REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PILIPINAS KYOHRITSU, INC., *Petitioner,*	**CTA Case No. 9706**
	Members:
	CASTAÑEDA, JR., *Chairperson,* and **BACORRO-VILLENA,** *JJ.*
- versus –	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated:
	JUN 3 0 2020 2:01 pm

x---x

DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

This case involves a Petition for Review filed by petitioner Pilipinas Kyohritsu Inc. against respondent Commissioner of Internal Revenue on 30 October 2017 praying for the refund of its alleged unutilized input Value-Added Tax (VAT) for the periods April to June 2015 [1st Quarter of Fiscal Year (FY) ending 31 March 2016] and July to September 2015 (2nd Quarter of FY ending 31 March 2016] in the aggregate amount of ₱23,175,145.79.[1]

THE PARTIES

Petitioner is a duly registered taxpayer in the Bureau of Internal Revenue (BIR) under Certificate of Registration Nos.

[1] Par. I, Statement of the Case, Pre-Trial Order dated April 16, 2018, Docket – Vol. I, p. 458.

OCN8R0000044554[2] and OCN8RC0000906901E[3]. It is also a registered entity in the Board of Investments (BOI).[4]

Respondent is the Commissioner of Internal Revenue, who was duly appointed and is empowered to perform the duties of his office, including the power to grant or deny tax refunds pursuant to Section 112(c) of the Tax Code, as amended, by Republic Act (RA) 8424, otherwise known as the "Tax Reform Act" of 1997, with office address at BIR National Office Building, Agham Road, Diliman, Quezon City.[5]

THE FACTS

For FY ending March 31, 2016, petitioner submitted the following:

Period	Monthly VAT Declaration/VAT Returns	Date of filing
April 2015	Monthly VAT Declaration[6]	May 22, 2015
May 2015	Monthly VAT Declaration[7]	June 23, 2015
1st Quarter – FY 2016 (April 1, 2015 to June 30, 2015)	Quarterly VAT Return[8]	July 23, 2015
1st Quarter – FY 2016 (April 1, 2015 to June 30, 2015)	Amended Quarterly VAT Return[9]	February 18, 2017
July 2015	Monthly VAT Declaration[10]	August 21, 2015
August 2015	Monthly VAT Declaration[11]	September 23, 2015
2nd Quarter – FY 2016 (July 1, 2015 to September 30, 2015)	Quarterly VAT Return[12]	October 22, 2015
2nd Quarter – FY 2016 (July 1, 2015 to September 30, 2015)	Amended Quarterly VAT Return[13]	February 18, 2017

ge

[2] Exhibit "P-2", Docket – Vol. II, p. 734.
[3] Exhibit "P-1", Docket – Vol. II, p. 732.
[4] Exhibits "P-4", "P-5", "P-6", and "P-7", Docket – Vol. II, pp. 735, 741, 747, and 753, respectively.
[5] Par. 1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 414.
[6] Exhibit "P-10", Docket – Vol. II, pp. 774 to 775.
[7] Exhibit "P-10.1", Docket – Vol. II, pp. 776 to 777.
[8] Exhibit "P-10.2", Docket – Vol. II, pp. 778 to 779.
[9] Exhibit "P-10.3", Docket – Vol. II, pp. 780 to 781.
[10] Exhibit "P-11", Docket – Vol. II, pp. 782 to 783.
[11] Exhibit "P-11.1", Docket – Vol. II, pp. 784 to 785.
[12] Exhibit "P-11.2", Docket – Vol. II, pp. 786 to 787.
[13] Exhibit "P-11.3", Docket – Vol. II, pp. 788 to 789.

On June 16, 2017, petitioner filed an administrative claim for refund covering the period of 1st and 2nd quarters of FY ending March 31, 2016.[14] In support to the said claim, petitioner submitted complete documents.[15]

Due to inaction of respondent, petitioner filed the present *Petition for Review* on October 30, 2017.[16] The present case was initially raffled to this Court's First Division.

Respondent interposed the following in his *Answer* filed on December 22, 2017:[17]

> "3.1 Petitioner's claim of ₱23,175,145.79 representing alleged unutilized creditable input Value-Added Tax (VAT) for the period April to June 2015 and July to September 2015, is subject to determination of sufficiency of proper documentation.
>
> 3.2 In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.
>
> 3.3 Petitioner must show that it has complied with the provisions of Section 112 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit.
>
> 3.4 In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements therefor ***(Western Mindanao Power Corporation vs. CIR, G.R. No. 181136, 13 June 2012, 672 SCRA 350, 362).***
>
> 3.5 Respondent humbly manifests that petitioner must prove that it was able to substantiate its claim and that it is entitled to the refund being prayed for. Petitioner's failure to comply with the invoicing and

---

[14] Exhibits "P-9" to "P-9-3", Docket – Vol. II, pp. 764, 766 to 767, 769, 771 to 772.
[15] Exhibits "P-13" and "13-1", Docket – Vol. II, pp. 794 to 795 and 796 to 797.
[16] Docket – Vol. I, pp. 10 to 24.
[17] Docket – Vol. I, pp. 165 to 174.

accounting requirements laid down in Sections 113, 114 and 236 of the NIRC of 1997, as amended, and its implementing regulations under RR 16-2005 would be fatal to its claim. In addition, petitioner must prove that it has strictly complied with the submission of all supporting and relevant documents provided under Revenue Memorandum Order (RMO) No. 53-98 and other existing rules and regulations to warrant the grant of the application for refund.

3.6 Well to consider, taxes paid and collected by the Bureau of Internal Revenue (BIR) are presumed to have been made in accordance with law, rules and regulations and the burden to prove otherwise is upon petitioner.

3.7 Likewise, for a judicial claim for refund of input VAT to prosper, the petitioner must prove that there must be (a) zero-rated or effectively zero-rated sales; (b) that input taxes were incurred or paid; (c) that the input taxes are directly attributable to zero-rated or effectively zero-rated sales; (d) that the input taxes were not applied against any output VAT liability; and (e) the claim for refund/tax credit must be filed within the two year prescriptive period.

3.8 To support its claim, it is imperative for petitioner to prove and present the following:

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

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

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

d. That the input taxes of ₱9,544,246.41 allegedly incurred by petitioner was directly attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;

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

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

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

3.9 With all due respect, respondent humbly manifests that petitioner has the burden of proving that it was able to substantiate its claim to be entitled to the refund being prayed for. Compliance with the aforementioned provisions of the NIRC of 1997, as amended, as well as the existing rules and regulations are necessary to establish its claim, that indeed there is the presence of valid zero-rated sales which would warrant the grant of administrative application for refund of its unapplied/unutilized input VAT as well as the submission of supporting documents to corroborate the claim being applied for.

3.10 Petitioner must prove that it has submitted complete documents to substantiate its administrative claim for refund. Such is a requirement, otherwise, the administrative body will have sufficient reason to deny the claim. As held by the Honorable Supreme Court in the case of Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. 145526, 16 March 2007:

> 'Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceedings in that court. First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. **<u>Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit.</u>** Second, cases filed in the CTA are

litigated de novo. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.' (emphasis and underscoring supplied)

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

VALUE-ADDED TAX

(For audit involving Claim for Refund/TCC)

A.) Requirements from Taxpayer

I. Requirements mention in Annex B

II. Additional General Requirements

1) 3 copies of 'Application for VAT Credit/Refund'

2) Summary List of Local Purchases specifying the following:

XXX XXX XXX

3) Photocopies of VAT purchase invoices for purchase of goods and official receipts for purchase of services. (The invoices/official receipts must be arranged according to the summary list)

4) Summary of importations made during the period with the following details:

XXX XXX XXX

5) Photocopies of invoices, import entry documents, official receipts or confirmation receipts evidencing payment of VAT. *gr*

(Segregate documents paid by cash from those paid by tax debit memo)

6) VAT Returns filed for the quarter showing that the amount applied for refund/TCC has been reflected as a deduction from the total available input tax, as well as VAT Return for the succeeding quarter

7) Certification of taxpayer showing the amount of Zero-rated Sales, Taxable Sales and Exempt Sales

8) A statement showing the amount and description of the sale of goods and services, name of persons or entities (except in case of exports) to whom the goods or services were sold and date of the transaction, where the applicant's zero-rated transactions are regulated by certain government agency.

9) Articles of Incorporation – for first time filers

10) Sales Contract/Agreement

11) BOI Certificate of Registration

12) BIR Certificate of Registration

13) Certification from BOI, DOF, BOC, EPZA, etc., that subject taxpayer has not filed similar claim for refund covering the same period.

14) Sworn statement that ending inventory as of the close of the period covered by the Claim has been used directly or indirectly in the products subsequently exported as supported by export documents, if the applicant is 100% exporter.

15) Documents of liquidation evidencing the actual utilization of the raw materials in the manufacture of goods at least 70% of which

has been actually exported, if the applicant is an indirect exporter.

16) Copy of the ITR and Certified Financial Statements, if applicable.

17) Beginning and ending inventory of raw materials, work-in-process, finished goods, supplies and materials.

Additional Specific Requirements

1) For Zero-Rated Sales of Services (contractors, mining, etc)
a. Authenticated copy/ies of the contract/s showing the person/s for whom the services were rendered, amount of consideration, description of the services and documents evidencing actual payments.

b. Photocopies of official receipts and billings together with a summary of the date of billing, name of principal, official receipt number, date of receipt, amount in foreign currency and the corresponding value thereof, date of remittance, name of bank, bank credit memo number and amount remitted in pesos.

c. Bank credit memoranda and certificate from the BSP with information similar to 1-c (export sales)

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

VALUE-ADDED TAX

A) Requirements from Taxpayers
1) Proof of claimed tax credits
2) Proof of Tax compliance Certificates applied
3) Xerox copy of used Tax Credit Certificate (TCC) with annotation of issued TDM at the back, if applicable
4) Proof of payment of deficiency tax, if any

a) current year/period
b) previous year/period

5) Certification of the appropriate government agency as to taxpayer's entitlement to tax incentives, if applicable
6) Xerox copies of the Official Receipts evidencing VAT payment on imported purchases, if applicable
7) Proof of exemption under special law, if applicable
8) Certification of the appropriate regulatory agency as to the exempt or zero-rated sales of the taxpayer under its regulatory supervision, if applicable
9) Certificate of Registration issued by the appropriate regulatory agency, together with the conditions attached to such registration, if applicable
10) Proof of 'Approval for Effective Zero-Rating of Sales', if applicable
11) Sample invoice/s for 'Export/Exempt Sales', if applicable
12) Proof that the acceptable foreign currency exchange proceeds on export sales/foreign currency denominated sales had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), if applicable

3.12 The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of the government for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people ***(Mactan Cebu International Airport Authority vs. Marcos, 261 SCRA 667, 690)***. Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that claims for refund are required to be done within certain time frames. In the instant petition, the failure of petitioner to comply with such periods is fatal to its cause.

3.13 Moreover, petitioner's failure to submit documents supporting its claim for refund makes its administrative claim for refund pro-forma. This pro-forma administrative claim should not be taken as proper compliance with the requirements of the law that an administrative claim for refund should have been filed prior to the institution of a judicial claim for refund. Thus, without a validly and duly filed administrative claim for refund, the Honorable Court is without jurisdiction to entertain the Petition for Review. Petitioner's failure to comply with a condition precedent prior to the institution of its petition for review makes it dismissible for absence of jurisdiction on the part of the Honorable Court.

3.14 The claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. After all tax refunds, like tax exemptions, are construed strictly against the taxpayer ***(Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332, both cited in Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5392 promulgated October 30, 1998)***.

3.15 Partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language ***(Sps. Aguilar vs. Commissioner of Internal Revenue, et al., CA G.R.SP No. 16432, March 30, 1999)***. Being in the nature of tax exemptions, these claims are regarded as in derogation of sovereign authority and to be construed strictissimi juris against the claimant and liberally in favor of the taxing authority ***(Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation, 204 SCRA 377)***.

3.16 Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation ***(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and such, they are looked upon with disfavor ***(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)***."

The pre-trial conference was set and held on March 1, 2018.[18] Then, *Respondent's Pre-Trial Brief* was filed on February 19, 2018,[19] while petitioner's *Pre-Trial Brief* was submitted on February 22, 2018.[20] The Court noted the same.[21]

On March 15, 2018, the parties submitted their *Joint Stipulation of Facts and Issues*,[22] and the Court approved the same.[23] The Court then terminated the pre-trial.[24] Consequently, a Pre-Trial Order was issued on April 16, 2018.[25]

Upon motion of petitioner,[26] the Court commissioned Mr. Gary S. Pagaspas as the Independent Certified Public Accountant (ICPA).[27]

On April 26, 2018, respondent transmitted to this Court the *BIR Records* of the present case,[28] which the Court noted.[29]

Then, the ICPA submitted his Report on May 28, 2018;[30] and the Court noted such submission.[31] Subsequently, the ICPA added one page to the ICPA Report.[32]

As trial ensued, petitioner presented documentary and testimonial evidence. As part of its testimonial evidence, petitioner proffered the testimonies of Ms. Edna Luisa Lopez,[33] petitioner's Manager of the Finance and Management Accounting Department; Mr. Salvador Laylo, Jr.,[34] petitioner's Manager of the Business

---

[18] Notice of Pre-Trial Conference, Docket – Vol. I, pp. 176 to 177; Order dated March 1, 2018, Docket – Vol. I, pp. 407 to 408.
[19] Docket – Vol. I, pp. 182 to 184.
[20] Docket – Vol. I, pp. 186 to 195.
[21] Minutes Resolution dated February 22, 2018, Docket – Vol. I, p. 402; Minute Resolution dated February 26, 2018, Docket – Vol. I, p. 404.
[22] Docket – Vol. I, pp. 414 to 421.
[23] Resolution dated March 27, 2018, Docket – Vol. I, p. 448.
[24] *Id.*
[25] Pre-Trial Order dated April 16, 2018, Docket – Vol. I, pp. 458 to 468.
[26] *Motion for the Appointment of an Independent Certified Public Accountant*, Docket – Vol. I, pp. 423 to 427.
[27] Minutes of the hearing held on, and Order dated, April 12, 2018, Docket – Vol. I, pp. 449 to 451 and 453 to 454; Oath of Commission dated April 12, 2018, Docket – Vol. I, p. 452.
[28] *Compliance*, Docket – Vol. I, pp. 672 to 675.
[29] Minute Resolution dated May 7, 2017, Docket – Vol. I, pp. 677 to 678.
[30] *Report of Independent CPA*, Docket – Vol. 1, pp. 687 to 688.
[31] Minute Resolution dated May 30, 2018, Docket – Vol. I, p. 689.
[32] *Transmittal Letter*, Docket – Vol. I, pp. 697 to 698.
[33] Exhibit "P-26", Docket – Vol. I, pp. 367 to 382; Order dated April 17, 2018, Docket – Vol. I, pp. 654 to 655.
[34] Exhibit "P-27", Docket – Vol. I, pp. 383 to 391; Order dated May 22, 2018, Docket – Vol. I, pp. 684 to 685; Minutes of the hearing held on May 22, 2018, Docket – Vol. II, pp. 885 to 886.

Planning Department, Import/Export Section; Ms. Evelyn Ocampo,[35] petitioner's Assistant Manager of the Management Accounting Section; and Mr. Garry S. Pagaspas,[36] the Court-commissioned ICPA.

Petitioner filed its *Formal Offer of Evidence with Motion to Set One Commissioner's Hearing* on August 1, 2018.[37] Respondent submitted his *Comment (Re: Petitioner's Formal Offer of Evidence)* on August 7, 2018.[38]

Pursuant to the Court's Resolution dated August 8, 2018,[39] a Commissioner's Hearing was held on September 11, 2018.[40]

On September 21, 2018, the present case was transferred to this Court's Second Division.[41]

The Court admitted petitioner's Exhibits "P-1", "P-2", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-9-1", "P-9-2", "P-9-3", "P-13", "P-13-1", "P-10", "P-10.1", "P-10.2", "P-10.3", "P-11", "P-11.1", "P-11.2", "P-11.3", "P-14", "P-14.1", "P-14.2", "P-14.3", "P-15", "P-15.1", "P-15.2", "P-15.3", "P-16", "P-16.1", "P-16.2", "P-16.3", "P-17", "P-17-1", "P-17-2", "P-18", "P-18-1", "P-18-2", "P-18-3", "P-19", "P-19-1", "P-19-2", "P-19-3", "P-20", "P-20-1", "P-20-2", "P-20-3", "P-21", "P-21-1", "P-21-2", "P-22", "P-22-1", "P-23", "P-23-1", "P-24", "P-24-1", "P-25", "P-25-1", "P-12", "P-12-2", "ICPA Exhibits P-32.1 to P-32.12, ICPA Exhibits P-34 to P-34.1, and ICPA Exhibit P-35", "ICPA Exhibits 33.1 to P-33.579.2, ICPA Exhibits P-36 to P-36.1, and ICPA Exhibit P-37", "ICPA Exhibit P-38, ICPA Exhibits P-40 to P-40.1", "ICPA Exhibit P-32", "ICPA Exhibits P-49 to P-51", "P-29", "P-29-1", "P-30", "P-33", "P-34", "P-31", "P-31-1", "P-32", "P-32-1", "P-26", "P-26-1", "P-27", "P-27-1", "P-28", and "P-28-1", except Exhibit "P-32.12" which was denied admission.[42] In view of the denial of admission of the said exhibit, petitioner filed a *Motion for Reconsideration* on March 7, 2019.[43] The Court subsequently admitted Exhibit "P-32.12".[44]

---

[35] Exhibit "P-28", Docket – Vol. I, pp. 627 to 635; Order dated July 17, 2018, Docket – Vol. I, pp. 716 to 717; Minutes of the hearing held on July 17, 2018, Docket – Vol. II, pp. 882 to 884.
[36] Exhibit "P-29" (*Judicial Affidavit of Garry S. Pagaspas*), Docket – Vol. I, pp. 428 to 435; Minutes of the hearing held on, and Order dated, April 12, 2018, Docket – Vol. I, pp. 449 to 451 and 453 to 454; Exhibit "P-31", Docket – Vol. I, pp. 701 to 714; Order dated July 17, 2018, Docket – Vol. I, pp. 716 to 717; Minutes of the hearing held on July 17, 2018, Docket – Vol. II, pp. 882 to 884.
[37] Docket – Vol. II, pp. 719 to 731.
[38] Docket – Vol. II, pp. 866 to 868.
[39] Docket – Vol. II, p. 871.
[40] Commissioner's Report dated September 11, 2018, Docket – Vol. II, pp. 872 to 873.
[41] Order dated September 21, 2018, Docket – Vol. II, p. 880.
[42] Resolution dated February 14, 2019, Docket – Vol. II, pp. 888 to 889.
[43] Docket – Vol. II, pp. 893 to 899.
[44] Minutes of the hearing held on, and Order dated, March 13, 2019, Docket – Vol. II, pp. 901 to 902.

Respondent's counsel manifested during the hearing on March 13, 2019 that there was no report of investigation submitted by the Revenue Officer, thus, she would no longer present evidence.[45]

After the Court granted both respondent's and petitioner's motions,[46] respondent's *Memorandum* was filed on April 30, 2019,[47] and *Memorandum [For the Petitioner]* was submitted on May 14, 2019.[48]

On May 21, 2019, the present case was deemed submitted for decision.[49]

THE ISSUES

As stipulated by the parties, the sole issue of this case is whether or not the petitioner is entitled to the refund in the total amount of ₱23,175,145.79, representing its unutilized input VAT for the periods April to June 2015 and July to September 2015.[50]

Petitioner's arguments:

Petitioner contends that it was entitled to a refund/tax credit amounting to ₱22,621,224.83. Petitioner alleges that it presented evidence proving its compliance with the mandated requisites, thus, it was entitled to a refund for the input taxes paid for the 1st and 2nd quarters of the FY ending 31 March 2016. Allegedly, petitioner is actually engaged in zero-rated sales for the 1st and 2nd quarters of the FY ending 31 March 2016. According to petitioner, the input taxes it paid which is subject of its tax refund, were attributable to its zero-rated sales.

Allegedly, the ICPA has found that supporting documents of input VAT amounting to ₱10,005,035.13 did not contain all details on invoicing and substantiation requirements under Section 113 and 237

---

[45] Minutes of the hearing held on, and Order dated, March 13, 2019, Docket – Vol. II, pp. 901 and 902.
[46] *Motion for Extension of Time to File Memorandum*, Docket – Vol. II, pp. 903 to 905; Order dated April 15, 2019, Docket – Vol. II, p. 911; *Motions for Extension of Time*, Docket – Vol. II, pp. 907 to 909 and 912 to 914; Order dated April 22, 2019, Docket – Vol. II, p. 916.
[47] Docket – Vol. II, pp. 917 to 923.
[48] Docket – Vol. II, pp. 925 to 941.
[49] Resolution dated May 21, 2019, Docket – Vol. II, p. 952.
[50] Par. II, Issues, JSFI, Docket – Vol. I, p. 415.

of the Tax Code, as amended, in relation to Section 4 of Revenue Regulation No. 16-2005. Petitioner claims that the ICPA erred when the latter reported the amount of ₱9,817,032.52 out of ₱10,005,035.13 to be lacking on invoicing and substantiation requirements. The alleged supporting documents which did not conform with the laws and rules and regulations amounting to ₱9,817,032.52, have been broken down as follows: ₱2,128,413.94 for having handwritten details in looseleaf or computerized accounting system (CAS) invoice/receipt with signatures on handwritten information; ₱5,221,762.46 for having mixed handwritten and printed details in documents not identified as either looseleaf or CAS permit with signatures on handwritten information, and ₱2,466,856.12 for having different handwriting of details in documents with signatures.

According to petitioner, neither Sections 113 and 237 of the Tax Code nor Section 4-113-1 of the Revenue Regulations (RR) No. 16-2005 indicates that a receipt/invoice will not comply with the requirements of the aforementioned sections if there are handwritten details/information in said receipts/invoices. Even Revenue Memorandum Circular No. 62-2005 has not allegedly stated that the information/details required cannot be written down by hand; hence, petitioner stands that it just requires the information be stated in the receipt or invoice. Petitioner asserts that its receipts or invoices comply with the invoicing requirements.

Respondent's counter-arguments:

Respondent counters that the law requires only the creditable input taxes, which were directly attributable to zero-rated or effectively zero-rated sales, may be refunded. According to respondent, the input tax must come from purchases of goods that form part of the finished product of the taxpayer. Allegedly, it must be directly used in the chain of production.

THE COURT'S RULING

Pursuant to the provisions of Sections 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended ("Tax Code"), jurisprudence has laid down certain requisites which must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT. Said requisites are classified into certain categories, to wit: *gr*

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

1. the claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[51]
2. that 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 120 days, the judicial claim has been filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[52]

With reference to the taxpayer's registration with the BIR:

3. the taxpayer is a VAT-registered person;[53]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[54]
5. for zero-rated sales under Sections 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[55]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[56]
7. the input taxes are due or paid;[57]
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

---

[51] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 155732, 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.*, G.R. No. 182364, August 3, 2010.

[52] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

[53] *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.*, supra.

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] *Id.*

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;[58] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[59]

Petitioner's administrative and judicial claims were timely filed.

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

The present claim covers two (2) quarters of FY 2016 ending March 31, 2016. Counting two (2) years from the respective close of the said quarters, the following table indicates the pertinent last days for the filing of an administrative claim for the said two (2) quarters, to wit:

FY 2016	Period	Close of the Taxable Quarter	Last Day to File Administrative Claim
1st Quarter	April 1, 2015 to June 30, 2015	June 30, 2015	June 30, 2017
2nd Quarter	July 1, 2015 to September 30, 2015	September 30, 2015	September 30, 2017

Considering that petitioner's administrative claim *[Application for Tax Credits/Refunds* (BIR Form No.1914)], covering the said two (2) quarters, was filed with the BIR on June 16, 2017[60], the same was timely made.

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 120-day period under the afore-quoted Section 112(C). Considering that there is no indication that respondent issued a decision relative to petitioner's

[58] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.
[59] *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.*, supra.
[60] Exhibits "P-9" to "P-9-3", Docket – Vol. II, pp. 764, 766 to 767, 769, 771 to 772.

administrative claim, the determination of the 120+30-day periods, as applied to this case, is shown as follows:

Date of Filing of Administrative Claim	End of 120 days for the CIR to decide the claim	End of 30 days from expiration of the 120 days
June 16, 2017	October 14, 2017	November 13, 2017

It appears that the present *Petition for Review* was filed on October 30, 2017[61], hence, petitioner's judicial claim was likewise seasonably filed.

Such being the case, petitioner fulfilled the above-stated *first* and *second* requisites.

Petitioner is a VAT-registered person.

Petitioner complied with the *third* requisite considering that it is a VAT registered taxpayer with BIR Certificate of Registration No. OCN8R0000044554 dated January 1, 1996 with Taxpayer's Identification Number (TIN) 000-269-082-000.[62]

Petitioner had zero-rated or effectively zero-rated sales during the 1st and 2nd quarters of Fiscal Year ending March 31, 2016 (FY 2016).

The *fourth* and *fifth* requisites require that the taxpayer is engaged in zero-rated or effectively zero-rated sales, and 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 by RA No. 9337, the acceptable foreign currency exchange proceeds must have been duly accounted for in accordance with the BSP rules and regulations.

Petitioner claims that during the 1st and 2nd quarters of FY 2016, it exported and sold its products to various foreign clients. Being in the nature of export sales, the same are allegedly zero-rated

[61] Docket – Vol. I, p. 10.
[62] Exhibit "P-2", Docket – Vol. II, p. 734.

for VAT purposes under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

In his Report, Mr. Garry S. Pagaspas, the Court-commissioned ICPA, accounted petitioner's total zero-rated sales in the amount of ₱3,771,683,704.63, as follows:[63]

Particulars	USD	PhP
Actual Export Sale of Services	459,659.40	20,594,685.41
Actual Export Sale of Goods	82,673,896.55	3,743,326,205.87
Sale to PEZA-registered Entities	171,351.00	7,762,813.35
Total Zero-rated Sales	**83,304,906.95**	**3,771,683,704.63**

Based on the above breakdown, petitioner has three (3) sources of zero-rated sales, to wit:

(i) sale of service under Section 108(B)(2) of the NIRC of 1997, as amended;
(ii) actual export sale of goods under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended; and
(iii) sale to Philippine Economic Zone Authority (PEZA)-registered entities under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended.

i) Sale of service under Section 108(B)(2) of the NIRC of 1997, as amended (₱20,594,685.41)

As gleaned from the Summary of Export Sales of Service[64], the alleged export sales of service in the amount of ₱20,594,685.41 were made to Sumitomo Wiring Systems, Ltd. ("SWS-JAPAN").

Pertinent to the determination of whether the said sales qualify for VAT zero-rating, Section 108(B)(2) of the NIRC of 1997, as amended, states:

"SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –

[63] Exhibit "P-32" (ICPA Report, p. 12, Table 7).
[64] ICPA Exhibit "P-32".

xxx xxx xxx

(B) *Transactions Subject to Zero Percent (0%) Rate.* - **The following services performed in the Philippines by VAT- registered persons shall be subject to zero percent (0%) rate:**

(1) Processing, manufacturing or repacking of goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);

(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);" (*Emphasis supplied*)

Based on the foregoing provision, certain essential elements must be present for a sale or supply of services to be subject to the VAT rate of zero percent (0%), under Section 108(B)(2) of the NIRC of 1997, as amended, to wit:

1. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a nonresident person not engaged in business who is outside the Philippines when the services were performed;[65]

2. The services fall under any of the categories under Section 108(B)(2),[66] or simply, the services rendered

[65] *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017; *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007; *Accenture, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012.

[66] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

should be other than *"processing, manufacturing or repacking of goods"*;[67]

3. The service must be performed in the Philippines[68] by a VAT-registered person; and

4. The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[69]

Relative to the *first* essential element, petitioner presented the *Certification of Non-Registration of Company* dated April 5, 2018[70] issued by the Securities and Exchange Commission (SEC) to the effect that the records of the latter do not show the registration of SWS-JAPAN as either a corporation or a partnership. Such document, however, failed to prove that SWS-JAPAN, petitioner's client, is a non-resident foreign corporation doing business outside the Philippines.

As consistently ruled by this Court in a number of cases,[71] to be considered as a non-resident foreign corporation doing business outside the Philippines, such must be proven by presenting, for each corporation involved, at the very least, **both** SEC Certification of Non-Registration **and** proof of incorporation or registration, and that there is no other indication which would disqualify said entity in being classified as a nonresident foreign corporation. Since the Court cannot ascertain from the Certification of Non-Registration alone whether SWS-JAPAN is a non-resident foreign corporation doing business outside the Philippines, petitioner failed to comply with the *first* essential element.

[67] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007.
[68] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.
[69] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.
[70] ICPA Exhibit "P-34".
[71] *NCR Cebu Development Center, Inc. vs. Commissioner of Internal* Revenue, CTA Case No. 9255, April 4, 2019; *Deutsche Knowledge Services Pte. Ltd. vs. Commissioner of Internal Revenue*, CTA Case No. 9079, January 9, 2018; *Deutsche Knowledge Services Pte. Ltd. vs. Commissioner of Internal Revenue*, CTA Case No. 8065, September 20, 2017; *Deutsche Knowledge Services Pte. Ltd. vs. Commissioner of Internal Revenue*, CTA Case Nos. 8623, 8656, 8661 & 8685, August 4, 2017; *Emerson Electric (Asia) Limited-ROHQ vs. Commissioner of Internal Revenue*, CTA Case No. 8657, December 21, 2016; *Procter & Gamble Asia, Pte. Ltd. vs. Commissioner of Internal Revenue*, CTA Case No. 7820, June 22, 2016; *Deutsche Knowledge Services Pte. Ltd. vs. Commissioner of Internal Revenue*, CTA Case No. 7808, December 16, 2014 affirmed *in toto* by the CTA En Banc on August 16, 2016 in CTA EB No. 1290.

In relation to the *second* and *third* essential elements, the Engineering Service Agreement[72] made by and between petitioner and SWS-JAPAN was offered as evidence and admitted by the Court. The said agreement contains, in part, the following statements:

> "ARTICLE I. STATEMENT OF SERVICES
> (a) Services requested by SWS
> During the term of the agreement, PKI shall furnish SWS with <u>its services for the input and maintenance of designing data of automotive wiring harnesses</u> in the capacity of an independent contractor. Xxx.
>
> ARTICLE 10. INDEMNIFICATION
>
> xxx xxx xxx
>
> (b) PKI agrees that in the performance of the services hereunder it will comply with all applicable national, state, or local safety protection requirements, rules, regulations, and laws (public or private) of the Philippines, <u>while performing services anywhere in the Philippines</u>." *(Underscoring supplied)*

Based on the aforesaid agreement, petitioner has rendered services to SWS-JAPAN for the input and maintenance of designing data of automotive wiring harnesses. Nonetheless, the agreement does not state whether the services were exclusively performed in the Philippines, or part of the services were performed in the place where its client was located. Although the agreement includes provision for indemnification, stating that petitioner will comply with Philippine laws "while performing services anywhere in the Philippines", it connotes that petitioner may render services outside Philippines.

Likewise, Mr. Salvador Laylo, petitioner's Manager in its Business Planning Department, Import/Export Section, and one of its witnesses, did not testify any matters on the sale of services. As such, the Court cannot determine if the services performed by petitioner to its client, SWS-JAPAN, were done in the Philippines.

As regards the *fourth* essential element, petitioner presented a Certificate of Inward Remittance[73] issued by The Bank of Tokyo- *gz*

---

[72] Exhibit "P-32.12", Docket – Vol. II, pp. 947 to 951.
[73] ICPA Exhibit "P-35".

Mitsubishi UFJ, Ltd., Manila Branch purportedly showing the foreign currency remittances of SWS-JAPAN to petitioner.

Corollary thereto, the said foreign currency remittances must be duly supported by VAT zero-rated official receipts (ORs), in accordance with Section 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, which provide that a VAT taxpayer, like herein petitioner, shall for every lease of goods or properties, and for every sale, barter or exchange of services, issue a VAT OR, which must contain the information stated in the said provisions, 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);
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:
>
> xxx xxx xxx
>
> (c) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;
>
> xxx xxx xxx

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

Furthermore, Section 4.113-1(A)(2), B(1) and (2)(c) of Revenue Regulations (RR) No. 16-2005, which implements the foregoing, also provides:

"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:

xxx xxx xxx

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

In the present case, however, the foreign currency remittances were not supported by VAT zero-rated ORs. As such, it cannot be verified whether the said foreign currency remittances actually pertain to the alleged zero-rated sales of services. Thus, petitioner, likewise, failed to comply with the *fourth* essential element that the services were paid in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.

Considering the foregoing, petitioner fell short in establishing that its sales of services amounting to ₱20,594,685.41 qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

ii) Actual export sale of goods under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended (₱3,743,326,205.87)

Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, states:

> "SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* –xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* -The term **'export sales'** means:
>
> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any

> shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"

Based on the foregoing, in order for an export sale to qualify as zero-rated, the following essential elements must be present:

1. the sale was made by a VAT registered person;
2. there was sale and actual shipment of goods from the Philippines to a foreign country; and
3. the sale was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

As for the *first* essential element, it has already been settled that petitioner is a VAT-registered person.

As for the *second* essential element, in relation to the above stated Section 113(A)(1), (B)(1) and (2)(c) of the NIRC of 1997, as amended, and Section 4.113-1(A)(1), (B)(1) and (2)(c) of RR No. 16-2005, any VAT registered person claiming VAT zero-rated direct export sales must present the following documents:

1. the sales invoice as proof of sale of goods; and
2. the bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country.

Moreover, the sales invoices supporting the export sales must also be duly registered with the BIR, pursuant to Sections 237, in relation to 238, both of the NIRC of 1997, as amended, which respectively provide:

> "SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* - All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, <u>issue duly registered</u> receipts or <u>sales</u> or <u>commercial invoices</u>, prepared at least

> in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service 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." *(Underscoring supplied)*

Thus, only export sales supported by the above stated documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

As confirmed from ICPA's verification of the Summary of Actual Export Sales of Goods[74], petitioner's sales amounting to US$82,705,837.80 or ₱3,744,778,883.84 arise from the export of goods to SWS-JAPAN and Sumitomo Electric Wiring Systems, Inc. ("SEWS-USA") which are properly supported with VAT zero-rated sales invoices, waybills and other export documents.[75]

The said gross sales of US$82,705,837.80 or ₱3,744,778,883.84 was accordingly adjusted with various credit and debit notes from SWS[76] aggregating US$627.48 or ₱29,072.57 and US$32,568.73 or ₱1,481,750.54, respectively, or a net debit of US$31,941.25 or ₱1,452,677.97, resulting to the net sales of US$82,673,896.55 or ₱3,743,326,205.87.[77] gr

---

[74] ICPA Exhibit "P-33".
[75] ICPA Exhibits "P-33.1" to "P-33.579.2".
[76] ICPA Exhibits "P-33.580" to "P-33.585".
[77] Exhibit "P-32" (Report of the ICPA, p. 14, Table 9), Green Folder.

Verily, petitioner satisfactorily complied with the *second* essential element.

As for the *third* essential element, *i.e.,* the sale was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP, petitioner presented the Certificate of Inward Remittance CIR16-355790[78] issued by The Bank of Tokyo-Mitsubishi UFJ, Ltd. Manila Branch and a Reconciliation of Export Sales and Dollar Remittances ("Reconciliation")[79].

However, although the said Certificate of Inward Remittance shows certain amounts (in USD) of remittances from SWS-JAPAN and SEWS-USA, such amounts do not match with the sales amounts per the supporting sales invoices. Neither does the said Reconciliation shows the invoices comprising a particular amount of remittance for a certain date as indicated in the Certificate of Inward Remittance. Since it cannot be ascertained whether the foreign currency remittances actually pertain to the payments for the zero-rated export sales of goods during the 1st and 2nd quarters of FY 2016, petitioner failed to comply with the said *third* essential element.

Thus, petitioner failed to establish that its actual export sales of goods amounting to ₱3,743,326,205.87 qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

iii) Sale to PEZA-registered entities under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended (₱7,762,813.35)

Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, provides:

> "SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* – xxx

[78] ICPA Exhibit "P-35".
[79] ICPA Exhibits "P-36" to "P-36.1".

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

(a) *Export Sales.* - The term '**export sales**' means:

xxx xxx xxx

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

Relative thereto, Section 4.106-5(a)(5) of RR No. 16-2005, as amended by RR No. 4-2007, provides:

"SEC. 4.106-5. *Zero-Rated Sales of Goods or Properties.* – x x x

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

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

xxx xxx xxx

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

'Considered export sales under Executive Order No. 226' shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; *Provided,* That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; *Provided, further,* That *pursuant to EO 226 and other special laws,* even without actual exportation, the following shall be

> considered constructively exported: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones *pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones*; (3) *sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA 7227*; (4) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (5) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not."

The special law applicable to this case is Republic Act (RA) No. 7916, as amended by RA No. 8748, otherwise known as *"The Special Economic Zone Act of 1995"*. Sections 8 and 24 thereof read:

> "SECTION 8. *ECOZONE to be Operated and Managed as Separate Customs Territory.* – **The ECOZONE shall be managed and operated by the PEZA as separate customs territory**.
>
> The PEZA is hereby vested with the authority to issue certificates of origin for products manufactured or processed in each ECOZONE in accordance with the prevailing rules of origin, and the pertinent regulations of the Department of Trade and Industry and/or the Department of Finance." *(Emphasis supplied)*
>
> "SECTION 24. *Exemption form National and Local Taxes.* – Except for real property taxes on land owned by developers, **no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE.** Xxx" *(Emphasis supplied)*

Since the ecozone is viewed as a foreign territory by legal fiction, sales of goods and services made by a VAT-registered person in the Philippine customs territory to an entity registered and operating within the ecozone are considered exports to a foreign country subject to zero percent (0%) VAT. This was elucidated by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.,*[80] to wit:

> "This Court agrees, however, **that PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory**.
>
> xxx An ECOZONE or a Special Economic Zone has been described as —
>
> xxx [S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.
>
> The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.
>
> Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory. *gz*

---

[80] G.R. No. 150154, August 9, 2005.

> Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?
>
> **The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of** goods and **services from the Philippines to a foreign country must be free of VAT**; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT[81]." (*Emphasis supplied*)

Based on the foregoing, in order for an export sale to be qualified for VAT zero-rating under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, the following essential elements must be present:

1.) the sale was made by a VAT registered person; and,
2.) the sale of goods must be to an entity entitled to incentives under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987 ("OIC"), and other special laws.

As determined earlier, petitioner is a VAT-registered person. Hence, the *first* essential element was already fulfilled.

Relative to the *second* essential element, petitioner presented a Certification from PEZA and a letter dated August 25, 2016 of PEZA OIC Deputy Director General for Finance and Administration, Mr. Justo Porfirio Li. Yusingco, showing that its clients, International Wiring Systems (Phils.) Corporation ("IWSPC") and Sumi Philippines Wiring Systems Corporation ("SPWSC"), are registered with PEZA and qualified for VAT zero-rating of its transactions with local suppliers for the years 2014 and 2015.[82]

Thus, petitioner's sales of goods to IWSPC and SPWSC for the 1st and 2nd quarters of FY 2016 qualify for VAT zero-rating pursuant

[81] Now at 12% VAT rate.
[82] ICPA Exhibit "P-40".

to Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, provided that the same are properly supported by VAT zero-rated sales invoices in accordance with the above stated Sections 113(A)(1), (B)(1), (2)(c) and (3), 237 and 238, all of the NIRC of 1997, as amended, in relation to Section 4.113-1(A)(1), (B)(1) and (2)(c) of RR No. 16-2005.

Upon examination of the submitted sales invoices and related delivery receipts[83] in support of petitioner's sales of goods to IWSPC and SPWSC, the undersigned found exceptions worth US$12,978.00 or ₱589,682.52, as detailed below, which pertain to VAT exempt sales as appearing in the corresponding sales invoices:

ICPA Exhibit No.	Name of Client	Invoice No.	Date	Amount (in US$)	Conversion Rate[84]	Amount (in PhP)
1st quarter						
"P-38.12"	IWSPC	2079	Apr. 8, 2015	3,780.00	44.7000	168,966.00
Subtotal				***3,780.00***		***168,966.00***
2nd quarter						
"P-38.31"	IWSPC	2111	Aug. 20, 2015	63.00	45.7400	2,881.62
"P-38.32"	IWSPC	2112	Aug. 20, 2015	9,135.00	45.7400	417,834.90
Subtotal				***9,198.00***		***420,716.52***
Total				**12,978.00**		**589,682.52**

Verily, only the following zero-rated export sales of goods amounting to US$158,373.00 or ₱7,173,130.85, which were duly supported by VAT zero-rated sales invoices, complied with the *second* essential element:

ICPA Exhibit No.	Name of Client	Invoice No.	Date	Amount (in US$)	Conversion Rate[85]	Amount (in PhP)
1st Quarter						
"P-38.1"	SPWSC	2085	Apr. 24, 2015	5,250.00	44.7000	234,675.00
"P-38.2"	SPWSC	2086	Apr. 25, 2015	9,951.00	44.7000	444,809.70
"P-38.3"	SPWSC	2094	Jun. 3, 2015	1,638.00	44.5900	73,038.42
"P-38.4"	SPWSC	2095	Jun. 3, 2015	5,670.00	44.5900	252,825.30
"P-38.5"	SPWSC	2099	Jun. 18, 2015	756.00	44.5900	33,710.04
"P-38.13"	IWSPC	2081	Apr. 8, 2015	749.00	44.7000	33,480.30
"P-38.14"	IWSPC	2082	Apr. 16, 2015	3,780.00	44.7000	168,966.00

gr

[83] ICPA Exhibits "P-38.1" to "P-38.35.1"
[84] The Conversion Rates were based on the rates used by the ICPA in the Summary of Sales to PEZA-registered Entities (ICPA Exhibit "P-38").
[85] The Conversion Rates were based on the rates used by the ICPA in the Summary of Sales to PEZA-registered Entities (ICPA Exhibit "P-38").

"P-38.15"	IWSPC	2083	Apr. 24, 2015	214.00	44.7000	9,565.80
"P-38.16"	IWSPC	2084	Apr. 24, 2015	3,780.00	44.7000	168,966.00
"P-38.17"	IWSPC	2087	May 6, 2015	856.00	44.5200	38,109.12
"P-38.18"	IWSPC	2088	May 6, 2015	3,780.00	44.5200	168,285.60
"P-38.19"	IWSPC	2089	May 6, 2015	4,515.00	44.5200	201,007.80
"P-38.20"	IWSPC	2090	May 22, 2015	107.00	44.5200	4,763.64
"P-38.21"	IWSPC	2091	May 22, 2015	8,715.00	44.5200	387,991.80
"P-38.22"	IWSPC	2092	Jun. 3, 2015	189.00	44.5900	8,427.51
"P-38.23"	IWSPC	2093	Jun. 3, 2015	11,340.00	44.5900	505,650.60
"P-38.24"	IWSPC	2097	Jun. 18, 2015	189.00	44.5900	8,427.51
"P-38.25"	IWSPC	2098	Jun. 18, 2015	10,710.00	44.5900	477,558.90
Subtotal				***72,189.00***		***3,220,259.04***
2nd Quarter						
"P-38.6"	SPWSC	2100	Jul. 3, 2015	5,103.00	45.0900	230,094.27
"P-38.7"	SPWSC	2101	Jul. 3, 2015	5,985.00	45.0900	269,863.65
"P-38.8"	SPWSC	2109	Aug. 6, 2015	4,536.00	45.7400	207,476.64
"P-38.9"	SPWSC	2110	Aug. 6, 2015	8,295.00	45.7400	379,413.30
"P-38.10"	SPWSC	2113	Sept. 3, 2015	3,591.00	46.7350	167,825.39
"P-38.11"	SPWSC	2115	Sept. 3, 2015	6,405.00	46.7350	299,337.68
"P-38.26"	IWSPC	2102	Jul. 9, 2015	9,030.00	45.0900	407,162.70
"P-38.27"	IWSPC	2103	Jul. 9, 2015	63.00	45.0900	2,840.67
"P-38.28"	IWSPC	2105	Jul. 23, 2015	63.00	45.0900	2,840.67
"P-38.29"	IWSPC	2106	Jul. 23, 2015	10,500.00	45.0900	473,445.00
"P-38.30"	IWSPC	2108	Aug. 6, 2015	11,655.00	45.7400	533,099.70
"P-38.33"	IWSPC	2114	Sept. 3, 2015	11,130.00	46.7350	520,160.55
"P-38.34"	IWSPC	2116	Sept. 17, 2015	9,765.00	46.7350	456,367.28
"P-38.35"	IWSPC	2117	Sept. 17, 2015	63.00	46.7350	2,944.31
Subtotal				***86,184.00***		***3,952,871.81***
Total				**158,373.00**		**7,173,130.85**

Hence, petitioner was able to prove that its sales of goods to PEZA-registered entities, in the amount of US$158,373.00 or ₱7,173,130.85, qualify for VAT zero-rating under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended.

In sum, only the said amount of ₱7,173,130.85 pertaining to sales to PEZA-registered entities represents petitioner's valid zero-rated sales for the 1st and 2nd quarters of FY 2016. Thus, petitioner satisfactorily complied with the *fourth* requisite.

As to the *fifth* requisite, which is to the effect that the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations for sales under Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2), all of the NIRC of 1997, as amended, since the legal basis for petitioner's zero-rated sales of ₱7,173,130.85 is Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, the said *fifth* requisite need not be fulfilled.

The Court shall then proceed to determine whether petitioner complied with the remaining requisites pertaining to the input VAT being claimed for refund.

The input taxes being claimed do not appear to be transitional input taxes.

In its Amended 1st and 2nd Quarterly VAT Returns for FY 2016, petitioner declared total input VAT of ₱23,296,894.00 from its domestic purchases and importation of goods and services, of which the amount of ₱23,175,145.79 is the subject of the present claim, as shown below:

	1st Quarter[86]	**2nd Quarter[87]**	**Total**
Input Tax Deferred on Capital Goods Exceeding 1Million from Previous Quarter	₱ 3,721,447.90	₱ 4,020,205.90	₱ 7,741,653.80
Add: Input tax due on Purchase of Capital Goods exceeding 1Million	635,549.51	2,408,593.87	3,044,143.38
Total	4,356,997.41	6,428,799.77	10,785,797.18
Less: Input Tax on Purchase of Capital Goods exceeding 1Million deferred for the succeeding period	4,020,205.90	5,990,351.13	10,010,557.03
Amortized Input Tax due	**₱ 336,791.51**	**₱ 438,448.64**	**₱ 775,240.15**
Current Input Taxes:			
On Purchase of Capital Goods not exceeding 1Million	₱ 47,683.50	₱ 88,276.50	₱ 135,960.00
On Domestic Purchases of Goods Other than Capital Goods	1,290,238.27	1,485,289.30	2,775,527.57
On Importation of Goods Other than Capital Goods	204,086.00	768,017.00	972,103.00
On Domestic Purchase of Services	8,509,974.53	10,128,088.75	18,638,063.28
Total	₱ 10,051,982.30	₱ 12,469,671.55	₱ 22,521,653.85
Total Input taxes for the period	**₱10,388,773.81**	**₱12,908,120.19**	**₱ 23,296,894.00**
Less: Output tax	30,509.37	91,238.83	121,748.20
Input VAT claim	**₱10,358,264.44**	**₱12,816,881.36**	**₱23,175,145.80**[88]

[86] Exhibit "P-10.3" (Amended 1st Quarterly VAT Return), Docket - Vol. II, p. 780.
[87] Exhibit "P-11.3" (Amended 2nd Quarterly VAT Return), Docket - Vol. II, p. 788.
[88] The discrepancy of ₱0.01 from the amount of claim may be due to rounding off.

The above input taxes do *not* appear to be transitional input taxes, as understood under Section 111(A) of the NIRC of 1997, as amended, to wit:

> "SEC. 111. *Transitional/Presumptive Input Tax Credits.* –
>
> (A) *Transitional Input Tax Credits.* – A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory according to the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to two percent (2%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax."

Parenthetically, transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisitions of their beginning inventory of goods, materials and supplies. During the period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer.[89]

Since there is no showing that the claimed input VAT is transitional input VAT, petitioner has complied with the *sixth* requisite for the grant of an input VAT refund.

Only a portion of the input taxes being claimed are due or paid.

Regarding the *seventh* requisite in claiming VAT refund, it is of fatal importance for petitioner to provide supporting documents to prove that the input taxes claimed during the subject period are actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, which provides that: *gr*

---

[89] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 158885 and 170680, April 2, 2008.

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

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

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

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 (₱1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition; Provided, however, that the total amount of input taxes (input tax on depreciable capital goods plus other allowable input taxes) allowed to be claimed against the output tax in the quarterly VAT Returns shall be subject to the limitation prescribed under Sec. 4.110-7 of these Regulations.

The aggregate acquisition cost of a depreciable asset in any calendar month refers to the total price agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired in installment for an acquisition cost of more than ₱1,000,000.00 will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed ₱1,000,000.00. *gr*

xxx xxx xxx

If the depreciable capital good is sold/transferred within a period of five (5) years or prior to the exhaustion of the amortizable input tax thereon, the entire unamortized input tax on the capital goods sold/transferred can be claimed as input tax credit during the month/quarter when the sale or transfer was made but subject to the limitation prescribed under Sec. 4.110-7 of these Regulations."

Meanwhile, Section 4.110-8 of RR No. 16-2005 provides for the substantiation requirements of input tax credits, 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. ge

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.

(b) Transitional input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.

(c) Input tax on "deemed sale" transactions shall be substantiated with the invoice required under Sec. 4.113-2 of these Regulations.

(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.

(e) Advance VAT on sugar shall be supported by the Payment Order showing payment of the advance VAT."

It is categorically mentioned in the above provisions that in order to be entitled to input tax credits, the same must be evidenced by VAT invoice or OR issued in accordance with Section 113 of the Tax Code, which was previously laid down in this Report.

Thus, in order to prove entitlement to credits for input taxes due and paid, petitioner must not only present the supporting documents prescribed under Section 4.110-8 of RR No. 16-2005, but more importantly, these documents must comply with the invoicing requirements of Sections 113(A) and (B), 237 and 238 of the Tax Code, as implemented by Section 4.113-1(A) and (B) of RR No. 16-2005.

In his report, the ICPA accounted for petitioner's input VAT, in the amount of ₱22,930,975.64, as follows:

	Particulars	Input VAT	ICPA Exhibit No./ Reference
1. Fully Compliant			
	Domestic Purchase-services and noncapital goods	₱ 11,592,237.64	"P-49"

ge

	Importations-Non capital goods	972,103.00	"P-50"
	Capital Goods-Domestic Imported Capital goods: Capital Goods not exceeding 1M -₱135,960.00 Capital Goods exceeding 1M - ₱225,639.87[90]	361,599.86	"P-51"; Table 34 of ICPA Report (p. 26)
	Subtotal	**₱12,925,940.50**	
2. Not Fully Compliant			
	a. Documents printed in thermal paper	₱ 10,590.64	"P-41"
	b. Handwritten TIN and/or address in loose-leaf or computerized accounting invoice/receipt	2,128,413.94	"P-42"
	c. Mixed handwritten and printed details in documents not identified as either with loose-leaf or CAS permit	5,221,762.46	"P-43"
	d. Different handwriting of details in documents with signature	2,466,856.12	"P-44"
	e. No original documents seen	250.84	"P-45"
	f. Not prescribed supporting documents	594.00	"P-46"
	g. Out of period	172,800.00	"P-48"
	h. Undated	3,767.14	"P-48"
	Subtotal	**₱10,005,035.14**	
Total Input VAT accounted by ICPA		**₱22,930,975.64**	

A) Input VAT from Domestic Purchases of Services and Goods other than Capital Goods

In support of its input VAT from domestic purchases of services and non-capital goods, petitioner submitted suppliers' sales invoices (SIs) for purchases of goods and ORs for purchases of services[91] which were all examined by the ICPA.

A perusal of the ICPA's report reveals that petitioner's input VAT on domestic purchases of services and non-capital goods amounted to ₱21,597,272.78, which was classified as fully compliant and not fully compliant input VAT in the amounts of ₱11,592,237.64 and ₱10,005,035.14, respectively.

The above exceptions found by the ICPA in the aggregate amount of ₱10,005,035.14 were noted, hence, shall be disallowed for refund purposes. gr

[90] There is a discrepancy of ₱0.01 from the Summary of Allowable Input VAT from Capital Goods may be due to rounding off.
[91] Exhibits "P-41.1" to "P-46.2", and "P-48.1" to P-49.1838".

In addition to the above disallowances, the input VAT amounting to ₱417,597.96, as presented below, shall also be disallowed for failure to meet the invoicing and substantiation requirements prescribed by law and regulations:

ICPA Exhibit No.	Supplier Name	SI/OR No.	1st Quarter	2nd Quarter	Input VAT Amount
On Domestic Purchases of Services					
Supported by VAT OR with alteration on date with counter signature but the countersignature differs from the signature of the authorized representative					
"P-49.177"	Trancy Logistics (Philippines) Inc.	5443	₱ 9,844.60		₱ 9,844.60
Supported by document other than VAT OR					
"P-49.348"	Greenland Commercial & Forklift, Inc.	41301	1,237.06		1,237.06
"P-49.349"	Greenland Commercial & Forklift, Inc.	41150	4,174.02		4,174.02
"P-49.350"	Greenland Commercial & Forklift, Inc.	41341	1,237.06		1,237.06
"P-49.1057"	Pentagon 8 Builders	0462		₱ 26,597.66	26,597.66
"P-49.1058"	Pentagon 8 Builders	0463		3,945.76	3,945.76
"P-49.1059"	Pentagon 8 Builders	0464		964.29	964.29
"P-49.1393"	Technoserve Industrial Repair Service and Enterprise	1592		8,571.43	8,571.43
"P-49.1649"	Greenland Commercial & Forklift, Inc.	41770		4,106.66	4,106.66
Supported by document with notation "This Document is not valid for claim of input taxes"					
"P-49.1210"	ACPower Engineering Services	1585		100,458.51	100,458.51
Subtotal			**₱ 16,492.74**	**₱144,644.31**	**₱161,137.05**
On Domestic Purchases of Goods other than Capital Goods					
Supported by document with notation "This Document is not valid for claim of input taxes"					
"P-49.1209"	ACPower Engineering Services	1491		₱ 12,480.00	₱ 12,480.00
"P-49.1211"	ACPower Engineering Services	1496		3,321.43	3,321.43
Overclaimed input VAT					
"P-49.219"	A.G. Cruz Trading & General Services (amount per claim of ₱111,644.23 less amount per invoice of ₱508.93)	0302	₱ 111,135.30		111,135.30
"P-49.220"	Abacus Books & Cards Corp. (amount per claim of ₱129,642.86 less amount per invoice of ₱118.68)	21076	129,524.18		129,524.18
Subtotal			**₱240,659.48**	**₱ 15,801.43**	**₱256,460.91**
Total Disallowed Input VAT from Domestic Purchases			**₱257,152.22**	**₱160,445.74**	**₱417,597.96**

Thus, out of the input VAT on domestic purchases of services and non-capital goods amounting to ₱21,597,272.78, only the amount of ₱11,174,639.68[92] were duly substantiated.

[92] Total input VAT on domestic purchases of services and noncapital goods of ₱21,597,272.78 less disallowances of ₱10,005,035.14 and ₱417,597.96.

B) Input VAT from Importation of Goods other than Capital Goods

As confirmed from the records of the case, petitioner's input VAT paid on importation of goods other than capital goods amounting to ₱972,103.00 were duly supported by Bureau of Customs (BOC) ORs, Import Entry and Internal Revenue Declarations (IEIRDs), supplier sales invoices, bills of lading or waybills and other related importation documents.[93]

C) Input VAT from Capital Goods not exceeding ₱1 Million

As to the input VAT on purchase of capital goods not exceeding ₱1 Million amounting to ₱135,960.00, only the amount of ₱123,960.00 were duly supported with VAT sales invoices, to wit:

ICPA Exhibit No.	Supplier Name	Date	SI No.	Input VAT
1st Quarter				
"P-51.4"	Handling Innovation Incorporated	May 23, 2015	15801	₱ 31,236.00
"P-51.5"	Meridian I.T. Corporation	May 5, 2015	06531	5,482.50
"P-51.6"	Meridian I.T. Corporation	May 5, 2015	06532	10,965.00
Subtotal				***₱ 47,683.50***
2nd Quarter				
"P-51.14"	Meridian I.T. Corporation	Aug. 6, 2015	06859	₱ 11,826.00
"P-51.15"	Meridian I.T. Corporation	Aug. 20, 2015	06923	25,323.00
"P-51.17"	Nexus Technologies, Inc.	Aug. 10, 2015	73940	39,127.50
Subtotal				***₱ 76,276.50***
Total				**₱123,960.00**

On the other hand, the remaining amount of ₱12,000.00, which is supported by Sales Invoice No. 1083 dated 18-Aug-1[94] issued by MZWork Marketing, is noncompliant with the substantiation and invoicing requirements previously mentioned in this report. Apparently, such purchase is in the nature of service (retention fee) but is not supported by VAT OR. Further, the said invoice even has

---

[93] ICPA Exhibits "P-50" and "P-50.1" to "P-50.8.247".
[94] ICPA Exhibit No. "P-51.16".

incomplete date and does not indicate the BIR Authority to Print (ATP). Hence, the said input VAT of ₱12,000.00 shall be disallowed.

D) Input VAT from Capital Goods exceeding ₱1 Million

As for the current input VAT on purchase of capital goods exceeding ₱1 Million amounting to ₱3,044,143.38, petitioner satisfactorily supported only the amount of ₱3,043,533.34 with SI [for local purchases] and Statement of Settlement of Duties and Taxes (SSDTs) [for importations], to wit:

ICPA Exhibit No.	Supplier Name	Date	SI/SSDT Receipt No.	Input VAT
1st Quarter				
"P-51.1"	Meridian I.T. Corporation	Apr. 14, 2015	06477	₱ 190,296.00
"P-51.2"	Meridian I.T. Corporation	Apr. 22, 2015	06494	89,715.00
"P-51.3"	Nexus Technologies, Inc.	Apr. 1, 2015	72701	119,119.05
"P-51.7"	Sumitomo Wiring Systems Ltd.	Jun. 5, 2015	R-68948	223,831.23
"P-51.8"	Meridian I.T. Corporation	Jun. 30, 2015	06693	5,482.50
"P-51.9"	Nexus Technologies, Inc.	Jun. 1, 2015	73223	7,088.96
Subtotal				***₱ 635,532.74***
2nd Quarter				
"P-51.10"	Japan Automotive Machine Co. Ltd.	Jul. 22, 2015	R-212603	₱ 896,087.73
"P-51.11"	Nexus Technologies, Inc.	Jul. 29, 2015	73887	4,191.29
"P-51.12"	Nexus Technologies, Inc.	Jul. 2, 2015	73684	2,677.08
"P-51.13"	Nexus Technologies, Inc.	Jul. 27, 2015	73856	4,231.50
"P-51.18"	Japan Automotive Machine Co. Ltd.	Sept. 4, 2015	R-111344	1,043,313.00
"P-51.19"	Meridian I.T. Corporation	Sept. 2, 2015	06961	457,500.00
Subtotal				***₱2,408,000.60***
Total				**₱3,043,533.34**

While petitioner was able to substantiate the current input VAT due or paid on capital goods purchases exceeding ₱1 Million in the amount of ₱3,043,533.34, only the amortization for the 1st and 2nd quarters of FY 2016 in the total amount of ₱225,639.85, as determined below, may be claimed by petitioner as valid input tax credits for the same taxable quarters pursuant to the previously stated Section 110(A) of the NIRC of 1997, as amended, as implemented by Section 4.110-3 of RR No. 16-2005:

Supplier Name	Date	Input VAT	Useful Life (in mos.)[95]	Monthly Amortization	No. of months			Allowable Input VAT	Input VAT Deferred to Future Periods
					In Q1 of FY 2016	In Q2 of FY 2016	Total		
1st Quarter									
Meridian I.T. Corporation	Apr. 14, 2015	₱ 190,296.00	36	₱ 5,286.00	3	3	6	₱ 31,716.00	₱ 158,580.00
Meridian I.T. Corporation	Apr. 22, 2015	89,715.00	36	2,492.08	3	3	6	14,952.50	74,762.50
Nexus Technologies, Inc.	Apr. 1, 2015	119,119.05	12	9,926.59	3	3	6	59,559.53	59,559.52
Sumitomo Wiring Systems Ltd.	Jun. 5, 2015	223,831.23	60	3,730.52	1	3	4	14,922.08	208,909.15
Meridian I.T. Corporation	Jun. 30, 2015	5,482.50	36	152.29	1	3	4	609.17	4,873.33
Nexus Technologies, Inc.	Jun. 1, 2015	7,088.96	36	196.92	1	3	4	787.66	6,301.30
Subtotal		***₱ 635,532.74***		***₱21,784.40***				***₱122,546.94***	***₱ 512,985.80***
2nd Quarter									
Japan Automotive Machine Co. Ltd.	Jul. 22, 2015	₱ 896,087.73	60	₱ 14,934.80		3	3	₱ 44,804.39	₱ 851,283.34
Nexus Technologies, Inc.	Jul. 29, 2015	4,191.29	12	349.27		3	3	1,047.82	3,143.47
Nexus Technologies, Inc.	Jul. 2, 2015	2,677.08	12	223.09		3	3	669.27	2,007.81
Nexus Technologies, Inc.	Jul. 27, 2015	4,231.50	12	352.63		3	3	1,057.88	3,173.62
Japan Automotive Machine Co. Ltd.	Sept. 4, 2015	1,043,313.00	60	17,388.55		1	1	17,388.55	1,025,924.45
Meridian I.T. Corporation	Sept. 2, 2015	457,500.00	12	38,125.00		1	1	38,125.00	419,375.00
Subtotal		***₱2,408,000.60***		***₱71,373.34***				***₱103,092.91***	***₱2,304,907.69***
Total		**₱3,043,533.34**		**₱93,157.74**				**₱225,639.85**	**₱2,817,893.49**

It must be noted that part of the total reported input taxes for the period in the amount of ₱23,296,894.00 is the amortized input tax of ₱775,240.15, as shown earlier. The said amount of ₱775,240.15 is comprised of the amortization of input VAT deferred on purchase of capital goods exceeding ₱1 million from previous period and current input VAT on purchase of capital goods exceeding ₱1 million for the 1st and 2nd quarters of FY 2016. Considering that the allowable input VAT amortization from current purchases of capital goods exceeding ₱1 million amounts to ₱225,639.85 only, and the input VAT deferred on purchase of capital goods exceeding ₱1 million from previous period was not substantiated, the remaining amount of ₱549,600.30 (₱775,240.15 less ₱225,639.85) shall be

[95] Based on the ICPA's verification per Summary of Capital Goods (ICPA Exhibit "P-51").

disallowed for purposes of computing the refundable input VAT amount.

In sum, for purposes of compliance with the *seventh* requisite, only the amount of ₱12,496,342.53 represents petitioner's valid input VAT due or paid for the 1st and 2nd quarters of FY 2016, as computed below:

Input VAT due or paid on domestic purchase of services and goods other than capital goods	₱11,174,639.68
Input VAT paid on Importations of goods other than capital goods	972,103.00
Input VAT due on Capital goods not exceeding 1Million	123,960.00
Input VAT due or paid on Capital goods exceeding 1Million	225,639.85
Total Valid Input VAT	**₱12,496,342.53**

Since there are both zero-rated or effectively zero-rated sales and taxable sales, the said amount of ₱12,496,342.53 shall be proportionately allocated on the basis of sales volume.

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 presented earlier, the ICPA accounted petitioner's zero-rated or effectively zero-rated sales amounting to ₱3,771,683,704.63. Further, petitioner had taxable sales amounting of ₱1,014,568.37[96]. Hence, petitioner's total sales for the 1st and 2nd quarters of FY 2016 amounted to ₱3,772,698,273.00.

[96] Computation of Vatable Sales:

Amended 1st Quarter of FY 2016 (Exhibit "P-10.3", Docket - Vol. II, p. 780)	₱ 254,244.77
Amended 2nd Quarter of FY 2016 (Exhibit "P-11.3", Docket - Vol. II, p. 788)	760,323.60
Total	**₱1,014,568.37**

Since petitioner's input VAT cannot be directly or entirely attributed to any of the transactions, the valid input VAT of ₱12,496,342.53 shall be allocated proportionately on the basis of the volume of its sales, as shown below:

Total Taxable Sales subject to 12% VAT for the period	₱ 1,014,568.37
Divided by the Total Sales for the period	3,772,698,273.00
Multiplied by Total Valid Input VAT	12,496,342.53
Valid Input VAT Allocated to Taxable Sales (12% VAT)	**₱ 3,360.56**

Total Zero-Rated Sales for the period	₱3,771,683,704.63
Divided by the Total Sales for the period	3,772,698,273.00
Multiplied by Total Valid Input VAT	12,496,342.53
Valid Input VAT Allocated to Zero-rated sales	**₱ 12,492,981.97**

Thus, with regard to petitioner's compliance with the *eighth* requisite, only the amount of ₱12,492,981.97 represents valid input VAT attributable to total reported zero-rated sales.

Determination of the refundable amount.

Having determined that petitioner had valid input VAT attributable to its zero-rated sales, we 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.

For the 1st and 2nd quarters of FY 2016, petitioner had an output VAT liability in the total amount of ₱121,748.20. Since petitioner's valid input VAT allocated to sales subject to 12% VAT in the amount of ₱3,360.56 is not enough to cover the said output VAT liability, petitioner still has an output VAT due of ₱118,387.64, as computed below:

Output VAT per Amended Quarterly VAT Returns[97]	₱ 121,748.20

[97]

1st Quarter of FY 2016 [Exhibit "P-10.3" (Line 19B), Docket – Vol. II, p. 780]	₱ 30,509.37
2nd Quarter of FY 2016 [Exhibit "P-11.3" (Line 19B), Docket – Vol. II, p. 788]	91,238.83
Total Output VAT per Returns	**₱121,748.20**

Less: Valid Input VAT allocated to taxable sales (12% VAT)	3,360.56
Output VAT Still Due	**₱118,387.64**

Upon applying the valid input VAT allocated to the total zero-rated sales in the amount of ₱12,492,981.97 against the said remaining output VAT liability of ₱118,387.64, the excess input VAT allocated to zero-rated sales amounted to ₱12,374,594.33. However, out of the said excess input VAT allocated to total zero-rated sales in the amount of ₱12,374,594.33, only the remaining input VAT of ₱23,534.47 is attributable to its valid zero-rated sales of ₱7,173,130.85, as determined below:

Valid Input VAT allocated to total zero-rated sales	₱ 12,492,981.97
Less: Output VAT still due	118,387.64
Excess Input VAT Allocated to Total Zero-Rated Sales	**₱ 12,374,594.33**
Divided by the Total Zero-Rated Sales	3,771,683,704.63
Multiplied by the Valid Zero-Rated Sales	7,173,130.85
Excess Input VAT Attributable to Valid Zero-Rated Sales	**₱ 23,534.47**

Needless to state, the said amount of ₱23,534.47 is included in the amount of the subject refund claim, *i.e.*, the amount of ₱23,175,145.79.

Note worthily, petitioner deducted the claimed input VAT of ₱10,358,264.44 and ₱12,816,881.35 or a total of ₱23,175,145.79 as *"VAT Refund/TCC claimed"* in its Amended 1st and 2nd Quarterly VAT Returns of FY 2016, respectively.[98] By virtue thereof, the subject claim no longer form part of the excess input VAT of ₱13,746,385.09[99] as of the end of the 2nd quarter of FY 2016 to be carried over/ applied to the succeeding quarters. Thus, petitioner has fulfilled the said *ninth* requisite in the refund of input VAT under Section 112(A) of the NIRC of 1997, as amended.

WHEREFORE, the present Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED** to refund or issue tax credit certificate in favor of petitioner the amount of **₱23,534.47** representing the latter's unutilized input VAT attributable to its zero-rated sales for the period April to June 2015 (1st quarter) and July to September 2015 (2nd quarter) of FY ending March 31, 2016.

[98] Exhibits "P-10.3" and "P-11.3" (Line 23D), Docket – Vol. II, pp.781 and 789, respectively.
[99] Exhibit "P-11.3" (Line 29), Docket – Vol. II, p. 789.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
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