, he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing. The taxpayer may have also filed the complete documents on the 30th day from filing of his application, pursuant to RMC No. 49-2003. He may very well have filed his supporting documents on the first day he was notified by the BIR of the lack of the necessary documents. In such cases, the 120-day period is computed from the date the taxpayer is able to submit the complete documents in support of his application.

Then, except in those instances where the BIR would require additional documents in order to fully appreciate a claim for tax credit or

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41 Supra.

42 774 Phil 473 (2015) [Per *J.* Mendoza, *En Banc*].

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refund, in terms ***what*** additional document must be presented in support of a claim for tax credit or refund — *it is the taxpayer who has that right and the burden of providing any and all documents that would support his claim for tax credit or refund.* After all, in a claim for tax credit or refund, it is the taxpayer who has the burden to prove his cause of action. As such, he enjoys relative freedom to submit such evidence to prove his claim. (Emphases in the original)

When DKS filed its administrative claim for refund on August 3, 2011, albeit submitting only three documents: Application for Refund (BIR Form No. 1914), Letter Request dated August 2, 2011, and Quarterly VAT Return (BIR Form No. 2550-Q), the CIR did not require DKS to submit additional documents to support its application. The presumption, therefore, is that DKS deemed the documents it offered on the same day that it filed the application to be the "complete documents" to support its claim.[43] Thus, the 120 days shall be reckoned from August 3, 2011. Consequently, the CIR had only until December l, 2011 to decide the refund, and DKS had 30 days from there, or until December 31, 2011, to file its judicial claim. DKS filed a petition for review before the CTA on December 28, 2011, or within the 120+30-day period prescribed by law. Accordingly, the CTA acquired jurisdiction over DKS's claim for a refund.

The CIR's reliance on *Hedcor*[44] is misplaced. In that case, Hedcor, Inc. claimed that the start of the 120 days should be on September 20, 2010, when it filed a Transmittal Letter containing the complete documents to support its administrative claim. However, the CTA observed that the Transmittal Letter does not bear any stamp marking that would show that the BIR legitimately received it. Accordingly, the Court ruled that the letter "is not a substantial submission that would warrant a change in the

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[43] *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue,* 774 Phil. 473 (2015) [Per J. Mendoza, En Banc]. See also *Commissioner of Internal Revenue v. Philex Mining Corp.,* G.R. No. 218057, January 18, 2021 [Per *J.* Hernando, Third Division].

[44] 764 Phil. 161 (2015) [Per *C.J.* Sereno, First Division].

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reckoning date for the 120-day period for the BIR to act on the claim for refund."[45]

It is true, in *Hedcor*, the Court did state that "the law intends the filing of an application for a refund to necessarily include the filing of complete supporting documents to prove entitlement for the refund. Otherwise, the mere filing of an application without any supporting document would be as good as filing a mere scrap of paper."[46] However, this statement must not be construed to impose any judicial doctrine that the administrative claim for a tax refund is valid only when supporting documents are attached to the application. It should be stressed that the burden of proving entitlement to a refund is on the taxpayer-claimant. And, in line with the guarantee that one be afforded the opportunity to be heard, the applicant should be allowed reasonable freedom as to *how* to present his claim.[47] If the taxpayer deems the application without supporting documents sufficient for the grant of the refund, so must it be. The taxpayer bears the resulting denial of the request if the CIR later finds the documents submitted insufficient to substantiate his claim. This is confirmed in *Pilipinas Total, viz*.:

> **Thereafter, whether these documents are *actually* complete as required by law — is for the CIR and the courts to determine**. Besides, as between a taxpayer-applicant, who seeks the refund of his creditable input tax and the CIR, it cannot be denied that the former has greater interest in ensuring that the complete set of documentary evidence is provided for proper evaluation of the State.[48] (Emphasis in the original)

At any rate, *Hedcor* does not apply to the instant case. *Hedcor* involved the reckoning of the 120-day period when Hedcor, Inc. allegedly submitted documents supporting its administrative claim. Here, DKS did not submit or manifest its intent to submit additional documents to support its application. DKS filed its

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[45] *Id.* at 169.

[46] *Id.* at 170.

[47] *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue,* 774 Phil. 473 (2015) [Per *J*. Mendoza, En Banc].

[48] *Id.* at 494.

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judicial claim to the CTA within thirty (30) days after the lapse of the 120 days prescribed by law. Accordingly, *Hedcor* is not the proper basis to construe that the CTA had no jurisdiction over DKS's claim for refund.

At this juncture, we clarify that the above discourse shall apply only to those claims filed *before June 11, 2014,* as in this case. Under Revenue Memorandum Circular No. 54-2014[49] dated June 11, 2014, the application for a refund or the issuance of TCC must now be accompanied by complete supporting documents as no other documents shall be accepted or required from the taxpayer thereafter.[50]

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[49] Entitled CLARIFYING ISSUES RELATIVE TO THE APPLICATION FOR VALUE ADDED TAX (VAT) REFUND/CREDIT, June 11, 2014. Pertinent portion provides:

II. Filing and Processing of Administrative Claims —

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

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

[50] *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue,* 774 Phil. 473 (2015) [Per *J.* Mendoza, En Banc] and reiterated in *Zuellig-Pharma Asia Pacific Ltd. Phils. ROHQ v. Commissioner of Internal Revenue,* G.R. No. 244154, July 15, 2020 [Per *J.* Perlas-Bernabe, Second Division] and *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.,* G.R. No. 234445, July 15, 2020 [Per *J.* lnting, Second Division].

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All told, we deny the CIR's petition in **G.R. Nos. 226548 & 227691** for lack of merit.

On the other hand, we find DKS's petition in **G.R. Nos. 226682-83** partly meritorious.

Findings of fact of the CTA are binding to this Court.

At the onset, we reiterate that factual findings of the CTA, a specialized court exercising expertise on the subject of taxation, are generally regarded as final, binding, and conclusive upon this Court.[51] The factual findings will not be reviewed or disturbed on appeal except when the conclusion is grounded entirely on speculations, surmises, or conjectures, when the inference made is manifestly mistaken, absurd, or impossible, or when the judgment is based on a misapprehension of facts.[52] None of the exceptions are obtaining in this case.

First, Section 4.110-3[53] of RR No. 16-2005 provides that the input tax on capital goods exceeding PHP 1 million with an estimated useful life of five (5) years shall be amortized over a period of sixty (60) months. Therefore, the CTA aptly held that only the amortized amount of PHP 28,430.61 should be allowed as input VAT for such purchases in the fourth quarter of 2009.

Second, the CTA correctly disallowed the sale made to the following entities from VAT zero-rating:[54]

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[51] *Commissioner of Internal Revenue v. Traders Royal Bank,* 756 Phil. 175, 191–192 (2015) [Per *J.* Leonardo-de Castro, First Division]; *Hitachi Global Storage Technologies Phil. Corp. v. Commissioner of Internal Revenue,* 648 Phil. 425 (2010) [Per *J.* Carpio, Second Division].

[52] See *Commissioner of Internal Revenue v. Embroidery & Garments Industries (Phil.), Inc.,* 364 Phil. 541 (1999) [Per *J.* Pardo, First Division], cited in *Commissioner of Internal Revenue v. Traders Royal Bank,* 756 Phil. 175 (2015) [Per *J.* Leonardo-de Castro, First Division].

[53] Supra.

[54] *CTA Division rollo,* Vol. 2, p. 1036.

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DKS client	OR No.	Exhibit No.	Inward Remittance Exhibit No.
DB AG, Inlandsbank	601	M-55.2	M-55.3
DB Vienna AG BR	606	M-60.1	M-60.2
DB AG Singapore	542	M-1.1	M-1.2
DB (Suisse) SA	543	M-2.1	M-2.2
Rued, Blass & Cie AG	544	M-3.1	M-3.2
DB AG Asia Pacific HO	546	M-5.1	M-5.2
DB AG Hongkong	618		M-72.1

DKS failed to prove that DB Vienna AG Branch (sale covered by O.R. No. 606) was a non-resident foreign corporation not engaged in business in the Philippines under Section 108 (B)(2)[55] of the Tax Code. To be zero-rated, the service recipient must be proven to be a foreign entity and not engaged in trade or business in the Philippines when the sales are rendered.[56] Here, the CTA *En Banc* observed that DB Vienna AG Branch was not among those entities evidenced by (1) SEC Certificates of Non-Registration of Company (to show that it is a foreign corporation) and (2) Articles of Association or Authenticated Certificate of Registration, Company Profile Fact Sheet, Authenticated Certificate of Incorporation in Change of Names of Company, Authenticated Certificate of Good Standing, Certificate of Incorporation, Intragroup Service Agreements, and Deutsche Bank List of Shareholdings 2008 (to prove that it is not engaged in trade or business in the Philippines).[57]

The sales covered by O.R. Nos. 542, 543, 544, 545, 546, 601, and 618 were disallowed by the CTA because DKS failed to offer them in evidence. DKS proffers that the official receipts were part of the documents examined by the ICPA and formed part of the ICPA Report, which was part of DKS's FOE. Thus, the CTA should consider the official receipts in computing the amount of

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[55] Supra.

[56] *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.,* G.R. No. 234445, July 15, 2020 [Per *J.* Inting, Second Division].

[57] *CTA Division rollo,* Vol. 2, pp. 894–897.

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valid zero-rated sales. In the alternative, DKS begs this Court's indulgence to allow it to present the official receipts in evidence. We deny DKS's request.

We agree with the CTA that there is no well-grounded reason to allow the belated presentation of evidence. As taxpayer-claimant, DKS has the burden of proof to establish the factual and legal basis of its claim for refund. Tax refunds, like tax exemptions, are construed *strictissimi juris* against the taxpayer. DKS failed to discharge this burden.

Foremost, the proposed additional pieces of documentary evidence were already available during the proceedings before the CTA. These were examined by the ICPA and considered in its ICPA Report. But for reasons known only to DKS, it failed to include the documents in its FOE. Section 32, Rule 132 of the Rules on Evidence is clear that for the evidence to be considered, the same must be formally offered unless *first,* the same has been duly identified by testimony duly recorded and, *second,* the same have been incorporated in the records of the case.[58] The exceptions were not justified. To be sure, the official receipts were not annexed or attached to the ICPA Report but only listed in Annex "C"[59] of the report and thereafter attached to the Omnibus Motion[60] filed with the CTA Division. The CTA *En Banc* aptly held that the failure to mark the documents and offer them in evidence could have been avoided had DKS exercised ordinary prudence and diligence in prosecuting its case. To allow DKS to belatedly submit such evidence, which could have been offered with the exercise of due diligence, goes against the orderly administration of justice.

DKS cannot insist that the CTA should have considered the documents because the ICPA reviewed and verified them. It is well to point out that the CTA is not bound by the findings and

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[58] *Vda. de Oñate v. Court of Appeals,* 320 Phil. 344 (1995) [Per *J.* Kapunan, First Division].

[59] *CTA Division records, Folder 1.*

[60] *CTA Division rollo,* Vol. 2, pp. 945–970.

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conclusions of the ICPA, and the determination of the merit and probative value of the report is within the province of the court. Section 3 of the Revised Rules of the Court of Tax Appeals[61] is clear:

> SECTION 3. Findings of Independent CPA. — The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.

More importantly, cases filed in the CTA are litigated *de novo*;[62] thus, the taxpayer-claimant should prove every minute aspect of its case by presenting, formally offering, and submitting its evidence to the CTA.[63] The appreciation of the evidence still lies within the sound discretion of the court.

Requirements for entitlement to a refund or the issuance of tax credit certificate of unutilized input tax attributable to zero-rated sales.

The CTA Division computed the amount to be refunded or credited in DKS's favor, as follows:[64]

Input VAT claimed for refund		PHP 34,107,284.30
Less: Disallowances		

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61 A.M. No. 05-11-07-CTA, November 22, 2005.

62 *Commissioner of Internal Revenue v. Philippine National Bank,* 744 Phil. 299 (2014) [Per *J.* Leonen, Second Division].

63 *Id.* at 312 quoting *Atlas Consolidated Mining and Development Corp. v. Commissioner of Internal Revenue,* 547 Phil. 332 (2007) [Per *J.* Corona, First Division].

64 *CTA Division rollo,* Vol. 2, p.1048.

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Unamortized Input VAT on Capital Goods exceeding ₱1M	PHP 1,019,622.18	
Input VAT on purchases of goods and services other than capital goods	14,068,220.19	PHP 15,087,842.37
Valid Input VAT		PHP **19,019,441.93**
Less: Output VAT		**1,353,651.47**
Valid Excess Input VAT		PHP **17,665,790.46**
Valid Zero-Rated Sales/ Receipts		1,600,232,233.09
Divided by Total Reported Zero-Rated Sales/Receipt		1,782,873,522.27
Multiply by Valid Excess Input VAT		17,665,790.46
Excess Input VAT attributable to the Valid Zero-Rated Sales/Receipts		PHP **15,856,069.97**

The CTA charged the validated input VAT against the output VAT to arrive at the refundable amount of input tax since DKS failed to substantiate the prior quarter's excess input taxes of PHP 320,171,664.12. According to the CTA, DKS's "mere declaration in its fourth quarter VAT return of the amount of input tax carried over without further supporting invoices and/or official receipts to substantiate the claim is insufficient."[65] The CTA required DKS to substantiate its prior quarters' excess input taxes so that there would be sufficient amount to cover DKS's output tax liability for the fourth quarter of 2009, and, only after the output tax had been paid or "covered" that the tax court allowed a refund.

We do not agree.

In *Chevron Holdings, Inc. v. Commissioner of Internal Revenue,*[66] the Court *En Banc* clarified that a VAT-registered taxpayer engaged in zero-rated transactions with excess and

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[65] *CTA Division rollo,* Vol. 2, p. 1040.

[66] G.R. No. 215159, July 5, 2022 [Per *J.* Lopez, M., *En Banc*].

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unutilized input VAT attributable to zero-rated sales has two options: one, charge the input tax against output tax from regular twelve percent (12%) VAT-able sales and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; **or** two, claim for refund or tax credit the input VAT from zero-rated sales in its entirety. These remedies are alternative and cumulative. Accordingly, it was erroneous for the CTA to deduct the output tax from the validated input tax first, and use the resultant amount in computing the input tax available for refund. This procedure has no basis in law. The Court explained:

> *First,* Section 112 (A) of the Tax Code merely requires that the input tax claimed for refund or the issuance of tax credit certificate **"has not been applied against [the] output tax[.]"** Section 4.112-1 (a) of RR No. 16-2005 states that "**[t]he input tax that may be subject of the claim shall exclude the portion of input tax that has been applied against the output tax.**" In *Commissioner of Internal Revenue v. Taganito Mining Corp.,* we held:
>
> > x x x Sec. 112 (A) of the Tax Code of 1997, as amended, states that, "[a]ny VAT-registered person, whose sales are zero-rated or effectively zero-rated may x x x apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales x x x to the extent that such input tax has not been applied against output tax." **This means that input VAT attributable to zero-rated sales may, at the option of the taxpayer, be (a) applied directly against output VAT due on other transactions, or (b) claimed as tax refund/credit.** The second option is the only one available for taxpayers whose transactions are 100% zero-rated as it will not have any output VAT against which it may apply its input VAT. It may also be the more favorable option for taxpayers with mixed transactions as the refunded amount will be cash on hand, while the TCC issued may be applied to all national internal revenue taxes (not just limited to output VAT). **When the taxpayer avails itself of the second option, it must prove that it has not previously availed itself of the first option.** The necessary implication of all this is that input VAT attributable to zero-rated sales is still creditable input VAT, and having the second option available to the taxpayer does not change its nature. (Emphasis supplied.)

The law and rules are clear and need no interpretation. The taxpayer only needs to prove *non-application or non-charging of the input*

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VAT subject of the claim. There is nothing in the law and rules that mandate the taxpayer to deduct the input tax attributable to zero-rated sales from the output tax from regular twelve percent (12%) VAT-able sales first and only the "excess" may be refunded or issued a tax credit certificate. To reiterate, these remedies accorded by law to the taxpayer are alternatives. **Requiring taxpayers to prove that they did not charge the input tax claimed for refund against the output tax is one thing; requiring them to prove that they have "excess" input tax *after* offsetting it from output tax is another.** The former is essential to entitlement of the refund under Section 112 (A); the latter is not. The reason is that a taxpayer who enjoyed a lower (or zero) output tax payable because it deducted the input tax from zero-rated sales from the output tax cannot benefit twice by applying for the refund or tax credit of the same input tax used to reduce its output tax liability. Proof of non-charging the input tax subject of the refund or credit against the output tax is to avert double recovery.

The foregoing is consistent with Section 110 (C) of the Tax Code and Section 4.110-5 of RR No. 16-2005 which prescribe the method for computing the total creditable input tax chargeable against the output tax, *viz*.:

x x x x

Thus, before the input tax from zero-rated sales may even form part of the total allowable or creditable input taxes to be charged against the output taxes and undergo the computation of "excess output or input tax" in Section 110(B), it may already be removed from the formula once the taxpayer opted to claim the entire amount for refund.

x x x x

Second, the Congress referred to **"any input tax"** in the *proviso* of Section 110(B), which could mean one, some, or all input tax from zero-rated sales. Had the legislature intended the charging of the input tax attributable to zero-rated sales against the output tax as a preliminary step to the refund or issuance of tax credit certificate, it would have used the phrase "**excess input tax**" in the provision.

x x x x

Third, to call the refundable input tax in Section 110 (B), in relation to Section 112 (A), "excess" input tax is a misnomer since what is being applied for refund or tax credit is the **unutilized or unused input**

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VAT from zero-rated sales. As a matter of fact, there is no "excess" input tax attributable to zero-rated sales as there is no related output tax from which the input tax may be charged against. For context, in zero-rated transactions, the tax rate is set at zero percent. Consequently, the seller charges zero output tax. However, the seller may have incurred input taxes from its purchases of goods and/or services related to its sales. The input taxes previously charged by suppliers **remain unutilized or unused until charged against the output tax from the non zero-rated sale transactions** in the same quarter that the input taxes were incurred or applied for refund or the issuance of tax credit certificate within two (2) years from the close of the taxable quarter when the related sales were made.

x x x x

Fourth, that the taxpayer failed to prove that it had sufficient creditable input taxes to cover or "pay" its output tax liability in a given period, hence, there is no refundable "excess" input tax, which is an issue distinct, separate and independent from a claim for refund or issuance of tax credit certificate of **unutilized** input VAT attributable to zero rated sales. For one, the taxpayer-claimant is not asking to refund the "excess" creditable input taxes from the output tax. To be sure, the "excess" input tax may only be carried-over to the succeeding periods and cannot be refunded. But, on the other hand, **the taxpayer is asking to refund the unutilized or unused input tax from zero-rated sales.**

Next, the substantiation of input taxes that can be credited against the output tax is an issue relevant to the assessment for potential deficiency output VAT liability. In turn, it is not for the CTA and this Court to determine and rule in a judicial claim for refund under Section 112 (A) of the Tax Code that the taxpayer had insufficient or unsubstantiated input taxes to cover its output tax liability. This is for the BIR to determine in an administrative proceeding for assessment of deficiency taxes.[67]

x x x x

In the present case, DKS proved that it has creditable input taxes in the amount of PHP 19,019,441.93 and the input taxes subject of the refund were not applied or charged against the output tax during and in the succeeding quarters. To be exact, the

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[67] *Id.*

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CTA Division found that **DKS carried over the subject input taxes in the succeeding Quarterly VAT Returns and did not charge, during and in the next quarters, the said input taxes against the output tax liability**, *viz.*:

> Although the **claimed input VAT was carried over by petitioner [DKS] in the succeeding Quarterly VAT Returns, the same remained unutilized until it was deducted from petitioner's total available input tax in the 3rd quarter of taxable year 2011.** Consequently, the subject claim no longer formed part of the excess input VAT of [PHP] 249,773,658.54 as of the 3rd quarter of taxable year 2011 which was carried over/applied to the succeeding 4th quarter of taxable year 2011.[68] (Emphasis supplied.)

Further, there is a dearth of evidence that DKS is delinquent for output VAT or that it is being assessed for deficiency output tax in the fourth quarter of taxable year 2009. Therefore, the CTA erred in charging first the validated and substantiated input tax against DKS's output tax and using the resultant amount as basis in computing the allowable amount for refund. Likewise, the CTA erroneously required DKS to substantiate its excess input tax carried over from the previous quarter as it is not a requirement for entitlement to a refund of unused or unutilized input VAT from zero-rated sales.

Under Section 4.110-4 of RR No. 16-2005, as amended by RR No. 4-2007,[69] the refundable input VAT is computed by getting the percentage of valid zero-rated sales over total reported sales (taxable, zero-rated and exempt) multiplied by the properly substantiated input taxes not directly attributable to any of the transactions.

Here, the CTA found that only PHP 1,600,232,233.09 qualified for VAT zero-rating of sales of services and that PHP 19,019,441.93

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[68] See *CTA Division rollo,* Vol. 2, p. 901.

[69] Entitled "AMENDING CERTAIN PROVISIONS OF REVENUE REGULATIONS NO. 16-2005, AS AMENDED, OTHERWISE KNOWN AS THE CONSOLIDATED VALUE-ADDED TAX REGULATIONS OF 2005," February 7, 2007.

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is the valid input tax attributable to both VAT-able and zero-rated transactions. Accordingly, DKS is entitled to the refund of unutilized input tax allocable to its zero-rated sales for the fourth quarter of taxable year 2009 in the amount of PHP 17,071,050.55, computed as follows:

Valid zero-rated sales	PHP 1,600,232,233.09
Divided by: Total reported sales	1,782,873,522.27[70]
Multiplied by: Valid input tax not directly attributable to any activity	19,019,441.93
Input tax attributable to zero-rated sales	PHP **17,071,050.55**

ACCORDINGLY, the Petition for Review on *Certiorari* filed by the Commissioner of Internal Revenue in G.R. Nos. 226548 & 227691 is **DENIED** for lack of merit. The Petition for Review on *Certiorari* filed by Deutsche Knowledge Services, Pte. Ltd. in G.R. Nos. 226682-83 is **PARTLY GRANTED**. The Court of Tax Appeals *En Banc*'s Decision dated February 17, 2016, and Resolution dated August 12, 20l6, in CTA EB Nos. 1266 & 1267 are **AFFIRMED with MODIFICATIONS**. The Commissioner of Internal Revenue is ordered to refund, or in the alternative, issue a tax credit certificate in favor of Deutsche Knowledge Services, Pte. Ltd. for Seventeen Million Seventy-One Thousand Fifty Pesos and 55/100 (PHP 17,071,050.55), representing unutilized input tax attributable to zero-rated sales for the fourth quarter of the year 2009.

SO ORDERED.

Leonen, S.A.J. (Chairperson), Lazaro-Javier, J. Lopez, and *Kho, Jr., JJ.,* concur.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

Salvador Llanillo & Bernardo for Deutsche Knowledge Services, Pte. Ltd.

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[70] *CTA Division rollo,* Vol. 1, p. 269.