REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

AIR DRILLING ASSOCIATES PTE LTD.,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10497

Present:

RINGPIS-LIBAN, *Chairperson*,
MODESTO-SAN PEDRO, and
FERRER-FLORES, *JJ.*

Promulgated:

AUG 15 2024

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DECISION

FERRER-FLORES, J.:

At bar is a *Petition for Review* filed by petitioner **Air Drilling Associates Pte. Ltd.** against respondent **Commissioner of Internal Revenue (CIR)** praying that the Court render judgment ordering respondent to refund or issue a tax credit certificate in favor of petitioner in the amount of **₱4,175,976.96** attributable to its zero-rated sales for the period July 1, 2018 to September 30, 2018.

Petitioner Air Drilling Associates Pte. Ltd. is a foreign company organized and existing under the laws of Republic of Singapore, and was duly licensed by the Philippine Securities and Exchange Commission (SEC) with Company Registration No. FS200704376, to establish a branch office in the Philippines to pursue geothermal aerated drilling services and related opportunities therein.[1] It is registered with Bureau of Internal Revenue (BIR) as value-added tax (VAT) taxpayer, under Taxpayer Identification Number (TIN) 251-156-024-000.[2]

[1] Exhibit "P-2", Docket, pp. 436 to 487.
[2] Exhibit "P-1", Docket, p. 435.

Respondent is the duly appointed CIR, vested with the authority to carry out the functions, duties, and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments, grant tax refunds and issue tax credit certificates, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997,[3] as amended, and other tax laws, rules and regulations.[4]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

Petitioner filed with the BIR its Quarterly VAT return for the third quarter (July 1 to September 30) of taxable year (TY) 2018 on October 25, 2018.

On September 30, 2020, petitioner filed with the BIR the letter dated September 29, 2020,[5] applying for a VAT refund representing the excess or unutilized input tax credits attributable to its VAT zero-rated sales for the third quarter of TY 2018.

Petitioner, however, received on March 9, 2021 the Letter dated December 16, 2020 issued by the BIR - Region No. 8A,[6] denying with finality its application for VAT refund for the said period, for lack of legal and factual basis.

PROCEEDINGS BEFORE THIS COURT

Undeterred, petitioner filed the present *Petition of Review* on May 17, 2021.[7]

On July 22, 2021, the Court received respondent's *Motion for an Extension to File an Answer*,[8] which the Court granted through Resolution dated September 6, 2021.[9] Subsequently, *Respondent's Answer* was posted on September 20, 2021.[10] The *BIR Records* for this case consisting of seven (7) folders were transmitted on November 5, 2021.[11]

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3 Republic Act (R.A.) 8424, *AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES,* also known as "*Tax Reform Act of 1997*"; December 11, 1997.

4 Par. 1, Facts Admitted, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 340.

5 Exhibit "P-13", Docket, pp. 696 to 702.

6 Exhibit "P-14", Docket, pp. 703 to 705.

7 Docket, pp. 8-19.

8 *Id.*, at 241-243.

9 *Id.*, at 247.

10 *Id.*, at 248-259.

11 Respondent's *Compliance* dated October 5, 2021, Docket, pp. 300 to 301.

The Pre-Trial Conference was initially set on January 26, 2022,[12] but was later reset to, and held on, May 10, 2022.[13] Prior thereto, the *Petitioner's Pre-Trial Brief* was filed on February 3, 2022,[14] while *Respondent's Pre-Trial Brief* was posted on January 27, 2022.[15]

On May 23, 2022, the parties filed their *Joint Stipulation of Facts and Issues*,[16] which the Court admitted and approved in its Resolution dated May 26, 2022,[17] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order was then issued on June 16, 2022.[18]

Trial then ensued, with the parties presenting their respective documentary and testimonial evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Rosebelle Liu,[19] petitioner's Office Manager; and (2) Atty. Adan T. Delamide,[20] the Court-commissioned Independent Certified public Accountant (ICPA).[21]

The *Report* of the ICPA was posted on July 22, 2022.[22]

On November 7, 2022, petitioner filed its *Formal Offer of Evidence*,[23] to which respondent posted his *Comment/Opposition (on Petitioner's Formal Offer of Evidence)* on November 28, 2022.[24] In the Resolution dated January 17, 2023,[25] the Court admitted petitioner's offered exhibits.

For his part, respondent offered the testimonies of Revenue Officers Rasul S. Solaiman[26] and Camille D. Bugayong.[27]

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12 Notice of Pre-Trial Conference dated October 21, 2021, Docket, pp. 298 to 299.
13 Notice of Resetting dated February 9, 2022, Docket, p. 303; Minutes of the hearing held on, and Order dated, May 10, 2022, Docket, pp. 330 to 332.
14 Docket, pp. 304-309.
15 *Id.*, at 312- 316.
16 *Id.*, at 340-344.
17 *Id.*, at 329.
18 *Id.*, at 361-366.
19 Exhibits "P-15", Docket, pp. 706 to 713; Minutes of the hearing held on July 19, 2022, Docket, p. 371.
20 Exhibit "P-17", Docket, pp. 403 to 411; Minutes of the hearing held on, and Order dated, October 12, 2022, Docket, pp. 756 to 758.
21 *Oath of Commission* dated June 22, 2022, Docket, p. 359; Minutes of the hearing held on, and Order dated, June 22, 2022, Docket, pp. 358, and 367 to 368, respectively.
22 Exhibit "P-18", Docket, pp. 374 to 387.
23 Docket, pp. 422-434.
24 *Id.*, at 750-752.
25 *Id.*, at 748-749.
26 Exhibit "R-4", Docket, pp. 261 to 268; Minutes of the hearing held on, and Order dated, January 17, 2023, Docket, pp. 741 and 760, respectively.
27 Exhibit "R-8", Docket, pp. 281 to 288; Minutes of the hearing held on, and Order dated, March 15, 2023, Docket, pp. 761 to 763.

On March 30, 2023, the *Respondent's Formal Offer of Evidence* was filed.[28] On even date, petitioner filed its *Comment to Respondent's Formal Offer of Evidence*.[29] In the Resolution dated June 23, 2023,[30] the Court admitted respondent's offered evidence.

The *Memorandum for Petitioner* was filed on July 27, 2023,[31] while *Respondent's Memorandum* was submitted on August 3, 2023.[32]

This case was considered submitted for decision on August 15, 2023.[33]

Hence, this Decision.

THE STIPULATED ISSUE

The sole issue to be resolved by the Court as stipulated by the parties is whether petitioner is entitled to its claim for refund of its alleged unutilized input VAT allegedly acquired during the third quarter of TY 2018 amounting to ₱4,175,976.96.[34]

Petitioner's arguments:

Petitioner argues that its administrative and judicial claims for refund were timely filed in accordance with Section 112 of the NIRC of 1997, as amended; that it is a VAT-registered entity; that it established rendering services subject to VAT zero-rate and substantiated the present claim with relevant supporting documents; that it substantiated its input VAT paid/incurred during the third quarter of TY 2018, which were all attributable to its VAT zero-rated sales; and, that its input VAT acquired during the third quarter of TY 2018 were not applied against any output VAT in the succeeding periods.

Respondent's counter-arguments:

Respondent contends that records and testimony of the witnesses show that petitioner failed to comply with a number of requirements, even during its administrative claim for VAT refund/credit for the third quarter of

[28] Docket, pp. 764-769.
[29] *Id.,* at 771-773.
[30] *Id.,* at 776-777.
[31] *Id.,* at 778-792.
[32] *Id.,* at 793-802.
[33] Minute Resolution dated August 15, 2023, Docket, p. 805.
[34] Issues, JSFI, Docket, p. 341.

TY 2018, which led to the denial of its entire claim; that petitioner failed to submit the Department of Energy (DOE) indorsement of Energy Development Corporation (EDC) for the time period petitioner is entitled for VAT zero-rating since the document offered by petitioner is issued for June 23, 2020; and, that petitioner's claim for VAT refund in the alleged amount of ₱4,175,976.96 should be denied.

THE COURT'S RULING

The *Petition for Review* is partly meritorious.

Requisites for refund or tax credit of input VAT established by law

Pertinent to the resolution of the present case is Section 112(A) and (C) of the NIRC of 1997, as amended by Republic Act (R.A.) No. 10963,[35] otherwise known as the Tax Reform for Acceleration and Inclusion (TRAIN), which reads as follows:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> xxx xxx xxx

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[35] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however*, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.

From the aforequoted provision, jurisprudence has laid down the following requisites for claiming refund or tax credit of unutilized or excess input VAT attributable to zero-rated or effectively zero-rated sales, *viz.*:

As to timeliness of the filing of the administrative and judicial claims:

1. The claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[36]

2. In case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of ninety (90) days, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision[37] or after the expiration of the said 90-day period;[38]

Concerning the taxpayer's registration with the BIR:

3. The taxpayer is a VAT-registered person;[39]

In relation to the taxpayer's output VAT:

4. The taxpayer is engaged in zero-rated or effectively zero-rated sales;[40]

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[36] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.

[37] Refer to *Energy Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 203367, March 17, 2021; *Commissioner of Internal Revenue vs. CE Casecnan Water And Energy Company, Inc.*, G.R. No. 212727, February 1, 2023; and *Commissioner of Internal Revenue vs. Vestas Services Philippines, Inc.*, G.R. No. 255085, March 29, 2023.

[38] R.A. No. 11976, *AN ACT INTRODUCING ADMINISTRATIVE TAX REFORMS, AMENDING SECTIONS 21, 22, 51, 56, 57, 58, 76, 77, 81, 90, 91, 103, 106, 108, 109, 110, 112, 113, 114, 115, 116, 117, 118, 119, 120, 128, 200, 204, 229, 235, 236, 237, 238, 241, 243, 245, 248, AND 169; AND REPEALING SECTION 34(K) OF THE NATIONAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES*, also known as "*Ease of Paying Taxes Act*"; January 5, 2024.

[39] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.

[40] *Id.*

5. For zero-rated sales under Section 106 (A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2)[41] of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[42]

As regards the taxpayer's input VAT being refunded:

6. The input taxes are not transitional input taxes;[43]

7. The input taxes are due or paid;[44]

8. 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 of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[45] and

9. The input taxes have not been applied against output taxes during and in the succeeding quarters.[46]

In addition, in claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the NIRC of 1997, as amended, and other implementing rules and regulations.[47] Thus, petitioner's compliance with all the VAT invoicing requirements is required to be able to file a claim for input taxes attributable to zero-rated sales.[48] The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[49] Moreover, it must be pointed out that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[50]

Strict compliance with substantiation and invoicing requirements is necessary considering the VAT's nature and VAT system's tax credit

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41 Under RA No. 10963, Section 106(A)(2)(a)**(2)** was renumbered to Section 106(A)(2)(a)**(3)** while Section 106(A)(2)**(b)** was deleted. However, there was no corresponding amendment to the subsections cited in Section 112(A) of the NIRC of 1997, as amended.

42 *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.

43 *Id.*

44 *Id.*

45 *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.

46 *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.

47 *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.

48 *J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.

49 *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.

50 *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

method, where tax payments are based on output and input taxes and where the seller's output tax becomes the buyer's input tax that is available as tax credit or refund in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates computation of tax credits, and provides accurate audit trail or evidence for BIR monitoring purposes.[51]

Furthermore, it must be emphasized that, in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[52] It, thus, behooves upon petitioner to show compliance with each of the foregoing requisites and invoicing requirements. Stated otherwise, the absence of *any* of the said requisites is already a valid ground to deny the refund claim.

Petitioner's administrative and judicial claims were timely filed.

To reiterate, the *first* requisite pertains to the filing of the refund claim for tax credit or refund of input VAT before the BIR, within two (2) years from the close of the quarter when the sales were made.

The present claim covers the taxable period from July 1, 2018 to September 30, 2018. Counting two (2) years from the close of the said quarter, petitioner originally had until September 30, 2020, but the deadline was extended until December 31, 2020 pursuant to Revenue Regulations (RR) No. 27-20.[53] Hence, petitioner timely filed its application letter dated September 29, 2020 with the BIR for its VAT refund on September 30, 2020.[54]

The *second* requisite is to the effect that the judicial claim must have been filed within thirty (30) days from receipt of respondent's decision or after the expiration of the ninety (90)-day period. The ninety (90)-day period to decide, however, was suspended at that time pursuant to RR 16-20[55] and 27-20, which provides as follows:

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[51] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, supra.

[52] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

[53] SUBJECT: Regulations Suspending the Filing and Ninety (90)-Day Processing of Value-Added Tax (VAT) Refund Claims Anchored Under Section 112 of the Tax Code of 1997, as Amended, in Relation to Section 4 (tt) of Republic Act (R.A.) No. 11494, Otherwise Known as the "Bayanihan to Recover as One Act", October 6, 2020.

[54] Exhibit "P-13", Docket, pp. 696 to 702.

[55] SUBJECT: Regulations Further Suspending the Due Dates in the Application of the Ninety (90)-Day Period to Process Value Added Tax (VAT) Refund/Claim Pursuant to Section 112 of the Tax Code of

RR 16-20

Section 3. Processing of VAT Refund. – The 90-day period of processing VAT refund claims shall be suspended in areas where ECQ or Modified ECQ is still in force.

RR 27-20

Section 4. *Processing of VAT Refunds* – The 90-day processing of VAT refund claims pursuant to Section 112 (C) of the Tax Code of 1997, as amended, is hereby suspended during the effectivity of R.A. No. 11494 or until the next adjournment of the Eighteenth Congress on December 19, 2020.

Following the above, the ninety (90)-day period to decide petitioner's claim should be reckoned from December 20, 2020 or until March 19, 2021. As mentioned, petitioner received respondent's letter denying its claim on March 9, 2021. Petitioner, then, had until **April 8, 2021** to file its judicial claim before this Court.

It must be noted , however, that due to the surge of Covid-19 cases, the Supreme Court (SC) issued the following administrative circulars ordering the physical closure of courts and suspending the time for filing of petitions and appeals, complaints, motions, pleadings, and court submissions in the National Capital Judicial Region and nearby provinces, from **March 25, 2021 to May 14, 2021**, *viz.*:

Announcement/ Administrative Circular No.	Date Issued	Subject Matter/Content
Announcement[56]	March 25, 2021	Physical Closure of NCJR Courts, Nearby Provinces on March 25-26, 2021 "In view of the rising cases of COVID-19 in the National Capital Region and the nearby provinces of Bulacan, Cavite, Laguna and Rizal ('Nearby Provinces'), Chief Justice Diosdado M. Peralta orders the **physical closure** of all courts and court offices in the NCJR (Supreme Court, Court of Appeals, Court of Tax Appeals, Sandiganbayan, and trial courts) and in nearby provinces **beginning at 2 P.M. today, March 25, 2021, until tomorrow, March 26, 2021.**"

1997, as Amended by Republic Act (R.A.) No. 10963 (TRAIN Law) for Taxable Quarters Affected by the Declaration of the National State of Emergency, June 19, 2020.

56 The Supreme Court of the Philippines Website, March 25, 2021, https://sc.judiciary.gov.ph/re-physical-closure-of-ncjr-courts-nearby-provinceson-march-25-26-2021/

Announcement[57]	March 27, 2021	Re: Physical closure of courts in the National Capital Judicial Region and nearby provinces from March 29 to 31, 2021 and throughout the Holy Week "In view of the alarming surge of COVID-19 cases and upon consultation with the members of the Court *En Banc*, as well as the heads of the concerned offices, the **physical closure** of all courts and court offices (Supreme Court, Court of Appeals, Court of Tax Appeals, Sandiganbayan, and trial courts) in the National Capital Judicial Region, and nearby provinces of Bulacan, Cavite, Laguna, and Rizal is hereby **EXTENDED** effective **March 29 (Monday) to March 31 (Wednesday), 2021 and throughout the Holy Week.**"
Administrative Circular No. 14-2021	March 28, 2021	Re: Extension of Filing Periods for Pleadings/Court Submissions for Courts in the National Capital Judicial Region and Nearby Provinces placed under Enhanced Community Quarantine from March 29 to April 4, 2021 "Considering that the National Capital Region and nearby provinces of Bulacan, Cavite, Laguna, and Rizal have been placed under Enhanced Community Quarantine beginning March 29 until April 4, 2021, the **filing periods** of pleadings and other court submissions that fall due <u>during the period from **March 29 to March 31, 2021**</u> are hereby **EXTENDED** for three (3) calendar days, counted from April 5, 2021, xxx"
Administrative Circular No. 15-2021	April 3, 2021	RE: EXTENSION OF THE PHYSICAL CLOSURE OF COURTS AND THE FILING PERIODS FOR PLEADINGS AND OTHER COURT SUBMISSIONS IN LIGHT OF THE FURTHER EXTENSION OF THE ENHANCED COMMUNITY QUARANTINE FROM APRIL 5 TO APRIL 11, 2021. "Likewise, the **filing periods** of pleadings and other court submissions that fell due or would fall due <u>during the period beginning from **March 29 to April 11, 2021**</u> are hereby **EXTENDED** for seven (7) calendar days, counted from April 12, 2021. xxx"
Administrative Circular No. 21-2021	April 10, 2021	RE: EXTENSION OF PHYSICAL CLOSURE OF COURT "Considering the unabated rise of COVID-19 cases, the requests of the judges and court personnel, and upon the concurrence of the members of the Court en banc, ALL the courts and judicial offices in the National Capital Judicial Region and the provinces of Bulacan, Cavite, Laguna, and Rizal (NCJR+) shall remain **physically closed until 18 April 2021**. They may be reached through their hotlines and email addresses as posted in the Supreme Court website. xxx xxx xxx

[57] The Supreme Court of the Philippines Website, March 27, 2021, https://sc.judiciary.gov.ph/re-physical-closure-of-courts-in-the-national-capital-judicial-region-and-nearby-provinces-from-march-29-to-31-2021-and-throughout-the-holy-week/

		The **time for filing and service of pleadings and motions** during this period is **SUSPENDED** and shall resume seven (7) calendar days counted from the first day of physical reopening of the relevant court."
Administrative Circular No. 22-2021	April 14, 2021	RE: PHYSICAL CLOSURE OF COURTS IN ENHANCED COMMUNITY QUARANTINE AND MODIFIED ENHANCED COMMUNITY QUARANTINE AREAS "Considering that the National Capital Region, and the provinces of Abra, Bulacan, Cavite, Laguna, Quirino and Rizal, and Santiago City are under Modified Enhanced Community Quarantine (MECQ) until 30 April 2021, the **physical closure** of courts in the said areas is likewise **extended to 30 April 2021**. xxx xxx xxx **The time for filing and service of pleadings and motions** during this period is **SUSPENDED** and shall resume seven (7) calendar days counted from the first day of physical reopening of the relevant court."
Administrative Circular No. 29-2021	April 30, 2021	RE: WORK ARRANGEMENTS IN COURTS ON 3 – 14 MAY 2021 "Considering that the National Capital Region, the provinces of Abra, Bulacan, Cavite, Laguna, Quirino, and Rizal, and Santiago City, Isabela, continue to be under Modified Enhanced Community Quarantine (MECQ) until 14 May 2021, ALL first and second level courts, and appellate collegiate courts, and their judicial offices in the said areas shall continue to be **physically closed until 14 May 2021**. xxx xxx xxx **The time for filing and service of pleadings and motions** during this period in these areas is **SUSPENDED** and **shall resume after seven (7) calendar days counted from the first day of the physical reopening of the relevant court**."
Administrative Circular No. 33-2021	May 14, 2021	RE: COURT OPERATIONS STARTING 17 MAY 2021 "Considering that the National Capital Region and nearby provinces of Bulacan, Cavite, Laguna, and Rizal, together with some provinces and cities, have been placed under General Community Quarantine (GCQ) starting 15 May until 31 May 2021, all first and second level courts, and appellate collegiate courts (except the Supreme Court), and the judicial offices in these areas under GCQ shall be **physically opened** with a skeleton force of at least thirty percent (30%) to at most fifty percent (50%), **beginning 17 May 2021 until further notice**."

In view of the foregoing SC issuances, the thirty (30)-day reglementary period to file appeal before this Court was suspended from March 25, 2021 until May 14, 2021, and resumed after seven (7) calendar days counted from the May 17, 2021. Particularly, the counting of thirty (30) days within which to appeal its claim for refund before this Court was reckoned from March 9, 2021 or until June 7, 2021, pursuant to SC Administrative Circular No. 29-2021. Since the present judicial claim was filed on May 17, 2021,[58] the same was timely made and this Court has jurisdiction to take cognizance of the present case.

From the foregoing, petitioner has shown compliance with the above-stated *first* and *second* requisites.

Petitioner is a VAT-registered entity.

Anent the *third* requisite, it is also undisputed that petitioner is a VAT-registered person/entity with TIN 251-156-024-000 as evidenced by its BIR Certificate of Registration.[59]

Petitioner is engaged in effectively zero-rated sales during the third quarter of 2018.

The *fourth* requisite requires that the taxpayer is engaged in zero-rated or effectively zero-rated sales.

Petitioner claims that its sales for the period July 1 to September 1, 2018 are comprised entirely of zero-rated sales to EDC. Hence, it invokes Section 15(g) of R.A. No. 9513[60] or the Renewable Energy Act of 2008, which grants certain tax incentives to renewable energy (RE) developers, such as EDC. Said provision reads, in part, as follows:

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

[58] Docket, pp. 8 to 19.
[59] Exhibit "P-1", Docket, p. 435.
[60] AN ACT PROMOTING THE DEVELOPMENT, UTILIZATION AND COMMERCIALIZATION OF RENEWABLE ENERGY RESOURCES AND FOR OTHER PURPOSES

xxx xxx xxx

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

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

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

Moreover, Part III, Rule 5, Section 13.G of Department Circular (DC) No. DC2009-05-0008, the Implementing Rules and Regulations (IRR) of R.A. No. 9513, dated May 25, 2009 issued by the DOE, provides:

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

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

xxx xxx xxx

G. Zero Percent Value-Added Tax Rate

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

xxx xxx xxx

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

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

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

However, the same Part III, Rule 5 of the IRR of R.A. No. 9513 further states the conditions for the availment of incentives and other privileges under the said law. Section 18(A), (B), and (C) thereof reads:

> SEC. 18. *Conditions for Availment of Incentives and Other Privileges –*
>
> *A. Registration/Accreditation with the DOE*
>
> **For purposes of entitlement to the incentives and privileges under the Act, existing and new RE Developers**, and manufacturers, fabricators, and suppliers of locally-produced RE equipment **shall register with the DOE, through the Renewable Energy Management Bureau (REMB)**. The following certifications shall be issued:
>
> ***(1) DOE Certificate of Registration* – issued to an RE Developer holding a valid RE Service/Operating Contract.**
>
> For existing RE projects, the new RE Service/Operating Contract shall pre-terminate and replace the existing Service Contract that the RE Developer has executed with the DOE subject to the Transitory Provision in Rule 13, Section 39.
>
> The DOE Certificate of Registration shall be issued immediately upon award of an RE Service/Operating Contract covering an existing or new RE project or upon approval of additional investment.
>
> Any investment added to existing RE projects shall be subject to prior approval by the DOE.
>
> xxx xxx xxx
>
> *B. Registration with the Board of Investments (BOI)*
>
> The RE sector is hereby declared a priority investment sector that will regularly form part of the country's Investment Priority Plan (IPP), unless declared otherwise by law.
>
> **To qualify for the availment of the incentives under Sections 13 and 15 of this IRR, RE Developers and manufacturers, fabricators, and suppliers of locally-produced RE equipment, shall register with the BOI.**
>
> The registration with the BOI shall be carried out through an agreement and an administrative arrangement between the BOI and the

DOE, with the end-view of facilitating the registration of qualified RE facilities. The applications for registration shall be favorably acted upon immediately by the BOI, on the basis of the certification issued by the DOE.

C. *Certificate of Endorsement by the DOE*

RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment **shall be qualified to avail of the incentives provided for in the Act only after securing a Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis.**

The DOE, through the REMB, shall issue said certification within fifteen (15) days upon request of the RE Developer or manufacturer, fabricator, and supplier; *Provided,* That the certification issued by the DOE shall be without prejudice to any further requirements that may be imposed by the government agencies tasked with the administration of the fiscal incentives mentioned under Rule 5 of this IRR.

xxx xxx xxx. *(Emphases and underscoring added)*

However, the DOE, in interpreting the conditions for the availment of incentives and other privileges of RE Developers under RA No. 9513, issued DC No. DC2021-12-0042, amending Section 18(C) of the IRR of R.A. No. 9513, stating that as a rule, RE Developers are ***automatically*** qualified to avail of the incentives provided for in R.A. No. 9513 after securing a DOE *Certificate of Registration* and that a *Certificate of Endorsement* is necessary only on importations by an RE developer, *viz*:

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

xxx xxx xxx

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

RE Developers and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be AUTOMATICALLY qualified to avail of the incentives provided for in the Act, OTHER THAN THE INCENTIVE OF DUTY-FREE IMPORTATION OF QUALIFIED MACHINERY, EQUIPMENT, MATERIALS, PARTS AND COMPONENTS, after securing a Certificate of Registration from the DOE.

RE DEVELOPERS THAT IMPORT RE EQUIPMENT, EQUIPMENT, MATERIALS, PARTS AND COMPONENTS SHALL SECURE A CERTIFICATE 24-000061-0002
OF ENDORSEMENT FROM THE DOE, THROUGH THE REMB, ON A PER IMPORTATION BASIS." *(Underscoring added)*

Thus, in order to qualify for and be entitled to VAT zero-rating on RE Developer's purchases as contemplated under R.A. No. 9513 and its IRR, the RE developer must present the following documents, *viz*:

1. Registration with the DOE; and,
2. Registration with the Board of Investments (BOI).

In this case, the sale of services to EDC's projects in Tongonan, Leyte, and Palinpinon, Negros Oriental, duly supported by EDC's DOE Certificates of Registration,[61] with its respective BOI Registrations,[62] are subject to VAT zero-rating under the law, *viz.*:

Location	**Project**	**DOE Certificate of Registration No.**	**BOI Certificate of Registration No.**
Tongonan, Leyte	Tongonan Geothermal Production Field and Unified Leyte Power Plant	GRESC 2009-10-001 dated October 23, 2009	2012-024 dated February 6, 2012
Palinpinon, Negros Oriental	Southern Negros Geothermal Production Field and Nasulo Geothermal Power Plant	GRESC 2009-10-002 dated October 23, 2009	2014-027 dated February 12, 2014

In addition, petitioner must also comply with the pertinent invoicing requirements, containing all the required information under Section 113(A) and (B) of the NIRC of 1997, as amended, to wit:

> SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> (A) *Invoicing Requirements.* — A VAT-registered person shall issue:
>
> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
>
> (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> (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);

[61] Exhibits "P-7" and "P-7-1", Docket, pp. 544 to 545.
[62] Exhibits "P-8" and "P-8-1", Docket, pp. 549 to 550.

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

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

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

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

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

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

(4) In the case of sales in the amount of One thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.

These provisions of the NIRC of 1997, as amended, are further implemented by Section 4.113-1(A) and (B) of RR No. 16-2005, as amended, to wit:

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) In the case of sales in the amount of one thousand pesos (₱1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section.

Moreover, the pertinent invoices and official receipts (ORs) must be duly registered with the BIR as prescribed under Section 237, in relation to Section 23, of the NIRC of 1997, as amended, to wit:

SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.*

—

(A) *Issuance.* — All persons subject to an internal revenue tax shall, at the point of each sale and transfer of merchandise or for services rendered valued at One hundred pesos (P100) or more, issue duly registered receipts or sale or commercial invoices, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however,* That where the receipt is issued to cover payment made as rentals, commissions, compensation or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided, further,* That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.

xxx xxx xxx

SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

In its Quarterly VAT Return for the third quarter of 2018, petitioner declared total sales/receipts amounting to ₱19,920,028.81,[63] which comprised **entirely** of zero-rated receipts for services rendered to its sole client EDC, an RE developer.[64] In support thereof, petitioner presented the ORs and the related billing invoices,[65] summarized as follows: [66]

Exhibit Nos.	Billing Invoice No.	Official Receipt		Amount per OR
		No.	Date	
"P-20"; "P-20-1"	503	1001	1 August 2018	₱ 6,006,074.03
"P-21"; "P-21-1"	504	1002	15 August 2018	149,119.51
"P-21"; "P-21-2"	505	1002	15 August 2018	6,241,923.58
"P-21"; "P-21-3"	506	1002	15 August 2018	387,481.79
"P-21"; "P-21-4"	508	1002	15 August 2018	6,929,926.87
"P-22"; "P-22-1"	507	1003	17 September 2018	73,905.81
"P-22"; "P-22-2"	509	1003	17 September 2018	131,597.22
			Total	**₱19,920,028.81**

Upon scrutiny, the Court finds that the ORs presented by petitioner complied with the invoicing requirements prescribed by law and regulations.

Therefore, the zero-rated receipts to EDC in the **entire** amount of ₱19,920,028.81 during the third quarter of TY 2018, which are properly supported by VAT zero-rated ORs, qualify for VAT zero-rating under R.A. No. 9513 and DOE DC No. DC2009-05-008, in relation to Section 113(A)(2), (B)(1), (2)(c), (3) and (4) of the NIRC of 1997, as amended.

63 Lines 17 and 19A, Exhibit "P-3", Docket, p. 488.
64 Annex D, Exhibit "P-18", Docket, p. 387.
65 Exhibits "P-20" to "P-22", including sub-markings, ICPA USB marked as Exhibit "18-1".
66 Annex D, Exhibit "P-18", Docket, p. 387.

There is no need to comply with the fifth requisite; and the input VAT being claimed does not appear to be transitional input taxes.

The *fifth* requisite is to the effect that petitioner must prove that the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations, but only for zero-rated sales under **Sections 106(A)(2)(a)(1), (2) and (b)**, and **108(B)(1) and (2)** of the NIRC of 1997, as amended. Since the legal basis for petitioner's zero-rated sales is Section 108(B)(7) of the NIRC of 1997, as amended, in relation to Section 15(g) of RA No. 9513, the *fifth* requisite finds no application in this case, and thus, need not be complied with.

Moreover, petitioner's input taxes do not appear to be transitional input taxes under Section 111(A) of the Tax Code, as amended, thereby satisfying the *sixth* requisite.

Not all of the input VAT being claimed are due or paid.

Anent the *seventh* requisite in claiming VAT refund, it is essential for petitioner to provide supporting documents to prove that the input taxes claimed during the third quarter of 2018 were actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, which provides that:

> SEC. 110. *Tax Credits.* —
>
> (A) *Creditable input Tax.* —
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> (a) Purchase or importation of goods:
>
> (i) For sale; or
>
> (ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
>
> (iii) For use as supplies in the course of business; or
>
> (iv) For use as materials supplied in the sale of service; or
>
> (v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

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

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

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (₱1,000,000): *Provided, however,* That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, further,* That the amortization of the input VAT shall only be allowed until December 31, 2021 after which taxpayers with unutilized input VAT on capital goods purchased or imported shall be allowed to apply the same as scheduled until fully utilized: *Provided, finally,* That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

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

SECTION 4.110-1. *Credits For Input Tax.* — 'Input tax' means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the Tax Code.

It includes input taxes which can be directly attributed to transactions subject to the VAT plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.

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

(a) Purchase or importation of goods

(1) For sale; or

(2) For conversion into or intended to form part of a finished product for sale, including packaging materials; or

(3) For use as supplies in the course of business; or

(4) For use as raw materials supplied in the sale of services; or

(5) For use in trade or business for which deduction for depreciation or amortization is allowed under the Tax Code,

(b) Purchase of real properties for which a VAT has actually been paid;

(c) Purchase of services in which a VAT has actually been paid;

(d) Transactions 'deemed sale' under Sec. 106 (B) of the Tax Code;

(e) Transitional input tax allowed under Sec. 4.111 (a) of these Regulations;

(f) Presumptive input tax allowed under Sec. 4.111 (b) of these Regulations;

(g) Transitional input tax credits allowed under the transitory and other provisions of these Regulations.

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

(a) To the importer upon payment of VAT prior to the release of goods from customs custody;

(b) To the purchaser of the domestic goods or properties upon consummation of the sale; or

(c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee.

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

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

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

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed one million pesos (P1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition.

Capital goods or properties refers to goods or properties with estimated useful life greater than one (1) year and which are treated as depreciable assets under Sec. 34(F) of the Tax Code, used directly or indirectly in the production or sale of taxable goods or services.

The aggregate acquisition cost of depreciable assets in any calendar month refers to the total price, excluding the VAT, agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired on installment for an acquisition cost of more than P1,000,000.00, excluding the VAT, will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed P1,000,000.00.

xxx xxx xxx

Construction in progress (CIP) is the cost of construction work which is not yet completed. CIP is not depreciated until the asset is placed in service. Normally, upon completion, a CIP item is reclassified and the reclassified asset is capitalized and depreciated.

CIP is considered, for purposes of claiming input tax, as a purchase of service, the value of which shall be determined based on the progress billings. Until such time the construction has been completed, it will not qualify as capital goods as herein defined, in which case, input tax credit on such transaction can be recognized in the month the payment was made; *Provided, that* an official receipt of payment has been issued based on the progress billings.

In case of contract for the sale of service where only the labor will be supplied by the contractor and the materials will be purchased by the contractee from other suppliers, input tax credit on the labor contracted shall still be recognized on the month the payment was made based on a progress billings while input tax on the purchase of materials shall be recognized at the time the materials were purchased.

Once the input tax has already been claimed while the construction is still in progress, no additional input tax can be claimed upon completion of the asset when it has been reclassified as a depreciable capital asset and depreciated.

Furthermore, Section 4.110-8 of RR No. 16-2005 provides for the substantiation requirements of input tax credits on importation of goods, domestic purchases of goods, properties and services payments made to non-residents, as follows:

> SECTION 4.110-8. *Substantiation of Input Tax Credits.* —
>
> (a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:
>
> (1) For the importation of goods — import entry or other equivalent document showing actual payment of VAT on the imported goods.
>
> (2) For the domestic purchase of goods and properties — invoice showing the information required under Secs. 113 and 237 of the Tax Code.
>
> (3) For the purchase of real property — public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.
>
> (4) For the purchase of services — official receipt showing the information required under Secs. 113 and 237 of the Tax Code.
>
> A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code.
>
> xxx xxx xxx
>
> (d) Input tax from payments made to non-residents (such as for services, rentals and royalties) shall be supported by a copy of the Monthly Remittance Return of Value Added Tax Withheld (BIR Form 1600) filed by the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor.

Thus, in order to prove entitlement to credits for input taxes due or paid, the same must be evidenced by VAT invoices (for domestic purchases of goods) or ORs (for domestic purchases of services) issued in accordance with Section 113 of the NIRC of 1997, as amended, as the case may be, as well as, the import entry or other equivalent documents showing actual payment of VAT (for importation of goods) and BIR Form No. 1600 with corresponding payment confirmation (for services rendered by non-residents).

In its Quarterly VAT Return for the third quarter of TY 2018,[67] petitioner reported total input VAT of ₱4,175,976.96 from its domestic purchases of goods and services, and services rendered by non-residents, which is subject of petitioner's claim for refund/tax credit certificate, as shown below:

Sources of Input VAT	Amount
Domestic Purchases of Goods Other than Capital Goods	₱ 28,156.04
Domestic Purchase of Services	145,156.14
Services Rendered by Non-residents*	4,002,664.78
Total Available Input Taxes	**₱ 4,175,976.96**

**Erroneously presented as Creditable VAT Withheld*

It must be noted, however, that petitioner erroneously filled up its VAT Return for the third quarter of TY 2018 by placing the amount of ₱4,002,664.78 on the portion of the *Creditable VAT Withheld* (Item No. 26B, Part II), instead of putting the same on *Services Rendered by Non-residents* (Item No. 21L, Part II).[68] Such an error appears to be mere oversight on the part of petitioner since the subject letter-application for refund[69] has clearly stated that such amount pertains to input taxes sourced from *"Services Rendered by Non-residents"*.

<u>Domestic Purchases of Goods Other Than Capital Goods – ₱28,156.04; and Domestic Purchase of Services - ₱145,156.14</u>

In support of its input VAT on domestic purchases of goods other than capital goods and services, petitioner presented its suppliers' ORs and invoices.[70]

However, as ascertained by the Court-commissioned ICPA, the input VAT amounting to ₱10,790.80, shall be disallowed for being supported by invalid documents.[71]

Further, upon review of the supporting documents relating to petitioner's domestic purchases of goods other than capital goods and services, the Court finds that the input VAT amounting to ₱31,246.01 should also be disallowed due to the following reasons:

67 Exhibit "P-3", Docket, pp. 488 to 489.
68 Par. 10, Exhibit "P-18", Docket, p. 379.
69 Exhibit "P-13", Docket, p. 700.
70 Exhibits "P-23" to "P-118" and "P-140" to "P-145", ICPA USB marked as Exhibit "P-18-1".
71 Par. 16, Exhibit "P-18", Docket, p. 380; See also Annex C for details, Exhibit "P-18", Docket, pp. 385 to 386.

Exhibit No.	Supplier	OR No.	OR Date	Amount	Input VAT
1.) Nature of services cannot be ascertained in the supporting OR					
"P-53"	Business Process Outsourcing International Inc.	98451	27 July 2018	₱59,000.00	₱7,080.00
"P-66"	Dearborne Global Business Services Inc.	6549	31 July 2018	178.57	21.43
"P-67"	Ultraman Travel Corporation	67023	31 August 2018	382.79	45.93
"P-79"	Business Process Outsourcing International Inc.	99037	31 August 2018	10,000.00	1,200.00
"P-80"	Ace Tubular Services Limited	2541	29 August 2018	151,264.58	18,151.75
2.) Nature of service is not indicated in the supporting OR					
"P-94"	TDV Pest Control Inc.	3724	15 August 2018	1,339.29	160.71
3.) Item descriptions and quantity are not indicated in the supporting invoice					
"P-97"	The Purple Oven Corporation	175631	23 August 2018	933.04	111.96
4.) Supported by photocopied OR[72]					
"P-140"	PLDT Inc.	PQGOR113904420	31 August 2018	1,383.93	166.07
"P-141"	PLDT Inc.	PQGOR113904419	31 August 2018	29,616.07	3,553.93
"P-142"	PLDT Inc.	PQGOR113904416	31 August 2018	1,236.54	148.38
"P-143"	PLDT Inc.	PQGOR113904413	31 August 2018	1,236.54	148.38
"P-144"	PLDT Inc.	PQGOR113904415	31 August 2018	1,236.54	148.38
"P-145"	PLDT Inc.	PQGOR113904414	31 August 2018	1,236.54	148.38
5.) VAT is not separately shown in the supporting OR					
"P-118"	TDV Pest Control	3791	25 September 2018	1,339.29	160.71
TOTAL DISALLOWANCES				**₱260,383.72**	**₱31,246.01**

Purchase of Services from Non-residents - ₱4,002,664.78

In support of its input VAT on services rendered by a non-resident, petitioner presented BIR Forms No. 1600 or the *Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld* for the months of August and September, duly filed by petitioner on September 7, 2018 and October 10, 2018, respectively, with the BIR, with the following details:[73]

Exhibit No.	Period Covered	eFPS Filing Reference No.	Date	Tax Base	12% Withholding VAT
"P-120"	August 2018	171800026764721	7 September 2018	₱ 12,299,535.35	₱ 1,475,944.24
"P-121"	September 2018	171800027204612	10 October 2018	21,056,004.46	2,526,720.54
			Total	**₱33,355,539.81**	**₱4,002,664.78**

[72] See ICPA's Remarks column, Annex C, Exhibit "P-18", Docket, p. 385.
[73] Exhibits "P-120" and "P-121", ICPA USB marked as Exhibit "P-18-1"; Annex B, Exhibit "P-18", Docket, p. 384.

The total amount of ₱4,002,664.78 was declared by petitioner in its Quarterly VAT Return for the third quarter of 2018,[74] *albeit* as *"Creditable VAT Withheld"*. Petitioner also submitted the eFPS Payment Details, where it was disclosed that petitioner paid the BIR the amounts of ₱1,475,944.24[75] and ₱2,526,720.54[76] or the aggregate amount of ₱4,002,664.78. Verily, the input VAT of ₱4,002,664.78 represents petitioner's valid input VAT.

Thus, for purposes of compliance with the *seventh* requisite, out of the total declared input VAT of ₱4,175,976.96, only the amount of ₱4,133,940.15 represents petitioner's valid input VAT for the third quarter of TY 2018, as computed below:

Input VAT claim		**₱ 4,175,976.96**
Less: Disallowances		
As found by the ICPA	₱ 10,790.80	
As found by the Court	31,246.01	42,036.81
Valid input VAT		**₱4,133,940.15**

The input VAT are attributable to zero-rated sales.

To reiterate, the *eighth* requisite is to the effect that 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 of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.

As mentioned earlier, petitioner reported total sales/receipts in the aggregate amount of ₱19,920,028.81, which is comprised **entirely** of zero-rated receipts for the third quarter of 2018. Therefore, its input VAT is entirely attributable thereto. *Apropos*, the input taxes of taxpayers engaged in purely zero-rated or effectively zero-rated transactions are attributable to the zero-rated or effectively zero-rated activity as they are not engaged in any other category for VAT purposes. All its purchases of goods and services are made in relation to or caused by its zero-rated or effectively zero-rated activities.[77]

Thus, for purposes of, and, as regards petitioner's compliance with, the *eighth* requisite, considering that petitioner had no other type of sales

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[74] Line 26B, Part II, Exhibit "P-3", Docket, p. 489.
[75] Exhibit "P-120-1", ICPA USB marked as Exhibit "P-18-1".
[76] Exhibit "P-121-1", ICPA USB marked as Exhibit "P-18-1".
[77] *Commissioner of Internal Revenue vs. Toledo Power Company*, G.R. Nos. 255324 and 255353, April 12, 2023.

except zero-rated sales, the entire substantiated input VAT of ₱4,133,940.15 is attributable thereto.

The subject input taxes have not been applied against output taxes during and in the succeeding quarters.

Having determined that petitioner had valid input VAT attributable to its zero-rated receipts, the Court shall now determine whether the same was not applied against its output VAT liability during and in the succeeding quarters, relative to the *ninth* requisite for the successful prosecution of an input VAT refund claim.

Considering that petitioner had no 12% VATable sales for the third quarter of TY 2018, it had no output VAT against which the claimed input VAT of ₱4,175,976.96 may be applied or credited. Therefore, no part of its available input VAT was utilized in the same period.

Furthermore, although the claimed input VAT amount of ₱4,175,976.96, which necessarily includes the substantiated input VAT of ₱4,133,940.15, was carried over by petitioner in the succeeding quarters,[78] the same remained unutilized until it was deducted as *"VAT Refund/TCC claimed"*[79] in its Quarterly VAT Return for the second quarter of 2020. Accordingly, the subject claim no longer formed part of the excess input VAT of ₱84,047,427.52[80] as of the end of the second quarter of 2020. Such being the case, the claimed input VAT could not have been carried over or utilized in the succeeding taxable quarters. Thus, the Court finds that petitioner complied with the *ninth* requisite for the grant of the input VAT claimed for refund or issuance of tax credit certificate.

In sum, petitioner has sufficiently proven its entitlement to the refund/tax credit certificate in the reduced amount of ₱4,133,940.15, representing the unutilized input VAT attributable to its zero-rated receipts for the third quarter of TY 2018.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED.**

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78 Exhibits "P-4", "P-4-1", "P-4-2", "P-5" to "P-5-12" and "P-6" to "P-6-10", Docket, pp. 490 to 543; Exhibits "P-124" to "P-136", ICPA USB marked as Exhibit "18-1".

79 Line 23D, with an aggregate amount of ₱5,469,607.10, representing input VAT for the 2nd and 3rd quarters of taxable year 2020 in the respective amounts of ₱1,293,630.14 and ₱4,175,976.96, Exhibit "P-6-8", Docket, p. 539.

80 Line 29, Exhibit "P-6-8", Docket, p. 539.

Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner, in the reduced amount of **₱4,133,940.15**, representing the unutilized input Value-Added Tax attributable to its zero-rated sales for the third quarter of taxable year 2018.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Division Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice