Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

FOSECO PHILIPPINES, INC.,
Petitioner,

CTA Case No. 8879
For: Refund

-versus-

Members:

DEL ROSARIO, P.J., *Chairperson*
UY, and
MINDARO-GRULLA, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 03 2017 2:24pm

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DECISION

MINDARO-GRULLA, J.:

This resolves the Petition for Review filed by Foseco Philippines, Inc., pursuant to Section 7(a)(2)[1] of Republic Act (RA) No. 1125 otherwise known as "An Act Creating the Court of Tax Appeals", as amended, as well as Section 3(a)(2)[2] of Rule 4 and Section 4(a)[3] of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended.

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[1] SEC. 7. *Jurisdiction.* - The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
xxx
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

[2] 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:
xxx
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: xxx;

[3] SEC. 4. *Where to appeal; mode of appeal.* –

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Petitioner seeks the refund or issuance of a tax credit certificate in the amount of ₱4,635,229.77, representing alleged excess and unutilized input value-added tax (VAT) paid for the four (4) quarters of calendar year (CY) 2012.

Petitioner Foseco Philippines, Inc. is a domestic corporation duly registered with and authorized by the Securities and Exchange Commission (SEC) to operate as a domestic corporation. Its principal office address is located at Warehouse No. 8, c/o Sun-Made Agri Plus Inc. Cpd., No. 1706 Manggahan St., Barangay Dita, Sta. Rosa City, Province of Laguna.[4]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner is engaged in the importation, distribution, marketing and wholesale of FOSECO metallurgical branded chemical products.[5] It is registered with the BIR as a VAT taxpayer under Certificate of Registration No. OCN 9RC0000266419.[6]

The Quarterly VAT Returns of petitioner for the four quarters of calendar year 2012 were filed on April 12, 2012[7], on July 6, 2012[8], on January 9, 2013[9], and on January 7, 2013[10], respectively. Its Annual Income Tax Return[11] was filed on April 11, 2013.

(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

4 Par, 1, Parties, Petition for Review, Docket, p. 7; Exhibit "P-1", Green Folder 1 of 9.
5 Exhibit "P-2", Green Folder 1 of 9.
6 Exhibits "P-3" and "P-4", Green Folder 1 of 9.
7 Exhibit "P-7", Green Folder 1 of 9.
8 Exhibit "P-8", Green Folder 1 of 9.
9 Exhibit "P-9", Green Folder 1 of 9.
10 Exhibit "P-10", Green Folder 1 of 9.
11 Exhibit "P-5", Green Folder 1 of 9.

On March 27, 2014, petitioner filed with respondent, through BIR Revenue District Office (RDO) No. 57, an administrative claim[12] for refund of its alleged excess and unutilized input VAT for the four quarters of calendar year 2012 in the amount of ₱4,635,229.77.

Respondent failed to act on petitioner's administrative claim for refund of its excess and unutilized input VAT for the four quarters of calendar year 2012, prompting petitioner to file the instant Petition for Review[13] with the Court on August 22, 2014.

Within the extended time granted by the Court,[14] respondent filed his Answer[15] on November 24, 2014, interposing the following special and affirmative defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

4. She reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.

5. To support its claim, it is imperative for petitioner to prove the following, *viz*:

a. The registration requirements of a value-added taxpayer in compliance with section 6 (a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the Tax Code, as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claims

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[12] Exhibit "P-18", Green Folder 1 of 9.
[13] Docket, pp. 7-18.
[14] Order dated September 30, 2014 and Resolution dated October 30, 2014, Docket, pp. 76 and 83.
[15] Docket, pp. 84-97.

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for VAT refund pursuant to Revenue Memorandum Order No. 53-98, ***otherwise there would be no sufficient compliance with the filing of an administrative claim for refund which is a condition sine qua non prior to the filing of a judicial claim*** *in accordance with Section 112 of the Tax Code, as amended. This requires the* ***submission of complete documents in support of the application filed*** *with the Bureau of Internal Revenue before the 120-day audit period shall apply, and* ***before the taxpayer could avail of the judicial remedies as provided for in the law.*** *Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of petitioner's petition for review;*

d. That the input taxes of Php 4,635,229.77 allegedly paid by petitioner on its purchases of goods and services for the 1st to 4th quarters of calendar year 2012 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;

e. ***That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) were filed within the periods provided in Sections 112 (A) and (D) of the Tax Code, as amended;***

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code, as amended, and pursuant to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits);

g. The requirements as enumerated under Section 4.104-5 of Revenue Regulations No. 7-95. (Re: Substantiation of Claims for Input Tax Credits).

6. Petitioner must prove that the aggregate amount of *Php 4,635,229.77* allegedly representing excess and unutilized input VAT for the 1st to 4th quarters of calendar year 2012 is properly documented.

7. As petitioner states in its petition before this Honorable Court, the subject of its claim for refund are *zero-rated sales to PEZA and BOI registered entities* covering the 1st to 4th quarters of taxable year 2012.

8. The instant petition involving petitioner's claim for refund in the amount of *Php 4,635,229.77* allegedly paid and incurred for the 1st to 4th quarters of taxable year 2012 is not warranted for lack of jurisdiction as petitioner failed to exhaust all administrative remedies before elevating this case to the Honorable Court

9. Unmistakably, Section 1 (j) of Rule 16 of the 1999 Rules of Civil Procedure provides that:

> 'MOTION TO DISMISS'
>
> *Section 1. Grounds. - Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:*
>
> *xxx*
>
> *(j) That a condition precedent for filing the claim has not been complied with.'*

10. Corollary thereto, Section 112 (D) [now Section 112(c) of the Tax Code of 1997] provides as follows, *to wit:*

> ***'SEC. 112. Refunds or Tax Credits of Input Tax. -***
>
> *X X X*
>
> ***(D) Period Within Which Refund or Tax Credit of Input Taxes Shall be Made.*** *- In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes* ***within one hundred***

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> ***twenty (120) days from the date of submission of complete documents in support of the application filed*** *in accordance with Subsections (A) and (B) hereof.*
>
> *In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above,* ***the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim*** *or after the expiration of the one hundred twenty day-period,* ***appeal the decision or the unacted claim with the Court of Tax Appeals.****' (Emphasis supplied)*

Pursuant to the aforequoted provision of law, the Commissioner of Internal Revenue has 120 days from the **submission of the complete supporting documents** to decide the claim for refund. It logically follows that a taxpayer must first submit the complete supporting documents before the 120-day period should commence. The CIR cannot decide the claim for refund without the complete supporting documents.

11. The implementing rule for these complete documents required by law is RMO No. 53-98. Annex B-1 of said RMO lists all the required documents as follows:

xxx xxx xxx

As stated above, the first documentary requirement is that provided in Annex B of the same RMO. Annex B provides for more requirements as follows:

> ***VALUE-ADDED TAX***
>
> *A) Requirements from Taxpayers*
>
> *1) Proof of claimed tax credits*
>
> *2) Proof of Tax Compliance Certificates applied*
>
> *3) Xerox copy of used Tax Credit Certificate (TCC) with annotation of issued TDM at the back, if applicable*

4) Proof of payment of deficiency tax, if any
a) current year/period
b) previous year/period

5) Certification of the appropriate government agency as to taxpayer's entitlement to tax incentives, if applicable

6) Xerox copies of the Official Receipts evidencing VAT payment on imported purchases, if applicable

7) Proof of exemption under special law, if applicable

8) Certification of the appropriate regulatory agency as to the exempt or zero-rated sales of the taxpayer under its regulatory supervision, if applicable

9) Certificate of Registration issued by the appropriate regulatory agency, together with the conditions attached to such registration, if applicable

10) Proof of 'Approval for Effective Zero-Rating of Sales', if applicable

11) Sample invoice/s for 'Export/Exempt Sales', if applicable

12) Proof that the acceptable foreign currency exchange proceeds on export sales/ foreign currency denominated sales had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), if applicable.

Indubitably, the law requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law.

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Far from complying with the checklist of requirements, evidence on record (Annex 'B' of the petition) shows that petitioner counted the 120 days from petitioner's submission of the application for VAT refund on March 27, 2014. From the aforesaid application, petitioner allegedly submitted:

xxx xxx xxx

12. A careful examination of the foregoing reveals that petitioner has not submitted complete documents to substantiate its administrative claim for refund to reckon the commencement of the 120-day period for the respondent. This is a requirement established by law and jurisprudence. Ergo, respondent humbly submits that failure on the part of petitioner to submit the required complete supporting documents would render the instant petition with this Honorable Court to have been prematurely filed.

13. This is not a claim for refund of erroneously or illegally collected taxes where petitioner may choose the evidence it wishes to submit to prove its case. This is merely a claim for excess input taxes where the prescribed documentation is needed by the BIR

14. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.

15. Respondent respectfully avers that before judicial inquiry into the issue of whether taxpayers, in general, are entitled to a refund/tax credit under substantive law may be considered, they have an initial burden to discharge. They must prove that they complied with all the administrative requirements continuing up to judicial review. In other words, before **trial de novo** proceeds and disposes of the issue of refund entitlement under **substantive** law, it must first be proved that there was **procedural** compliance in pursuing the administrative claim leading to the **appellate** proceedings. As stated by the Honorable Supreme Court:

> *'Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a*

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> *failure on its part to appreciate the nature of the proceedings in that court.* ***First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit.*** *Second, cases filed in the CTA are litigated de novo. Thus, a respondent should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA.* ***Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.****' (Emphasis and underscoring supplied)*

16. The doctrine of exhaustion of administrative remedies ensures an orderly procedure which favors a preliminary sifting process, particularly with respect to matters peculiarly within the competence of the administrative agency. After this sifting process comes the availability of judicial review of administrative decisions. Judicial review of administrative decisions entails the Court to examine the method in which the decision was arrived at, and finding no error, lets the administrative decision stand. This is precisely because, as previously stated, these are matters peculiarly within the competence of the administrative agency.

17. Well-settled is the rule that exhaustion of available administrative remedies is a condition sine qua non before taking a judicial action. The Honorable Supreme Court, in a long line of cases, has consistently held that if a remedy within the

administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought.

18. More so, the Honorable Supreme Court had the occasion to rule that where a remedy is available within the administrative machinery, this should be resorted to before resort can be made to courts, not only to give the administrative agency the opportunity to decide the matter by itself correctly, but also to prevent unnecessary and premature resort to courts. Thus, the party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court.

19. The doctrine of exhaustion of administrative remedies has practical and legal reasons. Resort to administrative remedies entails lesser expenses and provides for speedier disposition of controversies. Thus, for reasons of comity and convenience, courts will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency every opportunity to correct its error and to dispose of the case. The underlying principle of the rule rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly.

20. Respondent respectfully submits that the 120-day period provided for by law within which the CIR has to act on petitioner's claim for refund has not yet commenced considering petitioner's failure to comply with the duly mandated legal requirements in such claims for refund/tax credit *(i.e submission of complete supporting documents).* While it is true that petitioner filed an administrative claim for refund, the same is considered merely *pro forma* as it failed to submit documentary evidence to prove its entitlement thereto. Petitioner here failed to substantiate its administrative claim for refund.

21. Had petitioner submitted all relevant documents to substantiate its claim for refund or tax credit, respondent would have the opportunity to determine the veracity of its claim and

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might refund or issue a tax credit certificate for the claimed amount. Such failure of petitioner to submit relevant documents deprived respondent of the opportunity and time to study petitioner's claim for refund and to fully exercise its function. It must be remembered, that in the case of *Jariol vs. Commission on Elections*, the Supreme Court reasoned that a party must not merely initiate the prescribed administrative procedure to obtain relief, the party concerned must pursue this relief until the appropriate conclusion takes place before seeking judicial intervention in order to give the administrative an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court.

22. It is well settled rule in tax laws, that the taxpayer who feels aggrieved by the actions taken by tax authorities may not seek redress in the courts of justice without first exhausting available administrative remedies, except for certain well-recognized exceptions. It is the policy of the law and good practice to discourage court litigations and encourage resort to administrative action whenever the latter is feasible, adequate and speedy. Another thing, the respect and consideration due to each branch of the government demand that the judicial department abstain, whenever possible from interfering in the acts of the other departments except when the latter transcend their respective shares of action and suitable remedies cannot be obtained by them.

23. Equally noteworthy is the fact that the Highest Tribunal in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, held:

xxx xxx xxx

Thus, as clearly stated by the above jurisprudence, the necessity for petitioner to submit all relevant documents to substantiate its administrative claim for refund is imperative. The filing of the petition for review to this Honorable Court must be due to the denial of its claim or inaction which is tantamount to a denial of the said action. Absent these circumstances, the judicial claim merely becomes an attempt by the taxpayer to circumvent the role and duties of the Commissioner in evaluating taxpayer's claim for refund.

24. Failure of petitioner to exhaust all administrative remedies is fatal to its claim considering that such non-exhaustion is not merely for purposes of formality but is jurisdictional in nature.

25. Prescinding from and anent the foregoing considerations, petitioner's failure to exhaust all available administrative remedies which led to the premature filing of the instant petition divests the Honorable Court jurisdiction over the instant petition.

26. Exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications.

27. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund. Hence, a taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. Failure to comply therewith warrants a dismissal of the taxpayer's claim for refund. Respondent humbly submits that petitioner failed to establish its right to refund.

28. It can never be emphasized enough that in this jurisdiction tax refunds/credits are in the nature of tax exemptions, hence, laws relating to them call for a strict application against the claimant. As held by the Honorable Supreme Court:

> *'Tax refunds are in the nature of tax exemptions, and are to be construed strictissimi juris against the entity claiming the same. Thus, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund.'*

29. Taxes collected are presumed to be in accordance with laws and regulations.

30. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and as such, they are looked upon with disfavor. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed in *strictissimi juris* against the person or entity claiming the exemption. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.

31. Based on the foregoing, petitioner's claim for refund has no basis in fact and in law. Thus, the instant petition should be dismissed for lack of jurisdiction and/or for lack of merit."

The Pre-Trial Conference was set on March 12, 2015.[16] Accordingly, respondent's Pre-Trial Brief[17] was filed on March 6, 2015, while the Pre-Trial Brief for the Petitioner[18] was filed on May 19, 2015.

On October 8, 2015, the parties filed a Joint Motion to Admit Joint Stipulations of Facts and Issues. This was granted by the Court in the Resolution[19] dated November 2, 2015 and the Joint Stipulations of Facts and Issues[20] was admitted and approved. Subsequently, the Court issued the Pre-Trial Order[21] on November 13, 2015.

Upon motion[22] of petitioner, the Court commissioned Mr. Richard S. Querido, as the Independent Certified Public Accountant (ICPA) for the case.[23]

During trial, petitioner presented the following witnesses: Ms. Bricel Ann Reyes[24], its Finance Manager; and Mr. Richard S. Querido[25], the Court-commissioned ICPA.

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[16] Notice of Pre-Trial Conference, Docket, p. 99.
[17] Docket, pp. 102-105.
[18] Docket, pp. 129-141.
[19] Docket, pp. 203-204.
[20] Docket, pp. 192-196.
[21] Docket, pp. 207-214.
[22] Docket, pp. 164-166.
[23] Oath of Commission, Docket, p. 220.
[24] Minutes of the Hearing dated February 9, 2016 and May 31, 2016, Docket, pp. 217-219 and 280-284; Sworn Statement of Bricel Ann Reyes In Lieu of Direct Testimony, and Supplemental Sworn Statement of Bricel Ann Reyes In Lieu of Direct Testimony, Docket, pp. 116-128 and 252-257.
[25] Minutes of the Hearing dated May 31, 2016, Docket, pp. 280-284; Sworn Statement of Mr. Richard S. Querido In Lieu of Direct Testimony, Docket, pp. 264-272.

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The Formal Offer of Evidence for the Petitioner[26] was filed on August 1, 2016. In the Resolution[27] dated September 21, 2016, the Court admitted petitioner's Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-5-a", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-12-1", "P-13", "P-13-1", "P-14", "P-14-1", "P-15", "P-15-1", "P-16", "P-16-4", "P-16-2", "P-16-3", "P-17", "P-17-1", "P-17-2", "P-17-3", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26", "P-27", "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-36", "P-37", "P-38", "P-39", "P-40", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46", "P-47", "P-48", "P-49", "P-50", "P-51", "P-53", "P-53-1", "P-54", "P-54-1", "P-55", "P-55-1", "P-56", "P-56-1", "P-57", "P-58", "P-60 to P-244", "P-245" to "P-303", "P-304" to "P-318", "P-319", "P-320" to "P-332", "P-333", "P-334" to "P-362", "P-363", "P-364", "P-365" to "P-367", "P-368" to "P-394", "P-395", "P-396" to "P-400", "P-401" to "P-406", "P-407" to "P-409", "P-410" to "P-416", "P-417" to "P-476", "P-477" to "P-479", "P-480", "P-481" to "P-503", "P-504" to "P-505", "P-506" to "P-533", "P-534" to "P-613", "P-614" to "P-627", "P-628 ", "P-629", "P-630" to "P-631", "P-632", "P-633" to "P-857", "P-858" to "P-1074", "P-1075", "P-1076" to "P-1078", "P-1079", "P-1080" to "P-1086", "P-1087" to "P-1315", "P-1316" to "P-1540", "P-1541" to "P-1676", "P-1677", "P-1678" to "P-1683", "P-1684" to "P-1686", "P-1687", "P-1688" to "P-1691", "P-1692" to "P-1695", "P-1696" to "P-1699", "P-1700", "P-1701", "P-1702", and "P-1703". However, the Court denied the admission of Exhibit "P-33-a" for not having been found in the records of the case and for not being identified, and Exhibit "P-35" for failure to submit the duly marked document.

Petitioner's documentary exhibits are as follows:

Exhibit:	Nature and Description:
P-1	Certified true copy of the SEC Certificate of Registration issued on February 5, 2001
P-2	Certified true copy of the SEC Certificate of filing Amended Articles of Incorporation
P-3	Certified Xerox copy of the BIR Certificate of Registration issued by RDO No. 057 City of Binan, Laguna
P-4	Certified true copy of the BIR RDO No. 053B Certificate of Registration Alabang Muntinlupa City
P-5	Certified true copy of CY 2012 Annual Income Tax Return filed through eFPS on April 11, 2013 consisting of eight (8) pages

[26] Docket, pp. 295-314.
[27] Docket, pp. 324-326.

P-5-a	Original copy Comparative Audited Financial Statements for CY 2012 and 2011 issued by Manabat Sanagustin & Co., CPA on March 30, 2013 consisting of twenty three (23) pages
P-6	Certified true copy of petitioner's CY 2012 Alpha List and BIR Form 1604-CF
P-7	Certified true copy of CY 2012-First Quarterly VAT return
P-8	Certified true copy of CY 2012-Second Quarterly VAT return
P-9	Certified true copy of CY 2012-Third Quarterly VAT return
P-10	Certified true copy of CY 2012-Fourth Quarterly VAT return
P-11	Certified true copy of CY 2013-First Quarterly VAT return
P-12	Certified true copy of CY 2013-Amended Second Quarterly VAT return
P-12-1	Certified true copy of CY 2013-Second Quarterly VAT return
P-13	Certified true copy of CY 2013-Amended Third Quarterly VAT return
P-13-1	Certified true copy of CY 2013-Third Quarterly VAT return
P-14	Certified true copy of CY 2013-Amended Fourth Quarterly VAT return
P-14-1	Certified true copy of CY 2013-Fourth Quarterly VAT return
P-15	Certified true copy of amended Monthly Value Added Tax Declaration for the month of January 2014
P-15-1	Certified true copy of Monthly Value Added Tax Declaration for the month of January 2014
P-16	Certified true copy of Amended Monthly Value Added Tax Declaration for the month of February 2014
P-16-4	Line 20D of the amended Monthly Value Added Tax Declaration for the month of February 2014 marked as Exhibit P-16
P-16-2	Certified true copy of the Monthly Value Added Tax Declaration for the month of February 2014
P-16-3	Line 20D of the originally filed Monthly Value Added Tax Declaration for the month of February 2014 marked as Exhibit P-16-2
P-17	Certified true copy of CY 2014-Amended First Quarterly VAT return
P-17-1	Line 23D of CY 2014 amended First Quarterly VAT return marked as Exhibit P-17
P-17-2	Certified true copy of CY 2014-First Quarterly VAT return
P-17-3	Line 23D of CY 2014 First Quarterly VAT return marked as Exhibit P-17-2
P-18	Original copy of petitioner's formal application for VAT refund filed with BIR RDO No. 057 Binan, Laguna on March 27, 2014 on its CY 2012 unutilized input VAT in the amount of P4,635,229.77 consisting of seven (7) pages
P-19	Original copy of the Certification issued by the Department of Finance as of February 2, 2015
P-20	Original copy of the BIR Application for VAT Zero-Rated dated December 28, 2011 submitted by petitioner for Aichi Forging Company of Asia, Inc. (formerly Aichi Forging Asia, Inc.)
P-21	Original copy of the BIR Application for VAT Zero-Rate dated December 28, 2011 submitted by petitioner for

	Citizen Machinery Philippines Inc. (formerly Miyano Phils., Inc.)
P-22	Original copy of the BIR Application for VAT Zero-Rate dated December 28, 2011 submitted by petitioner for Creative Diecast Phils., Corp.
P-23	Original copy of the BIR Application for VAT Zero-Rate dated December 28, 2011 submitted by petitioner for Ebara Benguet Inc.
P-24	Original copy of the BIR Application for VAT Zero-Rate dated December 28, 2011 submitted by petitioner for FVC Philippines, Inc.
P-25	Original copy of the BIR Application for VAT Zero-Rate dated December 28, 2011 submitted by petitioner for Honda Parts Manufacturing Corp.
P-26	Original copy of the BIR Application for VAT Zero-Rate dated December 28, 2011 submitted by petitioner for Kito Philippines, Inc.
P-27	Original copy of the BIR Application for VAT Zero-Rate dated December 28, 2011 submitted by petitioner for Menima Casting Products, Inc.
P-28	Original copy of the BIR Application for VAT Zero-Rate dated December 28, 2011 submitted by petitioner for Mikado Philippines Corp.
P-29	Original copy of the BIR Application for VAT Zero-Rate dated December 28, 2011 submitted by petitioner for Philippine Denrai, Inc.
P-30	Original copy of the BIR Application for VAT Zero-Rate dated December 28, 2011 submitted by petitioner for Philippine Phosphate Fertilizer Corp.
P-31	Original copy of the BIR Application for VAT Zero-Rate dated December 28, 2011 submitted by petitioner for Toyota Autoparts Philippines, Inc.
P-32	Original copy of PEZA Certification dated August 27, 2014 issued by Ms. Ma. Lorna L. Alden, Division Chief, Enterprise Services Division
P-33	Certified true copy BOI Certificate of Registration dated May 26, 1994 issued to FVC Phils., Inc. consisting of four (4) pages
P-34	Certified true copy BOI Certificate of Registration dated May 19, 1997 issued to Ebara Benguet, Inc. consisting of four (4) pages
P-36	Original copy of the SEC *Certification of Non-Registration of Company* dated April 15, 2015 issued to Ashapura International Ltd.
P-37	Original copy of the SEC *Certification of Non-Registration of Company* dated April 15, 2015 issued to Ashapura Minechem Ltd.
P-38	Original copy of the SEC *Certification of Non-Registration of Company* dated April 15, 2015 issued to Vesuvius UK Limited
P-39	Original copy of the SEC *Certification of Non-Registration of Company* dated April 15, 2015 issued to Vesuvius GmbH (Foseco Borken)
P-40	Original copy of the SEC *Certification of Non-Registration of Company* dated April 15, 2015 issued to Foseco Golden Gate Co., Ltd

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P-41	Original copy of the SEC *Certification of Non-Registration of Company* dated April 15, 2015 issued to Foseco India Limited
P-42	Original copy of the SEC *Certification of Non-Registration of Company* dated April 15, 2015 issued to Foseco Japan Limited
P-43	Original copy of the SEC *Certification of Non-Registration of Company* dated April 15, 2015 issued to Foseco Korea Limited
P-44	Original copy of the SEC *Certification of Non-Registration of Company* dated April 15, 2015 issued to Foseco Nederland B.V.
P-45	Original copy of the SEC *Certification of Non-Registration of Company* dated April 15, 2015 issued to Foseco Pty Limited
P-46	Original copy of the SEC *Certification of Non-Registration of Company* dated April 15, 2015 issued to Foseco (Thailand) Ltd.
P-47	Original copy of the SEC *Certification of Non-Registration of Company* dated April 15, 2015 issued to Jiangsu Surun High Carbon Co., Ltd
P-48	Original copy of the SEC *Certification of Non-Registration of Company* dated April 15, 2015 issued to Pt Foseco Indonesia
P-49	Original copy of the SEC *Certification of Non-Registration of Company* dated April 15, 2015 issued to Siambrator Company Limited
P-50	Original copy of the SEC *Certification of Non-Registration of Company* dated April 15, 2015 issued to Vesuvius Foundry Products (Suzhou) Co., Ltd
P-51	Original copy of the SEC *Certification of Non-Registration of Company* dated April 15, 2015 issued to Zu-lon Industrial Co., Ltd
P-53	Original copy of the *Qualifying Sworn Statement of Mr. Richard S. Querido for Commissioning as Independent CPA* consisting of six (6) pages dated August 25, 2015
P-53-1	On page 3, the Name and signature on "Richard S. Querido"
P-54	Original copy of the *Sworn Statement of Bricel Ann Reyes in Lieu of Direct Testimony* consisting of sixteen (16) pages dated May 18, 2015
P-54-1	On page 11, the Name and Signature on "Bricel Ann Reyes"
P-55	Original copy of *Supplemental Sworn Statement of Bricel Ann Reyes in Lieu of Direct Testimony* consisting of eight (8) pages dated May 12, 2016
P-55-1	On page 6, the Name and Signature on "Bricel Ann Reyes"
P-56	Original copy of the *Sworn Statement of Mr. Richard S. Querido in Lieu of Direct Testimony* consisting of fourteen (14) pages dated May 24, 2016
P-56-1	On page 7, the Name and Signature on "Richard S. Querido"
P-57	Original copy of the ICPA Report dated March 8, 2016 – *FOSECO PHILIPPINES INC. Results of the Procedures Performed Relative to the Company's Claim for Refund of its Unutilized Input Tax Covering the 1st, 2nd, 3rd & 4th*

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	Quarters of Calendar Year 2012. CTA Case No. 8879 (First Division)
P-58	Soft copy or Compact Disc containing scanned copies of the Independent CPA Report, its annexes and exhibits
P-60 to P-244	Input VAT on domestic purchase of services supported by VAT ORs
P-245 to P-303	Input VAT on domestic purchase of services supported by VAT ORs wherein the amount of input VAT in the OR does not tie-up with the amount of input VAT in the Company's schedule
P-304 to P-318	Input VAT on domestic purchase of service supported by VAT ORs dated outside the quarter of period of claim but within CY 2012
P-319	Input VAT on domestic purchase of services supported by VAT OR wherein the amount of input VAT in the OR does not tie-up with the amount of input VAT in the Company's schedule and dated outside the quarter of period of claim but within CY 2012
P-320 to P-332	Input VAT on domestic purchase of services supported by VAT to establish domestic purchase of services ORs but amount of VAT not shown as separate item in the ORs
P-333	Input VAT on domestic purchase of services supported by Certified True Copy VAT OR
P-334 to P-362	Input VAT on domestic purchase of services supported by ORs with no BIR authority to print
P-363	Input VAT on domestic purchase of services supported by Certified True Copy VAT OR wherein the amount of input VAT in the OR does not tie-up with the amount of input VAT in the Company's schedule
P-364	Input VAT on domestic purchase of services supported by ORs with no BIR authority to print wherein the amount of input VAT in the OR does not tie-up with the amount of input VAT in the Company's schedule
P-365 to P-367	Input VAT on domestic purchase of services supported by duplicate copy of VAT ORs
P-368 to P-394	Input VAT on domestic purchase of services supported by ORs printed with "NOT VALID AS SOURCE OF INPUT TAX/NOT VALID FOR CLAIMING INPUT TAX"
P-395	Input VAT on domestic purchase of services supported by ORs printed with "NOT VALID AS SOURCE OF INPUT TAX/NOT VALID FOR CLAIMING INPUT TAX" and amount of VAT not shown as separate item in the OR
P-396 to P-400	Input VAT on domestic purchase of services supported by ORs with no BIR authority to print dated outside the quarter of period of claim but within CY 2012
P-401 to P-406	Input VAT on domestic purchase of services supported by duplicate copy of VAT ORs dated outside the quarter of period of claim but within CY 2012
P-407 to P-409	Input VAT on domestic purchase of services supported by ORs printed with "NOT VALID AS SOURCE OF INPUT TAX/NOT VALID FOR CLAIMING INPUT TAX" and dated outside the quarter of period of claim but within CY 2012
P-410 to P-416	Input VAT on domestic purchase of services supported by VAT ORs dated outside the period of claim
P-417 to P-476	Input VAT on domestic purchase of goods other than capital goods supported by VAT invoices

P-477 to P-479	Input VAT on domestic purchase of goods other than capital goods supported by VAT invoices dated outside the quarter of period of claim but within CY 2012
P-480	Input VAT on domestic purchase of goods other than capital goods supported by VAT invoice dated outside the period claim
P-481 to P-503	Input VAT on domestic purchase of goods supported by documents other than VAT invoices
P-504 to P-505	Input VAT on domestic purchase of goods supported by documents other than VAT invoices dated outside the quarter of period of claim but within CY 2012
P-506 to P-533	Input VAT on importation of goods supported by Import Entry & Internal Revenue Declarations (IEIRDs) and ORs
P-534 to P-613	Input VAT on importation of goods supported by Import Entry & Internal Revenue Declarations (IEIRDs) and ORs which are not of the same amount of VAT
P-614 to P-627	Input VAT on importation of goods supported by photocopied Import Entry & Internal Revenue Declarations (IEIRDs) but original ORs
P-628	Input VAT on importation of goods supported by import Entry & Internal Revenue Declarations (IEIRDs) which are the same amount of VAT not tie up with the schedule
P-629	Input VAT on importation of goods supported by ORs
P-630 to P-631	Input VAT on importation of goods supported by Import Entry & Internal Revenue Declarations (IEIRDs)
P-632	Input VAT on importation of goods supported by form other than IEIRD and OR
P-633 to P-857	Sale of Goods subject to 12% VAT supported by invoices printed with "TIN VAT" and dated within CY 2012
P-858 to P-1074	Sale of Goods subject to 12% VAT supported by invoices printed with "TIN VAT" and dated within CY 2012
P-1075	Sale of Goods subject to 12% VAT supported by invoices wherein the amount of output VAT in the invoice does not tie-up with the amount of output VAT in the Company's schedule
P-1076 to P-1078	Sale of Goods subject to 12% VAT supported by photocopied invoices
P-1079	Sale of Goods subject to 12% VAT supported by invoices printed but stamped "Zero-rated Sale"
P-1080 to P-1086	Gross receipts from Commission Income Subject to 12% VAT supported by documents other than ORs
P-1087 to P-1315	Zero-rated sale of goods supported invoices printed with "TIN VAT" and stamped with "ZERO-RATED SALES" and dated within CY 2012
P-1316 to P-1540	Sales invoices on sale of goods
P-1541 to P-1676	Zero-rated sale of goods supported invoices printed with "TIN VAT" and stamped with "ZERO-RATED SALES" and dated within CY 2012
P-1677	Zero-rated sale of goods with invoices which value does not tie up with the schedule
P-1678 to P-1683	Zero-rated sale of goods with supporting invoices but not stamped "Zero-rated sales"
P-1684 to P-1686	Zero-rated sale of goods with supporting invoices but not stamped "Zero-rated sales" but with VAT computation

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P-1687	Zero-rated sale of goods with supporting documents other than invoice
P-1688 to P-1691	Original filing for the 1st, 2nd, 4th quarter VAT returns, and amended VAT return for the 3rd quarter of CY 2012
P-1692 to P-1695	Original filing of 1st quarter VAT return for CY 2013; and amended quarterly VAT returns for 2nd, 3rd, and 4th quarters of CY 2013
P-1696 to P-1699	Amended 1st Quarter VAT return for CY 2014; and Quarterly VAT returns for the 2nd, 3rd, and 4th quarters of CY 2014
P-1700	Schedule of Input VAT for CY 2012
P-1701	Schedule of Sales for CY 2012
P-1702	Schedule of Zero-Rated Sales for CY 2012
P-1703	Petitioner's audited financial statements [AFS] for CY 2012

During the hearing on May 31, 2016, the counsel for respondent manifested that he will no longer be presenting any evidence.[28]

Both parties failed to file their memorandum as per Records Verification issued by this Court's Judicial Records Division dated November 8, 2016.[29] Thus, in the Resolution[30] dated November 29, 2016, the instant case was declared submitted for decision.

The parties stipulated the following issue[31] for resolution of this Court:

> Whether petitioner is entitled to a refund or tax credit in the total amount of ₱4,635,229.77 allegedly representing excess and unutilized input VAT for the 1st to 4th quarters of calendar year 2012.

The relevant provision to petitioner's refund claim is Section 112(A) and (C) of the National Internal Revenue Code of 1997, as amended, which is quoted hereunder for easy reference:

> "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

[28] Minutes of the Hearing dated May 31, 2016, Docket, pp. 280-284; Order dated May 31, 2016, Docket, pp. 285-286.
[29] Docket, p. 327.
[30] Docket, p. 331.
[31] Issue, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 193.

effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

xxx xxx xxx

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

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

Corollary thereto, Section 4.112-1(d) of Revenue Regulations (RR) No. 16-2005 states:

"SECTION 4.112-1. *Claims for Refund/Tax Credit Certificate of Input Tax*. –

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(d) *Period within which refund or tax credit certificate/refund of input taxes shall be made*

In proper cases, the Commissioner of Internal Revenue shall grant a tax credit certificate/refund for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with subparagraph (a) above.

In case of full or partial denial of the claim for tax credit certificate/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals (CTA) within thirty (30) days from the receipt of said denial, otherwise the decision shall become final. However, if no action on the claim for tax credit certificate/refund has been taken by the Commissioner of Internal Revenue after the one hundred twenty (120) day period from the date of submission of the application with complete documents, the taxpayer may appeal to the CTA within 30 days from the lapse of the 120-day period."

From the foregoing provisions, and based on the ruling of the Supreme Court in the case of *Southern Philippines Power Corporation vs. Commissioner of Internal Revenue*[32], citing the case of *San Roque Power Corporation vs. Commissioner of Internal Revenue*[33], in order to be entitled to a tax credit certificate or refund of excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be present:

(1) The taxpayer is VAT-registered;
(2) The taxpayer is engaged in zero-rated or effectively zero-rated sales;
(3) The input taxes are due or paid;
(4) The input taxes are not transitional input taxes;
(5) The input taxes have not been applied against output taxes during and in the succeeding quarters;
(6) The input taxes claimed are attributable to zero-rated or effectively zero-rated sales;

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[32] G.R. No. 179632, October 19, 2011.
[33] G.R. No. 180345, November 25, 2009.

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(7) For zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;

(8) Where there are both 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 volume; and

(9) The claim is filed within two years after the close of the taxable quarter when such sales were made.

The Court shall first ascertain whether it has jurisdiction to take cognizance of the instant Petition for Review, before proceeding to determine whether or not petitioner is entitled to its refund claim.

Petitioner's administrative and judicial claims were filed within the prescriptive period

Pursuant to the above-quoted Section 112(A) of the NIRC of 1997, as amended, the administrative claim for the issuance of a tax credit certificate or refund of 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 were made. Hence, petitioner's last day for filing of its administrative claim for the four taxable quarters of calendar year 2012 fell on the following dates:

Period covered	**Last day of the Two-year period**
January to March 2012 (1st Quarter)	March 31, 2014
April to June 2012 (2nd Quarter)	June 30, 2014
July to September 2012 (3rd Quarter)	September 30, 2014
October to December 2012 (4th Quarter)	December 31, 2014

Clearly, petitioner's administrative claim[34] for refund filed on March 27, 2014 was filed well within the two-year prescriptive period.

[34] Exhibit "P-18", Green Folder 1 of 9.

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As to petitioner's judicial claim, Section 112(C) of the NIRC of 1997, as amended, provides that respondent has one hundred twenty (120) days from the date of submission of complete documents within which to act on petitioner's claim.

In this case, petitioner simultaneously submitted its complete supporting documents[35] upon filing of its administrative claim. And, since there was no written notice sent by respondent informing petitioner that the documents it submitted were not complete or requiring the latter to submit additional documents, the 120-day period started and continued to run from March 27, 2014, the date when petitioner filed its administrative claim for refund, until July 25, 2014. After the lapse of the 120-day period, petitioner had thirty (30) days or until August 26, 2014[36] within which to file an appeal before this Court.

Due to respondent's inaction on its claim, petitioner filed its appeal via Petition for Review before this Court on August 22, 2014, which is within the required 30-day period. Hence, both the administrative and judicial claims were filed within the prescriptive period.

The Court shall now determine petitioner's entitlement to the instant claim.

Petitioner is a VAT-registered entity and had zero-rated or effectively zero-rated sales during calendar year 2012

Petitioner is a duly registered VAT taxpayer[37] engaged in the development, manufacture, importation, distribution, marketing and wholesale of metallurgical and construction chemical products and provides technical service and assistance to its buyers.[38]

Petitioner asserts that its sales of goods to Philippine Economic Zone Authority (PEZA) and Board of Investments (BOI)-registered enterprises in CY 2012 are subject to zero percent (0%) VAT.

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[35] As enumerated in pp. 6-7 of Exhibit "P-18", Green Folder 1 of 9.
[36] Next working day after August 24, 2014, which is Sunday, and followed by a holiday.
[37] Exhibits "P-3" and "P-4", Green Folder 1 of 9.
[38] Exhibit "P-2", Green Folder 1 of 9.

Indeed, sales of goods by a VAT-registered taxpayer, such as herein petitioner, to PEZA-registered entities or BOI-registered 100% exporters are subject to zero percent (0%) VAT.

Pertinent provisions of Section 106(A)(2)(a)(5) and (c) of the NIRC of 1997, as amended, state that:

> SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* –
>
> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* – The term *'export sales'* means:
>
> xxx xxx xxx
>
> (5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws.
>
> xxx xxx xxx
>
> (c) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate."

The special law specific to this case is Republic Act (RA) No. 7916, as amended, otherwise known as "The Special Economic Zone Act of 1995". Section 8 of RA No. 7916, as amended, mandates that the PEZA shall manage and operate the Ecozones as separate customs territory, thus:

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> "SECTION 8. *ECOZONE to be Operated and Managed as Separate Customs Territory.* – The ECOZONES shall be managed and operated by the PEZA as separate customs territory.
>
> The PEZA is hereby vested with the authority to issue certificates of origin for products manufactured or processed in each ECOZONE in accordance with the prevailing rules of origin, and the pertinent regulations of the Department of Trade and Industry and/or the Department of Finance."

Since the Ecozone is viewed as a foreign territory by legal fiction, *sales of goods* and services made by a VAT-registered person in the Philippine customs territory to an entity registered and operating within the Ecozone are considered exports to a foreign country subject to zero percent (0%) VAT.

It is now a settled rule that based on the Cross Border Doctrine, PEZA-registered enterprises are VAT-exempt and no VAT can be passed on to them.[39] This was elucidated by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.*[40], to wit:

> "This Court agrees, however, **that PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory**.
>
> xxx An ECOZONE or a Special Economic Zone has been described as —
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>> ... [S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial

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[39] *Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue,* G.R. No. 157594, March 9, 2010.
[40] G.R. No. 150154, August 9, 2005.

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> centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.

> The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.

> Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.

> Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?

> **The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of** goods and **services from the Philippines to a foreign country must be free of VAT**; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%)[41] VAT." (*Emphasis supplied*)

With respect to sales by a VAT-registered supplier to a BOI-registered 100% exporter, Section 4.106-5 of Revenue Regulations No. 16-05, as amended, provides:

> "SEC. 4.106-5. *Zero-Rated Sales of Goods or Properties.*
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[41] Now at 12% VAT rate.

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

(a) ***Export Sales***. – '*Export Sales*' shall mean:

xxx xxx xxx

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

'Considered export sales under Executive Order No. 226' shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; *Provided*, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; *Provided, further*, That pursuant to EO 226 and other special laws, even without actual exportation, the following shall be considered constructively exported: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones; (3) sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA 7227; (4) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (5) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not.

For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee; and ***Provided, finally,*** **that sales of** goods, properties or **services made by a VAT-registered supplier**

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> **to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI.**" (*Emphasis supplied*)

Clearly, sales of goods by a VAT-registered taxpayer, such as herein petitioner, to entities located in Ecozones and to BOI-registered manufacturers/producers whose products are 100% exported are considered "export sales" subject to zero percent (0%) VAT rate pursuant to Section 106(A)(2)(a)(5) and (c) of the NIRC of 1997, as amended, and Section 4.106-5 of RR No. 16-05.

In its Quarterly VAT Returns for CY 2012[42], petitioner's reported zero-rated sales amounted to ₱61,203,098.00, broken down as follows:

EXHIBIT	PERIOD COVERED	ZERO-RATED SALES
"P-7"	1st Quarter	₱ 16,108,327.25
"P-8"	2nd Quarter	15,344,937.75
"P-9"	3rd Quarter	16,199,493.25
"P-10"	4th Quarter	13,550,339.75
TOTAL		**₱61,203,098.00**

A perusal of petitioner's Schedule of Sales[43] with the related sales invoices[44] for the four quarters of CY 2012 shows that the amount of ₱61,203,098.00, treated by petitioner as zero-rated sales, pertains to its sales of goods to the following PEZA-registered entities or BOI-registered 100% exporters:

BOI/PEZA registered enterprises	Exhibit[45]	Proof of BOI/PEZA Registration
Aichi Forging Company of Asia, Inc.	P-20; P-32	BIR Application for VAT Zero-Rate; PEZA Certification
Citizen Machinery Philippines, Inc.	P-21; P-32	BIR Application for VAT Zero-Rate; PEZA Certification
Creative Diecast Phils. Corp	P-22; P-32	BIR Application for VAT Zero-Rate; PEZA Certification
Ebara Benguet inc.	P-23; P-34	BIR Application for VAT Zero-Rate; BOI Certificate of Registration
FVC Philippines, Inc.	P-24; P-33	BIR Application for VAT Zero-Rate; BOI Certificate of Registration
Honda Parts Manufacturing Corp.	P-25; P-32	BIR Application for VAT Zero-Rate; PEZA Certification
Kito Philippines, Inc.	P-26; P-32	BIR Application for VAT Zero-Rate; PEZA Certification
Menima Casting Products, Inc.	P-27; P-32	BIR Application for VAT Zero-Rate; PEZA Certification

42 Exhibits "P-7" to "P-10", Green Folder 1 of 9.
43 Exhibits "P-1701" and "P-1702", Green Folder 9 of 9.
44 Exhibits "P-1087" to "P-1687", Green Folder 7 of 9 to 9 of 9.
45 Green Folder 1 of 9.

Mikado Philippines Corp.	P-28	BIR Application for VAT Zero-Rate
Philippine Denrai, Inc.	P-29	BIR Application for VAT Zero-Rate
Philippine Phosphate Fertilizer Corp.	P-30; P-32	BIR Application for VAT Zero-Rate; PEZA Certification
Toyota Auto Parts Philippines, Inc.	P-31; P-32	BIR Application for VAT Zero-Rate; PEZA Certification
Nakashima Philippines Corporation	P-32	PEZA Certification
Kyoto Global Exterior Inc.	P-32	PEZA Certification

Thus, petitioner's sales of goods to the afore-mentioned entities covering the four quarters of CY 2012 qualify for VAT zero-rating pursuant to Section 106(A)(2)(a)(5) and (c) of the NIRC of 1997, as amended, provided that the same are properly supported by VAT zero-rated sales invoices in accordance with Sections 113(A)(1), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(1), (B)(1) and (2)(c) of RR No. 16-05, which are all quoted hereunder:

"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

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(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:

xxx xxx xxx

(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;

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xxx xxx xxx

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

"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

xxx xxx xxx

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

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

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

(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:

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(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;" *(Emphasis supplied)*

Upon examination of the supporting sales invoices submitted by petitioner, the Court-commissioned Independent Certified Public Accountant accounted a total amount of ₱61,180,058.00 zero-rated sales, detailed as follows:[46]

Findings	Annex	Exhibit No.	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Total
			Amount In Philippine Pesos				
Properly Substantiated							
Zero-rated sales of goods supported by invoices printed with "TIN VAT" and stamped with "ZERO-RATED SALES" and dated within CY 2012	C-1	P-1087 to P-1676	16,053,927.25	14,792,029.75	16,183,243.25	13,096,764.75	60,125,965.00
Zero-rated sale of goods with invoices which value does not tie up with the schedule	C-2	P-1677	-	15,228.00	-	-	15,228.00
			16,053,927.25	**14,807,257.75**	**16,183,243.25**	**13,096,764.75**	**60,141,193.00**
Not Properly Substantiated							
Zero-rated sale of goods with invoices which value does not tie up with the schedule	C-2	P-1677	-	14,429.00	-	-	14,429.00
Zero-rated sales of goods with supporting invoices but not stamped "Zero-rated sales"	C-3	P-1678 to P-1683	-	84,500.00	-	479,825.00	564,325.00
Zero-rated sales of goods with supporting invoices with stamped "Zero-rated sales" but with VAT computation	C-4	P-1684 to P-1686	-	176,080.00	16,250.00	-	192,330.00
Zero-rated sales of goods with supporting documents other than invoice	C-5	P-1687	-	331,500.00	-	-	331,500.00
Zero-rated sales of goods with no available supporting documents	C-6		54,400.00	(91,869.00)	-	(26,250.00)	(63,719.00)
			54,400.00	**514,640.00**	**16,250.00**	**453,575.00**	**1,038,865.00**
Total			**16,108,327.25**	**15,321,897.75**	**16,199,493.25**	**13,550,339.75**	**61,180,058.00**

[46] Exhibit "P-57", ICPA Report, Annex C.

The difference of ₱23,040.00 between the reported zero-rated sales of ₱61,203,098.00 and the accounted zero-rated sales of ₱61,180,058.00 was found by the ICPA as pertaining to a second quarter sale subject to 12% VAT per Invoice No. 14411[47], thus, shall be denied VAT zero-rating.

Moreover, petitioner's reported zero-rated sales in the amount of ₱1,038,865.00 classified by the ICPA as "Not Properly Substantiated" shall be denied VAT zero-rating for failure to meet the afore-stated invoicing requirements.

In addition, the reported zero-rated sales in the amount of ₱511,064.00 shall also be denied VAT zero-rating for the reasons stated below:

Reason for disallowance	Exhibit No.	Customer Name	Invoice No.	Amount
First Quarter				
Supported by VAT invoice with alteration on the date (year)	P-1188	Menima Casting Products, Inc.	14123	***₱ 2,500.00***
Third Quarter				
Sale without corresponding PEZA/BOI certification	P-1395	Applegate Technologies, Inc.	14555A	₱ 4,339.00
Supported by VAT invoice with date (year) not clearly verifiable from the document	P-1428	Citizen Machinery Philippines Inc.	14770	210,000.00
Supported by VAT invoice with incorrect date (year)	P-1504	FVC Philippines Inc.	14711	138,240.00
Supported by VAT invoice with incorrect date (year)	P-1505	FVC Philippines Inc.	14712	65,000.00
Supported by VAT invoice with incorrect date (year)	P-1506	FVC Philippines Inc.	14714	23,250.00
Sale without corresponding PEZA/BOI certification	P-1544	Metalcrest Technologies Inc.	14763	5,250.00
Subtotal				***₱446,079.00***
Fourth Quarter				
Sale without corresponding PEZA/BOI certification	P-1571	Applegate Performance Products Inc.	14860	₱ 8,485.00
Sale without corresponding PEZA/BOI certification	P-1601	FTECH Philippines MFG Inc.	14836	7,600.00
Sale without corresponding PEZA/BOI certification	P-1602	FTECH Philippines MFG Inc.	14885	1,900.00
Supported by VAT invoice but not stamped "zero-rated"	P-1647	Honda Parts	14986	34,000.00
Sale without corresponding PEZA/BOI certification	P-1660	Metalcrest Technologies Inc.	14949	10,500.00
Subtotal				***₱ 62,485.00***
Total				**₱511,064.00**

[47] Exhibit "P-1075", Green Folder 6 of 9.

In sum, out of the total reported zero-rated sales of ₱61,203,098.00, only the amount of ₱59,630,129.00 represents petitioner's valid zero-rated sales, computed as follows:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
	Amount in Philippine Pesos				
Zero-Rated Sales Per VAT Return	16,108,327.25	15,344,937.75	16,199,493.25	13,550,339.75	61,203,098.00
Less: Sales subject to 12% VAT per Inv. 14411 found by the ICPA to have been erroneously reported as Zero-Rated Sales		23,040.00			23,040.00
Adjusted Zero-Rated Sales Per VAT Return	16,108,327.25	15,321,897.75	16,199,493.25	13,550,339.75	61,180,058.00
Less: Disallowances					
Per ICPA's report	54,400.00	514,640.00	16,250.00	453,575.00	1,038,865.00
Per this Court's further verification	2,500.00		446,079.00	62,485.00	511,064.00
Total Disallowances	56,900.00	514,640.00	462,329.00	516,060.00	1,549,929.00
Valid Zero-Rated Sales	**16,051,427.25**	**14,807,257.75**	**15,737,164.25**	**13,034,279.75**	**59,630,129.00**

Petitioner incurred input taxes for CY 2012 which are attributable to its zero-rated or effectively zero-rated sales for the same period

For the four (4) taxable quarters of CY 2012, petitioner declared input VAT arising from its current transactions in the amount of ₱6,398,827.88, out of which, only the amount of ₱4,635,229.77 is the subject of petitioner's claim, which consisted of the following:

Exhibit	Taxable Quarter	Total Input Tax	Allocation[48] rate	Amount of input tax per claim
"P-7"	1st	₱ 1,729,403.35	73.11%	₱ 1,264,366.79
"P-8"	2nd	1,605,155.76	72.27%	1,160,046.07
"P-9"	3rd	1,568,262.75	73.94%	1,159,573.48
"P-10"	4th	1,496,006.02	70.27%	1,051,243.43
	Total	**₱ 6,398,827.88**		**₱ 4,635,229.77**

[48] Ratio of Zero-Rated Sales to Total Sales.

The breakdown of the reported input VAT of ₱6,398,827.88 for CY 2012 is as follows:

	1st Qtr (Exh. "P-7")	2nd Qtr (Exh. "P-8")	3rd Qtr (Exh. "P-9")	4th Qtr (Exh. "P-10")	Total
Input VAT on Domestic Purchases of Goods Other than Capital Goods *(Line 21F)*	₱ 64,135.71	₱ 88,291.34	₱ 73,929.38	₱ 36,336.43	₱ 262,692.86
Input VAT on Importation of Goods Other than Capital Goods *(Line 21H)*	1,411,143.00	1,331,790.00	1,308,843.00	1,296,519.00	5,348,295.00
Input VAT on Domestic Purchase of Services *(Line 21J)*	254,124.64	185,074.42	185,490.37	163,150.59	787,840.02
Total Input for the period	**₱1,729,403.35**	**₱1,605,155.76**	**₱1,568,262.75**	**₱1,496,006.02**	**₱6,398,827.88**

In support of its reported input VAT, petitioner submitted various official receipts (ORs)[49], invoices[50] and Import Entry and Internal Revenue Declarations (IEIRDs)[51], which were also examined by the ICPA. In his report, the ICPA noted the following exceptions, which shall be disallowed for failure to meet the substantiation requirements under Sections 110(A), 113(A) and (B), and 237 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-2, 4.110-8, and 4.113-1 of RR No. 16-05, as amended:[52]

Findings	Annex	Exhibit No.	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Total
			Amount In Philippine Pesos				
Domestic Purchase of services							
Input VAT on domestic purchase of services supported by VAT ORs wherein the amount of input VAT in the OR does not tie-up with the amount of input VAT in the Company's schedule	A-2	P-245 to P-303	(876.38)	(14,672.35)	(383.29)	(86.12)	(16,018.14)
Input VAT on domestic purchase of services supported by VAT ORs wherein the amount of input VAT in the OR does not tie-up with the amount of input VAT in the Company's schedule and dated outside the quarter of period of claim but within CY 2012	A-4	P-319	-	-	(68.30)	-	(68.30)

49 Exhibits "P-60" to "P-416".
50 Exhibits "P-417" to "P-505".
51 Exhibits "P-533" to "P-632".
52 Exhibit "P-57", ICPA Report, Annex A.

Input VAT on domestic purchase of services supported by VAT ORs but amount of VAT not shown as separate item in the ORs	A-5	P-320 to P-332	5,405.83	4,639.11	7,023.24	6,964.76	24,032.94
Input VAT on domestic purchase of services supported by Certified True Copy of VAT OR	A-6	P-333	1,571.76	-	-	-	1,571.76
Input VAT on domestic purchase of services supported by ORs with no BIR authority to print	A-7	P-334 to P-362	4,513.36	4,490.06	4,125.36	4,350.67	17,479.45
Input VAT on domestic purchase of services supported by Certified True Copy VAT OR wherein the amount of input VAT in the OR does not tie-up with the amount of input VAT in the Company's schedule	A-8	P-363	31,842.60	-	-	-	31,842.60
Input VAT on domestic purchase of services supported by ORs with no BIR authority to print wherein the amount of input VAT in the OR does not tie-up with the amount of input VAT in the Company's schedule	A-9	P-364	-	-	265.64	-	265.64
Input VAT on domestic purchase of services supported by duplicate copy of VAT ORs	A-10	P-365 to P-367	-	4,156.45	803.57	-	4,960.02
Input VAT on domestic purchase of services supported by ORs printed with "NOT VALID AS SOURCE OF INPUT TAX/NOT VALID FOR CLAIMING INPUT TAX"	A-11	P-368 to P-394	7,500.00	14,794.62	15,080.02	7,500.00	44,874.64
Input VAT on domestic purchase of services supported by ORs printed with "NOT VALID AS SOURCE OF INPUT TAX/NOT VALID FOR CLAIMING INPUT TAX" and amount of VAT not shown as separate item in the OR	A-12	P-395	-	-	-	294.64	294.64
Input VAT on domestic purchase of services supported by ORs with no BIR authority to print dated outside the quarter of period of claim but within CY 2012	A-13	P-396 to P-400	229.02	477.64	435.96	-	1,142.62
Input VAT on domestic purchase of services supported by duplicate copy of VAT ORs dated outside the quarter of period of claim but within CY 2012	A-14	P-401 to P-406	1,357.10	748.68	-	-	2,105.78

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Input VAT on domestic purchase of services supported by ORs printed with "NOT VALID AS SOURCE OF INPUT TAX/NOT VALID FOR CLAIMING INPUT TAX" and dated outside the quarter of period of claim but within CY 2012	A-15	P-407 to P-409	3,750.00	42.86	3,750.00	-	7,542.86
Input VAT on domestic purchase of services supported by VAT Ors dated outside the period of claim	A-16	P-410 to P-416	-	-	-	9,118.28	9,118.28
Input VAT on domestic purchase of services with no available supporting documents	A-17		14,685.85	1,085.40	43,443.49	4,833.43	64,048.17
subtotal			**69,979.14**	**15,762.47**	**74,475.69**	**32,975.66**	**193,192.96**
Domestic Purchase of Goods other than Capital Goods							
Input VAT on domestic purchase of goods other than capital goods supported by VAT invoice dated outside the period of claim	A-20	P-480	257.14	-	-	-	257.14
Input VAT on domestic purchase of goods supported by documents other than VAT invoices	A-21	P-481 to P-503	(192.86)	₱ 26,780.35	₱ 16,339.29	₱ 16,518.75	59,445.53
Input VAT on domestic purchase of goods supported by documents other than VAT invoices dated outside the quarter of period of claim but within CY 2012	A-22	P-504 to P-505	-	4,039.29	4,435.71	-	8,475.00
Input VAT on domestic purchase of goods other than capital goods with no available supporting documents	A-23		-	2,849.47	-	3,053.57	5,903.04
subtotal			**64.28**	**33,669.11**	**20,775.00**	**19,572.32**	**74,080.71**
Importation of Goods other than Capital Goods							
Input VAT on importation of goods supported by Import Entry & Internal Revenue Declaration (IEIRD) wherein the amount of VAT does not tie up with the schedule	A-27	P-628	-	55.00	-	-	55.00
Input VAT on importation of goods supported by photocopied OR	A-29	P-630 to P-631	3,695.00	-	-	6,531.00	10,226.00
Input VAT on importation of goods supported by form other than IEIRD and OR	A-30	P-632	-	3,271.00	-	-	3,271.00
subtotal			**3,695.00**	**3,326.00**	**-**	**6,531.00**	**13,552.00**
Total			**73,738.42**	**52,757.58**	**95,250.69**	**59,078.98**	**280,825.67**

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Further review of the ICPA report and petitioner's supporting documents reveals that in addition to the disallowance of ₱280,825.67, input VAT in the amount of ₱145,681.97 should likewise be disallowed from petitioner's claim because the supporting documents failed to meet the substantiation requirements under the afore-mentioned VAT law and regulations. Below is the breakdown of the additional input VAT disallowances of ₱145,681.97:

Exhibit	Invoice/ OR No.	Supplier	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
			Amount in Philippine Pesos			
1. Domestic purchases of services supported by VAT ORs without address and/or TIN of petitioner						
P-71	4084556	International Container Terminal Services Inc	388.92			
P-72	4093856	International Container Terminal Services Inc	417.80			
P-84	5088AV	Nyk-Fil Japan Shipping Corporation	105.96			
P-85	142375	Ocean Link Container Terminals Centers Inc	1,335.68			
P-104	276272	Transorient Container Terminal Services	3,145.75			
P-259	4001544	International Container Terminal Services Inc	451.24			
P-260	4007619	International Container Terminal Services Inc	1,001.35			
P-261	4012356	International Container Terminal Services Inc	566.75			
P-262	4012357	International Container Terminal Services Inc	653.39			
P-263	4026118	International Container Terminal Services Inc	1,214.09			
P-264	4030811	International Container Terminal Services Inc	1,098.58			
P-265	4045801	International Container Terminal Services Inc	1,156.06			
P-266	4064727	International Container Terminal Services Inc	451.24			
P-267	4064728	International Container Terminal Services Inc	1,098.58			
P-116	4105357	International Container Terminal Services Inc		1,036.26		
P-117	4105358	International Container Terminal Services Inc		405.48		
P-118	4125326	International Container Terminal Services Inc		1,036.26		
P-119	4127425	International Container Terminal Services Inc		939.03		
P-120	4150566	International Container Terminal Services Inc		388.92		
P-121	4158694	International Container Terminal Services Inc		405.48		
P-122	4169259	International Container Terminal Services Inc		939.03		
P-123	4169260	International Container Terminal Services Inc		388.92		
P-124	4186422	International Container Terminal Services Inc		417.80		
P-134	5631AV	Nyk-Fil Japan Shipping Corp		206.64		
P-135	5652AV	Nyk-Fil Japan Shipping Corp		103.32		
P-152	280775	Transorient Container Terminal Services		5,657.80		

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P-268	BFM-1-000374924	Digitel Mobile Philippines Inc		45.29		
P-269	BFM-1-000374926	Digitel Mobile Philippines Inc		67.82		
P-270	BFM-1-000374925	Digitel Mobile Philippines Inc		73.59		
P-271	BSS-1-000389199	Digitel Mobile Philippines Inc		50.54		
P-272	BSS-1-000389200	Digitel Mobile Philippines Inc		81.21		
P-273	BSS-1-000389201	Digitel Mobile Philippines Inc		54.61		
P-274	BFM-1-000388705	Digitel Mobile Philippines Inc		80.57		
P-275	BFM-1-000388706	Digitel Mobile Philippines Inc		40.20		
P-276	BFM-1-000388704	Digitel Mobile Philippines Inc		54.61		
P-165	4224529	International Container Terminal Services Inc			126.00	
P-166	4300269	International Container Terminal Services Inc			28.88	
P-167	4324438	International Container Terminal Services Inc			136.08	
P-176	1148589	People's Air Cargo and Warehousing Co., Inc			239.26	
P-193	284064	Transorient Container Terminal Services			2,158.54	
P-217	4481013	International Container Terminal Services Inc				448.88
P-227	1248615	People's Air Cargo and Warehousing Co., Inc				297.12
P292	BFM-1-000419270	Digitel Mobile Philippines Inc				83.06
P293	BFM-1-000419269	Digitel Mobile Philippines Inc				64.86
P294	BFM-1-000419271	Digitel Mobile Philippines Inc				55.34
P295	BFM-1-000429263	Digitel Mobile Philippines Inc				61.80
P296	BFM-1-000429262	Digitel Mobile Philippines Inc				77.64
P297	BFM-1-000429261	Digitel Mobile Philippines Inc				93.02
P298	BSS-1-000438528	Digitel Mobile Philippines Inc				67.89
P299	BSS-1-000438529	Digitel Mobile Philippines Inc				73.23
P300	BSS-1-000438530	Digitel Mobile Philippines Inc				65.19
		subtotal	***13,085.39***	***12,473.38***	***2,688.76***	***1,388.03***
2. Domestic purchases of services supported by VAT ORs with notation "NOT VALID AS PROOF TO CLAIM INPUT VAT"						
P-206	4391893	International Container Terminal Services Inc				1,014.12
P-207	4401566	International Container Terminal Services Inc				1,176.88
P-208	4402967	International Container Terminal Services Inc				1,014.12
P-209	4412841	International Container Terminal Services Inc				420.00
P-210	4412842	International Container Terminal Services Inc				1,119.12
P-211	4415321	International Container Terminal Services Inc				593.27
P-212	4429669	International Container Terminal Services Inc				580.95
P-213	4433718	International Container Terminal Services Inc				420.00
P-214	4442128	International Container Terminal Services Inc				1,205.75

P-215	4465564	International Container Terminal Services Inc				1,119.12
P-216	4478958	International Container Terminal Services Inc				420.00
		subtotal	-	-	-	***9,083.33***
3. Domestic purchase of service supported by VAT OR but VAT amount was not separately shown						
P-240	27941	Tri-star Cargo Express Int'l. Phils. Inc.				1,035.36
		subtotal	-	-	-	***1,035.36***
4. Domestic purchases of services supported by documents other than VAT OR						
P-256	GANTAE21000980	Globe Telecom Inc.	657.02			
P-257	GLPSAP14034297	Globe Telecom Inc.	732.02			
P-258	GANTAE20005176	Globe Telecom Inc.	987.86			
P-277	GANTAE21010432	Globe Telecom Inc.		836.67		
P-278	GLPSAP13033581	Globe Telecom Inc.		742.39		
P-279	GANTAE21016996	Globe Telecom Inc.		672.41		
P-290	GANTAE20017200	Globe Telecom Inc.			1,123.64	
P-291	GANTAE20020125	Globe Telecom Inc.			1,127.06	
P-319	GANTAE21030314	Globe Telecom Inc.			1,169.51	
P-301	GANTAE20026167	Globe Telecom Inc.				1,118.28
P-302	GLPSAP13051030	Globe Telecom Inc.				1,247.36
P-303	GLPSAP13054184	Globe Telecom Inc.				1,223.15
		subtotal	***2,376.90***	***2,251.47***	***3,420.21***	***3,588.79***
5. Domestic purchases of services supported by VAT ORs with unreadable details						
P-284	BFM-1-000404926	Digitel Mobile Philippines Inc.			62.14	
P-285	BFM-1-000404928	Digitel Mobile Philippines Inc.			61.18	
P-286	BFM-1-000404927	Digitel Mobile Philippines Inc.			49.35	
		subtotal	-	-	***172.67***	-
6. Domestic purchase of goods other than capital goods supported by document other than VAT invoice						
P-469	1121027	Silicon Valley			347.68	
		subtotal	-	-	***347.68***	-
7. Importation of goods supported by IEIRD but without proof of VAT payment						
P-628	C63843	Foseco Golden Gate Co Ltd		93,770.00		
		subtotal	-	***93,770.00***	-	-
		Total per quarter	**15,462.29**	**108,494.85**	**6,629.32**	**15,095.51**
		Grand Total				**145,681.97**

Therefore, out of petitioner's reported input VAT of ₱6,398,827.88, only the amount of ₱5,972,320.24 represents petitioner's valid input VAT, computed as follows:

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Total
	Amount in Philippine Pesos				
Input tax per Returns	1,729,403.35	1,605,155.76	1,568,262.75	1,496,006.02	6,398,827.88
Less: Disallowances					
Per ICPA's findings	73,738.42	52,757.58	95,250.69	59,078.98	280,825.67
Per Court's further verification	15,462.29	108,494.85	6,629.32	15,095.51	145,681.97
Total Disallowances	89,200.71	161,252.43	101,880.01	74,174.49	426,507.64
Valid Input VAT	**1,640,202.64**	**1,443,903.33**	**1,466,382.74**	**1,421,831.53**	**5,972,320.24**

The valid input VAT of ₱5,972,320.24 is not entirely attributable to petitioner's zero-rated sales since petitioner had VATable sales to private entities and VATable sales to government for the year 2012. Allocating, therefore, the input VAT of ₱5,972,320.24 among petitioner's zero-rated sales, VATable sales to private entities and VATable sales to government would result in the following input VAT attributable to VATable sales to private entities in the amount of ₱1,641,052.41, input VAT attributable to VATable sales to government in the amount of ₱6,675.82 and input VAT attributable to zero-rated sales in the amount of ₱4,324,592.01, as shown below:

CY 2012	**Input VAT Attributable to 12% VATable Sales to Private Entities**	**Input VAT Attributable to 12% VATable Sales to Government**	**Input VAT Attributable to Zero-Rated Sales**	**Total Input VAT**
1st Quarter	₱ 440,976.57	-	₱ 1,199,226.07	**₱ 1,640,202.64**
2nd Quarter	401,921.00	-	1,041,982.33	**1,443,903.33**
3rd Quarter	382,111.30	-	1,084,271.44	**1,466,382.74**
4th Quarter	416,043.55	₱ 6,675.82	999,112.16	**1,421,831.53**
Total	**₱ 1,641,052.41**	**₱ 6,675.82**	**₱4,324,592.01**	**₱5,972,320.24**
Allocation was based on the percentage of each type of sales to total sales as shown below:				
CY 2012	**12% VATable Sales to Private Entities**	**12% VATable Sales to Government**	**Zero-Rated Sales**	**Total**
1st Quarter *(Exh. "P-7")*	₱ 5,923,315.90	-	16,108,327.25	₱ 22,031,643.15
% to Total Sales	26.885493%	-	73.114507%	100%
2nd Quarter *(Exh. "P-8")*	5,910,073.81[53]	-	15,321,897.75[54]	21,231,971.56
% to Total Sales	27.835728%	-	72.164272%	100%

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Amount per VAT Return	₱ 5,887,033.81
Add: Sales subject to 12% VAT per Inv. 14411 found by the ICPA to have been erroneously reported as Zero-Rated Sales	23,040.00
Adjusted Amount of 12% VATable Sales to Private Entities	**₱5,910,073.81**

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Amount per VAT Return	₱ 15,344,937.75
Less: Sales subject to 12% VAT per Inv. 14411 found by the ICPA to have been erroneously reported as Zero-Rated Sales	23,040.00
Adjusted Amount of 12% VATable Sales to Private Entities	**₱15,321,897.75**

3rd Quarter *(Exh. "P-9")*	5,708,911.18	-	16,199,493.25	21,908,404.43
% to Total Sales	26.058087%	-	73.941913%	100%
4th Quarter *(Exh. "P-10")*	5,642,541.05	90,540.00	13,550,339.75	19,283,420.80
% to Total Sales	29.261100%	0.469523%	70.269377%	100%

After deducting the input tax of ₱1,641,052.41 attributable to VATable sales to private entities from its output VAT liability on the said sales of ₱2,782,181.03, petitioner still has a net amount of output VAT payable for 2012 in the amount of ₱1,141,128.62, computed as follows:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Output VAT Due	₱ 710,797.91	₱ 709,208.86	₱ 685,069.34	₱ 677,104.93	₱ 2,782,181.03
Less: Input VAT	440,976.57	401,921.00	382,111.30	416,043.55	1,641,052.41
Net Output VAT Payable	**₱ 269,821.34**	**₱ 307,287.86**	**₱ 302,958.05**	**₱ 261,061.38**	**₱1,141,128.62**

Thus, by deducting the net amount of output VAT payable of ₱1,141,128.62 from petitioner's input tax attributable to the zero-rated sales of ₱4,324,592.01, there remains an excess input VAT of ₱3,183,463.39 attributable to zero-rated sales, as shown below:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Input VAT Attributable Zero-Rated Sales	₱1,199,226.07	₱1,041,982.33	₱1,084,271.44	₱ 999,112.16	₱ 4,324,592.01
Less: Net Output VAT Payable	269,821.34	307,287.86	302,958.05	261,061.38	1,141,128.62
Excess Input VAT Attributable Zero-Rated Sales	**₱ 929,404.73**	**₱734,694.47**	**₱781,313.40**	**₱738,050.79**	**₱3,183,463.39**

However, as stated earlier, out of petitioner's adjusted declared zero-rated sales of ₱61,180,058.00, only the amount of ₱59,630,129.00 represents petitioner's valid zero-rated sales. Consequently, only the excess input VAT of ₱3,102,813.87 is attributable to the valid zero-rated sales of ₱59,630,129.00, as detailed below:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Excess Input VAT Attributable to Declared Zero-Rated Sales	₱ 929,404.73	₱ 734,694.47	₱ 781,313.40	₱ 738,050.79	₱ 3,183,463.39
Multiply by Valid Zero-Rated Sales	16,051,427.25	14,807,257.75	15,737,164.25	13,034,279.75	59,630,129.00
Divide by Adjusted Declared Zero-Rated Sales	16,108,327.25	15,321,897.75	16,199,493.25	13,550,339.75	61,180,058.00
Refundable Excess Input VAT	**₱ 926,121.76**	**₱ 710,017.17**	**₱ 759,014.93**	**₱ 709,942.38**	**₱3,102,813.87**

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The excess input taxes were not applied against any output VAT liability during calendar year 2012 and in the succeeding periods

Even though the claimed input VAT was carried over by petitioner to the succeeding quarters up to the first quarter of CY 2014[55], the same was not applied against any output VAT in the said quarters and remained unutilized until it was deducted as "VAT Refund/TCC claimed"[56] in the first quarter of 2014, thus, preventing the carry over or application of the claimed input VAT in the next taxable quarters.

In fine, petitioner has sufficiently proven its entitlement to a refund or issuance of tax credit certificate in the reduced amount of ₱3,102,813.87, representing its excess and unutilized input value-added tax attributable to its zero-rated sales for the four quarters of CY 2012 which are attributable to its zero-rated sales for the same period.

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱3,102,813.87**, representing its excess and unutilized input value-added tax attributable to its zero-rated sales for the first to fourth quarters of calendar year 2012.

SO ORDERED.

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

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[55] Exhibits "P-11", "P-12", "P-13", "P-14", and "P-17", Green Folder 1 of 9.
[56] Exhibit "P-17-1", Green Folder 1 of 9.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division