REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>SECOND DIVISION</u>

TOLEDO POWER COMPANY, Petitioner,	**CTA CASE NO. 8792**
	Members:
- versus -	**CASTAÑEDA, JR.**, Chairperson, **CASANOVA**, and **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 06 2017 9:00 a.m.

x- -x

DECISION

CASTAÑEDA, JR., ***J.***:

STATEMENT OF THE CASE

This case involves a claim for refund in the amount of ₱60,067,141.05 filed by Toledo Power Company, allegedly representing its unutilized input value-added tax (VAT) related to its zero-rated sales for the four quarters of taxable year 2012.

STATEMENT OF FACTS

Petitioner Toledo Power Company is a partnership duly registered with the Securities and Exchange Commission (SEC), with

Company Registration No. APO94-900.[1] Under its Restated and Amended Agreement of General Partnership, petitioner is engaged in the business of acquiring, owning, rehabilitating, maintaining and operating the Sangi coal-fired and oil-fired electrical generation facility located in Sangi, Toledo City, Cebu and the Carmen diesel-fueled electric generation facility located in Barangay Don Andres Soriano, Toledo City, Cebu.[2]

As a generation company, petitioner was granted by the Energy Regulatory Commission (ERC) with the authority to operate its generation facilities.[3] It is likewise registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with Taxpayer Identification Number (TIN) 003-883-626-000 per BIR Certificate of Registration No. 2RC0000074406.[4]

On the other hand, respondent is the duly appointed Commissioner of the BIR who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On November 29, 2013, petitioner filed with the BIR Revenue District Office No. 123 an administrative claim for refund in the total amount of ₱60,067,141.05, allegedly representing its unutilized input VAT related to its zero-rated sales/receipts for the 1st to 4th quarters of taxable year 2012.[5]

In view of respondent's inaction on its protest, petitioner filed the instant Petition for Review before this Court on March 31, 2014.

Respondent filed his Answer[6] on May 28, 2014 and interposed special and affirmative defenses, alleging, among others, that petitioner must prove its compliance with the prescribed checklist of

---

[1] Exhibit "P-1", docket, vol. II, p. 850.
[2] Exhibit "P-2", docket, vol. II, pp. 855-890.
[3] Exhibits "P-3" and "P-3-A", docket, vol. II, pp. 891-894.
[4] Exhibit "P-4", docket, vol. II, p. 895.
[5] Exhibits "P-9" and "P-10", docket, vol. II, pp. 905-917.
[6] Docket, vol. I, pp. 122-136.

requirements provided under Revenue Memorandum Order No. 53-98; that petitioner failed to prove that it has submitted the complete documents to substantiate its administrative claim for refund, hence, the instant petition was prematurely filed with the Court; that petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the BIR; that the instant petition should not be given due course for lack of jurisdiction since petitioner failed to exhaust all administrative remedies before elevating this case to this Court; and that 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.

A Notice of Pre-Trial Conference was issued by the Court on May 29, 2014, setting the case for pre-trial conference on July 3, 2014[7], but was reset to July 31, 2014[8], upon respondent's motion[9], and later reset to August 28, 2014[10]. Accordingly, petitioner's Pre-Trial Brief[11] was filed on June 25, 2014; while respondent's Pre-Trial Brief[12] was filed on July 21, 2014.

Pre-trial conference ensued. Meanwhile, upon petitioner's motion[13], this Court commissioned Mr. Joseph Cedric V. Calica of AMC & Associates, as Independent Certified Public Accountant (ICPA) for the case.[14]

The parties submitted their Joint Stipulation of Facts and Issues[15] on September 17, 2014. Subsequently, the Court issued a Pre-Trial Order[16] on September 24, 2014, approving and adopting the parties' joint stipulations and the pre-trial was deemed terminated.

---

[7] Docket, vol. I, p. 138.
[8] Order dated June 27, 2014, docket, vol. I. p. 355.
[9] Motion to Reset Pre-Trial Conference (Set on July 3, 2014), filed on June 24, 2014, docket, vol. I, pp. 139-142.
[10] Notice of Resetting, docket, vol. I, p. 357.
[11] Docket, vol. I, pp. 276-287.
[12] Docket, vol. I, pp. 358-361.
[13] Motion to Avail the Provisions of Rule 13 of the Revised Rules of the Court of Tax Appeals, filed on June 25, 2014, docket, vol. I, pp. 288-291.
[14] Minutes of the Hearing dated August 28, 2014, docket, vol. I, p. 364.
[15] Docket, vol. I, pp. 371-376.
[16] Docket, vol. I, pp. 378-383.

During trial, petitioner presented (1) Ms. Edita C. Encarnacion[17], petitioner's Assistant Vice President – Accounting; (2) Mr. Rolando L. Vicente[18], Finance Manager of Cebu Electric Cooperative Inc. III, purchaser of electric power sourced from petitioner; (3) Mr. Joseph Cedric V. Calica[19], the ICPA; (4) Isidito Camota Decina[20], Head of the Dispatch Group of petitioner; and (5) Bernadette Ann V. Policarpio[21], legal counsel of Global Business Power Corporation, petitioner's ultimate parent company, as its witnesses.

Petitioner filed its Formal Offer of Evidence[22] on September 3, 2015 and Supplemental Formal Offer of Evidence[23] on February 9, 2016. In the Resolution[24] dated March 29, 2016, the Court admitted all of petitioner's evidence.

On the other hand, respondent manifested that he has no witness to present.[25]

The case was submitted for decision on June 29, 2016[26] considering petitioner's Memorandum[27] filed on June 24, 2016 and respondent's Manifestation[28] filed on June 23, 2016, stating that he is adopting his Answer as his memorandum.

STATEMENT OF ISSUES

[17] Minutes of the Hearing dated October 1, 2014, docket, vol. I, p. 384; Exhibit "P-60", docket, vol. I, pp. 150-165; Minutes of the Hearing dated February 16, 2015, docket, vol. I, p. 462; Exhibit "P-150", docket, vol. II, pp. 1009-1014.
[18] Minutes of the Hearing dated November 17, 2014, docket, vol. I, p. 388; Exhibit "P-61", docket, vol. I, pp. 318-324.
[19] Minutes of the Hearing dated December 1, 2014, docket, vol. I, p. 420; Exhibit "P-142", docket, vol. I, pp. 406-419; and Minutes of the Hearing dated January 27, 2016, docket, vol. III, p. 1445; Exhibit "P-209", docket, vol. III, pp. 1110-1115.
[20] Minutes of the Hearing dated March 18, 2015, docket, vol. II, p. 717; Exhibit "P-152", docket, vol. II, pp. 1033-1037.
[21] Minutes of the Hearing dated May 20, 2015, docket, vol. II, p. 776; Exhibit "P-155", docket, vol. II, pp. 728-733. However, Exhibit "P-155" was not included in petitioner's Formal Offer of Evidence or Supplemental Offer of Evidence.
[22] Docket, vol. II, pp. 814-833.
[23] Docket, vol. IV, pp. 1450-1455.
[24] Docket, vol. IV, pp. 1796-1797.
[25] Minutes of the Hearing dated April 25, 2016, docket, vol. IV, p. 1799.
[26] Resolution dated June 29, 2016, docket, vol. IV, p. 1841.
[27] Docket, vol. IV, pp. 1814-1839.
[28] Docket, vol. IV, pp. 1811-1812.

The parties agreed on the following issues for the Court's resolution:[29]

Joint Issue:

Whether petitioner is entitled to a claim for refund in the total amount of ₱60,067,141.05, representing unutilized VAT input taxes for the 1st to 4th quarters of the taxable year 2012.

Additional Issues for Petitioner:

A. Whether petitioner is a VAT-registered taxpayer.
B. Whether petitioner is engaged in zero-rated sales.
C. Whether the input taxes are due or paid and have not been applied against output taxes during the quarter and in the succeeding quarters.
D. Whether the input tax being claimed is attributable to zero-rated sales.
E. Whether the instant claim complies with the period for claiming a refund under Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended.

DISCUSSION/RULING

Petitioner anchors its claim for refund/tax credit of its unutilized input VAT attributable to its zero-rated sales/receipts on Section 112, in relation to Section 108(B)(3), of the NIRC of 1997, as amended.

Section 112 of the NIRC of 1997, as amended, allows the refund or tax credit of unutilized excess input VAT attributable to zero-rated or effectively zero-rated sales. Subsections (A) and (C) thereof provide that:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* – Any VAT-registered person, whose sales are zero-rated or

[29] Statement of the Issues, JSFI, docket, vol. I, p. 372.

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: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

xxx xxx xxx

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

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

Pursuant to the above-quoted provisions, in order to be entitled to a refund/tax credit of excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1. the taxpayer-claimant must be VAT-registered;
2. there must be zero-rated or effectively zero-rated sales;
3. input taxes were incurred or paid;
4. such input taxes are attributable to zero-rated or effectively zero-rated sales;
5. said input taxes were not applied against any output VAT liability; and
6. the claim was filed within the prescriptive period.

The Court shall first determine whether petitioner complied with the sixth requisite.

Petitioner's administrative and judicial claims were timely filed

Pursuant to the above-quoted Section 112(A), the application for tax credit certificate/refund of input VAT must be filed within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. Thus, petitioner's last day for filing of its administrative claim for the four taxable quarters of calendar year (CY) 2012 fell on the following dates:

Period Covered	**Last Day for Filing Administrative Claim**
January 1 to March 31, 2012 (1st Quarter)	March 31, 2014
April 1 to June 30, 2012 (2nd Quarter)	June 30, 2014
July 1 to Sept. 30, 2012 (3rd Quarter)	September 30, 2014
October 1 to Dec. 31, 2012 (4thQuarter)	December 31, 2014

Evidently, petitioner timely filed with the BIR Large Taxpayers Division – Cebu, Revenue District Office No. 123 its administrative claim, together with the supporting documents, on November 29, 2013.[30]

[30] Exhibits "P-9" and "P-10", docket, vol. II, pp. 905-917.

As to the timeliness of petitioner's judicial appeal, Section 112(C) of the NIRC of 1997, as amended, states the time requirements for filing a judicial claim for the refund or tax credit of input VAT. The legal provision speaks of two periods: the period of 120 days, which serves as a waiting period to give time for the CIR to act on the administrative claim for a refund or credit; and the period of 30 days, which refers to the period for filing a judicial claim with the CTA.[31]

Applying Section 112(C), respondent should have acted on petitioner's claim for tax credit certificate/refund until March 29, 2014, the end of the 120-day period reckoned from November 29, 2013, the date when petitioner is deemed to have made its submission of complete documents to support its application for refund of excess unutilized input VAT. From March 29, 2014, petitioner had 30 days, or until April 28, 2014, within which to file its judicial claim before the Court. Therefore, the instant Petition for Review was timely filed on March 31, 2014.

Petitioner is VAT-registered and had zero-rated sales/receipts for the four taxable quarters of CY 2012

Petitioner complied with the first requisite considering that it is a VAT-registered entity with Certificate of Registration No. 2RC0000074406 duly issued by respondent and was assigned with TIN 003-883-626-000.[32]

On the second requisite, records show that petitioner is a partnership duly registered with the SEC and is engaged in the business of acquiring, owning, rehabilitating and operating coal-fired and oil-fired electrical generation facilities.[33] As a generation company, petitioner was granted by the ERC with the authority to operate generation facilities located in Sangi and Sigpit, Toledo City,

[31] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.
[32] Exhibit "P-4", docket, vol. II, p. 895.
[33] Exhibits "P-1" and "P-2", docket, vol. II, pp. 850-890.

Cebu under Certificate of Compliance No. 09-11-GXT 61-0066 issued on November 16, 2009.[34]

Petitioner avers that it is engaged in zero-rated sales as it sells and supplies electric power to entities located in economic zones, such as Philippine Economic Zone Authority (PEZA) or to Board of Investments (BOI)-registered enterprises and to other entities whose purchases from local suppliers are entitled to VAT zero-rating.

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

Pertinent provisions of Section 108(B) of the NIRC of 1997, as amended, state that:

> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> 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:
>
> xxx xxx xxx
>
> (3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects the supply of such services to zero percent (0%) rate**; (*Emphasis supplied*)

The special law specific to this case is Republic Act (RA) No. 7916, as amended, otherwise known as "The Special Economic Zone Act of 1995". Section 8 of RA No. 7916, as amended, mandates that

[34] Exhibits "P-3" and "P-3-A", docket, vol. II, pp. 891-894.

the PEZA shall manage and operate the ecozones as a separate customs territory, thus:

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

Since the Ecozone is viewed as a foreign territory by legal fiction, sales of goods and *services* made by a VAT-registered person in the Philippine customs territory to an entity registered and operating within the Ecozone are considered exports to a foreign country subject to zero percent (0%) VAT. This was elucidated by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.*[35], 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 —
>
> > ... [S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial,

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

> 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.

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%)[36] VAT. (*Emphasis supplied*)

---

[36] Now 12%.

With respect to sales by a VAT-registered supplier to a BOI-registered manufacturer/producer, Section 4.106-5 of Revenue Regulations (RR) No. 16-05, as amended by RR No. 04-07, provides:

> SECTION 4.106-5. *Zero-Rated Sales of Goods or Properties.* – xxx
>
> The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) ***Export Sales.*** – "*Export Sales*" shall mean:
>
> xxx xxx xxx
>
> (5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.
>
> ***"Considered export sales under Executive Order No. 226"*** shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; *Provided,* That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; *Provided,* further, That pursuant to EO 226 and other special laws, even without actual exportation, the following shall be considered constructively exported: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones; (3) sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA

> 7227; (4) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (5) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not.
>
> For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee; and ***Provided, finally,*** **that sales of** goods, properties or **services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI.** (*Emphasis supplied*)

Clearly, sales of services by a VAT-registered taxpayer, such as herein petitioner, to entities located in Ecozones and to BOI-registered manufacturers/producers whose products are 100% exported are considered "export sales" subject to zero percent (0%) VAT rate pursuant to Section 108(B)(3) of the NIRC of 1997, as amended, and Section 4.106-5 of RR No. 16-05.

In its Quarterly VAT Returns for the four taxable quarters of CY 2012, petitioner reflected an amount of ₱1,781,612,046.76 zero-rated sales/receipts, broken down as follows:

Exhibit	**CY 2012**	**Zero-Rated Sales/Receipts**
"P-17"	1st Quarter	₱ 542,930,177.94
"P-18"	2nd Quarter	501,923,964.17
"P-21"	3rd Quarter	430,079,791.55
"P-24"	4th Quarter	306,678,113.10

	Total	**₱1,781,612,046.76**

A perusal of petitioner's Schedule of Gross Sales (VATable, Zero-Rated, VAT-exempt and Sales to Government)[37] with the related sales invoices, official receipts and credit/debit memos[38] shows that the amount of ₱1,781,612,046.76 treated by petitioner as zero-rated sales/receipts pertains to its sales of electricity to Balamban Enerzone Corporation (BEC), Carmen Copper Corporation (CCC)[39], and Cebu Electric Cooperative III (CEBECO III).

It was established that BEC is a PEZA-registered entity and CCC is a registered BOI 100% exporter as evidenced by the Certifications issued by the PEZA[40] and BOI[41], respectively. Thus, petitioner's sales of electricity to BEC and CCC for the four taxable quarters of CY 2012 qualify for VAT zero-rating except for the following sales for the first and fourth quarters in the respective amounts of ₱167,364,545.29 and ₱115,377,193.94 which are not covered by VAT zero-rated official receipts (ORs) in accordance with Section 113(A)(2) of the NIRC of 1997, as amended:

Exhibit	OR No.	Customer	1st Quarter	4th Quarter
-	-	BALAMBAN ENERZONE CORPORATION	₱ 8,647,861.37	
-	2323	CARMEN COPPER CORPORATION	8,094,882.48	
-	2323	CARMEN COPPER CORPORATION	150,621,801.44	
-	2349	BALAMBAN ENERZONE CORPORATION		₱ 7,893,254.29
-	-	BALAMBAN ENERZONE CORPORATION		8,959,772.99
-	2356	BALAMBAN ENERZONE CORPORATION		10,813,211.00
-	2357	CARMEN COPPER CORPORATION		992,722.36
-	2358	CARMEN COPPER CORPORATION		75,905,022.30
-	2356	BALAMBAN ENERZONE CORPORATION		10,813,211.00
		Total	**₱167,364,545.29**	**₱115,377,193.94**

With regard to petitioner's sales to CEBECO III, petitioner asserts that since the electricity it sold to CEBECO III was ultimately distributed to BEC and CCC, petitioner's energy fee billings to CEBECO III were pass through charges and directly attributable to

[37] Exhibit "P-105".
[38] Exhibits "P-105-1" to "P-105-358".
[39] Exhibit "P-11", docket, vol. II, pp. 918-920.
[40] Exhibit "P-7", docket, vol. II, p. 903.
[41] Exhibit "P-11", docket, vol. II, pp. 918-920.

BEC and CCC. Petitioner posits that its sales to CEBECO III are likewise considered as zero-rated sales, citing as basis therefor Revenue Memorandum Circular (RMC) No. 61-05 dated October 27, 2005.

The Court disagrees with petitioner.

The VAT zero-rating contemplated under Section 108(B)(3) of the NIRC of 1997, as amended (in relation to Section 8 of RA No. 7916, as amended) and Section 4.106-5 of RR No. 16-05, as amended pertains only to sales made directly to PEZA-registered entities and BOI-registered 100% exporters. Since CEBECO III is neither a PEZA-registered entity nor a BOI-registered 100% exporter, the following sales to CEBECO III do not qualify for VAT zero-rating:

Exhibit	OR No.	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
P-105-138	2717	₱ 8,366,451.93			
P-105-139	2718	6,924,583.91			
P-105-152	2732	6,576,566.19			
P-105-153	2733	8,818,614.94			
P-105-173	2744	7,470,878.44			
P-105-173	2744	6,106,423.96			
P-105-191	2753		₱ 6,752,768.35		
P-105-192	2754		5,545,934.36		
P-105-213	2771		7,829,375.98		
P-105-213	2771		5,982,481.37		
P-105-356	2786		9,506,165.89		
P-105-255	2797			₱ 454,092.05	
P-105-256	2798			5,856,012.52	
P-105-256	2798			3,438,606.48	
P-105-272	2868			6,018,956.23	
P-105-273	2869			4,102,823.97	
P-105-306	2879			2,171,417.99	
P-105-306	2879			56,268.11	
P-105-306	2879			7,392,333.52	
P-105-325	2896				₱ 7,490,193.92
P-105-325	2896				3,228,804.45
P-105-344	2900				9,525,723.51
-	2924				8,547,142.00
	Total	**₱44,263,519.37**	**₱35,616,725.95**	**₱29,490,510.87**	**₱28,791,863.88**

Therefore, only sales/receipts amounting to ₱1,360,707,687.46, as computed below, qualify for VAT zero-rating:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Total Declared Zero-Rated Sales/Receipts Per Return	₱ 542,930,177.94	₱ 501,923,964.17	₱ 430,079,791.55	₱ 306,678,113.10	₱ 1,781,612,046.76
Less: Disallowances					

Sales not supported by official receipts	167,364,545.29	-	-	115,377,193.94	282,741,739.23
Sales to CEBECO III	44,263,519.37	35,616,725.95	29,490,510.87	28,791,863.88	138,162,620.07
Total Allowed Zero-Rated Sales	**₱331,302,113.28**	**₱466,307,238.22**	**₱400,589,280.68**	**₱162,509,055.28**	**₱1,360,707,687.46**

Petitioner incurred/paid excess input taxes attributable to its valid zero-rated sales/receipts for the subject periods and said input taxes were not applied against any output VAT liability

After resolving that petitioner had VAT zero-rated sales/receipts for the four taxable quarters of CY 2012, the Court shall now determine the amount of unutilized excess input VAT attributable thereto.

In its 2012 Quarterly VAT Returns, petitioner reported the following input taxes totaling ₱148,611,453.13 arising from its amortization of input VAT on purchases of capital goods exceeding ₱1Million, purchases of capital goods not exceeding ₱1Million, domestic purchases and importation of goods other than capital goods and domestic purchases of services, broken down as follows:

	1st Quarter	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**CY 2012**
	(Exhibit "P-17")	*(Exhibit "P-18")*	*(Exhibit "P-21")*	*(Exhibit "P-24")*	
Input Tax Deferred on Capital Goods exceeding ₱1Million from previous quarter	₱ 1,970,077.71	₱ 2,000,868.29	₱ 1,805,870.12	₱ 1,918,040.17	₱ 1,970,077.71
Add:					
Input Tax on Capital Goods exceeding ₱1Million purchased this quarter	219,516.85		296,407.56	943,516.83	1,459,441.24
Total Unamortized Input Tax on Capital Goods exceeding ₱1Million	₱ 2,189,594.56	₱ 2,000,868.29	₱ 2,102,277.68	₱ 2,861,557.00	₱ 3,429,518.95
Less:					
Input Tax on Purchases of Capital Goods exceeding ₱1Million deferred for the succeeding	2,000,868.29	1,805,870.12	1,918,040.17	2,649,506.67	2,649,506.67

period					
Amortization of Input Tax on Purchases of Capital Goods exceeding ₱1Million	*₱ 188,726.27*	*₱ 194,998.17*	*₱ 184,237.51*	*₱ 212,050.33*	*₱ 780,012.28*
Add: Input Tax on Current Purchases					
Purchases of capital goods not exceeding ₱1Million		*94,088.66*	*70,081.71*	-	*164,170.37*
Domestic purchases of goods other than capital goods	*2,339,408.36*	*4,757,874.47*	*7,658,181.33*	*17,191,706.76*	*31,947,170.92*
Importation of goods other than capital goods	*25,882,597.00*	*2,409,980.00*	*2,782,002.00*	*26,786,411.00*	*57,860,990.00*
Domestic purchases of services	*6,543,893.02*	*15,030,906.91*	*15,657,404.00*	*20,626,905.63*	*57,859,109.56*
Total	**₱34,954,624.65**	**₱22,487,848.21**	**₱26,351,906.55**	**₱64,817,073.72**	**₱148,611,453.13**

In support of the said input VAT, petitioner presented among others, its Schedule of Domestic Purchases of Goods and Services and Corresponding Input Tax[42], Schedule of Importation of Goods and Corresponding Input Tax[43] and the related suppliers' official receipts and sales invoices, Bureau of Customs (BOC) Import Entry and Internal Revenue Declarations (IEIRDs), Statements of Settlement of Duties and Taxes (SSDTs) and Temporary Assessment Notices[44] which were all examined by the Court-commissioned ICPA, Mr. Joseph Cedric V. Calica.

Based on the ICPA's findings, petitioner's reported input VAT in the aggregate amount of ₱17,361,231.47 shall be disallowed for not being properly substantiated by VAT invoices or receipts as prescribed under Sections 110(A), 113(A) and (B), 237, and 238 of the NIRC of 1997, as amended, and as implemented by Sections 4.110-1, 4.110-2, 4.110-8, and 4.113-1 of RR No. 16-05, as amended:

Exhibit	Exceptions	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	CY 2012
P-106-1	No sales invoices/official receipts submitted by the petitioner	₱ 504,527.89	₱ 42,618.20	₱ 1,439,832.31	₱ 4,458,124.37	₱ 6,445,102.77
P-106-2	Supporting documents are not in the period covered by the claim	2,319,037.59	62,574.97	705,319.74	219,373.66	3,306,305.96

[42] Exhibit "P-102".
[43] Exhibit "P-103".
[44] Exhibits "P-102-1" to "P-102-3465" and "P-103-1" to "P-103-66".

P-106-3	No valid supporting documents	-	10,827.86	852,707.50	6,318,626.46	7,182,161.82
P-106-4	Vat amount per schedule does not tally with the amount indicated in the supporting document	11,965.38	-	-	-	11,965.38
P-106-5	Incorrect/incomplete name of the petitioner	2,823.60	-	181,956.85	139.29	184,919.74
P-106-6	No TIN of the supplier	-	12,429.60	-	-	12,429.60
P-106-7	No TIN of the petitioner	-	51,448.02	4,687.79	3,892.50	60,028.31
P-106-8	Incorrect or no address of the Company	-	19,294.80	-	-	19,294.80
P-106-9	VAT not separately shown in the documents	2,057.14	4,578.46	6,319.15	126,068.34	139,023.09
	Total	**₱2,840,411.60**	**₱203,771.91**	**₱3,190,823.34**	**₱11,126,224.62**	**₱17,361,231.47**

In addition, the Court finds that the following input VAT should likewise be disallowed for failure to meet the substantiation requirements prescribed under the aforementioned VAT law and regulations, detailed as follows:

Exhibit	**Invoice/ OR No.**	**Supplier**	**Input VAT Claim (In Php)**			
			1st Quarter	**2nd Quarter**	**3rd Quarter**	**4th Quarter**
1. Domestic purchases of goods and services						
Input VAT supported by ORs pre-printed/stamped with "NOT A VALID SOURCE OF INPUT TAX"						
P-102-75	130	MAJESTIC SHIPPING CORPORATION	246,016.60			
P-102-1720	16723-A	AMERICAN TECHNOLOGIES INC.	331.71			
P-102-123	0128A	MAJESTIC SHIPPING CORPORATION	248,401.96			
P-102-1728	16848	ELASCO INTERNATIONAL CORPORATION	5,400.00			
P-102-178	108	MAJESTIC SHIPPING CORPORATION	178,539.69			
P-102-179	113	MAJESTIC SHIPPING CORPORATION	252,187.44			
P-102-180	116 A	MAJESTIC SHIPPING CORPORATION	257,260.20			
P-102-2153	50624	MICROGENESIS BUSINESS SYSTEMS		1,157.14		
P-102-2171	138-A	MAJESTIC SHIPPING CORPORATION		249,863.49		
P-102-353	152	MAJESTIC SHIPPING CORPORATION		249,292.50		
P-102-2222	3764	ULTRACOTE PAINTS & COATINGS CORPORATION		9,647.18		
P-102-2298	148	MAJESTIC SHIPPING CORPORATION		257,467.05		
P-102-451	144	MAJESTIC SHIPPING		251,161.27		

Exhibit	Invoice/ OR No.	Supplier	Input VAT Claim (In Php) 1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
		CORPORATION				
P-102-727	694	THE FLOWER PLANT BY WTU			267.86	
P-102-836	4075	ULTRACOTE PAINTS & COATINGS CORPORATION			24,102.82	
P-102-2083	4509	ULTRACOTE PAINTS & COATINGS CORPORATION				33,756.05
P-102-1545	162-A	MAJESTIC SHIPPING CORPORATION				248,788.04
		Subtotal	***1,188,137.60***	***1,018,588.63***	***24,370.68***	***282,544.09***
Input VAT supported by TIN-V invoices/ORs						
P-102-85	01659	ALAS CUSTOMS BROKERAGE	2,395.78			
P-102-85	01659	ALAS CUSTOMS BROKERAGE	1,025.47			
P-102-86	01663	ALAS CUSTOMS BROKERAGE	788.78			
P-102-86	01663	ALAS CUSTOMS BROKERAGE	2,113.87			
P-102-86	01663	ALAS CUSTOMS BROKERAGE	350.42			
P-102-87	01661	ALAS CUSTOMS BROKERAGE	382.73			
P-102-87	01661	ALAS CUSTOMS BROKERAGE	756.00			
P-102-87	01661	ALAS CUSTOMS BROKERAGE	93.98			
P-102-87	01661	ALAS CUSTOMS BROKERAGE	382.72			
P-102-88	01668	ALAS CUSTOMS BROKERAGE	4,823.12			
P-102-89	01669	ALAS CUSTOMS BROKERAGE	6,545.09			
P-102-90	01670	ALAS CUSTOMS BROKERAGE	13,658.96			
P-102-91	01662	ALAS CUSTOMS BROKERAGE	382.72			
P-102-91	01662	ALAS CUSTOMS BROKERAGE	23.21			
P-102-92	01667	ALAS CUSTOMS BROKERAGE	180.00			
P-102-149	01657	ALAS CUSTOMS BROKERAGE	334.88			
P-102-149	01657	ALAS CUSTOMS BROKERAGE	146.88			
P-102-149	01657	ALAS CUSTOMS BROKERAGE	671.43			
P-102-149	01657	ALAS CUSTOMS BROKERAGE	1,665.26			
P-102-149	01657	ALAS CUSTOMS BROKERAGE	88.04			
P-102-149	01657	ALAS CUSTOMS BROKERAGE	348.00			
P-102-150	01656	ALAS CUSTOMS BROKERAGE	1,048.60			
P-102-150	01656	ALAS CUSTOMS BROKERAGE	108.05			
P-102-150	01656	ALAS CUSTOMS BROKERAGE	2,623.78			
P-102-151	01655	ALAS CUSTOMS BROKERAGE	819.29			
P-102-151	01655	ALAS CUSTOMS	2,235.12			

Exhibit	Invoice/ OR No.	Supplier	Input VAT Claim (In Php) 1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
		BROKERAGE				
P-102-151	01655	ALAS CUSTOMS BROKERAGE	673.60			
P-102-1732	1644	ALAS CUSTOMS BROKERAGE	876.73			
P-102-210	01650	ALAS CUSTOMS BROKERAGE	498.47			
P-102-210	01650	ALAS CUSTOMS BROKERAGE	71.34			
P-102-210	01650	ALAS CUSTOMS BROKERAGE	120.00			
P-102-2151	4600	LIANG CHI INDUSTRY PHILS		11,606.40		
P-102-528 P-102-529	0333	MARNO TRADING			21,379.29	
P-102-549	0311	MARNO TRADING			565.44	
P-102-552	0315	MARNO TRADING			3,553.20	
P-102-1932	0318	MARNO TRADING			278.79	
P-102-553	0317	MARNO TRADING			239.14	
P-102-1933	0316	MARNO TRADING			535.71	
P-102-1934	321	MARNO TRADING			218.57	
P-102-1935	0319	MARNO TRADING			535.71	
P-102-554	0312	MARNO TRADING			4,140.00	
P-102-583	0325	MARNO TRADING			1,020.00	
P-102-584	0326	MARNO TRADING			1,205.28	
P-102-588	0327	MARNO TRADING			2,860.71	
P-102-589	0324	MARNO TRADING			5,245.71	
P-102-737	01693	ALAS CUSTOMS BROKERAGE			448.71	
P-102-737	01693	ALAS CUSTOMS BROKERAGE			459.78	
P-102-737	01693	ALAS CUSTOMS BROKERAGE			374.24	
P-102-737	01693	ALAS CUSTOMS BROKERAGE			596.90	
P-102-2020	0309	MARNO TRADING			257.14	
P-102-2020	0309	MARNO TRADING			257.14	
P-102-907	01687	ALAS CUSTOMS BROKERAGE			384.07	
P-102-908	01686	ALAS CUSTOMS BROKERAGE			528.62	
P-102-908	01686	ALAS CUSTOMS BROKERAGE			516.00	
P-102-908	01686	ALAS CUSTOMS BROKERAGE			88.04	
P-102 -910	1685	ALAS CUSTOMS BROKERAGE			390.25	
P-102-910	1685	ALAS CUSTOMS BROKERAGE			364.28	
P-102-910	1685	ALAS CUSTOMS BROKERAGE			61.67	
P-102-1143	371	MARNO TRADING				2,008.93
P-102-2119	338	MARNO TRADING				16,714.29
P-102-1253	347	MARNO TRADING				2,149.66
P-102-1254	355	MARNO TRADING				120.64
P-102-1302	0335	MARNO TRADING				929.40
P-102-1605	1701	ALAS CUSTOMS BROKERAGE				495.99
P-102-1347	389	MARNO TRADING				1,680.00
		Subtotal	***46,232.32***	***11,606.40***	***46,504.39***	***24,098.91***
Input VAT supported by invoices/ORs dated outside the period of claim						
P-102-1718	9107	SEVERO SY LING INC	11,283.08			
P-102-1719	9342	SEVERO SY LING INC	7,839.53			

Exhibit	Invoice/ OR No.	Supplier	Input VAT Claim (In Php) 1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
P-102-65	03-01805	AMERICAN PACKING INDUSTRIES (PHILS.)	10,980.00			
P-102-1722	2901	KINGMARK ENT. PHIL.	28,392.86			
P-102-1723	2907	KINGMARK ENT. PHIL.	70,982.14			
P-102-1724	1822	RBER INDUSTRIAL & TRADING CORPORATION	22,701.85			
		Subtotal	***152,179.46***	-	-	-
Input VAT supported only by a Provisional Receipt						
P-102-93	3670	AMC & ASSOCIATES, CPA	20,160.00			
		Subtotal	***20,160.00***	-	-	-
Input VAT supported by TIN-NonVAT invoices/ORs						
P-102-1817	500	PHILIPPINE INDEPENDENT POWER PRODUCERS ASSOCIATION INC		11,396.88		
P-102-508	1732	KJL COMPUTER ENTERPRISE			75.00	
P-102-1190	45905	ISA-CON ENTERPRISES				257.14
P-102-1645	N32-0000542	NATIONAL GRID CORPORATION OF THE PHILIPPINES				497.61
P-102-1715	444	NATIONAL GRID CORPORATION OF THE PHILIPPINES				366.14
P-102-1650	N32-0000404	NATIONAL GRID CORPORATION OF THE PHILIPPINES				23.11
P-102-1651	N32-0000343	NATIONAL GRID CORPORATION OF THE PHILIPPINES				3,395.84
		Subtotal	-	***11,396.88***	***75.00***	***4,539.84***
Input VAT amount not separately indicated in the invoices/ORs						
P-102-723	9401	PRODUCT EQUIPMENT RESOURCES & TRADING, INC.			(42.22)	
P-102-723	9401	PRODUCT EQUIPMENT RESOURCES & TRADING, INC.			8,023.90	
P-102-789	9312	PRODUCT EQUIPMENT RESOURCES & TRADING, INC.			(42.21)	
P-102-789	9312	PRODUCT EQUIPMENT RESOURCES & TRADING, INC.			8,304.63	
		Subtotal	-	-	***16,244.10***	-
Input VAT not covered by the supporting OR						
P-102-2302	6023	SCB FAO PEMC		3,829,981.06		
P-102-2302	6023	SCB FAO PEMC		(1,840,974.54)		
P-102-2302	6023	SCB FAO PEMC		(1,462,351.40)		
P-102-2302	6023	SCB FAO PEMC		307.49		
P-102-2302	6023	SCB FAO PEMC		1,852.88		
P-102-2318	5805	SCB FAO PEMC		980,731.57		
P-102-2318	5805	SCB FAO PEMC		(161,309.85)		
P-102-2318	5805	SCB FAO PEMC		307.49		
P-102-2318	5805	SCB FAO PEMC		1,852.88		
P-102-628	6954	SCB FAO PEMC			28,144.07	
P-102-628	6954	SCB FAO PEMC			7,837.05	
P-102-628	6954	SCB FAO PEMC			713.52	
P-102-628	6954	SCB FAO PEMC			231.79	
P-102-628	6954	SCB FAO PEMC			959.14	

Exhibit	Invoice/ OR No.	Supplier	Input VAT Claim (In Php) 1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
P-102-703	2238873	GLOBE TELECOM, INC.			107.14	
P-102-725	6723	SCB FAO PEMC			1,481.76	
P-102-1922	6723	SCB FAO PEMC			307.49	
P-102-775	879	JMPM FREIGHT FORWARDER INTERNATIONAL, INC.			2,510.84	
P-102-775	879	JMPM FREIGHT FORWARDER INTERNATIONAL, INC.			166.80	
P-102-775	879	JMPM FREIGHT FORWARDER INTERNATIONAL, INC.			166.80	
P-102-775	879	JMPM FREIGHT FORWARDER INTERNATIONAL, INC.			186.97	
P-102-2074	08248	PHILIPPINE ELECTRICITY MARKET CORPORATION				664.17
P-102-2074	08248	PHILIPPINE ELECTRICITY MARKET CORPORATION				6,156.55
		Subtotal	-	***1,350,397.58***	***42,813.37***	***6,820.72***
Exhibit reference does not pertain to the input VAT claim						
P-102-632	6954	SCB FAO PEMC			494,140.86	
P-102-632	6954	SCB FAO PEMC			(169,942.99)	
P-102-632	6954	SCB FAO PEMC			79.49	
P-102-2101	7426	PHILIPPINE ELECTRICITY MARKET CORPORATION				664.17
P-102-1215	650212	PILIPINAS SHELL PETROLEUM CORPORATION				58,251.84
P-102-2143	504	SAN-VIC AGRO-BUILDERS				89,472.00
		Subtotal	-	-	***324,277.36***	***148,388.01***
Input VAT claimed twice						
P-102-2021	6633	MARNIEL MARKETING			1,350.00	
	669350	PILIPINAS SHELL PETROLEUM CORP				58,448.26
	669349	PILIPINAS SHELL PETROLEUM CORP				58,448.26
		Subtotal	-	-	***1,350.00***	***116,896.52***
Marked exhibit cannot be found from the records						
P-102-1631	22580	MANDAUE INTEGRATED MANPOWER SERVICES				3,378.96
P-102-1631	22580	MANDAUE INTEGRATED MANPOWER SERVICES				1,016.52
P-102-1631	22580	MANDAUE INTEGRATED MANPOWER SERVICES				836.14
P-102-1631	22580	MANDAUE INTEGRATED MANPOWER SERVICES				1,082.41
P-102-1631	22580	MANDAUE INTEGRATED MANPOWER SERVICES				572.13
P-102-1631	22580	MANDAUE INTEGRATED MANPOWER SERVICES				904.30
		Subtotal	-	-	-	***7,790.46***
Input VAT not supported by Invoices/ORs						

Exhibit	Invoice/ OR No.	Supplier	Input VAT Claim (In Php) 1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
-	3082	ADVANCE SURFACE PROTECTION SPECIALIST				2,206.56
	BN-24	INNOVE COMMUNICATIONS				4,560.00
-		***Subtotal***	-	-	-	***6,766.56***
2. Importation of goods						
Input VAT supported by IEIRD but without a validation of the payment, or Statement of Settlement of Duties and Taxes (SSDT) or Bureau of Customs (BOC) official receipt						
P-103-1 to 2	114960325	PT KIDECO JAYA AGUNG	4,080,063.00			
P-103-12	118730841	KSB SINGAPORE PTE LTD	696,349.00			
P-103-13 to 15	116409413	SUN MACHINERY and TRADING INC	16,718.00			
P-103-16 to 18	116409465	KSB SINGAPORE PTE LTD	32,066.00			
P-103-19	120767963	KSB SINGAPORE PTE LTD	10,760.00			
P-103-20	118553757	YASHIMA and CO LTD	156,378.00			
P-103-21 to 22	118553741	FUJI TRADING COL LTD		84,431.00		
P-103-23 to 25	118553705	IANDN INTL		94,632.00		
P-103-26 to 28	120751303	NOMAX LTD		1,552,713.00		
P-103-29 to 31	120751303	NOMAX LTD		456,619.00		
P-103-32 to 34	118553522	FUJI TRADING CO LTD		221,585.00		
P-103-35 to 37	121773251	I AND N INTERNATIONAL			127,011.00	
P-103-38	121773084	PT SION MANDI			2,654,991.00	
P-103-39 to 40	123885002	HWAN TAI CEMENT PRODUCTS CO LTD				2,963,129.00
P-103-41 to 43	123884993	HWAN TAI CEMENT PRODUCTS LTD				798.00
P-103-44 to 45	121773102	PT SION ANUGRAH MANDIRI				2,616,500.00
P-103-48	121773181	PT SION ANUGRAH MANDIRI				3,530,132.00
P-103-55 to 57	018180153	FORMOSA HEAVY INDUSTRIES CORPORATION				3,388,641.00
P-103-58 to 60	121853286	PT SION ANUGRAH MANDIRI				3,521,760.00
P-103-61	121853313	PT SION ANUGRAH MANDIRI				3,492,053.00
P-103-62 to 63	116603094	FORMOSA HEAVY INDUSTRIES CORPORATION				1,371,231.00
P-103-64 to 65	116603103	FORMOSA HEAVY INDUSTRIES CORPORATION				1,852,731.00
P-103-66	116603146	LONJING HONGKONG COMPANY LIMITED				50,577.00
-	121853286	PT SION ANUGRAH MANDIRI				(520.00)
		Subtotal	***4,992,334.00***	***2,409,980.00***	***2,782,002.00***	***22,787,032.00***
		Total	**6,399,043.38**	**4,801,969.49**	**3,237,636.90**	**23,384,877.11**

With regard to the claimed ₱780,012.28 amortization of input VAT on purchases of capital goods exceeding ₱1Million, the same shall also be disallowed because petitioner failed to submit before this Court VAT invoices/official receipts in support of its previous year/s' purchases of capital goods exceeding ₱1Million. Also, petitioner failed to identify which among its domestic purchases of goods and services[45] for the year 2012 pertain to its capital goods purchases exceeding ₱1Million.

Therefore, out of petitioner's reported input VAT for the four quarters of CY 2012 in the total amount of ₱148,611,453.13, only the amount of ₱92,646,682.50 represents valid input VAT, computed below:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Input VAT per VAT Return	₱ 34,954,624.65	₱ 22,487,848.21	₱ 26,351,906.55	₱ 64,817,073.72	₱ 148,611,453.13
Less: Disallowances					
Per ICPA report	₱ 2,840,411.60	₱ 203,771.91	₱ 3,190,823.34	₱ 11,126,224.62	₱ 17,361,231.47
Per Court's further verification					
Input VAT on domestic purchases of goods and services and importation of goods	6,399,043.38	4,801,969.49	3,237,636.90	23,384,877.11	37,823,526.88
Amortization of input VAT on capital goods purchases exceeding ₱1Million	188,726.27	194,998.17	184,237.51	212,050.33	780,012.28
Total Disallowances	₱ 9,428,181.25	₱ 5,200,739.57	₱ 6,612,697.75	₱ 34,723,152.06	₱ 55,964,770.63
Substantiated Input VAT	**₱25,526,443.40**	**₱17,287,108.64**	**₱19,739,208.80**	**₱30,093,921.66**	**₱92,646,682.50**

However, considering that petitioner had other kinds of sales, *i.e.*, sales to private entities, sales to government and exempt sales, and its input VAT cannot be directly attributed to specific sales, the Court shall allocate the valid input VAT proportionately on the basis of the volume of petitioner's sales pursuant to Section 112(A) of the NIRC of 1997, as amended, computed as follows:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Sales per VAT return					
Vatable Sales/ Receipts – Private	₱ 142,290,065.92	₱213,266,370.23	₱179,525,702.25	₱172,096,239.00	₱ 707,178,377.40
Sales to Government	15,498,374.80	15,220,068.60	14,385,534.60	13,574,278.83	58,678,256.83
Zero-Rated Sales/Receipts	542,930,177.94	501,923,964.17	430,079,791.55	306,678,113.10	1,781,612,046.76
Exempt Sales/ Receipts	1,082,505.00	1,138,810.24	1,133,588.81	1,211,682.00	4,566,586.05

[45] Exhibit "P-102".

Total	₱ 701,801,123.66	₱731,549,213.24	₱625,124,617.21	₱493,560,312.93	₱2,552,035,267.04
Allocation Factor (Percentage of each type of sales to total sales):					
Vatable Sales/ Receipts – Private	20.2749841%	29.1527031%	28.7183863%	34.8683301%	27.7103685%
Sales to Government	2.2083713%	2.0805256%	2.3012267%	2.7502776%	2.2992730%
Zero-Rated Sales/Receipts	77.3623979%	68.6111003%	68.7990490%	62.1358940%	69.8114195%
Exempt Sales/ Receipts	0.1542467%	0.1556710%	0.1813381%	0.2454983%	0.1789390%
Total	100.0000000%	100.0000000%	100.0000000%	100.0000000%	100.0000000%
Valid Input VAT	₱ 25,526,443.40	₱ 17,287,108.64	₱ 19,739,208.80	₱30,093,921.66	₱ 92,646,682.50
Input VAT Allocation Per Each Type of Sales (Allocation Factor multiplied by Valid Input VAT):					
Vatable Sales/ Receipts –Private	**₱ 5,175,482.33**	**₱ 5,039,659.46**	**₱ 5,668,782.23**	**₱10,493,247.93**	**₱ 26,377,171.95**
Sales to Government	563,718.66	359,662.72	454,243.94	827,666.39	2,205,291.71
Zero-Rated Sales/Receipts	**19,747,868.72**	**11,860,875.44**	**13,580,387.93**	**18,699,127.28**	**63,888,259.37**
Exempt Sales/ Receipts	39,373.69	26,911.02	35,794.70	73,880.06	175,959.47
Total	₱ 25,526,443.40	₱ 17,287,108.64	₱ 19,739,208.80	₱ 30,093,921.66	₱ 92,646,682.50

Since the input VAT allocated to VATable sales/receipts-private entities is not enough to cover petitioner's output tax due for each quarter, the input VAT allocated to zero-rated sales/receipts shall be utilized to pay for the remaining output tax, as shown below:

	1st Quarter	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**Total**
Output VAT Due	₱ 17,074,807.91	₱ 25,591,964.43	₱ 21,543,084.27	₱ 20,651,548.68	₱ 84,861,405.29
Less: Input VAT allocated to VATable sales/receipts	5,175,482.33	5,039,659.46	5,668,782.23	10,493,247.93	26,377,171.95
Balance of Output VAT Due	₱ 11,899,325.58	₱ 20,552,304.97	₱ 15,874,302.04	₱ 10,158,300.75	₱ 58,484,233.34
Less: Input VAT allocated to Zero-Rated Sales/Receipts	19,747,868.72	11,860,875.44	13,580,387.93	18,699,127.28	63,888,259.37
Output VAT Still Due/(Excess Input VAT)	**₱(7,848,543.14)**	**₱8,691,429.53**	**₱2,293,914.11**	**₱(8,540,826.53)**	**₱(5,404,026.03)**

Based from the foregoing, petitioner had excess input VAT for the CY 2012 in the amount of ₱5,404,026.03, which can be attributed to its entire declared zero-rated sales/receipts in the amount of ₱1,781,612,046.76.

However, as stated earlier, petitioner was able to properly substantiate only the amount of ₱1,360,707,687.46 out of its total declared zero-rated sales/receipts of ₱1,781,612,046.76. Thus, the input VAT attributable to petitioner's valid zero-rated sales/receipts of ₱1,360,707,687.46 amounts only to ₱4,127,329.38, as computed below:

Excess Input VAT Attributable to Declared Zero-Rated Sales/Receipts	₱ 5,404,026.03
Divided by Declared Zero-Rated Sales/Receipts	÷ 1,781,612,046.76
Multiplied by Valid Zero-Rated Sales/Receipts	× 1,360,707,687.46
Excess Input VAT Attributable to Valid Zero-Rated Sales/Receipts	**₱ 4,127,329.39**

Even though the claimed input VAT was carried over by petitioner in its succeeding Quarterly VAT Returns[46], the same remained unutilized until it was deducted in its Quarterly VAT Return for the fourth quarter of 2013 as "VAT Refund/TCC claimed"[47] from the total available input tax of ₱382,255,748.72[48]. Thus, the claimed input taxes for the four quarters of CY 2012 could not have been carried over/utilized in the succeeding first quarter of 2014[49].

In fine, petitioner has sufficiently proven its entitlement to a refund in the amount of ₱4,127,329.39 representing its unutilized excess input VAT for the four taxable quarters of CY 2012, which is attributable to its zero-rated sales/receipts for the same period.

WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** to petitioner the amount of **₱4,127,329.39** representing its unutilized excess input VAT for the four quarters of taxable year 2012 attributable to its zero-rated sales/receipts.

SO ORDERED.

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

---

46 Exhibits "P-25" to "P-26", "P-28", and "P-29", docket, vol. II, pp. 940-943 and 946-949.
47 Exhibit "P-29", line 23D, docket, vol. II, p. 949.
48 Exhibit "P-29", line 22, docket, vol. II, p. 948.
49 Exhibit "P-30", docket, vol. II, p. 950.

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

(With Concurring and Dissenting Opinion)
CATHERINE T. MANAHAN
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.
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TOLEDO POWER COMPANY, *Petitioner,*	**CTA Case No. 8792**
-versus-	Members:
	CASTAÑEDA, JR., *Chairperson* **CASANOVA**, *and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 06 2017 9:00 a.m.

x- x

CONCURRING AND DISSENTING OPINION

MANAHAN, *J.:*

I concur with the *ponencia*'s conclusion that administrative and judicial claims for refund were timely filed. However, I respectfully dissent to the evidentiary value given to the Board of Investments (BOI) Certification submitted by Toledo Power Corporation (Toledo) to prove that its sales to Carmen Copper Corporation are zero-rated.

The said BOI Certification[1] provides as follows:

> This is to certify that CARMEN COPPER CORPORATION is registered with the Board of Investments (BOI) pursuant to Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, with the following data:
>
> xxx xxx xxx
>
> Information is hereby given that the firm exported 100% of its total sales volume/value for the calendar year covering January 01 to December 31, 2011 based on the

[1] Docket, CTA Case No. 8792, Vol. 2, Exhibit "P-11" Letter from BOI with attached Certification, pp. 918-920.

cm

> attached documents ...submitted to BOI, summarized as follows:
>
> xxx xxx xxx
>
> This Certification is valid from January 01 to December 31, 2012 unless sooner revoked by the BOI Governing Board for any or all of the following grounds: (a) Failure of the herein registered enterprise to comply with any of its BOI registration terms, commitments, and conditions; (b) Failure to export 100% in any of the instances set forth in Section 2 of RMO No. 9-2000; (c) Submission of fraudulent documents; and (d) Failure to submit Audited Financial Statements, Annual Income Tax Return and Annual Report on Actual Operations for the year 2011. (Underscoring supplied)

It is my view that in the instant case, the BOI Certification issued on January 30, 2012 does not attest to the 100% export sale of Carmen Copper Corporation (Carmen Copper) for calendar year 2012. At most, the BOI Certification attests that for the period of January 1 to December 31, 2011, Carmen Copper exported 100% of its total sales volume.

The validity period of January 1 to December 31, 2012 indicated in the BOI Certification of Carmen Copper made the majority conclude that the claim for refund pertaining to the four taxable quarters of taxable year 2012 falls within the coverage of the Certification's validity period. This may well be true if the purpose is to accord zero-rating status to sales made during the covered period, but it does not prove that Carmen Copper, as a BOI-registered exporter, exported 100% of its products for the period January 1 to December 31, 2012.

Thus, Toledo submitted a BOI Certification from Carmen Copper, its BOI-registered buyer, which failed to prove that Carmen Copper exported 100% of its sales from January 1 to December 31, 2012. Hence, Toledo failed to prove an essential aspect of its claim for refund/issuance of tax credit certificate.

Considering the foregoing, Toledo's entitlement to refund should be adjusted accordingly.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice