REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

NEW YORK BAY PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9669

Members:

DEL ROSARIO, *P.J., Chairperson*,
MANAHAN, and
REYES-FAJARDO, *JJ.*

Promulgated:

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AMENDED DECISION

DEL ROSARIO, P.J.:

This case was remanded by the Court of Tax Appeals (CTA) *En Banc* to the CTA First Division for the proper determination of the refundable amount, pursuant to its Decision dated March 24, 2022[1] and Resolution dated July 21, 2022[2] in CTA EB Nos. 2364 and 2366 entitled *Commissioner of Internal Revenue vs. New York Bay Philippines, Inc.* and *New York Bay Philippines, Inc. vs. Commissioner of Internal Revenue*, respectively. The dispositive portions of said Decision and Resolution read:

Decision dated March 24, 2022

"**WHEREFORE**, in light of the foregoing considerations, the Petition for Review filed by Commissioner of Internal Revenue is hereby **DENIED**. Meanwhile, the Petition for Review filed by New York Bay Philippines, Inc. is hereby **GRANTED**. Accordingly, the case is **REMANDED** to the Court of Tax Appeals First Division for the proper determination of the refundable amount.

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[1] *CTA En Banc No. 2364 Docket*, pp. 84 to 105.
[2] *CTA En Banc No. 2364 Docket*, pp. 142 to 145.

Meanwhile, the Commissioner of Internal Revenue's Notice of Change of Address is **NOTED**.

SO ORDERED."

Resolution dated July 21, 2022

"**WHEREFORE**, the CIR's **Motion for Reconsideration (En Banc Decision dated 24 March 2022)** is hereby **DENIED** for lack of merit.

SO ORDERED."

NATURE OF THE CASE

The present case involves New York Bay Philippines, Inc.'s (NYBPI) claim for refund or issuance of a tax credit certificate (TCC) in the aggregate amount of ₱46,835,732.67, allegedly representing its alleged excess and unutilized input value-added tax (VAT) on its purchases of goods and services attributable to its zero-rated sales for the four (4) quarters of calendar year (CY) 2015.

THE FACTS

As culled from CTA First Division's original Decision dated July 9, 2020, the undisputed facts of the present case are as follows:

"**THE PARTIES**

Petitioner [NYBPI] is a domestic corporation with principal place of business at Unit 2102, 21st Floor Antel Global Corporate Center, Julia Vargas Avenue, Pasig City.

Petitioner is registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 43 as a VAT taxpayer with Taxpayer Identification No. (TIN) 000-217-994-000.

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR) with the power to decide, approve and grant claims for refund or tax credit of erroneously paid or overpaid taxes, as provided by law.

THE FACTS AND THE PROCEEDINGS

Based on its Amended Article of Incorporation, petitioner was organized with the following primary purpose:

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> 'To acquire by purchase, exchange, assignment, gift or otherwise, and to hold, own and use for investment or otherwise, and to sell, assign, transfer, exchange, lease, let, develop, mortgage, pledge, traffic, deal in and with and otherwise operate, enjoy and dispose of any and all properties and assets of every kind and description and wherever situated, as and to the extent permitted by law, including but not limited to, real estate, whether improved or unimproved, and any interest or right therein, as well as building, tenements, warehouses, factories, edifices and structures and other improvements, and bonds, debentures, promissory notes, shares of capital stock, or other securities or obligations, created, negotiated or issued by any corporation, association, or other entity, foreign or domestic, and while the owner, holder or possessor thereof, to exercise all the right, powers and privileges of ownership or any interest therein, including the right to receive, collect and dispose of, any and all rentals, dividends, interests and income derived therefrom, and the right to vote on any proprietary or other interest, on any shares of the capital stock, and upon any bonds, debentures or other securities, having voting power, so owned or held provided that the Corporation shall not engage in mining, and provided further that it shall not engage in the business of an open-end investment company as defined in the Investment Company Act (Republic Act No. 2629), without first complying with the applicable provisions of the said Act, without necessarily engaging in stock brokerage or dealership in securities.'

During the 4 quarters of CY 2015, petitioner rendered services in the Philippines to non-resident foreign corporations not engaged in business in the Philippines, the consideration for which were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of *Bangko Sentral ng Pilipinas*.

On April 24, 2015, July 24, 2015, October 23, 2015 and January 22, 2016, petitioner filed with the BIR its original Quarterly VAT Returns (BIR Form No. 2550-Q) for the 1st, 2nd, 3rd and 4th quarters of CY 2015, respectively, through the BIR's Electronic Filing and Payment System (eFPS).

On February 2, 2015, November 23, 2015 and March 23, 2016, petitioner respectively filed through the BIR eFPS its Amended Quarterly VAT Returns (BIR Form No. 2550-Q) for the 1st, 3rd and 4th quarters of CY 2015.

Per its final/amended Quarterly VAT Returns for the 1st, 2nd, 3rd and 4th quarters of CY 2015, petitioner's gross receipts amounted to ₱631,162,185.35, which consists of zero-rated sales and local sales subject to 12% VAT. Likewise, it reported an output tax liability of ₱10,650.21 and accumulated input VAT credits on its domestic

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purchases of goods and services amounting to ₱47,188,611.72, for the 4 quarters of CY 2015.

Allegedly, petitioner applied a portion of its input tax credits as payment for its output tax of ₱10,650.21 and deducted therefrom the amount of ₱342,228.84 representing input tax on purchases of capital goods exceeding P1 million deferred for the succeeding period. Hence, it had excess and unutilized input VAT in the amount of ₱46,835,732.67 attributable to its zero-rated sales for the 4 quarters of CY 2015, which was not applied against any output tax during the succeeding taxable periods.

On March 29, 2017, petitioner filed with the BIR an administrative claim for refund, with attached Application for Tax Credits/Refunds (BIR Form No. 1914), requesting for the refund of or issuance of TCC of its alleged excess and unutilized input VAT for the 4 quarters of CY 2015 in the amount of ₱46,835,732.67.

On August 25, 2017, petitioner filed the instant *Petition for Review*, which was initially raffled to the Court's Second Division.

In his Answer, respondent argued that in claims for refund, the taxpayer has the burden of proof and must adduce the required documents under the law, rules and regulations. Specifically, petitioner must prove that its sale of services qualified as VAT zero-rated pursuant to Section 108 (B) (2) of the National Internal Revenue Code (NIRC) of 1997, as amended. It must comply with the parameters laid down under Section 110 (B) of the NIRC of 1997, as amended, as well as the substantiation requirements under Section 113 of the same Code and Section 4.108-5 (a) of Revenue Regulations (RR) No. 16-2005. It must also establish compliance with the substantiation of input tax credits under Section 4.110-8-5 (a) of RR No. 16-05, as amended, and those under Revenue Memorandum Order (RMO) No. 53-98.

After the Pre-Trial Conference on November 23, 2017, the parties filed their *Joint Stipulation of Facts and Issues* on January 12, 2018, on the basis of which a Pre-Trial Order was issued on January 19, 2018.

During the trial, petitioner presented Ma. Victoria Cruz and Madonna Mia S. Dayego as its witnesses.

Witness **Ma. Victoria Cruz** testified that she started working for petitioner on June 11, 2001 and currently its Senior Accounting Manager.

Petitioner's case is for refund or issuance of TCC in the amount of P46,835,732.67, representing its excess and unutilized input VAT on its purchases of goods and services attributable to zero-rated sales for the 4 quarters of CY 2015.

Petitioner is a domestic corporation authorized to engage in the following business activities, to wit: [t]o acquire by purchase, exchange, assignment, gift or otherwise, and to hold, own and use for investment or otherwise, and to sell, assign, transfer, exchange, lease, let, develop, mortgage, pledge, traffic, deal in and with and otherwise operate, enjoy and dispose of any and all properties and assets of every kind and description and wherever situated, as and to the extent permitted by law. It is also engaged in financial holding activities, particularly the business of a remittance service provider. As a remittance service provider, petitioner utilizes and offers, alternative delivery channels, including door-to-door, deposit to commercial bank account, pick-up from pawnshops and commercial and rural banks, credit cash cards and bills payment, as services to its non-resident clients.

For CY 2015, petitioner rendered services to two (2) non-resident clients, namely: i) Trans-Fast Remittance, LLC., a limited company created under the laws of Delaware, United States of America (U.S.A.) and conducting business in the U.S.A.; and ii) Trans-Fast International FZ-LLC, a company existing under the laws of Dubai, United Arab Emirates (UAE) and conducting business therein. Both companies are doing business outside the Philippines and were not engaged in any business activity in the Philippines at the time petitioner rendered services to them.

The witness further declared that per petitioner's Quarterly VAT Returns for the 1st, 2nd, 3rd and 4th quarters of CY 2015, its gross receipts amounted to ₱631,162,185.35, consisting of local sales subject to 12% VAT and zero-rated sales amounting to ₱631,073,433.56. On the other hand, petitioner's output tax on its VATable sales for the 4 quarters of CY 2015 amounted to ₱10,650.21.

Further, based on its Quarterly VAT Returns for the 4 quarters of CY 2015, petitioner accumulated input VAT credits on its domestic purchases of goods and services in the total amount of ₱47,188,611.72. Petitioner applied a portion of its input tax credits as payment for its output tax of ₱10,650.21 and deducted therefrom the amount of ₱342,228.84 representing input tax on purchases of capital goods exceeding P1 million deferred to the succeeding period. Hence, petitioner had excess and unutilized input VAT in the amount of ₱46,835,732.67, which remained unutilized since it was not applied against any output VAT liability during and in the succeeding quarters and was not carried forward to the succeeding taxable periods.

On March 29, 2017, petitioner filed with BIR RDO No. 43 an administrative claim for refund/issuance of TCC for its excess and unutilized input VAT for the 4 quarters of CY 2015 in the total amount of ₱46,835,732.67, with a Sworn Certification that it has submitted complete documents to substantiate its claim for refund. This notwithstanding, the BIR failed to act on the said claim for refund. Hence, petitioner filed the instant case with the Court on August 25, 2017.

The Court-commissioned ICPA, **Madonna Mia S. Dayego**, testified that she audited and evaluated petitioner's documents and record in support of its claim for tax refund/issuance of TCC for its excess and unutilized input VAT on purchases of goods and services attributable to zero-rated sales for the 4 quarters of CY ended December 31, 2015.

Per her examination and verification of petitioner's pertinent documents, the result of which was stated in her ICPA Report dated February 28, 2018, petitioner is entitled to its claim for refund/issuance of TCC in the reduced amount of ₱46,371,661.68, corresponding to the excess and unutilized input VAT on purchase of goods and services. The amount of ₱464,070.99 was disallowed due to petitioner's non-compliance to the VAT invoicing requirements and lack of supporting documents.

After its Formal Offer of Evidence, petitioner rested per Resolution dated September 5, 2018.

For his part, respondent presented his lone witness, Revenue Officer II **Susan G. Abesamis**, who testified that she has been employed with the BIR since 1990 and is currently assigned at RDO 43, Pasig City.

Petitioner's application for VAT refund was assigned to her for evaluation and audit investigation through Letter of Authority (LOA) No. LOA-043-2017-00000002 dated April 24, 2017.

Upon receipt of the LOA, she checked the requirements attached to the application for VAT refund and noticed that certain documentary requirements were lacking. Thus, she notified petitioner's representative with instruction to submit the lacking documents. However, petitioner's representative failed to comply, hence, she gave petitioner another extension to comply, but still failed. This prompted her to prepare a Memorandum of Report stating that petitioner failed to comply with mandatory requirements for claims for VAT Credit/Refund under Revenue Memorandum Circular (RMC) No. 54-2014, as clarified by RR No. 1-2017.

After Formal Offer of Evidence, respondent rested as shown in the Resolution dated January 17, 2019.

On September 24, 2018, the instant case was transferred to the Court's First Division.

On March 25, 2019, petitioner filed its *Memorandum*. Respondent did not despite directive. Accordingly, the instant case was deemed submitted for decision on April 10, 2019."[3] (*Citations omitted*)

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[3] *CTA Division Docket*, Vol II, pp. 538 to 545.

On July 9, 2020, this CTA First Division rendered its Decision on the present case,[4] the dispositive portion of which reads:

> "**WHEREFORE**, the instant Petition for Review filed by petitioner New York Bay Philippines, Inc., on August 25, 2017, is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **DIRECTED** to **REFUND** or to **ISSUE A TAX CREDITR CERTIFICATE** in favor of petitioner New York Bay Philippines, Inc. the amount of **₱9,582,877.37**, representing its excess and unutilized input VAT attributable to its zero-rated sales for the four (4) quarters of CY 2015.
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> **SO ORDERED.**"

On July 28, 2020, NYBPI filed a "Motion for Partial Reconsideration (Re: Decision dated July 9, 2020)";[5] while the Commissioner of Internal Revenue (CIR) filed his "Motion for Reconsideration (Decision dated 09 July 2020)"[6] on July 30, 2020.

On October 7, 2020, the CTA First Division issued a Resolution denying the parties' respective Motions.[7]

Undeterred, NYBPI and the CIR filed their respective "Petitions for Review" before the CTA *En Banc* on November 3, 2020 and November 11, 2020, docketed as CTA EB No. 2366[8] and 2364,[9] respectively. As already intimated, the CTA *En Banc* granted NYBPI's "Petition for Review" and denied the CIR's "Petition for Review" in its Decision dated March 24, 2022.

On April 12, 2022, the CIR posted a "Motion for Reconsideration (En Banc Decision dated 24 March 2022)".[10]

In the Resolution dated July 21, 2022,[11] the CTA *En Banc* denied CIR's Motion for Reconsideration for lack of merit.

On August 12, 2022, the CIR, through the Office of the Solicitor General (OSG), filed with the Supreme Court a "Motion for Extension

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[4] *CTA Division Docket*, Vol II, pp. 538 to 564.
[5] *CTA Division Docket*, Vol II, pp. 565 to 581.
[6] *CTA Division Docket*, Vol II, pp. 583 to 588.
[7] *CTA Division Docket*, Vol II, pp. 610 to 612.
[8] *CTA En Banc No. 2366 Docket*, pp. 1 to 31.
[9] *CTA En Banc No. 2364 Docket*, pp. 5 to 12.
[10] *CTA En Banc No. 2364 Docket*, pp. 111 to 115.
[11] *CTA En Banc No. 2364 Docket*, pp. 142 to 145.

of Time to File Petition for Review on Certiorari",[12] which was docketed as G.R. No. 262100. On September 6, 2022, the CIR, through the OSG, posted his "Motion to Withdraw Motion for Extension of Time to File Petition for Review on Certiorari".[13]

Thereafter, the Supreme Court issued the Resolution dated September 12, 2022,[14] which reads as follows:

> "**G.R. No. 262100 *(Commissioner of Internal Revenue vs. New York Bay Philippines, Inc.).*** – The Court resolves to **GRANT** the Office of the Solicitor General's (OSG) Motion to Withdraw Motion for Extension of Time to file petition for review on *certiorari* dated September 5, 2022, stating that upon further review of the pertinent records and applicable laws and jurisprudence, the OSG determined that it would be best to no longer appeal the assailed resolution, thus, praying that the previously filed motion for extension we considered withdrawn.
>
> In view thereof, the Court **NOTES WITHOUT ACTION** the Office of the Solicitor General's motion for extension of thirty (30) days from the expiration of the reglementary period within which to file a petition for review on *certiorari*.
>
> Let this case be considered **CLOSED** and **TERMINATED** and the parties be **INFORMED** accordingly."

On January 3, 2023, due to the OSG's "Motion to Withdraw Motion for Extension of Time to File Petition for Review on Certiorari", the Supreme Court Resolution dated September 2, 2022 became final and executory and was recorded in the Book of Entries of Judgment.[15]

THE ISSUE

The main issue submitted by the parties for the CTA First Division's resolution is as follows:

> Whether NYBPI is entitled to its claim for refund of or issuance of TCC in the amount of ₱46,835,732.67, representing its excess and unutilized input VAT for the four quarters of CY 2015.[16]

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[12] *CTA En Banc No. 2364 Docket*, pp. 146-183.
[13] *CTA En Banc No. 2364 Docket*, pp. 185-198.
[14] *CTA En Banc No. 2364 Docket*, p. 201.
[15] *CTA Division Docket*, Vol II, p. 822.
[16] *CTA Division Docket*, Vol II, p. 545.

THE COURT'S RULING

In its Decision dated March 24, 2022, the CTA *En Banc* has already resolved that NYBPI has satisfactorily proven that its sales to *Trans-Fast International FZ-LLC* qualify for VAT zero-rating, *viz.:*

> "To recall, the Court in Division denied VAT zero-rating to **TF International** for failure to satisfy the two requisites: (1) services rendered in its favor were not in the same category as 'processing, manufacturing or repacking of goods;' and (2) services were performed in the Philippines. Given that the Service Agreement to **TF Remittance** extends to **TF International** pursuant to the Addenda, the relevant provisions in the Service Agreement, insofar as it proves that services rendered are not in the same category as 'processing, manufacturing or repacking of goods' and that services were performed in the Philippines, also apply to **TF International**."

Apropos thereto, considering that in the CTA First Division Decision dated July 9, 2020 it was already established that NYBPI has successfully proven its compliance with the *first*,[17] *second*,[18] *third*,[19] *sixth*,[20] and *seventh*[21] requisites for the entitlement to input VAT refund, the CTA First Division, pursuant to CTA *En Banc*'s Decision dated March 24, 2022, shall determine anew whether NYBPI complied with the *fourth*, *fifth*, *eighth,* and *ninth* requisites, namely:

1. Whether the taxpayer is engaged in zero-rated or effectively zero-rated sales;

2. For zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b), and 108(8)(1) and (2), of the National Internal Revenue Code (NIRC) of 1997, as amended, whether the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;

3. Whether the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, 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

[17] NYBPI's administrative claim was seasonably filed.
[18] NYBPI's judicial claim was seasonably filed.
[19] NYBPI is a VAT-registered taxpayer with Certificate of Registration No. 3RC0000807275 dated January 1, 1997 and Tax Identification No. (TIN) 000-217-994-000.
[20] NYBPI's input VAT being claimed does not appear to be transitional input taxes.
[21] NYBPI's input taxes being claimed are due or paid in the amount of ₱46,310,726.45.

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of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and,

4. Whether the input taxes have not been applied against output taxes during and in the succeeding quarters.

NYBPI is engaged in zero-rated sales of services to non-resident foreign entities during the four (4) quarters of 2015 in the amount of ₱631,073,433.56.

In the Decision dated June 9, 2020, the CTA First Division determined that only the amount of ₱130,660,046.47 are valid zero-rated sale of services to non-resident foreign entities during the four (4) quarters of CY 2015. This amount pertains to NYBPI's sale of services to *Trans-Fast Remittance LLC*. On the other hand, the zero-rated sales to *Trans-Fast International FZ-LLC* for CY 2015 amounting to ₱500,413,387.12 was disallowed for NYBPI's failure to prove that the services it rendered thereto were not in the same category as *"processing, manufacturing or repacking of goods"*, and that the services rendered were performed in the Philippines.

The CTA *En Banc*, however, ruled that NYBPI's sales to *Trans-Fast International FZ-LLC* for the four (4) quarters of the CY 2015 likewise qualify as zero-rated sales.

To recall, the CTA First Division, in the Decision dated June 9, 2020, found that NYBPI fully complied with the *fourth* and *fifth* requisites by presenting Bank Advices or proof of inward remittance from BDO Corporate Remittance System,[22] Schedule of Zero-rated Sales for CY 2015[23] and the corresponding VAT zero-rated official receipts[24] supporting its declared zero-rated sales for the four (4) quarters of CY 2015.

The CTA First Division finds that the enumerated documents likewise include those which duly support NYBPI's zero-rated sales to *Trans-Fast International FZ-LLC* amounting to ₱500,413,387.12, detailed as follows:

[22] Exhibits "P-37-1" to "P-37-25".
[23] Exhibit "P-32".
[24] Exhibits "P-35-26" to "P-35-50".

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Official Receipt			Bank Advice Exhibit No.	Amount in USD (a)	Conversion Rate (b)	Amount in PhP (c) = (a) * (b)
Date	No.	Exhibit No.				
As declared in the 1st Quarterly VAT Return						
January 6, 2015	11540	"P-35-26"	"P-37-1"	$ 741,314.00	₱ 44.9514	₱ 33,323,102.14
February 10, 2015	11543	"P-35-29"	"P-37-4"	869,588.00	44.6878	38,859,974.63
March 3, 2015	11544	"P-35-30"	"P-37-5"	707,608.00	44.6044	31,562,430.28
March 24, 2015	11546	"P-35-32"	"P-37-7"	726,294.00	44.2214	32,117,737.49
April 28, 2015	11548	"P-35-34"	"P-37-9"	901,314.00	44.4457	40,059,531.65
			Subtotal	*3,946,118.00*		*175,922,776.19*
As declared in the 2nd Quarterly VAT Return						
May 27, 2015	11550	"P-35-36"	"P-37-11"	776,536.00	44.4136	34,488,759.29
July 1, 2015	11553	"P-35-39"	"P-37-14"	903,814.00	44.6106	40,319,684.83
August 4, 2015	11555	"P-35-41"	"P-37-16"	846,620.00	44.9831	38,083,592.12
			Subtotal	*2,526,970.00*		*112,892,036.24*
As declared in the 3rd Quarterly VAT Return						
August 26, 2015	11557	"P-35-43"	"P-37-18"	921,532.00	45.2649	41,713,053.83
September 29, 2015	11558	"P-35-44"	"P-37-19"	879,556.00	46.1420	40,584,472.95
November 3, 2015	11562	"P-35-47"	"P-37-22"	903,240.00	46.7504	42,226,831.30
			Subtotal	*2,704,328.00*		*124,524,358.08*
As declared in the 4th Quarterly VAT Return						
December 1, 2015	11564	"P-35-49"	"P-37-24"	968,460.00	46.3609	44,898,677.21
December 29, 2015	11565	"P-35-50"	"P-37-25"	897,224.00	47.0067	42,175,539.40
			Subtotal	*1,865,684.00*		*87,074,216.61*
			GRAND TOTAL	**$ 11,043,100.00**		**₱ 500,413,387.12**

Adding the foregoing valid zero-rated sales of NYBPI to *Trans-Fast International FZ-LLC* amounting to ₱500,413,387.12 to the previously determined valid zero-rated sales to *Trans-Fast Remittance LLC* amounting to ₱130,660,046.47, the same yields a total valid zero-rated sales of ₱631,073,433.59, with a minimal rounding difference against the total zero-rated sales declared by NYBPI in its Quarterly VAT Returns for CY 2015[25] in the aggregate amount of ₱631,073,433.56.

Verily, NYBPI has complied with the *fourth* and *fifth* requisites by establishing that it is engaged in zero-rated sale of services for the four (4) quarters of CY 2015 in the amount of ₱631,073,433.56.

[25] Exhibits "P-4", "P-5", "P-7", and "P-9", *CTA Division Docket*, Vol. I, pp. 386 to 387, 388 to 389, 392 to 393, and 396 to 397, respectively.

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Since there are both zero-rated or effectively zero-rated sales and taxable sales, the input taxes due or paid in the amount of ₱46,310,726.45 shall be proportionately allocated on the basis of sales volume.

To reiterate, the *eighth* requisite pertains to those input taxes claimed that are attributable to zero-rated or effectively zero-rated sales. Whenever there is a mixture of zero-rated or effectively zero-rated sales, and taxable or exempt sales, and considering that 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.

Again, in the Decision dated June 9, 2020, the CTA First Division determined that, on the basis of its Quarterly VAT Returns for CY 2015, NYBPI had sales for the said periods in the aggregate amount of ₱631,162,185.35, broken down as follows:

Type of Sale	**Amount**
VATable	₱ 88,751.79
Zero-Rated	631,073,433.56
Total Sales	**₱ 631,162,185.35**

Since its input VAT cannot be directly or entirely attributed to any of the transactions, the CTA First Division shall allocate the valid input VAT of **₱46,310,726.45** proportionately on the basis of the volume of its sales, as shown below:

Taxable Sales for the CY 2015	₱ 88,751.79
Divided by the Reported Total Sales per Quarterly VAT Returns	631,162,185.35
Multiplied by Total Valid Input VAT	46,310,726.45
Valid input VAT allocated to sales subject to the 12% VAT	**₱ 6,512.05**
Total Valid Zero-Rated Sales	₱ 631,073,433.56
Divided by the Reported Total Sales per Quarterly VAT Return	631,162,185.35
Multiplied by Total Valid Input VAT	46,310,726.45
Valid Input VAT allocated to valid zero-rated sales	**₱ 46,304,214.40**

Thus, for the purposes of, and with regard to NYBPI's compliance with the *eighth* requisite, only the amount of

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₱46,304,214.40 represents valid input VAT attributable to valid zero-rated sales.

NYBPI's input taxes were not applied to any output tax liability.

Having determined that NYBPI had valid input VAT attributable to its zero-rated sales, the CTA First Division shall now determine whether NYBPI was able to comply with the *ninth* requisite *i.e.,* whether the valid input VAT attributable to its zero-rated sales was applied against its output VAT liability during and in the succeeding quarters.

For the periods under consideration, NYBPI had an output VAT liability in the amount of ₱10,650.21.[26] As can be gleaned from NYBPI's Amended VAT Return for the 4th quarter of 2015,[27] petitioner utilized its input VAT for CY 2015 to pay for its ₱10,650.21 output VAT. Since NYBPI's valid input VAT in the amount of ₱6,512.05 allocated to sales subject to the 12% VAT is not enough to cover the said output VAT liability, the output VAT still due against NYBPI is computed as follows:

Output VAT liabilities for the CY 2015	₱ 10,650.21
Less: Valid Input VAT allocated to Sales subject to the 12% VAT	6,512.05
Output VAT Still Due	**₱ 4,138.16**

The 2015 valid input VAT attributable to valid zero-rated sales in the amount of ₱46,304,214.40, as earlier determined, shall then be utilized against the said remaining output VAT liability of NYBPI in the amount of ₱4,138.16. Correspondingly, only the remaining input VAT of **₱46,300,076.24** represents NYBPI's unapplied/excess input VAT attributable to its valid zero-rated sales, as determined below:

Valid Input VAT Allocated to Zero-Rated Sales	₱	46,304,214.40
Less: Output VAT still due		4,138.16
Excess input VAT attributable to valid zero-rated sales	**₱**	**46,300,076.24**

26 Line 19B of Exhibit "P-9", *CTA Division Docket*, Vol. I, p. 396.
27 Exhibit "P-9", *CTA Division Docket*, Vol. I, p. 396.

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Needless to state, the said amount of ₱46,300,076.24 is included in the amount of the subject refund claim, *i.e.,* the amount of ₱46,835,732.67.

Although the input VAT in the amount of ₱46,835,732.67 was initially carried-over by NYBPI to its succeeding Quarterly VAT Returns,[28] the same remained unutilized until the same was deducted as *"VAT Refund/TCC Claimed"* in its Amended 4th Quarterly VAT Return of CY 2015.[29] It bears stressing that after deducting the aforesaid input VAT in the amount of ₱46,835,732.67, NYBPI had a ₱0.01[30] amount of output tax still payable as of the end of the 4th quarter of CY 2015. Moreover, only the amount of "₱0.00"[31] was reflected as *Input Tax Carried Over from Previous Period* in the succeeding Amended Quarterly VAT Return for the 1st Quarter of CY 2016. In fine, NYBPI is deemed to have fulfilled the said *ninth* requisite in the refund of input VAT under Section 112(A) of the NIRC of 1997, as amended.

All told, NYBPI has established by preponderance of evidence that it is entitled to a modified refundable amount of ₱46,300,076.24, representing its excess and unutilized input VAT attributable to its zero-rated sales for the four (4) quarters of CY 2015.

WHEREFORE, premises considered, the Petition for Review filed by New York Bay Philippines, Inc. on August 25, 2017 is hereby **PARTIALLY GRANTED**. The dispositive portion of the CTA First Division's Decision dated July 9, 2020 is hereby **MODIFIED** to read as follows:

> "**WHEREFORE**, the instant *Petition for Review* filed by petitioner New York Bay Philippines, Inc., on August 25, 2017, is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **DIRECTED TO REFUND, or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner New York Bay Philippines, Inc. the amount of **₱46,300,076.24**, representing its excess and unutilized input VAT attributable to its zero-rated sales for the four (4) quarters of CY 2015.
>
> **SO ORDERED.**"

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[28] Exhibits "P-5", "P-7" and "P-9", *CTA Division Docket*, Vol. I, pp. 388 to 389, 392 to 393, and 396 to 397, respectively.
[29] Line 23D of Exhibit "P-9", *CTA Division Docket*, Vol. I, p. 397.
[30] Line 29 of Exhibit "P-9", *CTA Division Docket*, Vol. I, p. 397.
[31] Line 20A of Exhibit "P-10", *CTA Division Docket*, Vol. I, p. 398.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

CATHERINE T. MANAHAN	**MARIAN IVY F. REYES-FAJARDO**
Associate Justice	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.

ROMAN G. DEL ROSARIO
Presiding Justice