REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MAIBARARA GEOTHERMAL, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9662

x---x

MAIBARARA GEOTHERMAL, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9716

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

Promulgated:
JAN 29 2021
4:30 p.m.

x---x

DECISION

BACORRO-VILLENA, J.:

At bar are consolidated cases arising from two (2) separate Petitions for Review filed by Maibarara Geothermal, Inc. (**petitioner**) pursuant to Rule 8, Section 3(a)[1], in relation to Rule 4, Section 3(a)(2)[2] of the Revised Rules of the Court of Tax Appeals[3] (**RRCTA**).

The Petition for Review[4] for CTA Case No. 9662 was filed on 24 August 2017 while the Petition for Review[5] for CTA Case No. 9716 was filed on 17 November 2017. Both petitions seek the refund of the amounts of ₱928,668.00 and ₱2,285,716.01 for the unutilized input taxes relative to the first (1st) and second (2nd) quarters of taxable year (**TY**) 2015, respectively.

Petitioner is a corporation duly organized and existing under, and by virtue of the laws of the Republic of the Philippines, with principal address at 7th Floor, JMT Building, ADB Avenue, Ortigas Center, Pasig City, as evidenced by Securities and Exchange Commission (**SEC**) Company Registration No. CS201012659 dated 11 August 2010.[6]

Respondent Commissioner of Internal Revenue (**respondent/CIR**) is sued in his official capacity, having been duly appointed and empowered to perform duties of his office, as the chief of the Bureau of Internal Revenue (**BIR**), the government agency charged with the assessment and collection of all internal revenue taxes, fees and charges, and the enforcement of all forfeitures, penalties and fines connected therewith.[7]

---

1 **Sec. 3.** *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

2 **Sec. 3.** *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

...

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: ...

3 A.M. No. 05-11-07-CTA dated 22 November 2005.

4 Division Docket (CTA Case No. 9662), Volume I, pp. 10-32

5 Division Docket (CTA Case No. 9716), pp. 10-32.

6 Exhibit "P-1", Division Docket (CTA Case No. 9662), Volume II, p. 566.

7 Joint Stipulation of Facts and Issues (JSFI), id., Volume I, p. 388.

FACTS OF THE CASE

As stated in its Articles of Incorporation[8], the primary purpose for which petitioner was formed is to explore, extract, exploit, or otherwise obtain from the earth, store, hold, use, treat, reinject, prepare for market, buy, sell, distribute, exchange, and transport geothermal steam and brine, and all their products, compounds and derivatives; to convert geothermal energy into electric power and to build, construct, erect, own, equip, install, operate, maintain, sell, lease power generation plants, facilities, machineries, equipment that utilize geothermal energy, to sell, trade, transmit or distribute any electricity generated by such power plants; and to utilize geothermal steam and brine for industrial, agricultural, health, tourism, mineral recovery and processing, and other similar direct and indirect uses of geothermal steam and brine.

Petitioner was issued a Certificate of Registration No. GRESC 2011-01-025[9] by the Department of Energy (**DOE**), indicating that petitioner is duly registered as a Renewable Energy Developer (**RE Developer**) of geothermal energy resources located in Maibarara Batangas/Laguna (covered by Geothermal Renewable Energy Service Contract No. 2010-02-012[10]).

The Board of Investments (**BOI**) also issued to petitioner Certificate of Registration No. 2011-006[11] as a RE Developer of a 20MW Maibarara Geothermal Power generation Project in Sto. Tomas, Batangas and Calamba, Laguna under Republic Act (**RA**) No. 9513.[12] Further, BOI issued petitioner the Specific Terms and Conditions[13] (**Specific Terms and Conditions**), which states that "the sale of power generated by the enterprise as well as its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities and the whole process of exploration and development of RE sources up to its

---

8 Exhibit "P-2", id., Volume II, p. 568.
9 Exhibit "P-3", id., p. 609.
10 Question and Answer Nos. 7 and 10, Judicial Affidavit of Helenio B. Seraspi, Exhibit "P-30", Division Docket, Volume I, pp. 153-154.
11 Exhibit "P-4", id., Volume II, p. 610.
12 Renewable Energy Act of 2008.
13 Exhibit "P-5", Division Docket (CTA Case No. 9662), Volume II, pp. 611-615.

conversion into power shall be subject to zero percent value-added tax pursuant to the NIRC".[14]

Further, the Energy Regulatory Commission (**ERC**) issued to petitioner a Certificate of Compliance (**COC**) No. 13-10-GN 322-19998L[15] by with authority to operate its existing facilities.[16]

In the 1st and 2nd quarters of TY 2015, petitioner sold power generated from geothermal energy. Such sales of power or fuel generated through renewable sources of energy were subjected to zero percent (0%) Value-Added Tax (**VAT**).

During the same period, petitioner allegedly incurred the following input taxes which were reported in its VAT returns:

Quarter	Description	Purchases	Input Taxes
1st	Purchase of capital goods not exceeding P1 Million	₱562,406.85	₱67,488.82
	Domestic purchases of goods other than capital goods	1,283,810.50	154,057.26
	Importation of goods other than capital goods	122,166.70	14,660.00
	Domestic purhcases of services	5,799,298.05	695,915.77
	Total input tax		**₱932,121.85**
2nd	Purchase of capital goods not exceeding P1 Million	₱335,694.68	₱40,283.36
	Purchase of capital goods exceeding P1 Million	1,045,535.67	125,464.28
	Domestic purchases of goods other hand capital goods	2,852,330.48	342,279.66
	Importation of goods other than capital goods	3,661,183.37	439,342.00
	Domestic purchases of services	12,200,346.87	1,464,041.62
	Deduction from input tax		123,002.98
	Total input tax		**₱2,288,407.94**
TOTAL			**₱3,220,529.79**

14 Question and Answer Nos. 7 and 11, Judicial Affidavit of Helenio B. Seraspi, Exhibit "P-30", Division Docket, Volume I, pp. 153-155.
15 Exhibit "P-6", id., Volume II, p. 618.
16 Question and Answer No. 7, Judicial Affidavit of Helenio B. Seraspi, Exhibit "P-30", Division Docket, Volume I, p. 153.

According to petitioner, the unutilized input taxes attributable to petitioner's zero-rated sales/receipts for the 1st quarter of TY 2015 amounted to ₱928,668.00 while that for 2nd quarter amounted to ₱2,285716.01, for a total of ₱3,214,384.041.

Petitioner thus filed its administrative claims for refund for the 1st and 2nd quarters of TY 2015 (together with all its supporting documents) on 30 March 2017 and 23 June 2017, respectively, before the BIR Revenue District Office No. 43A in Pasig City, as evidenced by BIR Form No. 1914.

Claiming inaction on the part of respondent, petitioner filed with this Court the instant Petitions for Review on 24 August 2017 and on 17 November 2017, respectively.

PROCEEDINGS BEFORE THE SECOND DIVISION

In his Answers[17] to both CTA Case No. 9662 and 9716, respondent commonly argued that petitioner failed to strictly comply with the documentary requirements under Revenue Memorandum Circular (**RMC**) No. 54-2014.

In his Answer in CTA Case No. 9662, however, respondent particularly assailed the jurisdiction of the Court over the case contending that there was no valid claim for refund due to the non-submission of complete documents as required by RMC 54-2014. Thus, in the absence of a valid claim for refund, there is nothing for respondent to act on. Consequently, there is likewise nothing to appeal before this Court.

According to respondent, assuming arguendo that there was a valid claim for refund, it is imperative for petitioner to prove its compliance thereon.

Lastly, respondent maintains that in an action for tax refund, the burden of proof lies upon petitioner to establish by sufficient and competent evidence its entitlement thereto and failure to adduce sufficient proof is fatal to the action for tax refund.

---

17 Id., pp. 112-116; Division Docket (CTA Case No. 9716), pp. 113-118.

On 08 January 2018, in CTA Case No. 9716, petitioner filed a Motion to Consolidate[18] and sought its consolidation with CTA Case No. 9662. In its Resolution dated 14 February 2018[19], the Court's Third Division granted said Motion to Consolidate. On 07 March 2018, the Second Division manifested its approval of the said consolidation.[20]

On 06 April 2018, petitioner filed its Consolidated Pre-Trial-Brief[21] while Respondent's Pre-Trial Brief was filed on 11 April 2018.[22] After the parties submitted their Joint Stipulation of Facts and Issues on 09 May 2018[23], the Court issued the Pre-Trial Order on 18 May 2018.[24]

On 21 May 2018, Atty. Clifford E. Chua (**Atty. Chua**) was commissioned as Independent Certified Public Accountant (**ICPA**) despite respondent's objection as to the former's independence.[25]

Petitioner thereafter presented its first witness, Helenio B. Seraspi (**Seraspi**), who testified through his Judicial Affidavit[26] that: (1) he is the petitioner's Accounting Manager responsible for the recording of its books, accounting and review of financial reports and has access to its legal and corporate documents; (2) petitioner is principally engaged in the exploration, development and utilization of renewable energy resources, particularly, geothermal energy and the sale of electric power generated from the same; (3) petitioner was issued Certificates of Registration by the Department of Energy (**DOE**) with Registration No. GRESC 2011-01-025 and by the Board of Investments (**BOI**) as a Renewable Energy (**RE**) developer of a 20 MW Maibarara Geothermal Power Generation Project in Sto. Tomas, Batangas and Calamba, Laguna under Republic Act (**RA**) No. 9513; (4) petitioner was also issued by the Energy Regulatory Commission (**ERC**) an authority to operate its existing facilities under Certificate of Compliance (**COC**) No. 13-10-GN 322-19998L; (5) petitioner is a VAT-

---

18 Petitioner similarly filed a Motion to Consolidate (With Motion to Defer Pre-Trial) in CTA Case No. 9662 containing substantially the same allegations, Division Docket (CTA Case No. 9662), Volume I, pp. 119-123.
19 Division Docket (CTA Case No. 9716), pp. 121-122.
20 Division Docket (CTA Case No. 9662), Volume I, pp. 133-134.
21 Id., pp. 135-144.
22 Id., pp. 367-369.
23 Id., pp. 388-393.
24 Id., Volume II, pp. 419-425.
25 Id., pp. 428-429.
26 Exhibit "P-30", id., Volume I, pp. 151-165.

registered entity with 007-843-328-000; (6) petitioner filed its two separate administrative claims for refund along with all its supporting documents; and, (7) the input tax being claimed by petitioner for both the 1st and 2nd quarters of TY 2015 were not utilized or applied against its output tax liabilities and neither were these utilized in subsequent quarters.

On cross examination[27], Seraspi testified that: (1) only the documents listed in the Letter marked as Exhibit "P-8" were submitted to the BIR; (2) upon their submission, petitioner received a request from the BIR to submit additional documents; (3) petitioner responded to the said letter but did not submit additional documents. No re-direct examination was conducted.[28]

On 29 August 2018, Atty. Chua, by way of his Judicial Affidavit[29], substantially testified on direct examination that: (1) he prepared a Report[30] which he submitted to the Court on 20 June 2018; (2) he verified the original documents that support petitioner's claim for refund and compared the same with the photocopies submitted to the Court to ascertain if they are faithful reproduction of the originals; (3) he performed the examination of sales transaction and input taxes paid/incurred to verify the validity of petitioner's claim for refund; (4) he was able to determine that petitioner was properly registered with the SEC, DOE, BOI (as a new renewable energy developer) and was granted by the ERC an authority to operate generation facilities; (5) based on the documents submitted, petitioner is entitled to VAT zero-rating of its sale of fuel or power generated from renewable sources of energy and its purchases of local supply of goods, properties and services related to the development, construction and installation of its power facilities under RA 9513; (6) petitioner had zero-rated sales for the 1st and 2nd quarters of 2015 which are duly substantiated with receipts; (7) the input taxes being claimed for refund were shown and included as part of the "Allowable Input Tax" in petitioner's VAT returns; (8) in his report, he noted that the amounts of input tax in petitioner's VAT returns were derived from its summary list of purchase transactions attached thereto and he was able to examine the supporting documents of said purchase transactions; (9) he compared

27 TSN of 21 May 2018, pp. 16-17.
28 Id., p. 18.
29 Exhibit "P-803", Division Docket (CTA Case No. 9662), Volume II, pp. 449-467.
30 Exhibit "P-27".

the input tax per VAT return against the input tax traced from input tax account in the books of accounts and in the Audited Financial Statements (**AFS**) for which he merely noted a slight variance possibly due to rounding-off; (10) the input tax paid or incurred could be specifically identified to zero-rated sale transactions; (11) he has examined petitioner's VAT returns subsequent to the 1st and 2nd quarters of TY 2015 and he noted that the input tax being claimed for refund in the total amount of ₱3,214,384.01 was not utilized nor applied against its output tax liabilities and the same was likewise deducted and claimed for tax refund or issuance of tax credit certificate (**TCC**); (12) he examined the available original copies of importation documents, supplier's invoices and/or official receipts and noted several exceptions in the latter; (13) based on his findings, the allowable input tax refund is ₱2,227,443.69; and, (14) the photocopies of documents submitted to the Court as part of his report are faithful reproduction of the originals which are located in petitioner's office.

Respondent did not conduct any cross examination.[31]

On 15 October 2018, petitioner filed its Formal Offer of Evidence[32] (**FOE**) without respondent's comment.[33] On 17 December 2018, the Court issued a Resolution[34] admitting all of petitioner's documentary evidence (except certain exhibits[35]) and noting some discrepancies[36] therein.

On 04 January 2019, Petitioner thus filed an Omnibus Motion for Reconsideration (with Motion to Set Additional Commissioner's Hearing and Motion to Reopen Proceedings).[37] The Omnibus Motion sought (1) that it be allowed to present the originals of some of the denied exhibits for comparison; (2) for the Court to reopen the proceedings in order for the ICPA, Atty. Chua, to identify some of the

---

31 TSN of 02 July 2018, p. 7.
32 Division Docket (CTA Case No. 9662), Volume II, pp. 551-565.
33 Records Verification dated 24 October 2018, id., Volume III, p. 950.
34 Id., pp. 956-959.
35 Exhibits "P-8", "P-8-a", "P-8-b", "P-9", "P-9-a", "P-9-b", "P-10", "P-10-a", "P-10-b", "P-11", "P-11-a", "P-11-b", "P-31" to "P-36" and "P-37" to "P-41", "P-237" to "P-280", "P-297", "P-325", "P-518" and "P-775" to "P-777".
36 Exhibits "P-120", "P-121" to "P-127", "P-128", "P-129" to "P-233", "P-234" to "P-414", "P-415" to "P-417", "P-503", "P-504" to "P-511, "P-512" to "P-513" "P-514" to "P-524", "P-525" to "P-779" and "P-780" to "P-796".
37 Division Docket (CTA Case No. 9662), Volume III, pp. 962-972.

exhibits which he failed to do so; and, (3) for the Court to admit the corrections made in the FOE.

On 08 February 2019[38], respondent filed his Comment and Opposition to petitioner's Omnibus Motion contending that petitioner was given more than ample opportunity to provide the proper documents for presentation and that the voluminous nature of the documents is not a valid excuse because petitioner should have already been aware of such at the inception of the case.

On 26 March 2019, the Court issued a Resolution[39] granting petitioner's request for additional commissioner's hearing and the reopening of the proceedings.

On 27 May 2019, petitioner recalled Atty. Chua to the witness stand to identify his Supplemental Judicial Affidavit[40] where he additionally testified, among others, that: (1) he examined the original copies of petitioner's invoices and official receipts supporting its zero-rated sales and identifying Exhibits "P-31" to" P-36" (pertaining to zero-rated sales) and "P-37" to "P-41" (pertaining to sales subject to 12% VAT); (2) he also examined petitioner's third (3rd) quarter VAT return for TY 2017 where he additionally identified Exhibits "P-805"[41] and "P-806"[42]; and, (3) he inspected with the original receipts or invoices relative to the Annex "J" of his ICPA Report captioned as "Amount in Words Not Indicated" and identified Exhibits "P-237" to P-280".

Respondent again did not conduct any cross examination.[43]

On 24 June 2019, petitioner filed its Supplemental FOE[44], for the initially denied exhibits as well as some of its additional documentary

---

38 Id., pp. 979-982.
39 Id., pp. 984-988.
40 Exhibit "P-811", id., pp. 1013-1036.
41 Quarterly VAT Return (BIR Form No. 2550-Q) for the 3rd quarter of the taxable year 2017 with Reference No. 101700022078553 filed on October 23, 2017 (Originally Filed Return).
42 Amended Quarterly VAT Return (BIR Form No. 2550-Q) for the 3rd quarter of the taxable year 2017 with Reference No. 101700022496140 filed on November 20, 2017.
43 TSN of 27 May 2019, p. 6.
44 Division Docket (CTA Case No. 9662), Volume III, pp. 1176-1192.

evidence. Respondent did not file his Comment despite directive to do so.[45]

On 23 August 2019, the Court issued a Resolution[46] granting petitioner's Omnibus Motion (insofar as petitioner's plea for the admission of the corrections subsequently made) and admitting all exhibits offered in its Supplemental FOE.

On 02 October 2019, respondent presented his lone witness, Revenue Officer Adoracion C. Tayao (**RO Tayao**), who testified, by way of her Judicial Affidavit[47], that: (1) she was the RO tasked to conduct the audit investigation of petitioner's request for refund pursuant to Letter of Authority (**LOA**) No. LOA-043-2017-00000009/eLA201500053805 dated 03 July 2017 for the period covering 01 January to 31 March 2015; (2) she served the LOA on 31 July 2017 which was received by Anthony Joseph A. Salazar; (3) upon filing of the claim for refund, petitioner submitted some documents enumerated in the Checklist for Mandatory Requirement for Claims for VAT Credit Refund and petitioner executed a Sworn Certification that the documents submitted are complete; (4) after she reviewed and examined the documents submitted, she prepared a Memorandum Report stating her findings; (5) it was found that petitioner failed to submit documents as required under RMC 54-2014 such as the certified true copy of Quarterly Income Tax Returns-1702Q (in case of quarterly claims), certified true copy of billings/service contracts for sale of services and the sworn statement that the officer signing the affidavit (at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of petitioner; (6) after finding out that the documents were not submitted, she prepared a Revenue Officer's Audit Report on Value-Added Tax dated 04 May 2017 stating that she cannot proceed with the validation of data for petitioner's failure to submit the mandatory requirements; and, (7) thereafter, a Letter of Denial dated 16 August 2017 was issued and sent to petitioner on 23 August 2017.

Petitioner did not conduct cross examination.[48]

---

45 Records Verification dated 11 July 2019, id., p. 1349.
46 Id., pp. 1353-1357.
47 Exhibit "R-7", id., pp. 1334-1340.
48 TSN of 02 October 2019, p. 6; Order dated 02 October 2019, Division Docket (CTA Case No. 9662), Volume IV, pp. 1365-1366.

In its Resolution dated 21 November 2019[49], the Court noted that respondent failed to file his FOE.[50] As a result, the Court deemed respondent to have waived his right to formally offer his exhibits and declared that he has accordingly rested his case. In the same Resolution, the Court likewise directed the parties to file their respective memoranda.

On 24 January 2020, petitioner filed its Memorandum[51] while respondent failed to file his own[52], thereby submitting the cases for decision on 31 January 2020.[53]

ISSUES

Petitioner raises this sole issue in its Petition for Review[54] -

WHETHER PETITIONER IS ENTITLED TO THE REFUND FOR THE UNUTILIZED VALUE-ADDED TAX (VAT) INPUT TAXES IN THE TOTAL AMOUNT OF THREE MILLION TWO HUNDRED FOURTEEN THOUSAND THREE HUNDRED EIGHTY FOUR AND 1/100 PESOS (₱3,214,384.01) FOR THE 1ST AND 2ND QUARTERS OF TAXABLE YEAR 2015.

Insofar as respondent is concerned, for the Court's determination are the following issues and arguments:[55]

I

PETITIONER FAILED TO SUBMIT COMPLETE SUPPORTING DOCUMENTS IN SUPPORT OF ITS CLAIM FOR REFUND.

II

THERE IS NO VALID ADMINISTRATIVE CLAIM FOR REFUND IN THIS CASE.

III

THE HONORABLE COURT OF TAX APPEALS HAS NO JURISDICTION OVER THE CASE.

---

49 Division Docket (CTA Case No. 9662), Volume IV, p. 1378.
50 Records Verification dated 13 November 2019, id., p. 1376.
51 Id., pp. 1384-1417.
52 Records Verification dated 27 January 2020, id., p. 1419.
53 Resolution dated 31 January 2020, id., p. 1418.
54 JSFI, id., Volume I, p. 389.
55 Id.

IV
PETITIONER IS NOT ENTITLED TO THE CLAIM FOR REFUND/TAX CREDIT.

RULING OF THE COURT

Relevant to the resolution of the present case is Section 112(A) and (C) of the NIRC of 1997, as amended, which reads as follows:

> ...
>
> **Sec. 112.** *Refunds or Tax Credits of Input Tax.* —
>
> (A) Zero-Rated or Effectively Zero-Rated Sales. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> ...
>
> (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 provision and as laid down by the Supreme Court in a number of cases[56], a taxpayer engaged in zero-rated or effectively zero-rated sales is entitled to a claim for refund or credit of excess input taxes attributable to such sales upon compliance with the following requisites:

1. the taxpayer is VAT-registered;
2. the claim for refund was filed within the prescriptive period;
3. the taxpayer is engaged in zero-rated or effectively zero-rated sales;
4. the input taxes were incurred or paid;
5. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; and
6. the input taxes were not applied against any output VAT liability.

The Court shall discuss each requisite and petitioner's compliance thereto, *in seriatim.*

1ST REQUISITE:
PETITIONER IS A VALUE-ADDED TAX-REGISTERED ENTITY.

It is undisputed that petitioner complied with the first requisite considering that it is VAT-registered entity with TIN 007-843-328-000, as evidenced by its Certificate of Registration Number OCN3RC0000483772 dated 08 September 2010.[57]

[56] *Commissioner of Internal Revenue v. Toledo Power Company*, G.R. No. 195175, 10 August 2015; *Luzon Hydro Corporation v. Commissioner of Internal Revenue*, G.R. No. 188260, 13 November 2013; *Southern Philippines Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 179632, 19 October 2011; *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 172378, 17 January 2011; *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, 03 August 2010; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, 25 November 2009; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, 27 April 2007.

[57] Exhibit "P-7", Division Docket (CTA Case No. 9662), Volume II, p. 619.

2ND REQUISITE:
PETITIONER'S ADMINISTRATIVE AND JUDICIAL CLAIMS WERE FILED WITHIN THE PRESCRIPTIVE PERIOD.

In accordance with the above-quoted Section 112(A) of the NIRC of 1997, as amended, the administrative claim for refund or issuance of a tax credit certificate (**TCC**), relative to excess input tax, must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The instant claim for refund/TCC covers the 1st and 2nd quarters of TY 2015. Thus, petitioner's respective last days to file its administrative claim and the actual filing thereof fell on the following dates:

Period Covered	**Last Day to File Administrative Claim**	**Actual Date of Filing of Administrative Claim**
January to March 2015 (1st Quarter)	March 31, 2017	March 30, 2017[58]
April to June 2015 (2nd Quarter)	June 30, 2017	June 23, 2017[59]

Clearly, petitioner's administrative claims for refund/TCC were seasonably filed within the prescribed period.

As to the timeliness of petitioner's judicial claim, Section 112(C) of the NIRC of 1997, as amended (but prior to the amendments introduced by RA 10963[60]), provides that the CIR has one hundred twenty (120) days from the date of submission of the complete documents in support of the application for refund/TCC within which to grant or deny the claim.

In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before this Court within thirty (30) days from receipt of said decision. However, if after the 120-day period, the CIR

58 Exhibits "P-8" and "P-9", id., Volume III, pp. 1193-1203.
59 Exhibits "P-10" and "P-11", id., pp. 1204-1213.
60 Tax Reform for Acceleration and Inclusion (TRAIN).

fails to act on the application for refund/TCC, the remedy of the taxpayer is to appeal the inaction of the CIR to this Court within 30 days from the expiration of the said period.

As shown by the table below, petitioner filed its judicial claims well within the 30-day period after the lapse of the 120-day period, to wit:

Period Covered	Filing of Administrative Claim	End of 120-day Period	End of 30-day Period	Date of Receipt of Denial	Actual date of filing of judicial claim
1st Quarter	30 March 2017[61]	28 July 2017	27 August 2017	23 August 2017[62]	24 August 2017[63]
2nd Quarter	23 June 2017[64]	21 October 2017	20 November 2017	-	17 November 2017[65]

While it may appear that petitioner received the BIR's denial of petitioner's administrative claim for the 1st quarter of TY 2015 on 23 August 2017, still, the same was received after the lapse of the 120-day period (on 28 July 2017) within which respondent may decide the claim. As such, there was already a "deemed denial" resolve of the said administrative claim upon the lapse of the 120-day period which would prompt the application of Section 112(C) of the NIRC of 1997, as amended, in relation to Sections 7[66] and 11[67] of RA 1125[68], as amended

61 Exhibits "P-8" and "P-9", Division Docket (CTA Case No. 9662), Volume III, pp. 1193-1203.
62 Exhibit "R-6", id., p. 1346.
63 Petition for Review, id., Volume I, p. 10.
64 Exhibits "P-10" and "P-11", id., Volume III, pp. 1204-1213.
65 Petition for Review, Division Docket (CTA Case No. 9716), p. 10.
66 ...

Sec. 7. *Jurisdiction.* - The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

...

2. **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial**[.] (Emphasis supplied)

...

67 **Sec. 11.** *Who May Appeal; Mode of Appeal; Effect of Appeal.* - Any party adversely affected by a decision, ruling or **inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an

by RA 9282.[69] Therefore, petitioner's administrative and judicial claims were both timely filed within their respective prescribed periods.

Relatedly, respondent also contends that the Court has no jurisdiction over the instant Petition for Review, as petitioner allegedly failed to submit the complete supporting documents in support of its claim and thus there was no valid administrative claim for refund. As a result, the Court has no jurisdiction to entertain the instant Petition for Review.

We do not agree.

In *Pilipinas Total Gas, Inc. v Commissioner of Internal Revenue*[70], the Supreme Court ruled that the taxpayer's failure to submit the complete documents at the administrative level did not render its petition for review with this Court dismissible for lack of jurisdiction and that in cases of inaction, this Court may give credence to all evidence presented by the taxpayer, including those that may not have been submitted to the CIR, *viz*:

> ...
>
> **The alleged failure of Total Gas to submit the complete documents at the administrative level did not render its petition for review with the CTA dismissible for lack of jurisdiction.** ***First***, **the 120-day period had commenced to run**

---

appeal with the CTA **within thirty (30) days** after the receipt of such decision or ruling or **after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein**.

Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days** from the receipt of the decision or ruling or **in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon**. A Division of the CTA shall hear the appeal: *Provided, however*, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case en banc. (Emphasis supplied)

...

68 AN ACT CREATING THE COURT OF TAX APPEALS.

69 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

70 G.R. No. 207112, 08 December 2015; Emphasis supplied and italics in the original text.

> **and the 120+30 day period was, in fact, complied with.** As already discussed, it is the taxpayer who determines when complete documents have been submitted for the purpose of the running of the 120-day period. It must again be pointed out that *this in no way precludes the CIR from requiring additional documents necessary to decide the claim, or even denying the claim if the taxpayer fails to submit the additional documents requested.*
>
> ...
>
> A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.
>
> **In the present case, however, Total Gas filed its judicial claim due to the inaction of the BIR. Considering that the administrative claim was never acted upon; there was no decision for the CTA to review on appeal *per se*. Consequently, the CTA may give credence to all evidence presented by Total Gas, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.** The Total Gas must prove every minute aspect of its case by presenting and formally offering its evidence to the CTA, which must necessarily include whatever is required for the successful prosecution of an administrative claim.
>
> ...

Thus, assuming for the sake of argument that petitioner failed to submit the complete documentary requirements as required by RMC 54-2014 when it filed its administrative claims, the same is not fatal considering that respondent nevertheless failed to act thereon thereby giving this Court the authority to give credence to all evidence presented by petitioner, including those that may not have been submitted to respondent.

3RD REQUISITE:
PETITIONER ENGAGED IN ZERO-RATED OR EFFECTIVELY ZERO-RATED SALES DURING THE 1ST AND 2ND QUARTERS OF TY 2015.

As shown in its Articles of Incorporation[71], petitioner's primary purpose is to engage in the exploration, development and exploitation of geothermal energy and similar resources.

In Section 4(pp) of RA 9513 as "individual/s or a group of individuals formed in accordance with existing Philippine Laws engaged in the exploration, development and utilization of RE resources and actual operation of RE systems/facilities" is considered an RE Developer.

Furthermore, under Section 15(g) of the same law, RE Developers are entitled to VAT zero-rating treatment of its sale of fuel or power generated from renewable sources of energy and its purchases of local supply of goods, properties and services related to the development, construction and installation of its power facilities. The pertinent provision of RA 9513 states:

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

[71] Exhibit "P-2", Division Docket (CTA Case No. 9662), Volume II, pp. 567-608.

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

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

This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors.[72]

...

In relation thereto, Section 108(B)(7) of the NIRC of 1997, as amended, provides:

...

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

...

(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:

...

(7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels.

...

Also, Section 4.108-5(b)(7) of Revenue Regulations (**RR**) No. 16-2005[73] implementing the immediately preceding provision qualifies the applicability of such zero-rating as follows:

---

[72] Emphasis supplied.
[73] Consolidated Value-Added Tax Regulations of 2005.

> ...
>
> **SEC. 4.108-5. Zero-Rated Sale of Services. -**
>
> ...
>
> **(b)** ***Transactions Subject to Zero Percent (0%) VAT Rate.*** - The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate:
>
> ...
>
> (7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels; *Provided, however,* that zero-rating shall apply strictly to the sale of power or fuel generated through renewable sources of energy, and shall not extend to the sale of services related to the maintenance or operation of plants generating said power.
>
> ...

In the instant case, petitioner is registered with the DOE as "RE Developer of Geothermal Energy Resources located in Maibarara, Batangas/Laguna" under Certificate of Registration (**COR**) No. GRESC 2011-01-025[74] and in accordance with the provisions of Executive Order (**EO**) No. 226 otherwise known as the Omnibus Investments Code of 1987. The said COR issued by DOE provides that petitioner's registration as RE Developer took effect on 01 February 2010.

Likewise, petitioner was issued COR No. 2011-006[75] by the BOI as an RE Developer of 20 MW Maibarara Geothermal Power Generation Project, which was issued on 07 January 2011.

Furthermore, the Specific Terms and Conditions[76] issued to petitioner by the BOI for the Maibarara Geothermal Power Generation Project specifically provide that petitioner's sale of power is subject to zero-rated VAT, to wit:

> ...
>
> The sale of power generated by the enterprise as well as its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities and the whole process of exploration and development of

---
[74] Supra at note 9.
[75] Supra at note 11.
[76] Exhibit "P-5", Division Docket (CTA Case No. 9662), Volume II, p. 614.

> RE sources up to its conversion into power shall be subject to zero percent value-added tax pursuant to the NIRC.
>
> ...

With the finding that it is duly registered as such with DOE and BOI, the Court shall now proceed to determine the amount of zero-rated sales made by petitioner during the periods subject of this claim.

Petitioner's 1st and 2nd quarterly VAT returns of TY 2015 reported total sales of ₱394,668,590.04, broken down as follows:

	1st quarter of 2015[77]	2nd quarter of 2015[78]	Total
Vatable Sales	₱28,782.09	₱22,432.75	₱51,214.84
Zero-rated Sales	196,385,909.11	198,231,466.09	394,617,375.20
Total	**₱196,414,691.20**	**₱198,253,898.84**	**₱394,668,590.04**

To substantiate the foregoing, petitioner presented official receipts of its sales of steam generated through renewable geothermal energy to Trans-Asia Oil & Energy Development Corporation. These documents were verified and examined by the court-commissioned ICPA, Atty. Chua, and summarized as follows:

Exhibit No.	OR No.	Date	Customer	Amount
P-31	523	1/23/2015	Trans-Asia Oil and Energy Development Corporation	₱67,476,083.88
P-32	526	2/25/2015	Trans-Asia Oil and Energy Development Corporation	69,497,802.38
P-33	527	3/25/2015	Trans-Asia Oil and Energy Development Corporation	59,412,022.85
P-34	529	4/24/2015	Trans-Asia Oil and Energy Development Corporation	62,196,735.47
P-35	531	5/25/2015	Trans-Asia Oil and Energy Development Corporation	69,499,591.59
P-36	533	6/25/2015	Trans-Asia Oil and Energy Development Corporation	66,535,139.03
Total				**₱394,617,375.20**

77 Exhibit "P-12", id., p. 640.
78 Exhibit "P-13", id., p. 661.

Per examination of the abovementioned documents, the Court finds that the VAT zero-rated official receipts of petitioner for the 1st and 2nd quarters of TY 2015 comply with the VAT invoicing requirements laid down under Section 113(A)(2), (B)(1), (2)(c), (3) and (4) of the NIRC of 1997, as amended, as implemented by Section 4.113-1 (A)(2), (B)(1), (2)(c) and (3) of RR 16-2005, as amended, to wit:

...

Sec. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* —

(A) *Invoicing Requirements.* — A VAT-registered person shall issue:

...

(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:

...

(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;

...

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

(4) In the case of sales in the amount of one thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.

...

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

(A) A VAT-registered person shall issue:

...

(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:**

...

(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;

...

(3) In the case of sales in the amount of one thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client shall be indicated in addition to the information required in (1) and (2) of this Section.[79]

...

4TH AND 5TH REQUISITES: PETITIONER INCURRED AND PAID INPUT TAXES WHICH ARE ATTRIBUTABLE TO ITS ZERO-RATED SALES.

In its quarterly VAT returns for the 1st to 2nd quarters of TY 2015, petitioner claimed input taxes in the total amount of ₱3,220,529.79, broken down as follows:

[79] Emphasis in the original text.

	1st quarter of 2015[80]	2nd quarter of 2015[81]	Total
Purchase of capital goods not exceeding P1 Million	67,488.82	40,283.36	107,772.18
Purchase of capital goods exceeding P1 Million (amortization for the period)	-	2,461.30	2,461.30
Domestic purchase of goods other than capital goods	154,057.26	342,279.66	496,336.92
Importation of goods other than capital goods	14,660.00	439,342.00	454,002.00
Domestic purchase of services	695,915.77	1,464,041.62	2,159,957.39
Total Input Taxes for the period	**₱932,121.85**	**₱2,288,407.94**	**₱3,220,529.79**

To establish that petitioner incurred and/or paid the aforementioned input taxes, petitioner submitted various official receipts and sales invoices on the local purchases of goods and services which generally include office supplies, utilities, legal services, professional and transportation expenses. Petitioner also submitted the original printouts of Statement of Settlement of Duties and Taxes (**SSDT**) and Single Administrative Document (**SAD**) or Manual Import Entry and Internal Revenue Declaration (**IEIRD**) and bank certifications to substantiate its importations of goods other than capital goods.

Upon verification of petitioner's importation of goods other than capital goods, the ICPA ascertained that the amount of ₱266,654.00 in the 2nd quarter of TY 2015 shall be disallowed since the same is not supported by IEIRD/SAD.[82] Accordingly, only the amount of ₱187,348.00 out of the ₱454,002.00 represents petitioner's valid importation of goods other than capital goods.

As regards petitioner's domestic purchases of goods other than capital goods and purchase of services, *per* independent verification and examination of the documents submitted by petitioner, the Court further finds that only ₱1,137,563.72 (out of the total input tax on local

80 Supra at note 77.
81 Supra at note 78.
82 ICPA Report, Exhibit "P-27", p. 9.

purchases in the amount of ₱2,764,066.49[83] [excluding local purchases of capital goods exceeding P1 Million]) is properly substantiated and compliant with invoicing requirements pursuant to Sections 113[84] and Section 237[85] of the NIRC of 1997, as implemented by Section 4.113-1[86] of RR 16-2005.

83

	1st quarter of 2015	2nd quarter of 2015	Total
Purchase of capital goods not exceeding P1 Million	67,488.82	40,283.36	107,772.18
Domestic purchase of goods other than capital goods	154,057.26	342,279.66	496,336.92
Domestic purchase of services	695,915.77	1,464,041.62	2,159,957.39
Total Input Taxes for the period	**₱917,461.85**	**₱1,846,604.64**	**₱2,764,066.49**

84 **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); and
(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax. Provided, That:
(a) **The amount of the tax shall be known as a separate item in the invoice or receipt;**
(b) If the sale is exempt from value-added tax, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;
(c) If the sale is subject to zero percent (0%) value-added tax, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;
(d) If the sale involved goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT exempt, **the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be known on the invoice or receipt: Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.**
(3) **The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service**; and
(4) **In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.** (Emphasis supplied)

85 **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, 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: Provided, however, That where the receipt is issued to cover payment made as rentals, commissions, compensations, fees, receipts or invoices **shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: Provided, further, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.** (Emphasis supplied)

On the other hand, the total disallowed input VAT on local purchases amounting to ₱1,626,502.77 is broken down as follows:

Per ICPA			
A. Purchase of Goods	**1st quarter of TY 2015**	**2nd quarter of TY 2015**	**TOTAL**
TIN of petitioner not indicated / wrong TIN was indicated in the VAT Reg. TIN invoices (*Annex G, Annex P*)	₱10,037.72	₱704.63	₱10,742.35
Difference in the amount of input VAT (*Annex H*)	9,035.10	-	9,035.1
VAT Reg. TIN invoices dated outside the period of claim (*Annex I*)	67,190.09	-	67,190.09
Amount in words not indicated in the VAT Reg. TIN invoices (*Annex J, Annex S*)	101,839.69	362,906.77	464,746.46
Petitioner's address not indicated in the VAT Reg. TIN invoice (*Annex K, Annex T*)	3,374.46	6,136.96	9,511.42
No supporting documents (*Annex E*)	(3,396.62)	-	(3,396.62)
Subtotal	***₱188,080.44***	***₱369,748.36***	***₱557,828.80***
B. Purchase of Services			
VAT not separately indicated in the VAT Reg. TIN ORs (*Annex F, Annex O*)	₱642.86	₱1,727.38	₱2,370.24
TIN of petitioner not indicated / wrong TIN was indicated in the VAT Reg. TIN ORs (*Annex G, Annex P*)	2,105.71	6,078.76	8,184.47
Difference in the amount of input VAT (*Annex Q*)	-	2,664.82	2,664.82
VAT Reg. TIN ORs dated outside the period of claim (*Annex I, Annex R*)	8,064.00	48,692.51	56,756.51

---

86 **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
(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services. Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or official receipts. Said documents shall be considered as a 'VAT Invoice' or VAT official receipt. **All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.** VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) Information contained in VAT invoice or VAT official receipt. — The following information shall be indicated in VAT invoice or VAT official receipt:
(1) A statement that the seller is a VAT-registered person, followed by his TIN;
(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; Provided, That:
(a) **The amount of tax shall be shown as a separate item in the invoice or receipt;**
(b) If the sale is exempt from VAT, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;
(c) If the sale is subject to zero percent (0%) VAT, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;
(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.
(3) **In the case of sales in the amount of one thousand pesos (P1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section.** (Emphasis supplied)

Amount in words not indicated in the VAT Reg. TIN ORs *(Annex J, Annex S)*	89,246.90	22,421.56	111,668.46
Petitioner's address not indicated in the VAT Reg. TIN ORs *(Annex K, Annex T)*	2,400.00	9,030.53	11,430.53
No supporting documents *(Annex E, Annex N)*	2,556.05	87,660.13	90,216.18
Subtotal	***₱105,015.52***	***₱178,275.69***	***₱283,291.21***
SUBTOTAL of per ICPA	**₱293,095.96**	**₱548,024.05**	**₱841,120.01**
Per Court's examination			
Petitioner's TIN not indicated in the VAT Reg. TIN invoices *(Exhibits "P-63" and "P-448")*	364.29	1,044.64	1,408.93
Excess amount of input VAT claimed *(Exhibits "P-89" and "P-424")*	32.40	1,000.00	1,032.40
VAT Reg. TIN ORs dated outside the period of claim *(Exhibits "P-46", "P-104", "P-483", and "P-489")*	4,635.30	5,470.37	10,105.67
Amount of VAT indicated in the VAT Reg. TIN ORs as "VAT exempt" *(Exhibit "P-47" and "P-102")*	6,702.50	-	6,702.50
VAT not separately indicated in the VAT Reg. TIN ORs *(Exhibits "P-48", "P-79", "P-103", and "P-495")*	83,043.01	27,677.66	110,720.67
Purchase of services from National Grid Corporation of the Philippines (NGCP) supported with non-VAT OR *(Exhibits "P-50", "P-72", "P-105", "P-428", "P-461", and "P-498")*	106,479.98	597,584.85	704,064.83
Purchase of services supported by VAT Reg. TIN Charge Invoice *(Exhibit "P-493")*	-	732.00	732.00
No ATP or CAS Permit No. was indicated in the supporting document *(Exhibit "P-500")*	-	36,672.11	36,672.11
Difference between the total amount of input tax claimed by petitioner and the total amount of input tax accounted for by the ICPA	3,338.10[87]	4,976.97[88]	8,315.07
Subtotal	***₱204,595.58***	***₱675,158.60***	***₱879,754.18***
Less:			
Improperly supported input tax on purchase of capital goods exceeding P1 Million that was included above by the ICPA	-	(94,371.42)	(94,371.42)
SUBTOTAL of per Court's examination	**₱204,595.58**	**₱580,787.18**	**₱785,382.76**
GRAND TOTAL	**₱497,691.54**	**₱1,128,811.23**	**₱1,626,502.77**

It bears stressing that the input tax on purchases of services from NGCP must be disallowed because these are supported with non-VAT official receipts. Moreover, it would also appear from the examination of these official receipts that the same contain the statement that "[t]his document is not valid for claim of input taxes except for VAT on ancillary services collected for the account of other third party service provider." Thus, if NGCP collected from petitioner the payment and the corresponding VAT on account of other third party service providers, NGCP and such third party service provider should have nonetheless complied with the conditions laid down in RMC 9-2006[89] which specifically requires that VAT registered official receipts be issued in the name of the ultimate customer in order for the latter to

---

87 Computed as follows: ₱932,121.85 (total available input tax per 1st quarter of TY 2015 VAT return) - ₱928,783.75 [total input tax verified by the ICPA (Annex C)] = ₱3,338.10.

88 Computed as follows: ₱2,411,410.92 (total available input tax per 2nd quarter of TY 2015 VAT return) - ₱2,406,433.95 [total input tax verified by the ICPA (Annex L)] = ₱4,976.97.

89 Clarifying the Amount Subject to VAT and Expanded Withholding Tax (Income Tax) of Brokers and Others Similarly Situated and the Other Parties with Whom They Transact Business.

claim the related input tax. Accordingly, petitioner should have secured VAT-registered official receipts from the third-party service providers relative to such reimbursable expenses. Lastly, it must be noted also that these official receipts issued by NGCP, the amounts subjected to VAT were not separately indicated therein, in violation of Section 113(B)(2)(d) of the NIRC of 1997, as amended, and implemented by Section 4.113-1(B)(2)(d) of RR 16-2005 which pertinently state:

> ...
>
> **Sec. 113.** *Invoicing and Accounting Requirements for VAT-Registered Persons.* —
>
> ...
>
> (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:
>
> ...
>
> (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:
>
> ...
>
> (d) If the sale involved goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided,* That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.
>
> ...
>
> **SEC. 4.113-1.** ***Invoicing Requirements.*** —
>
> ...
>
> **(B) Information contained in VAT invoice or VAT official receipt.** — The following information shall be indicated in VAT invoice or VAT **official** receipt:
>
> ...
>
> (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:**
>
> ...
>
> (d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT

> zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.[90]

...

As regards the purchase of capital goods exceeding P1 Million, the Court found that only ₱31,092.86 (out of the total input tax subjected to amortization in the amount of ₱125,464.28[91]) is properly supported. The remaining ₱94,371.42 must be disallowed due to the following reason:

Supplier Name	Amount of input VAT	Reason for Disallowance	Exhibit No.
Honda Cars Manila	₱92,142.86	Amount in words not indicated in the VAT Reg. TIN invoices	P-678
Pan Pacific Computer Center, Inc.	1,007.14		P-769
Productivity Technologies Services, Inc.	1,221.42		P-772, P-773, P-774
Total	**₱94,371.42**		

Consequently, only ₱863.69 out of the total amortized input tax for the period in the amount of ₱2,461.30 can be claimed as valid input VAT, computed as follows:

Supplier Name	Amount of input VAT [A]	Est. Life (in months)[92] [B]	Input tax for the period [C = A/B]	Exhibit No.
E-copy Corporation	₱23,571.43	36	₱654.76	P-488
Pan Pacific Computer Center, Inc.	7,521.43	36	208.93	P-499
Total	**₱31,092.86**		**₱863.69**	

Accordingly, out of petitioner's total declared input tax of ₱3,220,529.79 for the 1st and 2nd quarters of TY 2015, only the amount of ₱1,325,775.41 represents valid input tax, as detailed below:

[90] Emphasis in the original text.
[91] Division Docket (CTA Case No. 9662), Volume II, p. 673.
[92] Id., p. 681.

	1st Quarter	2nd Quarter	Total
Input tax claim	₱932,121.85	₱2,288,407.94	₱3,220,529.79
Less: Disallowances			
Importation of goods other than capital goods	-	266,654.00	266,654.00
Domestic purchase of goods and services	497,691.54	1,128,811.23	1,626,502.77
Amortized input tax on purchases of capital goods exceeding P1 Million	-	1,597.61[93]	1,597.61
Total Valid Input Tax	**₱434,430.31**	**₱891,345.10**	**₱1,325,775.41**

Although petitioner has a total valid input tax of ₱1,325,775.41, the same, however, is not entirely attributable to zero-rated sales since petitioner also had sales subject to 12% VAT. Hence, the same shall be allocated based on the volume of total sales as computed below:

	1st quarter TY 2015	2nd quarter TY 2015	TOTAL
Zero-rated sales [A]	196,385,909.11	198,231,466.09	394,617,375.20
Valid zero-rated sales [B]	196,385,909.11	198,231,466.09	394,617,375.20
Percentage of valid zero-rated sales [C=B/A]	100%	100%	
Valid Input VAT [D]	434,430.31	891,345.10	1,325,775.41
Output VAT [E]	3,453.85	2,691.93	6,145.78
Valid less Output [F=D-E]	430,976.46	888,653.17	1,319,629.63
Input VAT for refund [F x C]	430,976.46	888,653.17	1,319,629.63

As can be seen from the above computation, petitioner's output tax liability did not exceed the input tax it incurred or paid during the same quarter. The same remained unutilized until it was deducted as "VAT Refund/TCC Claimed" as follows:

	Amended 1st quarter 2017 VAT Return[94]	Amended 2nd quarter 2017 VAT Return[95]	Total
Line 23D - VAT Refund/ TCC claimed	928,668.00[96]	2,285,716.01[97]	3,214,384.01

93 Computed as follows: ₱2,461.30 (total amortized input VAT claimed for the quarter) - ₱863.69 (properly supported input VAT amortization) = ₱1,597.61.
94 Exhibit "P-24", Division Docket (CTA Case No. 9662), Volume II, pp. 877-878.
95 Exhibit "P-26", id., pp. 910-911.
96 Amount being claimed for refund for the 1st quarter of TY 2015.
97 Amount being claimed for refund for the 2nd quarter of TY 2015.

Apparently, the subject claims no longer formed part of the excess input tax as of the end of the 2nd quarter of TY 2017 which is to be carried over or applied to the succeeding quarters. As such, it eliminates the possibility that the present claim would be applied to future output tax liability.

WHEREFORE, premises considered, the present Petitions for Review filed by petitioner Maibarara Geothermal, Inc. are **PARTIALLY GRANTED.** Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Maibarara Geothermal, Inc. in the reduced amount of **₱1,319,629.63**, representing its excess and unutilized input VAT attributable to zero-rated sales for the 1st and 2nd quarters of taxable year 2015.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

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

ATTESTATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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 cases were assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice