CTA Form No. 8

22-000394-0038

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10957

AIR DRILLING ASSOCIATES PTE LTD.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. ALBERT C. ARPON
ATTY. CARL FITRI A. HUSSIN
ATTY. JOEL VINCENT D. SALAZAR
Bureau of Internal Revenue
Legal Division, Revenue Region No. 8A
36th Floor, Export Bank Plaza Building
Sen. Gil Puyat Avenue corner Chino Roces Avenue
Makati City

AGAN MONTENEGRO MALASAGA & CO.
7th Floor, Electra House Building
115-117 Esteban Street, Legazpi Village
1229 Makati City

GREETINGS:

You are hereby notified by these presents that on **March 7, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **March 12, 2025.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

AIR DRILLING ASSOCIATES PTE LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. **10957**

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
MAR 07 2025 2:40PM

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Air Drilling Associates Pte Ltd. (**petitioner**) pursuant to Section 3(a)[2], Rule 8 in relation to Section 3(a)(1)[3], Rule 4 of the Revised Rules of the Court of

---

[1] Filed on 15 August 2022, Division Docket, Volume I, pp. 6-15.

[2] **SEC. 3.** *Who may appeal; period to file petition.* —
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

[3] **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]

Tax Appeals (**RRCTA**), challenging respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) total denial of its administrative claim for refund or issuance of tax credit certificate (**TCC**) in the amount of ₱13,071,974.37. The amount claimed represents excess and unutilized input Value-Added Tax (**VAT**) on purchases of goods and services attributable to zero-rated sales for the second (2^{nd}), third (3^{rd}) and fourth (4^{th}) quarters of calendar year (**CY**) 2020.

PARTIES OF THE CASE

Petitioner is a branch office of a foreign company organized and existing under the laws of Singapore and duly licensed by the Securities and Exchange Commission (**SEC**) to pursue geothermal aerated drilling services and related opportunities in the Philippines with Company Registration No. FS200704376.[4] Its principal address is at Unit D, 3^{rd} Floor, Glass Tower Building, 115 Carlos Palanca Jr. St., Legaspi Village, San Lorenzo, City of Makati.[5] It is registered with the Bureau of Internal Revenue (**BIR**) under Taxpayer's Identification Number (**TIN**) 251-156-024-000.[6]

Respondent, on the other hand, is the duly appointed CIR of the BIR vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments, grant tax refunds and issue tax credit certificates, pursuant to the provisions of the National Internal Revenue Code (**NIRC**) of 1997, as amended, and other tax laws, rules and regulations. He or she is represented in this case by the Legal Officers of the Legal Division, Revenue Region No. 8A-Makati, with office address at 36^{th} Floor, Exportbank Plaza, Sen. Gil Puyat Ave., corner Chino Roces Ave., Makati City, where he or she may be served summons and other legal processes of the Court.[7]

---

4 Exhibit "P-2", Division Docket, Volume I, p. 423.

5 See Paragraph 1, Facts Admitted, Joint Stipulation of Facts and Issues (JSFI) dated 28 March 2023, id., pp. 75-78.

6 Exhibit "P-1", id., p. 422.

7 See Par. 2, Facts Admitted, JSFI, id., pp. 75-76.

FACTS OF THE CASE

For the 2nd, 3rd and 4th quarters of CY 2020, petitioner filed its Quarterly VAT Returns (**BIR Form No. 2550-Q**) through the BIR's Electronic Filing and Payment System (**eFPS**), as follows:

CY 2020	Return	Date Filed
2nd Quarter	Original[8]	July 27, 2020
	Amended[9]	June 29, 2022
3rd Quarter	Original[10]	October 26, 2020
	Amended[11]	June 29, 2022
4th Quarter	Original[12]	January 26, 2021
	Amended[13]	June 29, 2022

In the Final Amended Quarterly VAT Returns for the three (3) quarters[14], petitioner declared a total sales amount of ₱205,467,456.81, which included zero-rated sales in the amount of ₱203,399,680.81, as shown below:

Period	Vatable Sales	Zero-Rated Sales	Total Sales
Second Quarter	₱1,276,496.00	₱79,089,282.74	₱80,365,778.74
Third Quarter	413,280.00	14,793,649.22	15,206,929.22
Fourth Quarter	378,000.00	109,516,748.85	109,894,748.85
Total	**₱2,067,776.00**	**₱203,399,680.81**	**₱205,467,456.81**

For the same period, petitioner claimed to have accumulated input tax in the total amount of ₱13,071,974.37, which is also the amount subject of the present petition, as shown on the tabulation below:

	2nd Quarter[15]	3rd Quarter[16]	4th Quarter[17]	Total
Input tax on Domestic Purchases of Goods Other than Capital Goods	₱12,009.08	₱80,598.34	₱50,735.37	₱143,342.79

8 Exhibit "P-3", id., p. 475.
9 Exhibit "P-3-1", id., p. 476.
10 Exhibit "P-4", id., p. 477.
11 Exhibit "P-4-1", id., p. 478.
12 Exhibit "P-5", id., p. 479.
13 Exhibit "P-5-1", id., p. 480.
14 Exhibits "P-3-1", "P-4-1", "P-5-1", id., pp. 476, 478 and 480, respectively.
15 Supra at note 9.
16 Supra at note 11.
17 Supra at note 13.

Input Tax on Importation of Goods Other than Capital Goods	1,805,333.03	189,675.41	1,922,160.44	3,917,168.88
Input tax on Domestic Purchase of Services	78,639.66	153,113.43	140,321.21	372,074.30
Input tax on Services Rendered by Non-residents	1,891,004.07	2,469,236.41	4,279,147.92	8,639,388.40
Total Input Taxes for the period/Amount of claim for refund	**₱3,786,985.84**	**₱2,892,623.59**	**₱6,392,364.94**	**₱13,071,974.37**

On 30 June 2022, petitioner filed *via* registered mail with the BIR Revenue District Office (**RDO**) 47 – East Makati an administrative claim for the refund of unutilized input VAT attributable to zero-rated sale of services to Energy Development Corporation (**EDC**) and Philippine Geothermal Production Company Inc. (**PGPC**), for the 2nd to 4th quarters of CY 2020 in the total amount of ₱13,071,974.37.[18]

On 15 July 2022, petitioner received the Letter dated 14 July 2022[19] issued by the BIR Revenue District Officer Rufo B. Ranario (**RDOr Ranario**), informing petitioner that the BIR cannot process its claim for VAT refund for its failure to comply with Mandatory Requirements on Claims for VAT Refund, pursuant to Revenue Memorandum Order (**RMO**) No. 47-2020.

PROCEEDINGS BEFORE THE COURT

Aggrieved, on 15 August 2022[20], petitioner filed the present Petition for Review. Initially, it was raffled to the Court's Second Division. On 30 August 2022, summons was issued to respondent, directing him or her to file an Answer within thirty (30) days from the date of receipt thereof, *i.e.*, 01 September 2022.[21]

---

18 Par. 3, Facts Admitted, JSFI, Division Docket, Volume I, p. 75; Exhibit "P-13", Division Docket, Volume II, p. 649.
19 Par. 4, id.; Exhibit "P-14", id., p. 654.
20 Supra at note 1.
21 Division Docket, Volume I, p. 41.

On 30 September 2022, respondent filed a "Motion for Extension of Time to File Answer"[22] through registered mail. In its Order dated 06 October 2022[23], the Court granted the said motion and thereby extended respondent's deadline to file an Answer until 31 October 2022.

Respondent's Answer was eventually filed on 26 October 2022.[24] In his or her Answer, respondent interposed the following special and affirmative defenses: (1) petitioner failed to substantiate its claim for refund at the administrative level since the Certificate of Registration (**COR**) and Accreditation issued by the Department of Energy (**DOE**) and Certificate of Endorsement (**COE**) from the DOE, through the Renewable Energy Management Bureau (**REMB**), were not submitted by petitioner; and (2) claims for refund are construed in *strictissimi juris* against the taxpayer and in favor of the government.

Subsequently, the Pre-Trial Conference was set on 16 March 2023.[25] Petitioner's Pre-Trial Brief[26] was filed on 17 February 2023, while respondent's Pre-Trial Brief[27] was submitted on 13 March 2023. The Pre-Trial Conference proceeded on 16 March 2023.[28]

Later, as ordered during the Pre-Trial Conference, the parties filed their Joint Stipulation of Facts and Issues[29] (**JSFI**) on 30 March 2023. In the Pre-Trial Order[30] issued on 20 April 2023, the Court adopted the JSFI wherein it was also reflected that respondent's counsel opted to no longer present any evidence.

On 14 April 2023, petitioner sought the commissioning[31] of an Independent Certified Public Accountant (**ICPA**), Atty. Adan Delamide (**Delamide**), which the Court granted in its Order dated 05 September 2023.[32]

---

22 Id., pp. 43-45.
23 Id., p. 48.
24 Id., pp. 49-55.
25 See Notice of Pre-Trial Conference dated 08 November 2022, id., pp. 58-59.
26 Id., pp. 60-64.
27 Id., pp. 65-67.
28 See Order dated 16 March 2023, id., pp. 73-74.
29 See JSFI dated 28 March 2023, id., pp. 75-78.
30 Id., pp. 89-93.
31 See *Motion to Commission and Appoint Independent Certified Public Accountant*, id., pp. 79-80.
32 Id., pp. 367-367-A.

In the Resolution issued on 29 May 2023, the present case was transferred to this Court's First Division pursuant to Administrative Circular No. 01-2023 (Reorganizing the Divisions of the Court) dated 23 May 2023.[33]

In the trial that ensued subsequently, petitioner presented the following witnesses who all testified *via* their respective judicial affidavits, namely: Rosebelle Liu (**Liu**) and the Court-commissioned ICPA Delamide.[34]

On the witness stand, Liu, petitioner's Office Manager, declared that: (1) petitioner rendered aerated drilling services in the Philippines to EDC, which is a Board of Investments (**BOI**) – registered Renewable Energy (**RE**) Developer, for the 2nd to 4th quarters of CY 2020; (2) it is licensed to transact business in the Philippines as a branch office to pursue geothermal aerated drilling and related services in the Philippines; (3) the services it rendered were paid in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (**BSP**); (4) it incurred input VAT attributable to zero-rated sales in the amount of ₱13,071,974.37 during the 2nd to 4th quarters of CY 2020; (5) it was not able to utilize input taxes on its purchases of goods and services in the Philippines which are attributable to its zero-rated sale of services; and (6) it timely filed both administrative and judicial claims for input VAT refund.[35]

In her cross-examination, Liu clarified that: (1) respondent refused to accept petitioner's documents due to its failure to submit complete documents, specifically DOE COR and DOE REMB Endorsement Letter; (2) petitioner was not required to produce the aforementioned documents as it is not an RE company but merely a subcontractor of RE companies; and (3) as to EDC's DOE COR and BOI COR, both documents were certified as true copies on 02 September 2022, which was few days after the filing of the administrative claim.[36]

During her redirect examination, Liu reiterated that petitioner is not an RE company and is a subcontractor. Furthermore, Liu clarified

33 Id., p. 94.
34 See Order dated 05 September 2023, supra at note 32.
35 See Amended Judicial Affidavit of Rosebelle Liu dated 07 June 2023, Exhibit "P-15", Division Docket, Volume I, pp. 98-105.
36 TSN dated 05 September 2023, pp. 26-29.

that although the certification of EDC's DOE COR and BOI COR happened after the filing of the administrative claim, the aforementioned documents were issued on 23 October 2009.[37]

No re-cross examination was conducted.[38]

Upon the completion of Liu's testimony, petitioner presented ICPA Delamide. He testified that: (1) he is the Court-commissioned ICPA; (2) as such, he prepared the "Report of the [ICPA]" dated 05 October 2023[39] (which the Court received on 06 October 2023) enclosing the audit procedures performed and the findings of the verification, and a USB[40] containing the scanned copies of the documents examined; (3) out of the total claim of ₱13,071,974.37, petitioner only properly supported ₱12,905,309.66 with relevant documents; and (4) the difference of ₱166,664.71 is accounted for as – ₱131,196.32 (allocable to activities subject to 12%) and ₱35,468.39 (pertains to claims supported by documents that do not comply with the invoicing requirements and claims not completely supported by relevant documents, among others.)[41]

In his cross-examination, ICPA Delamide explained that: (1) he was able to verify the status of petitioner's domestic customer[s] as RE developer[s]; (2) petitioner submitted complete supporting documents for his verification; and (3) he recommended the partial grant of petitioner's claim for refund.[42]

No redirect examination was conducted.[43]

Following the comparison and re-marking of petitioner's exhibits during the Commissioner's Hearing on 04 July 2023[44], petitioner filed its Formal Offer of Evidence[45] (**FOE**) on 16 November 2023. With respondent's "Comment and Opposition (to Petitioner's [FOE] dated

---

37 Id., pp. 29-31.
38 Id., p. 31.
39 Exhibit "P-398", Division Docket, Volume I, pp. 368-383.
40 Exhibit "P-399".
41 See Judicial Affidavit of Atty. Adan Delamide dated 27 October 2023, Exhibit "P-17", Division Docket, Volume I, pp. 391-399.
42 TSN dated 07 November 2023, pp. 10-12.
43 Id., p. 12.
44 Division Docket, Volume I, pp. 346-347.
45 Id., pp. 407-421.

November 13, 2023)"[46] filed on 24 November 2023, petitioner's FOE was thereafter submitted for resolution.[47]

On 06 March 2024, the Court issued a Resolution admitting petitioner's FOE, except: (**a**) Exhibits "P-12" and "P-13-1", "P-122", "P-123", "P-153" to "P-155", "P-157", "P-177", "P-217" to "P-223", "P-260", "P-261", "P-266" and "P-272"[48], for failure to present the originals for comparison; (**b**) Exhibits "P-111", "P-161", "P-166-1" to "P-166-3", "P-173-2", "P-185" to "P-186", "P-193-1", "P-289", "P-292", "P-299", "P-316", "P-332" to "P-334", and "P-341"[49], for being blurred and/or unreadable; and (**c**) Exhibits "P-16-2" and "P-16-3"[50], for not being found in the records of the case.[51]

In light of respondent's earlier manifestation during the Pre-Trial Order[52] that he or she would no longer be presenting any evidence, the Court, in the same Resolution, granted the parties 30 days from notice

46 Id., Volume II, pp. 666-669.
47 See Minute Resolution dated 18 December 2023, id., p. 671.
48

Exhibit No.	Description
"P-12"	Amended Contract.
"P-13-1"	Revised Checklist of Mandatory Requirements on Claims for VAT Credit/Refund with stamp receipt of the BIR dated June 30, 2022.
"P-122", "P-123", "P-153" to "P-155", "P-157", "P-177", "P-217" to "P-223", "P-260", "P-261", "P-266" and "P-272"	Sales Invoice/ Official Receipts arising from petitioner's Local Purchases.

49

Exhibit No.	Description
"P-111", "P-161", "P-166-1" to "P-166-3", "P-173-2", "P-185" to "P-186" and "P-193-1"	Sales Invoice/ Official Receipts arising from petitioner's Local Purchases.
"P-289", "P-292" and "P-332" to "P-334"	VAT Official Receipts issued to [PGPC].
"P-299" and "P-316"	VAT Official Receipts issued to [EDC].
"P-341"	VAT Official Receipts issued to All First Kalinga Holdings, Inc. (AFKHI).

50

Exhibit No.	Description
"P-16-2"	Board of Accountancy Certificate of Registration.
"P-16-3"	Professional Regulatory Commission ID.

51 See Resolution dated 06 March 2024, Division Docket, Volume II, pp. 674-677.
52 Supra at note 30.

within which to file their respective memoranda.[53] Petitioner filed its Memorandum[54] on 04 April 2024 while respondent filed his or her Memorandum[55] on 12 April 2024. The present case was thereafter submitted for decision on 30 April 2024.[56]

ISSUE

As can be gleaned from the parties' JSFI[57], the sole issue for this Court's resolution is –

> WHETHER PETITIONER AIR DRILLING ASSOCIATES PTE LTD. IS ENTITLED TO A REFUND OF ITS ALLEGED UNUTILIZED INPUT VALUE-ADDED TAX (VAT) ALLEGEDLY ATTRIBUTABLE TO ZERO-RATED SALE OF SERVICES FOR THE SECOND (2^{ND}), THIRD (3^{RD}) AND FOURTH (4^{TH}) QUARTERS OF CALENDAR YEAR (CY) 2020 IN THE AMOUNT OF ₱13,071,974.37.

ARGUMENTS

In the instant Petition for Review, petitioner argues that its excess and unutilized input VAT being claimed for refund, amounting to ₱13,071,974.37, are all attributable to its zero-rated sales of services to EDC and PGPC, which are RE Developers and entitled to zero-rated VAT on their purchases of supply of goods, properties and services needed for the development, construction and installation of their plant facilities in the 2^{nd} to 4^{th} quarters of CY 2020 pursuant to Section 15(g)[58]

---

53 Supra at note 51.
54 Division Docket, Volume II, pp. 678-693.
55 Id., pp. 695-705.
56 See Minute Resolution dated 30 April 2024, id., p. 708.
57 See supra at note 29.
58 **Sec. 15.** *Incentives for Renewable Energy Projects and Activities.* — RE Developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:

> ...
>
> (g) Zero Percent Value-Added Tax Rate. — The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.
>
> All RE Developers shall be entitled to zero-rated value-added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.

of Republic Act (**RA**) No. 9513[59], in relation to Section 108(B)(3)[60] of the NIRC of 1997, as amended. Considering that the said amount of excess and unutilized input VAT for the 2nd to 4th quarters of CY 2020 has remained unutilized and/or unapplied against its output VAT liability, it is entitled to the refund and/or issuance of a TCC for the said amount under the said provisions of the NIRC of 1997, as amended.

Respondent countered that petitioner is not entitled to the subject refund claim as it failed to submit complete documents in support of its administrative claim for tax refund since petitioner failed to attach its DOE Certificate of Accreditation. Respondent also avers that the invoices that the ICPA examined must not be given probative value as these are mere photocopies, in violation of Section 2, Rule 13 of the RRCTA.[61] Finally, respondent asserts that a claim for refund is strictly construed against the taxpayer as it partakes the nature of a tax exemption.

RULING OF THE COURT

After a careful and thorough evaluation of the parties' respective evidence and the applicable laws, rules and regulations, the Court finds the instant petition partly meritorious.

This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors.

...

59 AN ACT PROMOTING THE DEVELOPMENT, UTILIZATION AND COMMERCIALIZATION OF RENEWABLE ENERGY RESOURCES AND FOR OTHER PURPOSES.

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

...

(B) *Transactions Subject to Zero Percent (0%) Rate.* — ...

...

(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[.]

...

61 **RULE 13**
Trial By Commissioner

...

SEC. 2. *Duties of Independent CPA.* — The independent CPA shall perform audit functions in accordance with the generally accepted accounting principles, rules and regulations, which shall include:

...

b) Reproduction of, and comparison of such reproduction with, and certification that the same are faithful copies of original documents, and pre-marking of documentary exhibits consisting of voluminous documents[.]

...

Petitioner anchors its claim on Sections 110(B)[62], 112(A) and (C) of the NIRC of 1997, as amended by RA 10963 or Tax Reform for Acceleration and Inclusion (**TRAIN**), which are quoted hereunder:

> ...
>
> **SEC. 110.** *Tax Credits.* —
>
> ...
>
> (B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however,* That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.
>
> ...
>
> **SEC. 112.** *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> ...
>
> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days **from the date of submission of the official receipts or invoices and other documents in support of the application** filed in accordance with Subsections (A) and (B)

[62] As amended by Republic Act No. 9361, "AN ACT AMENDING SECTION 110(B) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES".

> hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.[63]
>
> ...

In *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[64] (**Deutsche Knowledge Services**), the Supreme Court laid down the requisites for the entitlement to tax refund or credit of excess input VAT attributable to zero-rated sales, to wit:

> ...
>
> Under Section 4.112-1(a) of Revenue Regulations No. (RR) 16-05, otherwise known as the Consolidated VAT Regulations of 2005, in relation to Section 112 of the Tax Code, a claimant's entitlement to a tax refund or credit of excess input VAT attributable to zero-rated sales hinges upon the following requisites: "(1) the taxpayer must be VAT-registered; (2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax."
>
> ...

Applying the foregoing principle, the Court will proceed to determine whether petitioner complied with the aforementioned requisites. For an orderly discussion, We shall start with the third (3rd) requisite, followed by the first (1st) and second (2nd) requisites, then the fourth (4th) requisite.

---

63 Emphasis supplied and italics in the original text.

64 G.R. No. 234445, 15 July 2020; Citations omitted.

THIRD (3RD) REQUISITE:
THE CLAIM MUST BE FILED WITHIN TWO (2) YEARS AFTER THE CLOSE OF THE TAXABLE QUARTER WHEN SUCH SALES ARE MADE.

In accordance with Section 112(A) and (C)[65] of the NIRC of 1997, as amended by TRAIN, the administrative claim for refund of unutilized input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales are made.

Petitioner's present claim covers the 2nd to 4th quarters of CY 2020. Counting two (2) years from the respective close of the said quarters, the last day for the filing of the administrative claim for the said three (3) quarters, *vis-à-vis* the date of filing of the administrative claim by petitioner, pursuant to Section 112(A) of the NIRC of 1997, as amended, are shown below:

Quarter (CY 2020)	Close of taxable quarter	Last day for filing an administrative claim	Date of filing of claim for refund
2nd Quarter	30 June 2020	30 June 2022	30 June 2022[66]
3rd Quarter	30 September 2020	30 September 2022	
4th Quarter	31 December 2020	31 December 2022	

As can be gleaned from the foregoing table, petitioner had until 30 June 2022, 30 September 2022, and 31 December 2022 within which to file the administrative claims for refund for the 2nd, 3rd and 4th quarters of CY 2020, respectively. Thus, petitioner's administrative claims were seasonably filed on 30 June 2022.[67]

As to the timeliness of petitioner's judicial claim, respondent had ninety (90) days or until 28 September 2022, to decide on petitioner's administrative claim. Considering that petitioner received a letter dated 14 July 2022[68] on 15 July 2022 totally denying the same, petitioner had 30 days therefrom or until 14 August 2022, within which to file a judicial

65 Supra at pp. 11-12.
66 Supra at note 18.
67 Supra at note 18.
68 Supra at note 19.

claim before this Court. Thus, the instant Petition for Review was also seasonably filed on 15 August 2022 (since 14 August 2022 fell on a Sunday).[69] Such being the case, the Court finds that petitioner satisfied the above-stated 3rd *requisite*.

FIRST (1ST) REQUISITE:
PETITIONER MUST BE VALUE-ADDED TAX (VAT)-REGISTERED.

Undeniably, petitioner is a VAT-registered taxpayer with TIN 251-156-024-000, as shown in its BIR Certificate of Registration Number OCN 9RC0000652585E.[70] Thus, petitioner complied with the *1st requisite*.

SECOND (2ND) REQUISITE:
PETITIONER MUST BE ENGAGED IN SALES WHICH ARE ZERO-RATED OR EFFECTIVELY ZERO-RATED.

The *2nd requisite* requires that the taxpayer be engaged in zero-rated or effectively zero-rated sales. Petitioner alleges that its sales to EDC and PGPC, RE developers, are zero-rated pursuant to Section 15(g)[71] of RA 9513 in relation to Section 108(B)(3)[72] of the NIRC of 1997, as amended.

Section 15(g) of RA 9513 which grants certain tax incentives to RE developers like EDC. Said provision reads, in part, as follows:

> ...
>
> CHAPTER VII
> GENERAL INCENTIVES
>
> Section 15. *Incentives for Renewable Energy Projects and Activities.* - **RE developers of renewable energy facilities,** including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, **as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:**

---

69 Supra at note 1.
70 Exhibit "P-1", Division Docket, Volume I, p. 422.
71 Supra at note 58.
72 Supra at note 60.

...

(g) Zero Percent Value-Added Tax Rate. - The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.

All RE Developers shall be entitled to zero-rated value added tax on [their] purchases of local supply of goods, properties and **services needed for the development, construction and installation of its plant facilities.**

This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors.[73]

...

Moreover, Section 13(G)(b)(c), Rule 5 of Department Circular No. DC2009-05-0008 dated 25 May 2009, or the *Implementing Rules and Regulations* (**IRR**) of RA 9513, provides:

...

SEC. 13. *Fiscal Incentives for Renewable Energy Projects and Activities*

DOE-certified existing and new RE Developers of RE facilities, including Hybrid Systems, in proportion to and to the extent of the RE component, for both Power and Non-Power Applications, shall be entitled to the following incentives:

...

G. Zero Percent Value-Added Tax Rate

The following transactions/activities shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337:

...

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

[73] Italics in the original text and emphasis supplied.

> (c) Whole process of exploration and development of RE sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors.[74]
>
> ...

Based on the foregoing provisions, all RE Developers are entitled to zero-rated VAT *on its purchases* of local supply of goods, properties and *services needed for the development, construction and installation of plant facilities*. Furthermore, the law declares that the VAT zero-rating applies to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors.

Relative thereto, the same IRR of RA 9513 further states the conditions in availing the incentives and other privileges under the said law. Section 18(A) and (B) thereof reads:

> ...
>
> SEC. 18. *Conditions for Availment of Incentives and Other Privileges* –
>
> A. *Registration/Accreditation with the DOE*
>
> **<u>For purposes of entitlement to the incentives and privileges under the Act, existing and new RE Developers</u>**, and manufacturers, fabricators, and suppliers of locally-produced RE equipment **shall register with the DOE, through the Renewable Energy Management Bureau (REMB)**. The following certifications shall be issued:
>
> ***(1) DOE Certificate of Registration*** **– issued to an RE Developer holding a valid RE Service/Operating Contract.**
>
> For existing RE projects, the new RE Service/Operating Contract shall pre-terminate and replace the existing Service Contract that the RE Developer has executed with the DOE subject to the Transitory Provision in Rule 13, Section 39.
>
> The DOE Certificate of Registration shall be issued immediately upon award of an RE Service/Operating Contract covering an existing or new RE Project or upon approval of additional investment.

---

74 Emphasis supplied and italics in the original text.

Any investment added to existing RE projects shall be subject to prior approval by the DOE.

...

B. Registration with the Board of Investments (BOI)

The RE sector is hereby declared a priority investment sector that will regularly form part of the country's Investment Priority Plan (IPP), unless declared otherwise by law.

To qualify for the availment of the incentives under Sections 13 and 15 of this IRR, <u>RE Developers</u> and manufacturers, fabricators, and suppliers of locally-produced RE equipment, shall register with the BOI.

The registration with the BOI shall be carried out through an agreement and an administrative arrangement between the BOI and the DOE, with the end-view of facilitating the registration of qualified RE facilities. The applications for registration shall be favorably acted upon immediately by the BOI, on the basis of the certification issued by the DOE.[75]

...

Corollary, Department Circular No. DC2021-12-0042[76], amending Section 18(C) of the IRR of RA 9513, confirms that RE Developers are ***automatically*** qualified to avail of the incentives provided for in RA 9513 after securing a DOE COR, *viz*:

...

SEC. 18. Conditions for Availment of Incentives and Other Privileges. –

...

C. DOE ENDORSEMENT FOR AVAILMENT OF INCENTIVES AND DUTY-FREE IMPORTATIONS OF MACHINERY, EQUIPMENT, AND MATERIALS

<u>RE Developers</u> and manufacturers, fabricators, and suppliers of locally-produced RE equipment <u>shall be AUTOMATICALLY qualified to avail of the incentives provided for in the Act</u>, OTHER THAN THE INCENTIVE OF DUTY-FREE IMPORTATION OF QUALIFIED MACHINERY, EQUIPMENT, MATERIALS, PARTS AND

75 Italics in the original text, emphasis and underscoring supplied.

76 PRESCRIBING AMENDMENTS TO SECTIONS 13(E) AND 18(C) OF DEPARTMENT CIRCULAR NO. DC2009-05-0008, ENTITLED RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 9513, OTHERWISE KNOWN AS "THE RENEWABLE ENERGY ACT OF 2008".

COMPONENTS, after securing a Certificate of Registration from the DOE.[77]

...

Thus, in order for the sales of services to an RE Developer to qualify for VAT zero-rating as contemplated under RA 9513 and its IRR, the following conditions must be present:

1) The RE developer must be registered with the DOE and the BOI; and

2) The local sales of goods, properties and services to the RE Developer are needed for the development, construction, and installation of the RE Developer's plant facilities and the whole process of exploration and development of RE sources up to its conversion into power.

As indicated in petitioner's Quarterly VAT Returns for the 2nd, 3rd and 4th quarters of CY 2020[78], petitioner declared total sales/receipts of ₱205,467,456.81, which included zero-rated sales in the amount of ₱203,399,680.81, as shown below:

Period	Vatable Sales	Zero-Rated Sales	Total Sales
Second Quarter	₱1,276,496.00	₱79,089,282.74	₱80,365,778.74
Third Quarter	413,280.00	14,793,649.22	15,206,929.22
Fourth Quarter	378,000.00	109,516,748.85	109,894,748.85
Total	**₱2,067,776.00**	**₱203,399,680.81**	**₱205,467,456.81**

Based on petitioner's Schedule of Sales[79], its total zero-rated sales of ₱203,399,680.80[80] can be further broken down as follows:

Customers	2nd Quarter	3rd Quarter	4th Quarter	Total
EDC	52,131,194.27	14,793,649.22	99,617,333.98	166,542,177.47
PGPC	26,958,088.46	-	9,899,414.87	36,857,503.33
Total	**79,089,282.73**	**14,793,649.22**	**109,516,748.85**	**203,399,680.80**

77 Emphasis in the original text and underscoring supplied.
78 Supra at note 14.
79 Annex E, ICPA Report, USB.
80 With ₱0.01 minor difference.

To prove the *first condition, i.e.,* petitioner's customers – EDC and PGPC, are registered with the DOE and BOI as RE Developers, petitioner presented the following:

Location	DOE Certificate of Registration No.	BOI Certificate of Registration No.
EDC		
Tongonan, Leyte	GRESC 2009-10-001 dated 23 October 2009[81]	2012-024[82]
Palinpinon, Negros Oriental	GRESC 2009-10-002 dated 23 October 2009[83]	2014-027[84]
Bacon-Manito Sorsogon/Albay	GRESC 2009-10-003 dated 23 October 2009[85]	-
Kidapawan City, North Cotabato	GRESC 2009-10-004 dated 23 October 2009[86]	-
Northern Negros, Negros Occidental	GRESC 2009-10-005 dated 23 October 2009[87]	-
PGPC		
Tiwi, Albay	GSC 2013-04-044[88]	2014-066[89]
Makiling-Banahaw (**Mak-ban**), Batangas and Laguna	GSC 2013-04-45[90]	2014-067[91]

However, based on the foregoing information, petitioner failed to establish that EDC's projects in: (1) Bacon-Manito Sorsogon/Albay; (2) Kidapawan City, North Cotabato; and (3) Northern Negros, Negros Occidental, were registered with the BOI. Moreover, EDC's project in Northern Negros, Negros Occidental, was not at all mentioned in the Letter of Endorsement dated 23 June 2020, issued by Director Mylene C. Capongcol, Officer-in-Charge of the Renewable Energy Management Bureau.[92] Thus, anent the *first condition*, only the sale of services made to EDC's projects in Tongonan, Leyte, and Palinpinon,

81 Exhibit "P-7", Division Docket, Volume I, p. 486.
82 Exhibit "P-8", id., pp. 491-496.
83 Exhibit "P-7-1", id., p. 487.
84 Exhibit "P-8-1", id., pp. 497-504.
85 Exhibit "P-7-2", id., p. 488.
86 Exhibit "P-7-3", id., p. 489.
87 Exhibit "P-7-4", id., p. 490.
88 Exhibit "P-369", USB.
89 Exhibit "P-393", id.
90 Exhibit "P-370", id.
91 Exhibit "P-368", id.
92 Exhibit "P-9", Division Docket, Volume I, pp. 505-506.

Negros Oriental, and PGPC's projects in Tiwi, Albay and Mak-ban, Batangas and Laguna qualifies for VAT zero-rating under the law.

Still as regards the *first condition*, respondent avers that petitioner as subcontractor of RE Developers should have submitted its own DOE COR, BOI COR and DOE COE.

Respondent's postulation has no legal mooring.

It bears noting that the instant petition is predicated upon Section 108(B)(3) of the NIRC of 1997, as amended, *i.e.*, the taxpayer renders services to an exempt-entity through special law, and **not** upon Section 108(B)(7) of the NIRC of 1997, as amended, which governs zero-rated sales by RE entities, among others.

Section 108(B)(7) of the NIRC of 1997, as amended, rests on the **direct tax incentive** conferred upon RE entities to obviate the imposition of 12% output VAT on their sales. Accordingly, RE entities availing themselves of such direct tax incentive are required to substantiate their eligibility for zero-rating by presenting their own DOE and BOI CORs and DOE COE, if applicable.

In contrast, Section 108(B)(3) of the NIRC of 1997, as amended, operates under the premise of an **indirect tax incentive** granted to RE entities under RA 9513. While the statutory tax liability of the suppliers of RE entities is effectively obviated, such benefit nonetheless constitutes an incentive accorded to the RE entity itself.

In this regard, petitioner, being neither an RE entity nor purporting to be one but acting solely as a subcontractor of RE entities, need not furnish the qualifications required of an RE entity. Rather, in order to avail itself of the indirect tax incentive (*i.e.*, zero-rating on purchases by RE entities), it suffices for petitioner, as a supplier of services to RE entities, to show that the RE entity to which it rendered services possesses the required DOE and BOI certifications which, in this case, were filed and proven during trial (save for the noted exceptions).

As to the *second condition*, petitioner presented the Contract for Aerated Fluids Drilling Works with Appendix[93] that it entered into with EDC. The said contract shows that petitioner undertook to provide EDC with "Aerated Fluids Drilling Services for drilling, and special cases workover, of *Geothermal Wells* for any operating rig designed by [EDC]". Aerated Fluids Drilling Services is defined as the "use of techniques and services to achieve reduction in the specific gravity of a column of unweighted drilling fluid (water, oil, or synthetic based) by injection of gas, thereby reducing the hydrostatic pressure in the *wellbore*". From the foregoing, petitioner's services to EDC were necessary for the production of geothermal energy by EDC, petitioner's sales or receipts derived from these services during the 2nd to 4th quarters of CY 2020 may qualify for VAT zero-rating.

In relation to petitioner's sale of services to PGPC, it is evident in the billing invoices[94] that the description of works was aerated drilling services, including equipment rental and supply of personnel, and correspondingly, petitioner's sale of services to PGPC clearly pertains to the exploration and development of RE sources.

A careful scrutiny of petitioner's pieces of evidence reveals that its zero-rated sales of ₱99,617,333.98 must be disallowed for petitioner's failure to prove that these payments were rendered to DOE and BOI-registered EDC projects, to wit:

Exhibit No.	OR Date	OR No.	Exhibit No.	Invoice Date	Invoice No.	Description	Zero-Rated Receipts (in PHP)
P-307	11-Nov-20	1041	P-308	31-Aug-20	617	Aerated Drilling Services EDC Package 2	₱12,014,492.21
P-307	11-Nov-20	1041	P-309	30-Sep-20	620	ADA Chemicals EDC Package 1	184,129.00
P-307	11-Nov-20	1041	P-310	30-Sep-20	623	ADA Chemicals EDC Package 2	322,225.75
P-311	11-Nov-20	1042	P-312	21-Aug-20	616	ADA Chemicals EDC Package 1	1,339,508.55

---

93 Exhibits "P-10" and "P-11", id., Volume II, pp. 507-640.

94 Exhibits "P-290" to "P-297", "P-304" to "P-306" and "P-333" to "P-337", USB.

P-311	11-Nov-20	1042	P-313	31-Aug-20	618	ADA Chemicals EDC Package 2	877,609.05
P-311	11-Nov-20	1042	P-314	30-Sep-20	624	ADA Chemicals EDC Package 2	4,606,859.13
P-311	11-Nov-20	1042	P-315	30-Sep-20	621	ADA Chemicals EDC Package 1	2,363,150.35
P-316	11-Nov-20	1043	P-317	29-Jul-20	607	Aerated Drilling Services EDC Package 1	1,465,614.83
P-316	11-Nov-20	1043	P-318	29-Jul-20	608	Aerated Drilling Services EDC Package 1	896,720.00
P-316	11-Nov-20	1043	P-319	29-Jul-20	609	Aerated Drilling Services EDC Package 2	1,989,839.78
P-316	11-Nov-20	1043	P-320	29-Jul-20	610	ADA Chemicals EDC Package 1	607,904.05
P-316	11-Nov-20	1043	P-321	03-Aug-20	614	Aerated Drilling Services EDC Package 2	6,518,299.69
P-316	11-Nov-20	1043	P-322	03-Aug-20	613	Aerated Drilling Services EDC Package 2	2,772,147.62
P-316	11-Nov-20	1043	P-323	03-Aug-20	612	Aerated Drilling Services EDC Package 1	382,046.97
P-316	11-Nov-20	1043	P-324	03-Aug-20	611	Aerated Drilling Services EDC Package 1	11,504,720.21
P-325	18-Dec-20	1047	P-326	31-Oct-20	634	ADA Chemicals EDC Package 2	2,207,085.60
P-325	18-Dec-20	1047	P-327	31-Oct-20	633	Aerated Drilling Services EDC Package 2	12,325,556.66
P-325	18-Dec-20	1047	P-328	31-Oct-20	632	ADA Chemicals EDC Package 1	919,619.00
P-325	18-Dec-20	1047	P-329	31-Oct-20	631	Aerated Drilling	11,309,135.66

						Services EDC Package 1	
P-330	18-Dec-20	1048	P-331	30-Sep-20	622	Aerated Drilling Services EDC Package 2	5,360,334.38
P-338	04-Dec-20	1046	P-339	30-Sep-20	619	Aerated Drilling Services EDC Package 1	7,065,428.30
P-338	04-Dec-20	1046	P-340	31-Aug-20	615	Aerated Drilling Services EDC Package 2	12,584,907.19
Total							**₱99,617,333.98**

Prescinding from the description of works, there is no showing that these services were rendered *only* to the DOE and BOI-registered EDC projects in Tongonan, Leyte and Palinpinon, Negros Oriental. Petitioner's failure to positively show that such sales relate to the said projects (when it has the burden of proof to do so) warrants the disallowance of the said sales for zero-rating.

As to the sales to PGPC, it was sufficiently shown that petitioner's services were rendered to PGPC's Tiwi and Mak-ban projects.

Additionally, the sales to EDC and PGPC must likewise be compliant with the pertinent invoicing requirements, containing all the required information under Sections 113(A)(1), (B)(1) and (2)(c) of the NIRC of 1997, as amended[95], and Sections 4.113-1(A)(1), (B)(1) and (2)(c) of Revenue Regulations (**RR**) No. 16-2005[96], which respectively provide:

> ...
>
> **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.**

[95] Prior to the changes brought about by Republic Act No. 11976 or "Ease of Paying Taxes Act".
[96] Consolidated Value-Added Tax Regulations of 2005.

(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.[97]

...

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

[97] Emphasis supplied and italics in the original text.

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:

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 **break-down** 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.[98]

...

In addition to the above requirements, the ORs supporting the sale of services to nonresident foreign corporations (**NRFCs**) must be duly registered with the BIR and must contain all the required information, pursuant to Sections 237 and 238 of the NIRC of 1997, as amended, *viz*:

[98] Emphasis supplied and italics in the original text.

> ...
>
> **SEC. 237.** *Issuance of* ***Receipts*** *or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service[.] ...
>
> ...
>
> **SEC. 238.** *Printing of* ***Receipts*** *or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.
>
> No authority to print **receipts** or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.[99]
>
> ...

To summarize the foregoing requirements, the following information should be reflected in the VAT official receipt (**OR**):

1. A statement that the seller is a VAT-registered person, followed by its 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; or (**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,

---

99 Emphasis supplied and italics in the original text.

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 ₱1,000.00 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;

4. Date of transaction; and

5. Quantity, unit cost and description of merchandise or nature of service.

Tellingly, Revenue Memorandum Circular (**RMC**) No. 42-03[100] expressly provides that a taxpayer's failure to comply with the invoicing requirements will result in the disallowance of the claim for input tax, as follows:

...

Q-13: *Should penalty be imposed on TCC application for failure of claimant to comply with certain **invoicing requirements**, (e.g., sales invoices must bear the TIN of the seller)?*

A-13: Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result [in] the disallowance of the claim for input tax by the purchaser-claimant.

If the claim for refund/TCC is based **on the existence of zero-rated sales by the taxpayer** but **it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g., failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be <u>denied</u>** considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset

100 Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters.

> account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer.[101]
>
> ...

Thus, only zero-rated receipts supported by the above-stated documents shall qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

Consequently, the following sales, amounting to ₱35,562,101.47 shall be denied VAT zero-rating for the following reasons:

Exhibit No.	OR Date	OR No.	Exhibit No.	Invoice Date	Invoice No.	Customer	Zero-Rated Sales
Not supported by VAT zero-rated OR[102]							
P-289	28-May-20	1036	P-290	04-Dec-19	567	PGPC	₱3,232,389.95
P-289	28-May-20	1036	P-291	27-Dec-19	568		1,213,058.00
P-289	28-May-20	1036	P-292	3-Feb-20	584		10,436,453.60
P-289	28-May-20	1036	P-293	3-Feb-20	585		5,141,976.00
P-289	28-May-20	1036	P-294	28-Feb-20	589		4,197,787.26
P-289	28-May-20	1036	P-295	28-Feb-20	590		1,353,763.20
P-289	28-May-20	1036	P-296	4-Mar-20	594		102,765.65
P-289	28-May-20	1036	P-297	4-Dec-19	564		1,279,894.80
P-332	03-Dec-20	1044	P-333	29-Jul-20	606		3,689,250.00
P-332	03-Dec-20	1044	P-334	30-Sep-20	628		241,868.81
P-332	03-Dec-20	1044	P-335	30-Sep-20	625		3,637,125.00
Nature of services rendered is not shown[103]							
P-298	27-May-20	1034	P-299	31-Jan-20	583	EDC	1,035,769.20
Total							**₱35,562,101.47**

In fine, and for purposes of compliance with the 2nd *requisite*, the amount of ₱68,220,245.36 represents petitioner's valid zero-rated sales for the 2nd to 4th quarters of CY 2020.

Total Declared Zero-Rated Sales	₱203,399,680.81
Less: Zero-rated sales not compliant with RA 9513 and its IRR	99,617,333.98
Zero-rated sales not compliant with the invoicing requirements	35,562,101.47

[101] Italics in the original text, emphasis and underscoring supplied.
[102] Since ORs were denied admission for being blurred and/or unreadable. Supra at note 51.
[103] Since the billing invoice was denied admission for being blurred and/or unreadable; supra at note 51.

Total Valid and Substantiated Zero-Rated Sales for the 2nd to 4th quarters of CY 2020	**₱68,220,245.36**

The dissent is of the view that different types of sales transactions impose distinct imprinting requirements. Specifically, Section 113(B)(2)(c)[104] of the NIRC of 1997, as amended, governs purely VAT zero-rated sales transactions, wherein it is required that the term "zero-rated sale" is written or imprinted prominently. On the other hand, Section 113(B)(2)(d)[105] of the NIRC of 1997, as amended, governs mixed-sale transactions wherein only a breakdown of the sale between its taxable, exempt and zero-rated components is enough.

In the instant case, since the subject sale transactions were purely VAT zero-rated receipts, a 'breakdown' is not enough, the term "zero-rated sale" must also be prominently imprinted or written.

We beg to differ.

Subsections (a), (b), and (c) of Section 113(B)(2)[106] of the NIRC of 1997, as amended, apply to pure transactions, whereas subsection (d) of the same Section[107] applies to mixed-sale transactions. Should a seller be engaged in mixed-sale transactions, he or she or it is required to comply with subsection (d) only, and thus show the breakdown of sales to distinguish the taxable, exempt and the zero-rated components thereof. Nothing in subsection (d) requires the seller to again indicate the amount of tax or again print the term "exempt" or "zero-rated" on the same invoice (as this would be a redundant exercise). It is sufficient that a breakdown is presented to clearly segregate the sales.

Conversely, should a seller be engaged in pure transactions, then he or she is required to comply with either subsections (a), (b), or (c) only, thus, show the amount of tax as a separate item, or imprint the term "exempt" or "zero-rated" whichever is applicable to the pure transaction. Such seller is not necessarily required to comply with subsection (d). It suffices that the applicable term or amount of tax is prominently imprinted or indicated to clearly distinguish the sale

104 Supra at p. 25.
105 Id.
106 Id.
107 Id.

reflected on the invoice. Simply stated, as long as the sale transaction type – whether subject to 12% or 0% VAT or exempt – can be readily identified, the imprinting requirement is deemed satisfied. This interpretation aligns with the purpose of the requirement, *i.e.*, to prevent buyers from falsely claiming input VAT from their purchases when no VAT was actually paid to the prejudice of the State[108], without imposing undue burden on taxpayers.

In addition, it bears noting that during the period of claim, *i.e.*, 2nd to 4th quarters of CY 2020, petitioner was engaged in mixed transactions[109], *i.e.*, it had transactions which are subject to 12% VAT, and others which are not subject to 12% VAT (but to 0% VAT). Annex C.1.2 of Revenue Memorandum Order (**RMO**) No. 12-13[110], which governs the issuance of Authority to Print (**ATP**) ORs, such as the instant case, provides the following *pro-forma* ATP OR if the VAT taxpayer is engaged in mixed transactions:

Sample Only

In settlement of the following		
Billing Invoice No.	Amount	
Total Sales (VAT Inclusive)		
Less VAT		
Total		
Less SC/PWD Discount		
Total Due		
Less Withholding Tax		
Amount Due		
VA Table Sales		
VAT-Exempt Sales		
Zero Rated Sales		
VAT Amount		
Total Sales		
Form of Payment:		
Cash ☐	Check ☐	

ABC CORPORATION
76 Dilman, Quezon City
VAT Reg. TIN: 144-424-024-0000

"Annex C.1.2"

OFFICIAL RECEIPT

DATE ____________

Received from ____________________ with TIN ________
and address at ________________________ engaged in the
business style of __________________________, the sum of
____ pesos
(₱ _____) in partial/full payment for ____________________.

Sr. Citizen TIN

By: ________________________
Cashier/ Authorized Representative

OSCA/PWD ID No.   Signature

No. 1001

10 Bklts (3x) 1001-1500
BIR Authority to Print No. 3AU000805222
Date Issued 07-30-13 : Valid until 07-29-2018
BERTHA PRINTING SERVICES, INC.
Bgy. 789, Quezon City
TIN: 123-456-789-0000

Printer's Accreditation No. P08051200
Date Issued 08-01-12

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

---

108 See *Panasonic Communications Imaging Corporation of the Philippines (formerly Matsushita Business Machine Corporation of the Philippines) v. Commissioner of Internal Revenue*, G.R. No. 178090, 08 February 2010.

109 Supra at note 14.

110 Prescribing Work-around Guidelines and Procedures in the Processing of Authority to Print (ATP) Official Receipts (ORs), Sales Invoices (SIs) and Other Commercial Invoices (CIs) in the Interim Period until the On-line ATP System Pursuant to Revenue Regulations (RR) No. 18-2012 is Fully Developed.

A meticulous examination of petitioner's ORs[111] reveals that the same faithfully comply with the said RMO. As such, petitioner cannot be faulted for adhering to the prevailing rules and regulations. To disallow petitioner's zero-rated receipts in such circumstances would constitute a grave injustice.

In addition, one of the canons of a sound tax system is administrative feasibility, which means that the tax system should be capable of being effectively administered and enforced with the **least inconvenience to the taxpayer.**[112] Certainly, to require the seller to print the terms "exempt" or "zero-rated" **again** on all copies of the same invoice or receipt, when the nature of the transaction and its classification as either exempt, zero-rated or subject to 12% VAT can already be ascertained through the breakdown provided therein would run counter to the principle of administrative feasibility.

Verily, a 'breakdown' conspicuously showing that the said sale transaction is zero-rated substantially complies with the imprinting requirement under subsection (c). Accordingly, the amounts prominently written on the line directly parallel to the term "VAT ZERO RATED" clearly represent zero-rated sales.

FOURTH (4TH) REQUISITE:
THE CREDITABLE INPUT TAX DUE OR PAID MUST BE ATTRIBUTABLE TO SUCH SALES, EXCEPT THE TRANSITIONAL INPUT TAX, TO THE EXTENT THAT SUCH INPUT TAX HAS NOT BEEN APPLIED AGAINST THE OUTPUT TAX.

To satisfy the *fourth requisite,* the following conditions must concur:

a. **1st condition**: the input taxes are due or paid;

b. **2nd condition**: the input taxes claimed are attributable to zero-rated or effectively zero-rated sales and where there are both

111 Exhibits "P-280" to "P-348", USB.

112 See *Renato V. Diaz and Aurora Ma. F. Timbol v. The Secretary of Finance and the Commissioner of Internal Revenue,* G.R. No. 193007, 19 July 2011.

zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales;

c. 3rd **condition**: the input taxes are not transitional input taxes; and,

d. 4th **condition**: the input taxes have not been applied against output taxes during and in the succeeding quarters.

Petitioner complied with the ***3rd condition*** as its input taxes do not appear to be transitional input taxes since they operate to benefit only newly VAT-registered persons. Also, petitioner is deemed to have complied with the ***4th condition*** after it was established that it deducted the input VAT claim of ₱13,071,974.37 as a "VAT Refund/TCC Claimed" (line 23D) in its Amended Quarterly VAT Return for the 1st quarter of CY 2022[113] preventing thus the carry-over of the said amount unto the succeeding taxable quarters. Accordingly, the subject claim no longer formed part of the excess input VAT of ₱100,291,795.99[114] as of the end of the 1st quarter of CY 2022, to be carried over to the succeeding quarters.[115]

As to the ***1st condition***, petitioner claims that for the 2nd, 3rd and 4th quarters of CY 2020, it had a total amount of input VAT of ₱13,071,974.37, which is also the amount subject of the present petition, as shown on the following tabulation[116]:

	2nd Quarter[117]	**3rd Quarter**[118]	**4th Quarter**[119]	**Total**
Input tax on Domestic Purchases of Goods Other than Capital Goods	₱12,009.08	₱80,598.34	₱50,735.37	₱143,342.79
Input Tax on Importation of Goods Other than Capital Goods	1,805,333.03	189,675.41	1,922,160.44	3,917,168.88

113 Exhibit "P-377", Line 23D, USB; Filed on 29 June 2022.
114 Id.
115 Exhibits "P-380" to "P-391", id.
116 Supra at pp. 3-4.
117 Supra at note 9.
118 Supra at note 11.
119 Supra at note 13.

Input tax on Domestic Purchase of Services	78,639.66	153,113.43	140,321.21	372,074.30
Input tax on Services Rendered by Non-residents	1,891,004.07	2,469,236.41	4,279,147.92	8,639,388.40
Total Input Taxes for the period/Amount of claim for refund	**₱3,786,985.84**	**₱2,892,623.59**	**₱6,392,364.94**	**₱13,071,974.37**

In support of its reported input VAT of ₱13,071,974.37 from its importation, domestic purchases of goods and services and payment to nonresidents for the 2nd, 3rd and 4th quarters of CY 2020, petitioner submitted various suppliers' sales invoices[120], ORs[121], *Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld* (BIR Forms No. 1600)[122] and Statement of Settlement of Duties and Taxes (**SSDT**)[123] which Court-commissioned ICPA Delamide examined.

For purposes of satisfying the aforesaid condition, it is of crucial importance that petitioner provides documents to support its declaration that the input VAT claimed during the subject period was actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended[124], which provides:

> ...
>
> **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**:
>
> a. Purchase or importation of goods:
>
> i. For sale; or
> ii. For conversion into or intended to form part of a finished product for sale including packaging materials; or
> iii. For use as supplies in the course of business; or

120 Exhibits "P-25" to "P-27" and "P-86" to "P-279", USB.
121 Id.
122 Exhibits "P-20", "P-24", "P-349" and "P-356", id.
123 Exhibits "P-28" to "P-85", id.
124 Prior to the changes brought about by Republic Act No. 11976 or "Ease of Paying Taxes Act".

iv. For use as materials supplied in the sale of service; or
v. For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

b. Purchase of services on which a value-added tax has actually been paid.

(2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:

a. To the purchaser upon consummation of sale and on importation of goods or properties; and
b. To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000): *Provided, however*, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, further*, That the amortization of the input VAT shall only be allowed until December 31, 2021 after which taxpayers with unutilized input VAT on capital goods purchased or imported shall be allowed to apply the same as scheduled until fully utilized. *Provided, finally*, That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or free.[125]

...

The above provisions are implemented by Sections 4.110-1 to 4.110-3 of RR No. 16-2005, as amended by RR No. 13-2018[126], which provide as follows:

...

SEC. 4.110-1. ***Credits For Input Tax.*** — '*Input tax*' means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include

[125] Emphasis supplied and italics in the original text.

[126] Regulations Implementing the Value-Added Tax Provisions under the Republic Act (RA) No. 10963, or the "Tax Reform for Acceleration and Inclusion (TRAIN)," Further Amending Revenue Regulations (RR) No. 16-2005 (Consolidated Value-Added Tax Regulations of 2005), as Amended.

the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the Tax Code.
It includes input taxes which can be directly attributed to transactions subject to the VAT plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.

Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Secs. 113 and 237 of the Tax Code shall be creditable against the output tax:

a. Purchase or importation of goods
    1. For sale; or
    2. For conversion into or intended to form part of a finished product for sale, including packaging materials; or
    3. For use as supplies in the course of business; or
    4. For use as raw materials supplied in the sale of services; or
    5. For use in trade or business for which deduction for depreciation or amortization is allowed under the Tax Code.

b. Purchase of real properties for which a VAT has actually been paid;
c. Purchase of services in which a VAT has actually been paid;
d. Transactions "deemed sale" under Sec. 106 (B) of the Tax Code;
e. Transitional input tax allowed under Sec. 4.111 (a) of these Regulations;
f. Presumptive input tax allowed under Sec. 4.111 (b) of these Regulations;
g. Transitional input tax credits allowed under the transitory and other provisions of these Regulations.

SEC. 4.110-2. ***Persons Who Can Avail of the Input Tax Credit.*** — The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:

a. To the importer upon payment of VAT prior to the release of goods from customs custody;
b. To the purchaser of the domestic goods or properties upon consummation of the sale; or
c. To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee.

SEC. 4.110-3. ***Claims 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 (P1,000,000.00), 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.

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

...

(c) The amortization of the input VAT shall only be allowed until December 31, 2021 after which taxpayers with unutilized input VAT on capital goods purchased or imported shall be allowed to apply the same as scheduled until fully utilized: *Provided*, That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.[127]

...

Meanwhile, Sections 4.110-8(a) and (d) and 4.114-2(b) of RR No. 16-2005, as amended by RR No. 04-2007[128], provide for the substantiation requirements of input tax credits, as follows:

...

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:**

[127] Emphasis supplied and italics in the original text.

[128] Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005.

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.

   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.

...

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) <u>filed</u> by the resident payor in behalf of the non-resident <u>evidencing remittance</u> of VAT due which was withheld by the** payor.

...

SEC. 4.114-2. *Withholding of VAT on Government Money Payments and Payments to Non-Residents.* —

...

(b) The government or any of its political subdivisions, instrumentalities or agencies, including GOCCs, as well as private corporations, individuals, estates and trusts, whether large or non-large taxpayers, shall withhold twelve percent (12%) VAT, starting February 1, 2006, with respect to the following payments:

(1) Lease or use of properties or property rights owned by non-residents; and

(2) Other services rendered in the Philippines by non-residents.

In remitting VAT withheld, the withholding agent shall use BIR Form No. 1600 Remittance Return of VAT and Other Percentage Taxes Withheld.

> VAT <u>**withheld**</u> **and** <u>**paid**</u> **for the non-resident recipient (remitted using BIR Form No. 1600)**, which VAT is passed on to the resident withholding agent by the non-resident recipient of the income, **may be claimed as input tax by said VAT-registered withholding agent** <u>**upon filing his own VAT Return**</u>, subject to the rule on allocation of input tax among taxable sales, zero-rated sales and exempt sales. **The duly filed BIR Form No. 1600 is the proof or documentary substantiation for the claimed input tax or input VAT.**[129]
>
> ...

The documents also need to comply with the invoicing requirements[130] provided under Sections 113(A)(1), (B)(1) and (2)(c) of the NIRC of 1997, as amended, and Sections 4.113-1(A)(1), (B)(1) and (2)(c) of RR No. 16-2005, as amended.

Based on ICPA Delamide's findings, the total input VAT of ₱35,468.40 shall be disallowed for petitioner's failure to meet the substantiation and invoicing requirements, *viz*:[131]

<table>
<tr><th>Supplier</th><th>Invoice/
OR No.</th><th>Amount of
Input Tax</th><th>Reason for disallowance</th></tr>
<tr><td>April C. Cerdeño</td><td>0776</td><td>₱8,908.71</td><td rowspan="2">The nature of service was not indicated therein or the documents bearing the reference indicated were not attached to the OR</td></tr>
<tr><td>Mac-Nels Line, Inc.</td><td>34334</td><td>2,028.49</td></tr>
<tr><td>Welders Testing Laboratories Phils., Inc.</td><td>18187</td><td>2,398.20</td><td rowspan="2">Input VAT was not separately indicated</td></tr>
<tr><td>World Safety Organization (WSO) International Office for Philippines, Inc.</td><td>17285</td><td>1,285.71</td></tr>
<tr><td>Prodril Supply Company Inc.</td><td>1550</td><td>18,123.84</td><td rowspan="3">Petitioner's TIN is missing or incorrect</td></tr>
<tr><td>LHI Real Estate Corporation</td><td>0005695</td><td>689.02</td></tr>
<tr><td>LBC Express, Inc.</td><td>SLZ0210000253679</td><td>124.29</td></tr>
<tr><td>Office Warehouse, Inc.</td><td>106954</td><td>261.94</td><td rowspan="3">Petitioner's address is missing or incorrect</td></tr>
<tr><td>Eton Properties Philippines, Inc.</td><td>94433</td><td>1,383.59</td></tr>
<tr><td>The Landmark Corporation</td><td>15-00-0000236036</td><td>233.46</td></tr>
</table>

129 Italics in the original text, emphasis and underscoring supplied.
130 Supra at pp. 26-27.
131 Annex D, ICPA Report, USB.

-	-	31.15	Petitioner's erroneous input VAT computation resulting in over-claiming
Total Disallowance per ICPA		**₱35,468.40**	

Upon further verification, the Court finds that the additional input VAT on domestic purchases of goods and services in the total amount of ₱32,875.64 shall likewise be disallowed for reasons stated herein, to wit:

Exhibit No.	Supplier's Name	Invoice/OR No.	Purchase Amount	Input VAT Amount
Supported by VAT invoices and/or ORs that were denied admission for failure to present the originals for comparison[132]				
P-122	RS Components Corporation	414247441	₱27,692.11	₱3,323.05
P-123	RS Components Corporation	414247442	27,692.11	3,323.05
P-153	RS Components Corporation	414249176	3,978.10	477.37
P-154	RS Components Corporation	414249313	5,807.32	696.88
P-155	RS Components Corporation	414249175	35,739.98	4,288.80
P-157	RS Components Corporation	414248889	7,161.98	859.44
P-177	RS Components Corporation	414253329	9,137.88	1,096.55
P-217	RS Components Corporation	414259844	4,419.60	530.35
P-218	RS Components Corporation	414259845	4,612.16	553.46
P-219	RS Components Corporation	414261053	9,829.34	1,179.52
P-220	RS Components Corporation	414261362	5,714.39	685.73
P-221	PLDT Inc.	PELOR003959105	2,518.03	302.17
P-222	PLDT Inc.	PELOR003959102	2,518.03	302.17
P-223	PLDT Inc.	PELOR003959104	2,518.03	302.17
P-224	PLDT Inc.	PELOR003959103	2,518.03	302.17
P-260	RS Components Corporation	414266829	1,084.74	130.17
P-261	RS Components Corporation	414267305	2,736.74	328.41
P-266	Globe Telecom Inc.	GPCG600501OR421829	11,726.54	1,407.19
P-272	Globe Telecom Inc.	GPNC1600019OR9874423	11,862.27	1,423.47
Subtotal				*₱21,512.12*
Supported by unreadable or blurred VAT invoices and/or ORs[133]				
P-111	Shopwise Rustan Supercenters, Inc.	147413	1,958.26	₱234.99
P-161	Ever Plus Superstore Inc.	326183	1,502.92	180.35
P-166; P-166-1 to P-166-3	Mac-Nels Line, Inc.	33958	76,738.45	9,208.61
P-173-2	Mac-Nels Line, Inc.	34113	13,800.00	1,656.00
P-185	SM Mart, Inc.	362127	258.93	31.07
P-186	SM Mart, Inc.	362128	437.50	52.50
Subtotal				*₱11,363.52*
Total				**₱32,875.64**

[132] Documents were denied admission for failure to present the originals for comparison; supra at note 51.

[133] Documents were denied admission for being blurred and/or unreadable; supra at note 51.

Anent the input taxes on services rendered by nonresidents, it is noteworthy that withholding VAT (**WVAT**) may be claimed as input tax credit **in the month such WVAT is withheld and <u>remitted</u> to the BIR** supported by WVAT Return (BIR Form No. 1600). Since the December 2020 WVAT Return[134] amounting to ₱2,260,997.97 was remitted to the BIR on **11 January 2021**[135], which is outside the period of claim of 01 April 2020 to 31 December 2020, the Court is left with no choice but to disallow the same.

Hence, for purposes of compliance with the ***1st condition***, out of the total reported input VAT of ₱13,071,974.37, only the amount of **₱10,742,632.36** represents petitioner's valid input VAT due or paid for the 2nd, 3rd and 4th quarters of CY 2020, as computed below:

Input VAT *per* VAT Return		₱13,071,974.37
Less: Disallowances		
Per ICPA findings	₱35,468.40	
Per Court's further verification		
Violation of the invoicing requirements	32,875.64	
Out-of-period WVAT	2,260,997.97	2,329,342.01
Total Substantiated or Valid Input VAT		**₱10,742,632.36**

As for the ***2nd condition***, since petitioner had both zero-rated and VATable sales in the period of claim and the corresponding input VAT cannot be directly and entirely attributed to any of these sales, the input VAT shall be proportionately allocated on the basis of sales volume, to wit:

Total Declared Zero-Rated Sales *per* VAT Return	₱203,399,680.81
Divided by Reported Total Declared Sales *per* VAT Return	205,467,456.81
Multiplied by Total Declared Input VAT	13,071,974.37
Declared Input VAT allocated to Declared Zero-Rated Sales	**₱12,940,421.1**

Total Declared 12% VATable Receipts *per* VAT Return	₱2,067,776.00
Divided by Reported Total Declared Sales *per* VAT Return	205,467,456.81
Multiplied by Total Declared Input VAT	13,071,974.37
Declared Input VAT allocated to Declared 12% VATable Sales	**₱131,553.27**

134 Exhibits "P-24" and "P-24-1", USB.
135 Id.

In the case of *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*[136] *(**Chevron**)*, the Supreme Court made a definitive declaration that a VAT-registered taxpayer has two (2) options with respect to its input VAT attributable to zero-rated sales, it may: (1) charge the same against output VAT from VATable sales, and claim for refund or issuance of a TCC any unutilized or "excess" input VAT; or (2) claim the same for refund or issuance of a TCC in its entirety, *viz*:

> ...
> **[T]he input tax attributable to zero-rated sales may, <u>at the option of the VAT-registered taxpayer</u>, be: (1) charged against output tax from regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety.** It must be stressed that **the remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative.** Furthermore, the option is vested with the taxpayer-claimant. It goes without saying that **the CTA, and even the Court, may not, on its own, deduct the input tax attributable to zero-rated sales from the output tax derived from the regular twelve percent (12%) VAT-able sales first and use the resultant amount as the basis in computing the allowable amount for refund. <u>The courts cannot condition the refund of input taxes allocable to zero-rated sales on the existence of "excess" creditable input taxes, which includes the input taxes carried over from the previous periods, from the output taxes.</u>** These procedures find no basis in law and jurisprudence.
> ...

Clearly from the foregoing, a VAT-registered taxpayer has the discretion to decide whether to charge its input VAT attributable to zero-rated sales against output VAT. In this respect, the Court cannot impose its own methods for calculating the refund, such as compelling the crediting of input VAT against output VAT as a condition precedent to the refund or issuance of a TCC. This is especially true when the taxpayer-claimant opts to claim the input VAT attributable to zero-rated sales for a refund or issuance of a TCC in its entirety.

[136] G.R. No. 215159, 05 July 2022; citation omitted, underscoring supplied, emphasis in the original text and supplied.

Furthermore, regardless of which option the taxpayer-claimant chooses, the Supreme Court's ruling in *Chevron* clarifies that since the taxpayer-claimant is requesting a refund of unutilized or unused input VAT from zero-rated sales (as opposed to the "excess" creditable input VAT from the output VAT), this amount is inherently immediately refundable, given that there is no related output VAT to offset it against. Therefore, the Court's proper preliminary step in determining the refundable excess and unutilized input VAT attributable to valid zero-rated sales should be computing the ratable portion of the taxpayer-claimant's input VAT allocable to zero-rated sales, assuming the input VAT cannot be directly attributed to zero-rated activities.

In this case, petitioner applied for the refund of the **entire** current input VAT even though petitioner had both zero-rated and VATable sales in the period of claim. This shows that petitioner has chosen the **second option**, *i.e.*, to claim for refund all input VAT attributable to its zero-rated sales.

Accordingly, petitioner is entitled to the refund of unutilized input tax allocable to its zero-rated sales for 01 April to 31 December 2020 in the total amount of ₱3,566,817.96, computed as follows:

Valid Zero-Rated Sales	₱68,220,245.36
Divided by Total Declared Sales	205,467,456.81
Multiplied by Valid Input VAT not directly attributable to any activity	10,742,632.36
Total Refundable Amount	**₱3,566,817.96**

Claims for the tax refund, like tax exemptions, are construed *strictissimi juris* against the taxpayer. However, when the claim for refund has a clear legal basis and is sufficiently supported by evidence, as in the present case, then the Court shall not hesitate to grant the refund.[137]

WHEREFORE, premises considered, the instant Petition for Review filed on 15 August 2022 by petitioner Air Drilling Associates Pte Ltd. is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** or

[137] *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*, supra at note 136.

TO ISSUE A TAX CREDIT CERTIFICATE in the amount of **₱3,566,817.96**, representing petitioner's unutilized excess input Value-Added Tax for the 2nd, 3rd and 4th quarters of CY 2020 which is attributable to its zero-rated sales for the same period.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

(With due respect, see D.O.)
ROMAN G. DEL ROSARIO
Presiding Justice

LANEE S. CUI-DAVID
Associate Justice

C E R T I F I C A T I O N

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

AIR DRILLING ASSOCIATES PTE LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10957

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, and
CUI-DAVID, *JJ.*

Promulgated:

MAR 07 2025; 2:40PM

x- -x

DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I am constrained to withhold my assent to the *ponencia*. I submit that petitioner's claim for refund of input value-added tax (VAT) attributable to zero-rated sales must be denied for petitioner's failure to comply with the invoicing requirements under Section 113(B)(2)(c) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Section 113(B)(2)(c) and (d) of the NIRC of 1997, as amended, reads:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
>
> xxx xxx xxx
>
> (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:

xxx xxx xxx

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

(d) If the sale involved 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. x x x" (*Boldfacing supplied*)

The above provision is implemented by Section 4.113-1 of Revenue Regulations (RR) No. 16-2005, as amended, which reads:

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

xxx xxx 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 xxx 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:

xxx xxx xxx

(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 **break-down** 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." (*Boldfacing supplied*)

From the foregoing, it is a requirement that for any VAT invoice or official receipt (OR) evidencing a zero-rated transaction, the term **"zero-rated sale" should be written or printed prominently**

thereon. Failure to comply with the invoicing requirements is sufficient ground to deny the claim for refund or tax credit.[1]

The Supreme Court has settled, in a number of cases,[2] that the writing or imprinting of the term "zero-rated sale" on the VAT invoice or OR is **indispensable** for a valid claim for refund of unutilized input tax. Such requirement was traced by the Supreme Court from Section 4.108-1 of RR No. 7-95, which has been incorporated in Section 113(B)(2)(c) of the NIRC of 1997, as amended, by virtue of the amendments introduced by Republic Act (RA) No. 9337, which confirms the validity of the imprinting requirement on VAT invoices or official receipts, *viz*:[3]

> "**RR 7-95, which took effect on 1 January 1996, proceeds from the rule-making authority granted to the Secretary of Finance** by the NIRC for the efficient enforcement of the same Tax Code and its amendments. In *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue*, we ruled that this provision is 'reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services.' Moreover, we have held in *Kepco Philippines Corporation v. Commissioner of Internal Revenue* that **the subsequent incorporation of Section 4.108-1 of RR 7-95 in Section 113 (B)(2)(c) of R.A. 9337 actually confirmed the validity of the imprinting requirement on VAT invoices or official receipts – a case falling under the principle of legislative approval of administrative interpretation by reenactment.**" (*Boldfacing supplied*)

Revenue Memorandum Circular No. 42-2003 provides that if the refund claim is based on the existence of zero-rated sales but the taxpayer fails to comply with the invoicing requirements, such claim should be **denied**, *viz*.:

> "Q-13: Should penalty be imposed on TCC application for failure of claimant to comply with certain invoicing requirements, (e.g., sales invoices must bear the TIN of the seller)?

---

[1] *Commissioner of Internal Revenue vs. Philex Mining Corporation*, G.R. No. 230016, November 23, 2020.

[2] *Panasonic Communications Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010; *J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 177127, October 11, 2010; *Hitachi Global Storage Technologies Philippines Corp. vs. Commissioner of Internal Revenue*, G.R. No. 174212, October 20, 2010; *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181858, November 24, 2010; *Silicon Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011; *Western Mindanao Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181136, June 13, 2012; *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

[3] *Western Mindanao Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181136, June 13, 2012.

A-13: **Failure by the supplier to comply with the invoicing requirements** on the documents supporting the sale of goods and services will result to the **disallowance** of the claim for input tax by the purchaser-claimant." (*Boldfacing and underscoring supplied*)

In the case at bar, a scrutiny of **all of the ORs** submitted by petitioner reveals that the same **did not indicate therein that the sales were zero-rated**. The term **"zero-rated sale" was not written or printed prominently on the said ORs**. As shown in three (3) sample ORs,[4] petitioner clearly failed to comply with the imprinting requirement that must be made separate and distinct from the format bearing a "breakdown":

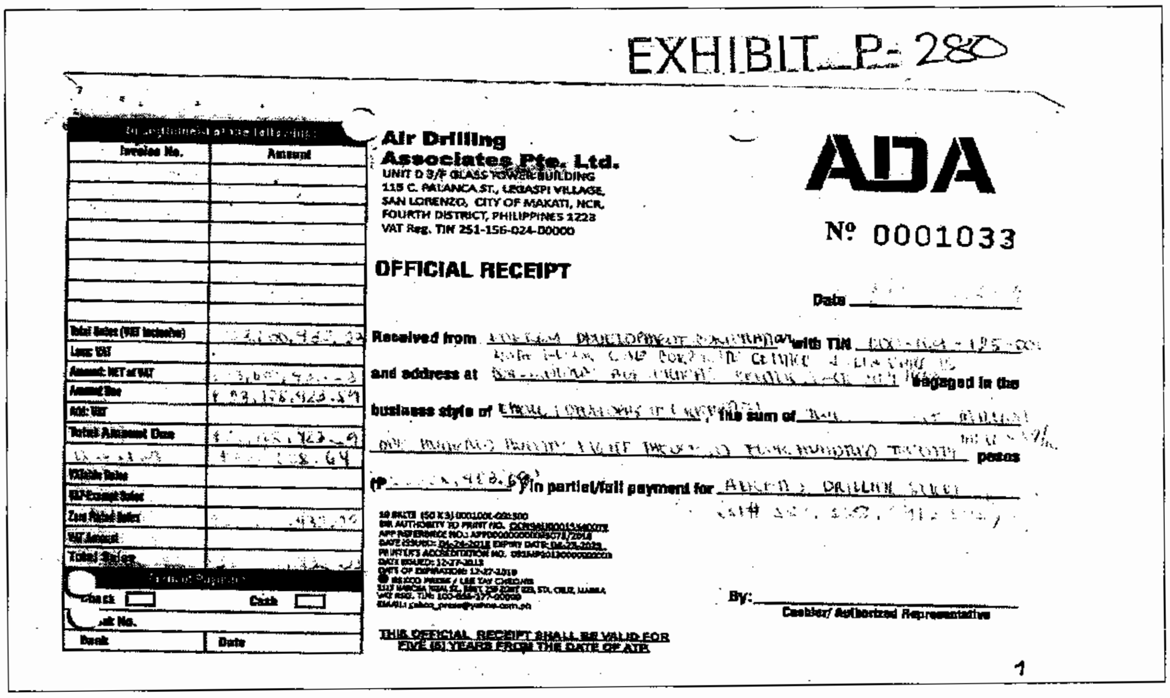

EXHIBIT P-280

Air Drilling Associates Pte. Ltd.
UNIT D 3/F GLASS TOWER BUILDING
115 C. PALANCA ST., LEGASPI VILLAGE,
SAN LORENZO, CITY OF MAKATI, NCR,
FOURTH DISTRICT, PHILIPPINES 1223
VAT Reg. TIN 251-156-024-00000

ADA

Nº 0001033

OFFICIAL RECEIPT

Date ______

Invoice No.	Amount
Total Sales (VAT Inclusive)	
Less: VAT	
Amount: NET of VAT	
Amount Due	
Add: VAT	
Total Amount Due	
VATable Sales	
VAT-Exempt Sales	
Zero Rated Sales	
VAT Amount	
Total Sales	

Form of Payment
Check ☐ Cash ☐
Check No.
Bank | Date

Received from ______ with TIN ______ and address at ______ engaged in the business style of ______ the sum of ______ pesos (P______) in partial/full payment for ______

By: ______
Cashier/ Authorized Representative

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

---

[4] Exhibits "P-280", "P-300", "P-325", USB.

014

EXHIBIT P-300

Air Drilling Associates Pte. Ltd.
UNIT D 3/F GLASS TOWER BUILDING
115 C. PALANCA ST., LEGASPI VILLAGE,
SAN LORENZO, CITY OF MAKATI, NCR,
FOURTH DISTRICT, PHILIPPINES 1223
VAT Reg. TIN 251-156-024-00000

ADA

Nº 0001037

OFFICIAL RECEIPT

Date [illegible] 2020

Received from ENERGY DEVELOPMENT CORPORATION with TIN [illegible]
and address at 40TH FL. ONE CORPORATE CENTRE [illegible] AVE. ORTIGAS CENTER, PASIG CITY engaged in the
business style of ENERGY DEVELOPMENT EXPLORATION, the sum of [illegible] pesos
(₱19,097,7[illegible]) in partial/full payment for AERATED DRILLING SERVICES [illegible]

In settlement of the following	
Invoice No.	Amount
Total Sales (VAT Inclusive)	
Less: VAT	
Amount: NET of VAT	
Amount Due	
Add: VAT	
Total Amount Due	19,097,7[illegible]
US$ [illegible]	(₱595,872.98
VAtable Sales	
VAT-Exempt Sales	
Zero Rated Sales	19,7[illegible],699.72
VAT Amount	
Total Sales	19,7[illegible],699.72

Form of Payment: Check ☐ Cash ☐
Check No.
Bank | Date

By: ____________
Cashier/ Authorized Representative

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

EXHIBIT P 325

Air Drilling Associates Pte. Ltd.
UNIT D 3/F GLASS TOWER BUILDING
115 C. PALANCA ST., LEGASPI VILLAGE,
SAN LORENZO, CITY OF MAKATI, NCR,
FOURTH DISTRICT, PHILIPPINES 1223
VAT Reg. TIN 251-156-024-00000

ADA

Nº 0001047

OFFICIAL RECEIPT

Date DEC. 18, 2020

Received from ENERGY DEVELOPMENT CORPORATION with TIN 000-169-125-000
and address at 20TH FLOOR ONE CORPORATE CENTRE, JULIA VARGAS COR. MERALCO AVE. ORTIGAS CENTER, PASIG CITY engaged in the
business style of ENERGY DEVELOPMENT CORPORATION, the sum of TWENTY SIX MILLION ~~THOUSAND~~ TWO HUNDRED FIFTY SEVEN THOUSAND FOUR HUNDRED THIRTY SIX & 2/100 pesos
(₱26,257,436.02) in partial/full payment for AERATED DRILLING SERVICES INV # 0631, 0632, 0633 & 0634

In settlement of the following	
Invoice No.	Amount
0631	
0632	
0633	
0634	
Total Sales (VAT Inclusive)	26,761,396.92
Less: VAT	
Amount: NET of VAT	26,761,396.92
Amount Due	26,257,436.02
Add: VAT	
Total Amount Due	26,257,436.02
WHT	503,960.89
VAtable Sales	
VAT-Exempt Sales	
Zero Rated Sales	26,761,396.92
VAT Amount	
Total Sales	

Form of Payment: Check ☑ Cash ☐
Check No. 5030884
Bank Security Bank Corp. Date

By: GEORGELY ANN MEDINA
Cashier/ Authorized Representative

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

Thus, for failure of petitioner to comply with the invoicing requirements for all its alleged zero-rated sales, its refund claim should be denied.

Notwithstanding the fact that petitioner indicated in the breakdown of the VAT ORs the amount pertaining to the "zero-rated sale", such however **did not in any way cure its failure to prominently imprint the phrase "zero-rated sale"**. The information necessary to be indicated in the "breakdown" *and* the writing or imprinting of "zero-rated sales" on the VAT ORs are requirements governed by **separate provisions** of the NIRC of 1997, as amended; that is, Section 113(B)(2), **subparagraph d**, which requires the breakdown of sales in mixed transactions involving VATable, VAT-exempt or VAT zero-rated goods, properties, or services and Section 113(B)(2), **subparagraph c**, which provides for the imprinting requirement in case of sale exempt from VAT.

Otherwise stated, **when the transaction involves a purely VAT zero-rated sale, the VAT OR should prominently bear the phrase "zero-rated sale", separate and distinct from any imprinted "breakdown format", in accordance with Section 113(B)(2)(c) of the NIRC of 1997, as amended.** When the transaction, however, is **mixed**, *i.e.*, it involves a combination of VATable, VAT-exempt or VAT zero-rate sales, the **breakdown format** under Section 113(B)(2)(d) may apply. In the case at bar, all of petitioner's VAT ORs pertain to **purely VAT zero-rated sales**, yet the imprinting of the required phrase "zero-rated sale" as mandated under Section 113(B)(2)(c) of the NIRC of 1997, as amended, was not complied with.

If the breakdown format is intended by law to be sufficient in all types of transactions - - whether mixed transactions or purely "zero-rated sales" transactions, **then the law does not make sense in crafting separate provisions, one, in requiring the use of "breakdown format", and another mandatory, the separate imprinting of "zero-rated sale" in purely VAT zero-rated sale transactions.**

Section 113 of the NIRC of 1997, as amended, in both its previous form under RA No. 9337, which is applicable to this case, and present form as introduced by RA No. 11976, otherwise known as "Ease of Paying Taxes Act", requires the use of two (2) formats, that is, either the use of invoices bearing prominently the phrase "zero-rated sale" or the use of invoices bearing the "breakdown format" **(depending upon the nature or type of sale involved)**. Section 113 of the NIRC of 1997, as amended by RA No. 9337 and RA No. 11976 read as follows:

RA No. 9337	RA No. 11976
SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* –	Section 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.*-

on

(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. (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 <u>break-down</u> of the sale price between its taxable, exempt and zero-rated components,** and the	(A) Invoicing Requirement. - A VAT-registered person shall issue a VAT invoice for every sale, barter, exchange, or lease of goods or properties, and for every sale, barter or exchange of services. (B) Information Contained in the VAT Invoice. - The following information shall be indicated in the **VAT invoice**: (1) A statement that the seller is a VAT-registered person, followed by the seller's Taxpayer Identification Number; (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; (b) If the sale is **exempt** from value-added tax, the term **'VAT-exempt sale'** shall be written or printed on the invoice; (c) If the sale is subject to **zero percent (0%)** value-added tax, the term **'zero-rated sale' shall be written or printed on the invoice**; (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 shall clearly indicate the <u>breakdown</u> 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: *Provided,* That the seller may issue separate invoices for the taxable,

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. xxx	exempt, and zero-rated components of the sale. xxx

Interestingly, the Ease of Paying Taxes Act,[5] **has retained specific but separate provisions on the type of sales subject to imprinting "zero-rated sale" and those that are subject to "breakdown format"**, albeit with a minor modification on the imprinting requirement, *i.e.*, the omission of the word "prominently" to qualify the requirement. The retention of both requirements supports the interpretation that the **imprinting requirement is indeed separate and distinct from the breakdown requirement**.

In numerous VAT refund cases, erasures and corrections in invoices or official receipts are allowed when they are made by an authorized signatory. Such treatment of allowing erasures and corrections in invoices or official receipts, especially on the parts where the types and amounts of sales are shown, creates a risk that ill-intentioned taxpayers may manipulate zero-rated sale transactions who make use of the "breakdown format" without "zero-rated sale" separately and prominently written in the official receipts by altering such invoices or receipts to appear as VATable transactions, thus eventually allowing them to be entitled to input tax credits, whether to be used to settle output tax liability or to be claimed for refund. **To prevent such abuse, the requirement of stamping or imprinting the term "zero-rated sales", which cannot simply be discounted, in receipts involving purely zero-rated sale transaction is and should be implemented. This measure ensures that alterations cannot easily convert zero-rated sales into VATable sales, and thus prevent the evil, *i.e.*, the use of credits against output tax liability, or worse, refund of taxes not actually incurred or paid.**

Considering petitioner was unable to prove compliance with the fourth requisite thereby precluding its entitlement to refund, the Court need not belabor on the other requisites in this case.

The Court reiterates that tax refunds are in the nature of a claim for tax exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented

---

[5] RA No. 11976.

entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[6]

ALL TOLD, I *VOTE* to **DENY** the Petition for Review for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice

[6] *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue* (Notice), G.R. No. 211779, November 3, 2020.