REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1536 (CTA CASE No. 8962)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
PHIL. GOLD PROCESSING & REFINING CORP., *Respondent.*	Promulgated: JAN 17 2018 2:24 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision of this Court En Banc is a Petition for Review filed by the Commissioner of Internal Revenue (CIR) under *Section 3(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals*[1], *as amended,*

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[1] RULE 8, Sec 3. *Who may appeal; period to file petition.-*

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> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

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seeking the nullification of the Decision[2] dated July 22, 2016 and the Resolution[3] dated September 21, 2016, partially granting herein respondent's claim for refund in the reduced amount of Thirty Five Million Eight Hundred Eighty Three Thousand Five Hundred Forty-Nine Pesos and 98/100 (P35,883,549.98), allegedly representing unutilized excess input value-added tax (VAT) attributable to its zero-rated sales covering the period of July 1, 2012 to September 30, 2012, the dispositive portions of which, respectively read as follows:

> <u>Decision dated July 22, 2016:</u>
>
> "**WHEREFORE** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Respondent Commissioner of Internal Revenue is hereby **ORDERED to ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Phil. Gold Processing & Refining Corp. in the reduced amount of **THIRTY-FIVE MILLION EIGHT HUNDRED EIGHTY-THREE THOUSAND FIVE HUNDRED FOURTY-NINE AND 98/100 PESOS (PHP35,883,549.98)**.
>
> **SO ORDERED."**
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> <u>Resolution dated September 21, 2016:</u>
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> "**WHEREFORE**, respondent's Motion for Partial Reconsideration (Re: Decision Promulgated 22 July 2016) is hereby **DENIED** for lack of merit.
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> **SO ORDERED."**

The factual antecedents, as found in the records[4] of this case read as follows:

> "On February 7, 2008, PGPRC was issued a BOI Certificate of Registration No. 2008-042.

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[2] Penned by Associate Justice Lovell R. Bautista, concurred in by Associate Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban, En Banc Docket, pp. 18-42.
[3] Id., pp. 38-42.
[4] Third Division Decision, En Banc Docket, pp.20-25.

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On May 15, 2013, PGPRC filed its Quarterly VAT Return or BIR Form No. 2550-Q for the period ending September 30, 2012, reflecting the amounts of Php43,096,909.95 as Total Available Input Tax, Php37,393,195.00 as VAT Refund/TCC Claimed and the remaining Php5,703,714.95 as VAT Overpayment.

On August 8, 2014, PGPRC filed its Application for Tax Credits/Refunds or BIR Form No. 1914, asking specifically for a TCC covering the period July 1, 2012 to September 30, 2012, in the amount of Php37,393,195.00 based on Section 112 of the 1997 National Internal Revenue Code, as amended ("1997 NIRC") and Section 4.112 of Revenue Regulations ("RR") No. 16-05.

On September 8, 2014, the BIR issued Letter of Authority ("LOA")-411-2014-00000125, authorizing Revenue Officers ("RO") Jennifer Agamata and Jovelyn Borromeo and Group Supervisor ("GS") Angelita Martinez of Revenue Region No. 040- VAT Credit Audit Division to examine PGPRC's books of account and other accounting records for VAT for the period July 1, 2012 to September 30, 2012 pursuant to Mandatory Audit-Claim for VAT TCC; the same was received by PGPRC on even date.

On December 2, 2014 BIR Deputy Commissioner Nelson M. Aspe wrote a letter to PGPRC denying the claim for TCC for the reason that it cannot be ascertained whether such foreign currency remittances actually pertain to PGPRC's export sales for the subject period of claim.

Unsatisfied with the denial of its claim, PGPRC filed the present Petition for Review on January 5, 2015.

On January 20, 2015, the Court issued Summons to the CIR, ordering her to file her Answer to the Petition for Review within fifteen (15) days from receipt thereof. The BIR Litigation Division received the same on January 22, 2015.

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On February 4, 2015, the CIR filed a Motion for Extension of Time to File Answer praying for an extension of thirty (30) days from February 6, 2015 or until March 8, 2015, within which to file her Answer, which was granted by the Court in its Resolution dated February 9, 2015.

On March 6, 2015, the CIR filed her Answer, raising the following Special and Affirmative Defenses:

> 4. Respondent reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defense.
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> 5. The power of taxation is an inherent attribute of sovereignty, the government chiefly relies on taxation to obtain the means to carry on its operations. Taxes are essential to its very existence; hence, the dictum that taxes are the lifeblood of the government. For this reason, the right of taxation cannot easily be surrendered.
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> 6. Since taxes are what we pay for civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting tax exemptions are construed *strictissimi juris* against taxpayers and liberally in favor of the taxing authority.
>
> 7. Tax refunds partake the nature of tax exemptions which are a derogation of the power of the State. Consequently, they are construed strictly against a taxpayer and liberally in favor of the State.
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> 8. Thus, the taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund.

9. Further, taxes paid and collected are presumed to have been made in accordance with the laws and regulations.

10. In the case at hand, petitioner's claim for tax refund is subject to administrative and routinary investigation and examination by the [BIR]. A claim for tax refund is not ipso facto granted because respondent still has to investigate and ascertain the validity of the claim.

11. It is incumbent upon petitioner to establish its right to tax refund and that it is indubitably entitled thereto; and failure to sustain such burden is fatal for this claim of tax refund.

12. Likewise, not only should petitioner establish that it is entitled to tax refund, it is also imperative that petitioner prove its compliance with the following:

> a. The registration requirement of a VAT taxpayer in compliance with [RR] No. 7-2012 in relation to Section 236 (A), (B), (C) and (D) of the [1997 NIRC];
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> b. The invoicing and accounting requirements for VAT registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the [1997 NIRC];
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> c. Proof of compliance with the prescribed checklist of requirements to be submitted in cases involving a claim for VAT refund pursuant to Revenue Memorandum Order [("RMO")] No. 53-1998 and Revenue Memorandum Circular [("RMC")] No. 54-2014. Otherwise, there would be no sufficient compliance with the filing of an administrative application for tax refund which is a condition sine qua non prior to the filing of a judicial

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claim in accordance with Section 112 of the [1997 NIRC]. This requires the submission of complete documents in support of the application filed with the [BIR] 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 petitioner's alleged zerorated sales complied with the requirements set forth in Section 108 of the [1997 NIRC];

e. That the input taxes in the amount of Thirty-Seven Million Three Hundred Ninety-Three Thousand One Hundred Ninety-Five Pesos ([Php]37,393,195.00) allegedly representing unutilized input VAT were directly attributable to its zero-rated sales and such have not been applied against any Output VAT and were not carried over to the succeeding taxable quarter or quarters;

f. That petitioner's administrative and judicial claims for tax refund [were] filed within the periods provided in Sections 112 (A) and (C) of the [1997 NIRC];

g. That petitioner's local purchases and importation of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/ or official receipts under Sections 110 (A) (2) and 113 of the [1997 NIRC]; and

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h. The requirements as enumerated under Section 4.110-7 of [RR] No. 14-2005.

13. It is noteworthy that the alleged unutilized Input VAT claimed by petitioner was not properly documented.

14. It has been uniformly and consistently held by the Honorable Supreme Court that the taxpayer bears the burden of establishing the factual and legal basis of its claim for tax refund. In the case at hand, petitioner failed to present clear and convincing evidence to merit a tax refund.

15. The case of [CIR] v. Pilipinas Shell Petroleum Corporation emphatically pointed out that:

> 'Time and again, we have held that tax refunds are in the nature of tax exemptions which result to loss of revenue for the government. **Upon the person claiming an exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted, it is never presumed nor be allowed solely on the ground of equity. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken. Such exemptions must be strictly construed against the taxpayer**, as taxes are the lifeblood of the government.[]'

16. Following the premise above, petitioner has the burden of proving that the right to such

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tax refund indubitably exists and a well-founded doubt is fatal to its claim.

On April 17, 2015 and April 22, 2015, the CIR and PGPRC filed their respective Pre-Trial Briefs.

On May 6, 2015, the parties filed their Joint Stipulation of Facts and Issues ("JSFI").

On May 27, 2015, a Pre-trial Order was issued by the Court terminating the Pre-Trial Conference.

On June 1, 2015, PGPRC filed its Motion to Amend JSFI with attached Amended JSFI. This was granted by the Court in its June 20, 2015 Resolution, which likewise served as the Amended Pre-Trial Order.

On September 30, 2015, PGPRC filed its Formal Offer of Exhibits ("FOE"), which was resolved by the Court in its Resolution dated October 28, 2015.

During the hearing on December 1, 2015, the CIR manifested that she will no longer present any evidence and in *lieu* thereof, will just file a memorandum. This was confirmed by the Court in its Resolution dated December 10, 2015.

PGPRC filed its Memorandum on January 8, 2016; while on January 12, 2016, the CIR filed by registered mail her Manifestation that she is adopting her Answer as her Memorandum.

Thereafter, the Court resolved to submit the case for decision through its Resolution dated January 26, 2016;"

The Court in Division thereafter rendered the assailed Decision dated July 22, 2016, which held that Philippine Gold Processing and Refining Corporation (PGPRC) is entitled to a refund in the reduced amount of P35,883,549.98 allegedly representing unutilized excess input VAT attributable to its zero-rated sales for the first quarter of taxable year (TY) ending June 30, 2013.

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The CIR's Motion for Partial Reconsideration filed on August 11, 2016 was denied thru the assailed Resolution dated September 21, 2016.

Hence, this Petition for Review was filed by the CIR.

In the instant Petition for Review, petitioner maintains his position that PGPRC's claim for refund of unutilized input VAT should be denied for failure to comply with the requirements provided under the law, and thus the claim for refund or tax credit must necessarily fail.

Petitioner CIR also contends that, considering Phil. Gold's failure to substantiate its claim for refund on the administrative level, this Court lacks jurisdiction over the judicial claim.

The arguments presented deserve scant consideration, and We rule to **DENY** the Petition for Review.

At the outset, the Court disagrees with the view of the petitioner that the Court lacks jurisdiction over the judicial claim. If the claimant has sufficiently complied with the requirements provided for under Sections 112 (A), and 106 (A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997, as amended, as well as Section 113 (B)(2)(c), as implemented by Section 4.113-18(2)(c) of Revenue Regulation (RR) No. 16-05, then there is no reason to deny the claim.

Further, the contention that PGPRC failed to submit complete documents as required under Revenue Memorandum Order (RMO) No. 53-98 dated June 1, 1997, in relation to Section 112(C) of the NIRC of 1997, as amended, is misplaced. The RMO states that it is a "Checklist of Documents to be Submitted by a Taxpayer upon **Audit** of his Tax Liabilities". There is nothing in Section 112 of the NIRC of 1997, as amended, RR No. 3-88 or RMO 53-98 that require submission of complete documents enumerated in RMO No. 53-98 for a grant of a refund or credit of input VAT[5]. Considering that PGPRC is not under audit, there is no necessity to submit the documents enumerated under the RMO.

[5] Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation), G.R. No. 205055, July 18, 2014.

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Notably, the non-submission of complete supporting documents in the administrative level is not fatal to the taxpayer's judicial claim. It has already been stressed in the assailed Decision that the Court is not barred from receiving, evaluating and appreciating evidence submitted before it. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevance, probative value and weight of evidence presented therein become subject to the relevant provisions of the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the grant of a claim for refund lies within the sound discretion and judgment of the Court.[6]

As this Court had ruled in *Commissioner of Internal Revenue v. Philippine Airlines*[7] :

> "It has been settled in several CTA *En Banc* cases that judicial claims should not be denied on the sole ground that the taxpayer allegedly failed to submit before the BIR the complete documents in support of its administrative claim for refund. In the case of *Philippine Bank of Communications* vs. *Commissioner of Internal Revenue* We passed upon the issue on the non-submission of supporting documents in the administrative level as NOT fatal to a claim for refund. The pertinent portion of the Decision provides:
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>> '**Non-submission of supporting documents in the administrative level is not fatal to a claim for refund. Judicial claims are litigated *de novo* and decided based on what has been presented and formally offered by the parties during the trial.** In the case of *CIR* vs. *Manila Mining Corporation,* it was explained that 'Under Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are litigated *de novo,* party litigants should prove every

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[6] Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc., CTA EB No. 474, September 1, 2009; Commissioner of Internal Revenue vs. Toledo Power Company, CT A EB No. 589, September 15, 2010; Commissioner of Internal Revenue vs. San Roque Power Corporation, CTA EB No.657, April 4, 2012.
[7] CTA EB No. 775, July 24, 2012.

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> minute aspect of their cases. Finally, pieces of evidence submitted in the administrative proceeding have no evidentiary value unless presented and formally offered before the Court.

Likewise, in *Pilipinas Total Gas, Inc.* v. *Commissioner of Internal Revenue*[8], the Supreme Court dealt with the issue of submission of supporting documents regarding claims for refund for zero-rated transactions, which can be applied, by analogy, to the present case. The relevant discussion in the said case is as follows:

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> "x x x for purposes of determining when the supporting documents have been completed - **it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period. After all, he may have already completed the necessary documents the moment he filed his administrative claim**, in which case, the 120-day period is reckoned from the date of filing. The taxpayer may have also filed the complete documents on the 30th day from filing of his application, pursuant to RMC No. 49-2003. He may very well have filed his supporting documents on the first day he was notified by the BIR of the lack of the necessary documents. In such cases, the 120-day period is computed from the date the taxpayer is able to submit the complete documents in support of his application.
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> Then, except in those instances where the BIR would require additional documents in order to fully appreciate a claim for tax credit or refund, in terms of what additional document must be presented in support of a claim for tax credit or refund - it is the taxpayer who has that right and the burden of providing any and all documents

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[8] Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue, G.R. No. 207112, December 8, 2015.

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that would support his claim for tax credit or refund. After all, in a claim for tax credit or refund, it is the taxpayer who has the burden to prove his cause of action. As such, he enjoys relative freedom to submit such evidence to prove his claim.

The foregoing conclusion is but a logical consequence of the due process guarantee under the Constitution. Corollary to the guarantee that one be afforded the opportunity to be heard, it goes without saying that the applicant should be allowed reasonable freedom as to when and how to present his claim within the allowable period.

Thereafter, whether these documents are actually complete as required by law - is **for the CIR and the courts to determine.** Besides, as between a taxpayer-applicant, who seeks the refund of his creditable input tax and the CIR, it cannot be denied that the former has greater interest in ensuring that the complete set of documentary evidence is provided for proper evaluation of the State.

Section 112(A)[9] of the National Internal Revenue Code (NIRC) of 1997, as amended, provides the following requisites that must be complied with in order to be entitled to a refund or tax credit of unutilized VAT, to wit:

1. There must be zero-rated or effectively zero-rated sales;

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[9] SECTION 112. Refunds or Tax Credits of Input Tax. -

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

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2. Input taxes were incurred or paid;
3. Such input taxes are attributable to zero-rated or effectively zero-rated sales;
4. The input taxes were not applied against any output tax; and
5. The claim for refund was filed within the two-year prescriptive period.

Relevantly, such export sales are subject to zero percent (0%) VAT rate under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which provides:

> "Section. 106. *Value-Added Tax on Sale of Goods or Properties. –*
>
> **(A)** ***Rate and Base of Tax.***
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> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) ***Export Sales.*** - The term *"export sales"* means:
>
> (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);
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> xxx xxx xxx

Based on the above provisions, the Court in Division has exhaustively discussed in the assailed Decision the conditions that must be complied with in order for an export sale to qualify as zero-rated. To reiterate, the following must concur:

1. That there was a sale and actual shipment of goods from the Philippines to a foreign country;

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2. The sale was made by a VAT-registered person;
3. The sale was paid for in acceptable currency or its equivalent in goods or services; and
4. The payment was accounted for in accordance with the rules and regulations of the BSP.

Significantly, Sections 113(A)(1), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(1), B(1) and (2)(c) of RR No. 16-2005, as amended, mandate that a VAT taxpayer, like PGPRC, shall for every sale, barter, or exchange of goods or properties, issue a VAT invoice, which must contain the following information;

> Section 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* -
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> **(A)** ***Invoicing Requirements.*** - A VAT-registered person shall issue:
>
> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
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> xxx xxx xxx
>
> **(B)** ***Information Contained in the VAT Invoice or VAT Official Receipt.*** - The following information shall be indicated in the VAT invoice or VAT official receipt:
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> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN); and
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> (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:
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> (c) If the sale is subject to zero percent (0%) value-added tax, the term **"zero-rated sale"** shall be written or printed prominently on the invoice or receipt.

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

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"*Section. 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

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

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

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

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

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

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

Incidentally, Section 237[10] in relation to Section 238[11] additionally requires that the invoices or receipts must be duly registered with the BIR and must contain all the required information under the law and regulations, such as the imprinted words "zero-rated" and the taxpayer's TIN-VAT number.

Based on the afore-quoted provisions, any VAT-registered person claiming VAT-zero rated direct export sales must present at least three (3) types of documents, to wit;

1. The sales invoice as proof of sale of goods;
2. The export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and
3. The bank credit advice, certificate of bank remittance, or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

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

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[10] Section. 237. *Issuance of Receipts or Sales or Commercial Invoices.* –

All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, **issue duly registered receipts or sales or commercial invoices**, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service

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[11] Section 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." (Emphasis supplied)

Let us revisit Section 113 (B)(2)(c) of the NIRC of 1997, as amended, and Section 4.113-1(B)(2)(c) of RR No. 16-05 which provide the invoicing requirements for VAT-registered persons. The provisions state as follows:

> Section 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* -
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> xxx xxx xxx
>
> ***(B) Information Contained in the VAT Invoice or VAT Official Receipt.*** - The following information shall be indicated in the VAT invoice or VAT official receipt:
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> xxx xxx xxx
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax. Provided, That:
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> 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**. (Emphasis supplied)
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> xxx xxx xxx
>
> *Section. 4.113-**1. Invoicing Requirements**.* -
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> xxx xxx xxx
>
> **(B) Information contained in VAT invoice or VAT official receipt**. - The following information shall be indicated in VAT invoice or VAT official receipt:
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> xxx xxx xxx
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the

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> indication that such amount includes the VAT; Provided, That:
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> 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**;" (Emphasis supplied)

A review of the records of this case shows that as proof of its VAT zero-rated direct export sales, PGPRC presented the following documents:

1. Zero-rated VAT sales invoices[12],
2. Export documents[13] consisting of:
    a. export declaration,
    b. provisional invoice,
    c. transport permit, and
    d. airway bill,
3. Certification[14] from Hongkong and Shanghai Banking Corporation Limited (HSBC), and
4. Consolidated Bank Statements[15] from BNP Paribas Corporate & Investment Banking.

From the afore-mentioned documents, the Court Commissioned Independent Certified Public Accountant (ICPA), Atty. Clifford Chua, in his report[16], was able to attribute and verify which direct export sales were substantiated and qualified for zero-rating.

Accordingly, he was also able to establish from these documents the correct amount that should be refunded to PGPRC. Based on the examination, the input VAT in the amounts of P31,259.00 should be disallowed, and only the remaining input VAT in the amount of P37,361,944.64 represent PGPRC's valid input VAT. Additionally, since PGPRC has export sales with no corresponding foreign currency remittances, only the input VAT amount of P37,361,936.00 can be attributed to its valid zero-rated sales in the amount

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[12] Division Docket, Exhibits "P14" to "P-14-k".
[13] Division Docket, Exhibits "P-18" to "P-18-a".
[14] Division Docket, Exhibit "P-20".
[15] Division Docket, Exhibits "P-20" to "P-20-g".
[16] Division Docket, Exhibit "P-21".

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of P2,333,280,269.70 for the first quarter of fiscal year ending in June 30, 2013, computed as follows:

First Quarter of FY 2013		
Valid Input VAT		P37,391,936.00
Multiplied by:		
Valid zero-rated sales in PHP	P2,333,280,269.70	
÷Total zero-rated sales/return	P2,431,361,070.95	95.96660125%
Valid Input VAT attributable to valid zero-rated sales for the 1st Quarter of FY 2013		**P35,883,549.98**

Lastly, a perusal of respondent's Quarterly VAT Returns reveals that it had no output tax liability against which the claimed input VAT may be applied to or credited from. The Court *En Banc* agrees that respondent may no longer avail of the carry-over or application of input taxes for the next taxable quarter/s because its reported unutilized input taxes for the same taxable quarter were already deducted as "VAT Refund/TCC Claimed" in the Quarterly VAT Returns for the next taxable quarter/s.

Finding no reversible error, We **AFFIRM** the assailed Decision of the Third Division dated July 22, 2016 and the Resolution dated September 21, 2016.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice