REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

DOLE PHILIPPINES, INC., *Petitioner,*	**CTA CASE NO. 10315**
- versus -	*Members:* **DEL ROSARIO**, *P.J.,** **BACORRO-VILLENA**, *Acting Chairperson, and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 3 0 2024 4:00 PM

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DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review* filed on August 20, 2020, by petitioner Dole Philippines, Inc., praying that the Court renders judgment ordering respondent Commissioner of Internal Revenue to refund petitioner the aggregate amount of ₱1,381,096,733.07, representing its excess and unutilized input value-added tax (**VAT**) attributable to its VAT zero-rated sales for the period April 1, 2018 to March 31, 2019.[1]

THE PARTIES

Petitioner Dole Philippines, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal address at Cannery Site, Cannery, Polomolok, South Cotabato.[2] Its head office and branches throughout the Philippines are registered with the Bureau of Internal Revenue (**BIR**).[3]

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* Special Member per Memorandum dated June 21, 2024.

[1] Statement of the Case, Pre-Trial Order, Docket – Vol. II, p. 718.

[2] Par. 1, Joint Stipulation of Facts and Issues (JSFI), Docket – Vol. II, p. 675.

[3] Exhibits "P-3", "P-3-1", "P-3-2", "P-3-3", "P-3-4", "P-3-5", "P-3-6", "P-3-7", "P-3-8", "P-3-9", "P-3-10", "P-3-11", "P-3-12", "P-3-13", "P-3-14", "P-3-15", "P-3-16", "P-3-17", "P-3-18", "P-3-19", "P-3-20", "P-3-21", "P-3-22", "P-3-22", "P-3-23", "P-3-24", "P-3-25", "P-3-26", "P-3-27", "P-3-28", "P-3-29", and "P-3-30", Docket – Vol. III, pp. 1325 to 1361.

Respondent Commissioner of Internal Revenue (**CIR**) is empowered to perform the duties of his office, including acting upon protest cases and approval of claims for refund or tax credit as provided by law and implementing regulations.[4]

FACTUAL ANTECEDENTS

On December 16, 2019, petitioner filed before the BIR – VAT Credit Audit Division (**VCAD**) an administrative claim for VAT refund in the total amount of ₱1,381,096,733.07, allegedly representing unutilized input taxes directly attributable and allocable to its VAT zero-rated sales as declared in its VAT returns, for the taxable period from April 1, 2018 to March 31, 2019.[5]

The *Tax Verification Notice* No. TVN 201800116184, dated December 16, 2019, was issued to petitioner, authorizing Revenue Officers (RO) Leo-Gibbs C. Tapiru, Dexter C. Bustillos, Ruth E. Jimenez, Jerome C. Manuncia, Estela G. Buenviaje, Ma. Cleofe T. Tasarra, Jonathan G. Simon, Michele Alonzo-Bucayu, Mary Ann B. Estacio, and Marjorie C. Dioso of the VCAD to verify petitioner's supporting documents and/or pertinent records relative to its claim for VAT refund, covering the above-stated taxable period.[6]

On July 16, 2020, petitioner received the decision of Commissioner Caesar R. Dulay (via the *VAT Refund Notice* dated February 20, 2020),[7] *denying* its claim for a tax refund.[8]

PROCEEDINGS BEFORE THIS COURT

Aggrieved, the present *Petition of Review* was filed on August 20, 2020.[9]

Within the extended time granted by the Court,[10] respondent posted his *Answer* on November 3, 2020.[11]

[4] Par. 2, JSFI, Docket – Vol. II, p. 675.
[5] Par. 3, JSFI, Docket – Vol. II, pp. 675 to 676; Exhibit "P-47", Docket – Vol. III, pp. 1481 to 1492; and Exhibit "P-46", Docket – Vol. III, p. 1480.
[6] Par. 4, JSFI, Docket – Vol. II, p. 676.
[7] Exhibit "54", Docket – Vol. III, pp. 1523 to 1525; and Exhibit "R-5", BIR Records, pp. 1354 to 1356.
[8] Par. 5, JSFI, Docket – Vol. II, p. 676.
[9] Docket – Vol. I, pp. 6 to 53.
[10] Respondent's Motion for Extension of Time to File Answer dated October 2, 2020, Docket – Vol. I, pp. 248 to 251; and Resolution dated October 8, 2020, Docket – Vol. I, p. 254.
[11] Docket – Vol. I, pp. 265 to 275.

On December 4, 2020, respondent transmitted the *BIR Records* for this case, which consisted of two (2) folders numbered consecutively as pages 1 to 1363.[12]

The Pre-Trial Conference was initially set for April 8, 2021,[13] but was eventually reset to and held on February 8, 2022.[14] Prior thereto, petitioner's *Pre-Trial Brief* was filed on May 17, 2021; [15] while respondent's *Pre-Trial Brief* was submitted on May 20, 2021.[16]

On March 9, 2022, the parties submitted their *Joint Stipulation of Facts and Issues*,[17] which was admitted and approved by the Court in the *Resolution* dated March 17, 2022,[18] thereby deeming the termination of the Pre-Trial. The *Pre-Trial Order* dated April 1, 2022 was then issued.[19]

The trial then ensued, with both parties presenting and offering their respective testimonial and documentary evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Artjohn C. Guerra, Tax Manager of Dole Asia Company Ltd.; [20] and (2) Atty. Adan T. Delamide,[21] the Court-commissioned Independent Certified Public Accountant (**ICPA**).[22]

The *Amended and Final Report* of the ICPA was posted on June 30, 2022.[23]

Petitioner filed its *Formal Offer of Evidence* on October 25, 2022,[24] to which respondent filed his *Comment (On Petitioner's Formal Offer of Evidence)* on November 3, 2022.[25]

[12] Docket – Vol. I, pp. 328 to 330.
[13] Resolution dated November 19, 2020, Docket – Vol. I, pp. 279 to 281.
[14] Notice of Resetting dated October 6, 2021, Docket – Vol. II, p. 642; and Minutes of the hearing held on, and Order dated February 8, 2022, Docket – Vol. II, pp, 645 to 648.
[15] Docket – Vol. I, pp. 333 to 360.
[16] Docket – Vol. II, pp. 635 to 637.
[17] Docket – Vol. II, pp. 675 to 701.
[18] Docket – Vol. II, pp. 715 to 716.
[19] Docket – Vol. II, pp. 718 to 730.
[20] Exhibit "P-58", Docket – Vol. II, pp. 750 to 782; and Minutes of the hearing held on, and Order dated, May 12, 2022, Docket – Vol. II, pp. 1019 to 1020.
[21] Exhibit "P-216", Docket – Vol. III, pp. 1145 to 1202; and Minutes of the hearing held on, and Order dated, September 29, 2022, Docket – Vol. III, pp. 1269 to 1271.
[22] Oath of Commission dated April 26, 2022, Docket – Vol. II, p. 743; and Minutes of the hearing held on, and Order dated, April 26, 2022, Docket – Vol. II, pp. 742, and 744 to 745, respectively.
[23] Exhibit "P-215", Docket – Vol. III, pp. 1077 to 1132.
[24] Docket – Vol. III, pp. 1279 to 1305.
[25] Docket – Vol. III, pp. 1528 to 1530.

In the Resolution dated January 25, 2023,[26] the Court partly admitted petitioner's offered exhibits.

Consequently, on February 17, 2023, petitioner filed a *Motion for Partial Reconsideration to the Resolution dated January 25, 2023*,[27] praying that this Court admit the denied exhibits. Thereafter, respondent filed his *Comment/Opposition* on March 14, 2023.[28]

For his part, respondent offered the testimonies of ROs Leo-Gibbs C. Tapiru[29] and Junelle Aira C. Salamanca.[30]

Respondent filed his *Formal Offer of Evidence* on February 13, 2023,[31] to which petitioner filed its *Comment/Opposition (To the Respondent's Formal Offer of Evidence)* on February 21, 2023.[32] In the *Resolution* dated April 18, 2023,[33] the Court partially granted petitioner's *Motion for Partial Reconsideration* and admitted Exhibit "P-6." However, the Court still denied the admission of certain exhibits because they were not found in the records. In the same *Resolution*, the Court admitted all respondent's offered exhibits.

On May 22, 2023, petitioner filed its *Memorandum;*[34] while on May 24, 2023,[35] respondent submitted a *Manifestation* stating that he would adopt his *Answer* as his Memorandum.

On May 26, 2023, the present case was considered submitted for decision.[36]

THE ISSUE

As stipulated by the parties, the sole issue for this Court's resolution is as follows:

[26] Docket – Vol. IV, pp. 1538 to 1557.
[27] Docket – Vol. IV, pp. 1567 to 1592.
[28] Docket – Vol. IV, pp. 1621 to 1622.
[29] Exhibit "R-6", Docket – Vol. I, pp. 294 to 297; and Minutes of the hearing held on, and Order dated, February 2, 2023, Docket – Vol. IV, p. 1558.
[30] Exhibit "R-7", Docket – Vol. I, pp. 310 to 315; and Minutes of the hearing held on, and Order dated, February 2, 2023, Docket – Vol. IV, p. 1558.
[31] Docket – Vol. IV, pp. 1561 to 1565.
[32] Docket – Vol. IV, pp. 1614 to 1615.
[33] Docket – Vol. IV, pp. 1629 to 1647.
[34] Docket – Vol. IV, pp. 1648 to 1723.
[35] Docket – Vol. IV, pp. 1725 to 1727.
[36] Resolution dated May 26, 2023, Docket – Vol. IV, p. 1729.

> "WHETHER PETITIONER IS ENTITLED TO THE CLAIM FOR REFUND OF THE EXCESS AND UNUTILIZED INPUT VALUE ADDED TAX (VAT) ALLOCABLE/ATTRIBUTABLE TO ITS VAT ZERO RATED SALES FOR THE PERIOD FROM APRIL 1, 2018 TO MARCH 31, 2019 IN THE AMOUNT OF ONE BILLION, THREE HUNDRED EIGHTY-ONE MILLION, NINETY-SIX THOUSAND, SEVEN HUNDRED THIRTY-THREE PESOS AND SEVEN CENTAVOS (P1,381,096,733.07)."[37]

Petitioner's arguments:

Petitioner argues that its claim for a tax refund should be granted because all the necessary elements are present. As such, its present judicial claim for a tax refund in the amount of ₱1,381,096,733.07 should be granted.

Respondent's counter-arguments:

Respondent contends that the Court has no jurisdiction over the case and that the denial of petitioner's claim for refund in the amount of ₱1,381,096,733.07 is proper as it failed to comply with the mandatory requirements for claiming a tax refund or credit.

THE COURT'S RULING

The present *Petition for Review* is partly meritorious.

The Court has jurisdiction over the present case.

Respondent alleges that petitioner admitted receiving the *VAT Refund Notice* denying its claim for a tax refund on July 16, 2020. Citing Section 112 (C) of the National Internal Revenue Code (**NIRC**) of 1997, as amended by Republic Act (**RA**) No. 10963, the Tax Reform for Acceleration and Inclusion (**TRAIN**) Law,[38] respondent claims that petitioner had thirty (30) days, or until August 15, 2020, to elevate the

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[37] Par. B, JSFI, Docket – Vol. II, p. 676.
[38] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

denial of its claim to this Court. Respondent maintains that petitioner filed the instant *Petition for Review* on August 20, 2020, which is five (5) days beyond the period prescribed under Section 112 (C); thus, this Court has no jurisdiction over the subject matter of the present case. [39]

The Court disagrees with respondent.

Section 112 of the NIRC of 1997, as amended by the TRAIN Law,[40] provides, in part, 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 xxx
>
> xxx xxx xxx
>
> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, **the Commissioner shall grant a refund for creditable input taxes within ninety (90) days** from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals**: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code." *[Emphasis supplied]*

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[39] Answer, Docket – Vol. I, pp. 266 to 267.

[40] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

Based on the foregoing, a VAT-registered taxpayer claiming a tax refund or credit of excess and unutilized input VAT may file an *administrative claim* within two (2) years from the close of the taxable quarter when the sales were made; and a *judicial claim* within 30 days from receipt of respondent's decision denying the claim.

The present claim covers the taxable period from April 1, 2018 to March 31, 2019. Counting two (2) years from the close of the taxable quarters, petitioner had until the following dates to file its *administrative claim*:

Period Covered	**Close of the Taxable Quarter**	**Last Day to File Administrative Claim**
1st Quarter (April 1 to June 30, 2018)	June 30, 2018	June 30, 2020
2nd Quarter (July 1 to September 30, 2018)	September 30, 2018	September 30, 2020
3rd Quarter (October 1 to December 31, 2018)	December 31, 2018	December 31, 2020
4th Quarter (January 1 to March 31, 2019)	March 31, 2019	March 31, 2021

Hence, petitioner's *administrative claim* for refund was *timely filed* on **December 16, 2019**.[41]

Correspondingly, from filing petitioner's administrative claim for refund on December 16, 2019, respondent had ninety (90) days, or until March 15, 2020, to decide on the claim. While respondent's *VAT Refund Notice* denying petitioner's claim was allegedly issued on February 20, 2020, within the 90-day period, it was received by petitioner only on July 16, 2020.[42] As such, petitioner had thirty (30) days from July 16, 2020, or until **August 15, 2020**,[43] to appeal before this Court.

However, due to the imposition of Modified Enhanced Community Quarantine (MECQ) in Metro Manila, the Supreme Court issued Administrative Circular No. 43A-2020, *suspending* the reglementary periods for the filing of petitions, appeals, and other court submissions from August 4 to 18, 2020, and ordering their resumption on August 19, 2020.[44]

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[41] Exhibits "P-46" and "P-47", Docket – Vol. III, pp. 1480 to 1492.
[42] Exhibit "54", Docket – Vol. III, pp. 1523 to 1525; and Exhibit "R-5", BIR Records, pp. 1354 to 1356.
[43] August 15, 2020 (30th day) fell on Saturday.
[44] Supreme Court Administrative Circular No. 43A-2020 dated August 3, 2020.

Since August 19, 2020 was declared a special non-working holiday (Quezon City Day) in Quezon City where this Court sits, the filing of the present *Petition for Review* on the following working day, August 20, 2020,[45] was well within the adjusted reglementary period.

The Court notes that the filing of the *Petition for Review* on August 20, 2020 was beyond the 90(previously 120)+30-day period. Records reveal that as of March 15, 2020, the end of ninety (90) days, petitioner had not received a decision on the refund claim, nor had it filed a petition for review within thirty (30) days from March 15, 2020.

While respondent did not question the filing of the *Petition for Review* after the 90+30-day period, the Court finds it necessary to discuss, for the guidance of the bench and bar, that the *Petition for Review* was, nevertheless, timely filed.

Section 112 (C) of the NIRC of 1997, as amended, governs the filing of a judicial claim for refund or tax credit of input VAT.

Before the enactment of TRAIN Law, Section 112 (C) reads:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
> x x x
>
> (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).
>
> **In case of full or partial denial of the claim for tax refund or tax credit, <u>or</u> 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 **<u>or</u>** after the expiration of the one hundred twenty day-period, **appeal the decision or the unacted claim with the Court of Tax Appeals**." *[Emphasis supplied]*

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[45] Docket – Vol. I, pp. 6 to 53.

In construing the afore quoted provision, the Supreme Court opined, in *Taihei Alltech Construction (Phil.), Inc. v. Commissioner of Internal Revenue (Taihei)*,[46] that the taxpayer can file an appeal in one of **two (2) ways**: (1) file the judicial claim within 30 days after the Commissioner denies the claim within the 120-day period, **OR** (2) file the judicial claim within 30 days from the expiration of the 120-day period if the Commissioner does not act within the 120 days.

In *Taihei*, taxpayers were reminded that when the 120 days lapse and there is inaction on the part of the CIR, they must no longer wait for it to come up with a decision thereafter. The CIR's inaction is the decision itself. It is already a denial of the refund claim. Thus, the taxpayer must file an appeal within thirty (30) days from the lapse of the 120-day waiting period.[47]

In the case of *Silicon Philippines, Inc. v. Commissioner of Internal Revenue* (*Silicon*) cited in the *Taihei* case, the Supreme Court emphasized that a judicial claim for refund shall be filed within thirty (30) days after the receipt of the CIR's decision/ruling **OR** after the expiration of the 120-day period, "**whichever is sooner**." [48]

> The judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the 120-day period, **whichever is sooner**.
>
> Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by the law, any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is **outside the jurisdiction of the CTA**. *[Emphasis supplied]*

The Supreme Court said in *Taihei* that the *post facto* denial of the administrative claim is irrelevant, as the CIR's inaction for 120 days is already considered a "deemed denial" of the administrative claim for refund. Without a timely appeal, the "deemed denial" becomes final and unappealable.[49]

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[46] G.R. No. 258791, December 7, 2022.
[47] *Taihei Alltech Construction (Phil.), Inc. v. Commissioner of Internal Revenue, id.*, citing *Rohm Apollo Semiconductor Phils. v. Commissioner of Internal Revenue* in *Taihei Alltech Construction (Phil.), Inc. v. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.
[48] *Id.*, citing *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016.
[49] *Id.*

With the enactment of the TRAIN Law, Section 112(C) of the NIRC was amended to read as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
> x x x
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within **ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.**
>
> In case of full or partial denial of the claim for tax refund, **the taxpayer affected may, within thirty (30) days from the <u>receipt of the decision</u> denying the claim, appeal the decision with the Court of Tax Appeals**: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within ninety (90) days period shall be punishable under Section 269 of this Code." *[Emphasis supplied]*

As provided in Section 112 (C) above, the period for the CIR to act on the administrative claim for refund was reduced from 120 days to 90 days, and specific phrases relative to the "**inaction of the CIR**" have been deleted.

As currently worded, Section 112(C) does not anymore give the taxpayer the right to appeal the "**inaction of the CIR**" within thirty (30) days following the lapse of the 120(now 90)-day period. Given the deletion or removal of the phrases "*or the failure on the part of the Commissioner to act on the application within the period prescribed above*" and "*or after the expiration of the one hundred twenty day-period,*" the 30-day period to appeal to the CTA, pursuant to the TRAIN law, can be made under **only <u>one</u> circumstance**, that is, from <u>receipt</u> by the taxpayer of the CIR's decision denying the refund claim – whether the receipt was before or after the lapse of the 90-day waiting period.

Indeed, the principle behind the *Silicon* case, as cited in *Taihei,* that "any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is **outside the jurisdiction of the CTA"** - no longer applies to cases

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governed by the TRAIN Law, considering the deletion of the phrases relative to the CIR's inaction on the claim after 120 (now 90) days.

Moreover, Section 4.112-1 (d) of Revenue Regulations (**RR**) No. 16-2005,[50] as amended by RR No. 26-2018,[51] explicitly provides that the taxpayer affected may appeal the decision to the CTA within thirty (30) days from <u>receipt</u> of the decision denying the claim to wit:

> "SEC. 4.112-1. Claims for Refund/Credit of Input Tax. —xxx
>
> xxx xxx xxx
>
> (d) Period within which refund/credit of input taxes shall be made
>
> xxx xxx xxx
>
> The 90-day period to process and decide shall start from the filing of the claim up to the release of the payment of the VAT refund: Provided, That, the claim/application is considered to have been filed only upon submission of the official receipts or invoices and other documents in support of the application as prescribed under pertinent revenue issuances.
>
> In case of full or partial denial of the claim for tax refund, **the taxpayer affected, may, within <u>thirty (30) days from the receipt of the decision</u> denying the claim, appeal the decision with the Court of Tax Appeals (CTA)**: Provided, that failure on the part of any official, agent or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of the Tax Code, as amended. Provided, further, That, **in the event that the 90-day period has lapsed without having the refund released to the taxpayer-claimant, the VAT refund claim may still continue to be processed administratively.** Provided however, That the BIR official, agent or employee who was found to have deliberately caused the delay in the processing of the VAT refund claim may be subjected to penalties imposed under said section. x x x" *[Emphasis supplied]*

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[50] SUBJECT: Consolidated Value-Added Tax Regulations of 2005.
[51] SUBJECT: Amends Certain Provisions of RR No. 13-2018 to Implement the 90-Day Processing of Claim for VAT Refund under Section 112 (C) of the Tax Code of 1997, as Amended by Republic Act (R.A.) No. 10963, Otherwise Known as the Tax Reform for Acceleration and Inclusion or TRAIN.

Under the cited provision, if the 90-day period lapses without the refund being released to the claimant, the BIR may continue to process the refund claim. Furthermore, the BIR official, agent, or employee found to have deliberately caused the delay in processing the VAT refund claim may be subjected to penalties.

Clearly, Section 112 of the NIRC of 1997, as amended, and Section 4.112-1(d) or RR No. 16-2005, as amended, contemplate the possibility that the BIR may act and issue a decision on the refund claim after the lapse of the 90-day period. In such cases, the taxpayer may file an appeal with this Court within thirty (30) days from receipt of the decision or ruling.

Nonetheless, notwithstanding the amendment, a taxpayer may still elevate the CIR's inaction should he desire to do so, pursuant to Section 7(a)(2), in relation to Section 11 of RA No. 1125[52], as amended by RA No. 9282[53], which provides that the CTA has jurisdiction not only over CIR's decisions but also his inactions on refund claims where the law provides a "specific period of action."

Notably, Section 86 of the TRAIN Law,[54] the repealing clause, which includes a comprehensive list of repealed laws, does not mention RA No. 1125 nor RA No. 9282.

It has been consistently held that "on the presumption that whenever the legislature enacts a provision it has in mind the previous statutes relating to the same subject matter, it is held that *in the absence of any express repeal or amendment* therein, the new provision was enacted in accord with the legislative policy embodied in those prior statutes, and they all should be construed together.[55]

Applying the foregoing, in enacting the TRAIN Law, the legislature is presumed to have in mind the pertinent provisions of RA No. 9282 concerning the CTA's jurisdiction

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[52] AN ACT CREATING THE COURT OF TAX APPEALS
[53] 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.
[54] SECTION 86. Repealing Clause. — The following laws or provisions of laws are hereby repealed, and the persons and/or transactions affected herein are made subject to the VAT provision of Title IV of the NIRC, as amended: ...Tax Reform for Acceleration and Inclusion (TRAIN), Republic Act No. 10963, December 19, 2017.
[55] *Garcia v. Tolentino*, G.R. Nos. 153810 & 167297, August 12, 2015.

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to review by appeal the inaction of the CIR in cases involving disputed assessments, **refunds,** or other matters arising under the NIRC. Thus, in the absence of its express repeal, the TRAIN Law is deemed enacted in accordance with the legislative policy embodied in those prior laws, including RA No. 9282.

Section 7(a)(1) and (2) and Section 11 of RA No. 1125[56], as amended by RA No. 9282[57], which have not been repealed by the TRAIN Law, are quoted as follows:

> SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> (1) **Decisions of the Commissioner of Internal Revenue** in cases involving disputed assessments, **<u>refunds</u>** 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;
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> (2) **Inaction by the Commissioner of Internal Revenue** in cases involving disputed assessments, **<u>refunds</u>** 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 <u>**specific period of action**, in which case the inaction shall be deemed a **denial**</u>;
>
> xxx xxx xxx
>
> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a <u>decision</u>, ruling, or <u>inaction</u>** of the Commissioner of Internal Revenue...may file an 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 **<u>decision</u>** or ruling or in the case of **<u>inaction</u> as herein provided, from the expiration of the period fixed by law to act thereon**.

[56] *Supra* at note 52.
[57] *Supra* at note 53.

> A Division of the CTA shall hear the appeal: xxx *[Emphasis supplied]*

Indeed, despite the amendments introduced by the TRAIN Law, the CTA retains its appellate jurisdiction to review the **inaction** of the CIR. Regarding the **decision** of the CIR, it is not required that it be received before the lapse of the "specific period of action," which is ninety (90) days. Therefore, a judicial claim filed within thirty (30) days from receipt of a decision rendered or received beyond the 90-day period is valid.

In summary, under the present text of Section 112 (C) of the NIRC of 1997, as amended by the TRAIN Law, and Sections 7(a)(2) and 11 of RA No. 1125, as amended by RA No. 9282, a taxpayer adversely affected by a decision, ruling or inaction of the CIR may file an appeal as follows:

(1) In case of full or partial denial of the tax refund claim within the 90-day period for the CIR to act, the affected taxpayer may appeal to this Court within 30 days from receipt of the decision denying the claim;

(2) In case the 90-day period lapses without the taxpayer receiving a decision fully or partially denying the claim, the taxpayer may treat the inaction as a denial under Section 7 (a)(2) of RA No. 1125, as amended by RA No. 9282, and may appeal to this Court within 30 days from the lapse of the 90-day period; and

(3) In case the taxpayer chooses to wait for the CIR's decision and receives a full or partial denial of the claim after the 90-day period has lapsed, the taxpayer may still file an appeal with this Court within 30 days from receipt of the decision, pursuant to the current wording of Section 112(C) of the NIRC of 1997, as amended.

As previously discussed, petitioner received the VAT Refund Notice allegedly issued within the 90-day period on July 16, 2020. Counting thirty (30) days from that date, petitioner had until **August 15, 2020,** to file a petition for review before this Court. However, the filing of petitions was suspended from August 4 to 18, 2020, and resumed on August 19, 2020, in accordance with Supreme Court Administrative Circular No. 43A-2020, dated August 3, 2020. Moreover, August 19, 2020 was a special non-working holiday. Hence, the filing of the instant *Petition for Review* on August 20, 2020, which coincided with the resumption of the filing of petitions, appeals, and other court submissions before this Court, was timely.

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Having settled that the *Petition for Review* was timely filed, the Court likewise rules that it has the requisite jurisdiction to take cognizance of this case under Section 3(a)(1), Rule 4 of RRCTA.[58]

Requisites for the grant of a refund or issuance of tax credit certificate of unutilized or excess input VAT attributable to zero-rated sales.

Section 112(A) and (C) of the NIRC of 1997, as amended, provides:

> 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.
>
> (B) ...
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts

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[58] Section 3. Cases Within the Jurisdiction of the Court in Divisions. — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving xxx refunds of internal revenue taxes, xxx.

or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: Provided, however, That failure on the part of any official, agent, or employee of the BIR to act on the application within ninety (90) days period shall be punishable under Section 269 of this Code.

As culled from jurisprudence, particularly *Commissioner of Internal Revenue v. Toledo Power Co.*,[59] the requisites to successfully obtain a credit/refund of unutilized or excess input VAT under Section 112 of the NIRC of 1997, as amended, are as follows:

<u>As to the timeliness of the filing of the administrative and judicial claims:</u>

1. the claim is 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;[60]
2. in case of full or partial denial of the refund claim rendered within a period of ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision.[61]

<u>With reference to the taxpayer's registration with the BIR:</u>

3. the taxpayer is a VAT-registered person;[62]

<u>In relation to the taxpayer's output VAT:</u>

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[63]

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[59] G.R. Nos. 195175 & 199645, 10 August 2015, 766 SCRA 20-33.

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

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

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

[63] *Id.*

5. for 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 have been duly accounted for in accordance with BSP rules and regulations;[64]

<u>As regards the taxpayer's input VAT being refunded:</u>

6. the input taxes are not transitional;[65]
7. the input taxes are due or paid;[66]
8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[67] and
9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[68]

In addition, in claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the NIRC and other implementing rules and regulations[69] to determine the veracity of the taxpayer's claims.[70] Moreover, compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[71]

Furthermore, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[72] Thus, petitioner must comply with the foregoing requisites and invoicing requirements. The absence of *any* of the said requisites is a valid ground to deny the refund claim.

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[64] *Id.*
[65] *Id.*
[66] *Id.*
[67] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, supra*; and *San Roque Power Corporation v. Commissioner of Internal Revenue, supra.*
[68] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, supra*; *San Roque Power Corporation v. Commissioner of Internal Revenue, supra*; and *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, supra.*
[69] *Team Energy Corporation v. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.
[70] *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.
[71] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[72] *Edison (Bataan) Cogeneration Corporation v. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon v. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

First and second requisites: The administrative and judicial claims were timely filed.

The *first* and *second* requisites have already been exhaustively discussed above. To reiterate, the Court finds that petitioner timely filed its administrative and judicial claims for a refund.

Third requisite: Petitioner is a VAT-registered entity.

The Certificate of Registration (BIR Form No. 2303) may be used to determine whether petitioner is VAT-registered.

Anent the *third* requisite, it is undisputed that petitioner is a VAT-registered person/entity with Tax Identification No. (TIN) 000-428-573-000, as evidenced by BIR Certificates of Registration for its Head Office and branches.[73] Thus, there is no question that petitioner showed compliance with the said requisite.

Fourth and fifth requisites: Petitioner has zero-rated or effectively zero-rated sales but only in the amount of ₱36,499,857,975.17.

The *fourth* and *fifth* requisites require that the taxpayer be engaged in zero-rated or effectively zero-rated sales, and for zero-rated sales under Sections 106(A)(2)(a)(1) and (3), and 108(B)(1) and (2) of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with Bangko Sentral ng Pilipinas (BSP) rules and regulations.

In its Amended Quarterly VAT Returns for the period covering April 1, 2018 to March 31, 2019, petitioner reported total sales of ₱39,600,679,515.70 which include vatable sales amounting to ₱2,539,658,198.47, zero-rated sales amounting

[73] Exhibits "P-3", "P-3-1", "P-3-2", "P-3-3", "P-3-4", "P-3-5", "P-3-6", "P-3-7", "P-3-8", "P-3-9", "P-3-10", "P-3-11", "P-3-12", "P-3-13", "P-3-14", "P-3-15", "P-3-16", "P-3-17", "P-3-18", "P-3-19", "P-3-20", "P-3-21", "P-3-22", "P-3-22", "P-3-23", "P-3-24", "P-3-25", "P-3-26", "P-3-27", "P-3-28", "P-3-29", and "P-3-30", Docket – Vol. III, pp. 1325 to 1361.

to ₱36,533,275,020.59 and exempt sales amounting to ₱527,746,296.64, as shown below:

Period Covered	Vatable Sales	Zero Rated Sales	Exempt Sales	Total
1st Quarter[74]	₱ 428,259,954.73	₱ 8,660,656,265.05	₱ 110,066,861.07	₱ 9,198,983,080.85
2nd Quarter[75]	554,060,017.74	7,284,692,457.69	117,686,494.03	7,956,438,969.46
3rd Quarter[76]	968,167,282.26	10,202,383,488.80	154,117,379.02	11,324,668,150.08
4th Quarter[77]	589,170,943.74	10,385,542,809.05	145,875,562.52	11,120,589,315.31
Total	**₱2,539,658,198.47**	**₱36,533,275,020.59**	**₱527,746,296.64**	**₱39,600,679,515.70**

Petitioner claims that it entered into a Sales Agreement[78] with Dole Asia Holdings (**DAH**) Pte. Ltd., a non-resident foreign corporation (**NRFC**) established under the laws of Singapore and holding principal office thereat and the consideration for which was paid for and inwardly remitted in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.[79]

In addition, petitioner avers that its other clients for the period April 1, 2018 to March 31, 2019, include export-oriented entities that are either registered with the Board of Investments (**BOI**), Subic Bay Metropolitan Authority (**SBMA**), and Clark Development Corporation (**CDC**).[80]

From the foregoing, petitioner has two (2) sources of zero-rated sales, *i.e.*, (1) sales to NRFC doing business outside the Philippines; and, (2) sales to entities registered with Philippine Economic Zone Authority (**PEZA**), BOI, CDC, SBMA and other government entities, under Section 106(A)(2)(a)(1) and (5) of the NIRC of 1997, as amended.

Based on the ICPA Report, petitioner's zero-rated sales can be classified as follows:

[74] Exhibit "P-10", Docket – Vol. III, pp. 1420 to 1421.
[75] Exhibit "P-13", Docket – Vol. III, pp. 1426 to 1427.
[76] Exhibit "P-17", Docket – Vol. III, pp. 1434 to 1435.
[77] Exhibit "P-20", Docket – Vol. III, pp. 1440 to 1441.
[78] Exhibit "P-5", Docket – Vol. III, pp. 1393 to 1399.
[79] Par. 6.7, *Petition for Review*, Docket – Vol. I, pp. 17 to 18.
[80] Par. 6.18, *Petition for Review*, Docket – Vol. I, p. 22.

Customer Name	Registration Type	Annexes to ICPA Report	Amount (in USD)	Amount (in Pesos)
I. Sales to NRFC (Direct Export Sales)				
1. Dole Asia Holdings (DAH) Pte. Ltd.	NRFC	Annexes AA, AE, AG, AI, AC, AD, AH, AJ	$ 686,411,805.64	₱ 36,310,334,491.67
2. Dole Thailand	NRFC	Annex AA	528,199.96	27,845,700.35
3. Itochu Metals Corporation	NRFC	Annex AA	3,167,049.24	165,453,606.60
Total Direct Export Sales			**$690,107,054.84**	**₱36,503,633,798.62**
II. Sales registered with BOI, SBMA, and CDC (Considered Export Sales)				
1. Century Pacific Agricultural Ventures, Inc.	BOI	Annex AB		₱ 21,252,520.02
2. General Tuna Corporation	BOI	Annex AB		4,461,530.88
3. Philbest Canning Corporation	BOI	Annex AB		1,253,062.00
4. Fresh Consumer Trade and Logistics, Inc.	BOI *(DTI-Export Development Act)*	Annex AF		2,558,520.00
5. Gem Foods International, Inc.	SBMA	Annex AF	$ 5,702.50	296,620.57
6. Milbrae Exports, Inc.	CDC	Annex AF		(181,030.00)
Total Considered Export Sales			**$ 5,702.50**	**₱ 29,641,223.47**
TOTAL ZERO-RATED SALES			**$686,417,508.14**	**₱36,533,275,022.09**[81]

As the table above shows, petitioner's sales to NRFCs include its sales to Dole Thailand and Itochu Metals Corporation, in addition to DAH Pte. Ltd.

The relevant provision in determining whether petitioner's sales to the foregoing customers are subject to VAT at zero percent (0%) is Section 106(A)(2)(a)(1) and (5) of the NIRC of 1997, as amended, which reads:

"SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* —

(A) *Rate and Base of Tax.* — xxx

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

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

[81] The Court notes an unexplained discrepancy of P1.50 between the ICPA Report and the declared zero-rated sales on the VAT return.

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

xxx xxx xxx

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

Relative thereto, Section 4.106-5 of RR No. 16-2005,[82] as further amended by RR No. 13-2018,[83] provides:

"SEC. 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:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported, paid for in acceptable foreign currency or its equivalent in goods and services, and accounted for in accordance with the rules and regulation of the Bangko Sentral ng Pilipinas (BSP);

xxx xxx xxx

(4) 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

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[82] *Supra* at note 50.
[83] Regulations Implementing the VAT Provisions under the RA No. 10963, Further Amending RR No. 16-2005, as Amended, March 15, 2018.

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 without actual exportation the following shall be considered constructively exported for purposes of these provisions: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones; (3) 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); (4) 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."

Moreover, petitioner must comply with the invoicing requirements under Section 113(A) and (B) of the NIRC of 1997, as amended, which provides that a VAT taxpayer shall, for every sale, barter or exchange of goods or properties, issue a VAT invoice or official receipt (**OR**) which must contain the following information:

"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.

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(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:

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

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

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

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the 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 component of the sale.

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

(4) In the case of sales in the amount of One thousand pesos (₱1,000.00) or more where the sale or transfers 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]*

The above provision is implemented by Section 4.113-1 of RR No. 16-2005, as amended, which reads:

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

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

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

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

Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or official receipts. Said documents shall be considered as a "VAT Invoice" or "VAT official receipt". All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipts 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 peso (₱1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client,

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shall be indicated in addition to the information required in (1) and (2) of this Section."

In addition to the above requirements, the sales invoices (**SIs**) and ORs must be duly registered with the BIR as prescribed under Section 237, in relation to Section 238, of the NIRC of 1997, as amended, which provides:

> "SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.*—
>
> "(A) *Issuance.* – All persons subject to an internal revenue tax shall, at the point of each sale and transfer of merchandise or for services rendered valued at One hundred pesos (₱100) or more, issue duly registered receipts or sale or commercial invoices, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however,* That where the receipt is issued to cover payment made as rentals, commissions, compensation or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided, further,* That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser."
>
> "SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

Thus, only the sales of goods or services supported by the SIs or ORs, having the required information, shall qualify for VAT zero-rating.

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I. Export sales of goods to NRFCs

Based on the foregoing, for petitioner's export sales of goods to qualify as zero-rated under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, the following essential elements must be present:

1. The sale was made by a VAT-registered person;

2. There was a sale and actual shipment of goods from the Philippines to a foreign country; and,

3. The sale was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

Corollary thereto, any VAT-registered person claiming for VAT zero-rating on its export sale of goods must present at least three (3) types of documents, as follows:

1. sales invoice as proof of sale of goods;

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

3. bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

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

As discussed earlier, petitioner has proved that it is a VAT-registered person as regards the *first* essential element.

Anent the *second* essential element, petitioner adduced before this Court its SIs and export documents, such as Bill of Lading (**BL**) or Waybills, Single Administrative Documents (**SADs**), and Export Declarations (**EDs**).[84]

[84] Exhibits "P-63-A-01-01" to "P-63-D-34".

For the *third* essential element, petitioner presented the Certificates of Inward Remittance,[85] Account Statements,[86] and Reconciliation of Export Sales and Foreign Currency Remittances[87] to support that the sales were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP, as examined by the ICPA.

The ICPA noted the following observations[88] in relation to petitioner's sales to NRFC, which the Court finds to be in order, to wit:

Observations	Sales Amount per Schedules (in PHP)	Reference
f) Zero-rated sales arising from the export of goods duly supported by original zero-rated sales invoices dated within April 2018 and March 2019 and export documents but without valid proof of remittance	₱ 439,686.28	Annex AC
g) Zero-rated sales arising from the export of goods duly supported by original zero-rated sales invoices dated within April 2018 and March 2019 with valid proof of remittances but without export documents[89]	1,613,499.11	Annex AD
i) Zero-rated sales arising from the export of goods not duly supported by zero-rated sales invoices but with valid proof of remittances and BOC certification of the exportation	(139,532.59)	Annex AH
j) Zero-rated sales arising from the export of goods not duly supported by zero-rated sales invoices but with proof of remittance and BOC certification of exportation	370,529.51	Annex AJ
	₱2,284,182.31	

However, upon further examination of the submitted supporting documents, the Court finds the following sales to DAH Pte. Ltd. amounting to ₱1,491,641.14 are not valid for zero-rating based on the reasons stated below:

[85] Exhibits "P-86-C" to "P-86-D".
[86] Exhibits "P-86-A" to "P-86-B".
[87] Exhibits "P-85-A" to "P-85-E".
[88] Exhibit "P-215", Docket – Vol. III, p. 1108.
[89] The ICPA noted in his report that the ₱1,613,499.11 zero-rated sale was supported by a bill of lading (Exhibit "P-63-B-06-494"). However, examination shows that the said bill of lading was unreadable. Thus, the Court shall disallow the same.

Invoice Number		**BL/Airway Bill**	**Proof of Inward Remittance**			**Amount**	**Reason for disallowance**
Exhibit No.	**Invoice No.**	**Exhibit No.**	**Exhibit No.**	**Month**	**Page No.**		
P-63-B-05-529	87772		P-85-C & P-86-A	July 2018	21	₱ 612,825.41	Not supported by BL
P-63-B-13-764	90505		P-85-C & P-86-A	April 2019	5	126,874.73	Not supported by BL, and the Invoice was not found on the records
P-63-B-09-511	102089		P-85-B & P-86-B	December 2018	4	355,608.56	
P-63-B-08-327 to P-63-B-08-328	101846	P-63-B-08-588	P-85-B & P-86-B	November 2018	20	396,332.45	BL does not pertain to Invoice No. 101846
						₱1,491,641.14	

In fine, only the amount of ₱36,499,857,975.17 satisfied the essential elements to qualify as VAT zero-rated sales under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, to wit:

Total Zero-Rated Sales to NRFC		
Dole Asia Holdings (DAH) Pte. Ltd.	₱36,310,334,491.67	
Dole Thailand	27,845,700.35	
Itochu Metals Corporation	165,453,606.60	₱ 36,503,633,798.62
Less: Disallowances		
Per ICPA	2,284,182.31	
Per Court's further verification	1,491,641.14	3,775,823.45
Total Valid Zero-Rated Sales to NRFC		**₱ 36,499,857,975.17**

II. Sales to BOI, SBMA, and CDC-registered entities

Petitioner claims that it also derived its zero-rated sales to entities registered with the BOI, Department of Trade and Industry (**DTI**), SBMA, and CDC in the aggregate amount of ₱29,641,223.47, broken down as follows:

Customer Name	**Registration Type**	**Annexes to ICPA Report**	**Amount (in Pesos)**
Century Pacific Agricultural Ventures, Inc.	BOI	AB	₱21,252,520.02
General Tuna Corporation	BOI	AB	4,461,530.88
Philbest Canning Corporation	BOI	AB	1,253,062.00
Fresh Consumer Trade and Logistics, Inc.	DTI	AF	2,558,520.00

Gem Foods International, Inc.	SBMA	AF	296,620.57
Milbrae Exports, Inc.	CDC	AF	(181,030.00)
Total			**₱29,641,223.47**

Under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended and as implemented by Section 4.106-5 of RR No. 16-2005, [90] as amended by RR No. 13-2018, [91] for a *"considered export sale"* to qualify as zero-rated, the following essential elements must be present:

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

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

As for the *second* essential element, any VAT-registered person claiming VAT zero-rated *"considered export sales"* must present, among others, the following documents:

1. The sales invoice as proof of sale of goods; and,

2. The proof of entitlement to zero-rating under the OIC or other special laws.

Moreover, in *Commissioner of Internal Revenue v. Filminera Resources Corporation (Filminera* case*)*, [92] the Supreme Court ruled that sales made to a BOI-registered buyer are export sales subject to the zero percent rate if the following conditions are met:

1. The buyer is a BOI-registered manufacturer /producer;

2. The buyer's products are 100% exported; and,

3. The BOI certifies that the buyer exported 100% of its products. For this purpose, the BOI Certification is vital

[90] *Supra* at note 50.
[91] *Supra* at note 83.
[92] G.R. No. 236325, September 16, 2020.

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for the seller-taxpayer to avail of zero-rating benefits. The certification is evidence that the buyer exported its entire product and shall serve as authority for the seller to claim a refund or tax credit.

Thus, in compliance with the *second* essential element, petitioner presented the following: (1) Sales Invoices and Return Sales Invoices;[93] and (2) Certificates of BOI and SBMA registration.[94]

Upon examination of petitioner's sales invoices, the Court finds that the total amount of ₱27,263,733.47 must be disallowed for petitioner's failure to comply with the invoicing requirements (*i.e.*, failure to indicate the purchaser's TIN in the invoices issued by petitioner), to wit:

Customer Name	**Registration Type**	**Amount (in Pesos)**	**Exhibits**
Century Pacific Agricultural Ventures, Inc.	BOI	₱21,252,520.02[95]	"P-63-E-1" to "P-63-E-13", "P-63-E-19" to "P-63-E-21", "P-63-E-23" to "P-63-E-25", "P-63-E-28" to "P-63-E-33", "P-63-E-35" to "P-63-E-52", "P-63-E-54" to "P-63-E-71", "P-63-E-75" to "P-63-E-89", "P-63-E-94" to "P-63-E-105", "P-63-E-108" to "P-63-E-113", "P-63-E-117" to "P-63-E-121", "P-63-E-123" to "P-63-E-132", "P-63-E-137" to "P-63-E-153", "P-63-E-157" to "P-63-E-165", "P-63-E-171", "P-63-E-173" to "P-63-E-209", "P-63-E-211" to "P-63-E-213", "P-63-E-219" to "P-63-E-226", "P-63-E-228" to "P-63-E-235", "P-63-E-239" to "P-63-E-243", "P-63-E-245" to "P-63-E-255", "P-63-E-257" to "P-63-E-259", "P-63-E-261" to "P-63-E-265"
General Tuna Corporation	BOI	4,461,530.88[96]	"P-63-E-14", "P-63-E-15", "P-63-E-26", "P-63-

[93] Exhibits "P-63-E-1" to "P-63-E-269", and "P-63-F-01-01" to "P-63-F-01-17".
[94] Exhibits "P-99" to "P-103", USB.
[95] Annex AB, USB.
[96] *Id.*

Customer Name	Registration Type	Amount (in Pesos)	Exhibits
			E-27", "P-63-E-34", "P-63-E-39", "P-63-E-40", "P-63-E-73", "P-63-E-74", "P-63-E-90" to "P-63-E-93", "P-63-E-106", "P-63-E-107", "P-63-E-114" to "P-63-E-116", "P-63-E-122", "P-63-E-133" to "P-63-E-136", "P-63-E-154", "P-63-E-156", "P-63-E-166" to "P-63-E-170", "P-63-E-210", "P-63-E-227"; "P-63-E-244", "P-63-E-256", "P-63-E-260"
Philbest Canning Corporation	BOI	1,253,062.00[97]	"P-63-E-155", "P-63-E-172", "P-63-E-236" to "P-63-E-238", "P-63-E-266", "P-63-E-267"
Gem Foods International, Inc.	SBMA	296,620.57[98]	Exhibits "P-63-E-16", "P-63-E-17", "P-63-E-18", "P-63-E-22", "P-63-E-53", "P-63-E-72", "P-63-E-214" to "P-63-E-218", "P-63-E-268", "P-63-E-269"
Total Sales to BOI-registered entities		**₱27,263,733.47**	

Again, at the risk of being repetitive, petitioner must ensure that its sales of goods or services are duly supported by SIs or ORs that are compliant with the invoicing requirements under Section 113(A) and (B) of the NIRC of 1997, as amended, to qualify for VAT zero-rating. Thus, it is deemed proper to outrightly disallow as valid zero-rated sales the amount of ₱27,263,733.47 due to petitioner's failure to comply with the invoicing requirements.

On the other hand, while petitioner's sales to Fresh Consumer Trade and Logistics, Inc. amounting to ₱2,558,520.00[99] were duly supported with SIs dated within the period of claim, they cannot qualify as valid zero-rated sales as petitioner fell short in proving that its products were

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[97] *Id.*
[98] Annex AF, USB.
[99] The amount of ₱2,558,520.00 pertains to sales to Fresh Consumer Trade and Logistics, Inc.; ICPA's observation letter (h) amounting to ₱2,674,110.57 excluding observation regarding sales to SBMA and CDC registered entities amounting to ₱115,590.57.

100% exported, based on the DTI Certificate of Accreditation.[100] To reiterate, as ruled in the *Filminera case*, for a sale to a BOI-registered entity to be accorded VAT zero-rating, petitioner must be able to show that its buyer's products are 100% exported.

Moreover, it may be noted that petitioner failed to offer a certification issued by CDC to prove entitlement to VAT zero-rating of sales to its supplier Milbrae Exports, Inc. Thus, petitioner's sales thereto cannot qualify for VAT zero-rating.

In fine, petitioner's *"considered export sales"* cannot qualify for VAT zero-rating.

To recapitulate, out of petitioner's zero-rated sales for the period covering April 1, 2018 to March 31, 2019 amounting to ₱36,533,275,022.09, only the amount of ₱36,499,857,975.17 qualify for VAT zero-rating, as determined below:

Particulars	Sales to NRFC	Sales to BOI/ SBMA/CDC-registered Entities	Total
Reported Zero-rated Sales	**₱36,503,633,798.62**	**₱29,641,223.47**	**₱36,533,275,022.09**[101]
Less: Exceptions Noted			
Exceptions noted by the ICPA (Annexes AC, AD, AH, and AJ)	(2,284,182.31)		(2,284,182.31)
Zero-rated sales not supported by BLs and Sales Invoices	(1,491,641.14)		(1,491,641.14)
Failure to comply with the invoicing requirements and to prove entitlement of the BOI/CDC-registered entities to VAT zero-rating		(29,641,223.47)	(29,641,223.47)
Total Valid Zero-Rated Sales	**₱36,499,857,975.17**	-	**₱36,499,857,975.17**

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[100] Exhibit "P-103".
[101] With ₱1.50 difference between the total zero-rated sales reported per return and per schedule.

***Sixth requisite*: The input taxes claimed by petitioner are not transitional.**

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

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

As held by the Supreme Court in *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue,*[102] the transitional input tax credit benefits newly VAT-registered persons, whether or not they previously paid taxes on the acquisitions of their beginning inventory of goods, materials, and supplies. During the transition from non-VAT to VAT status, the transitional input tax credit alleviates the impact of VAT on the taxpayer.

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

***Seventh requisite*: Not all input taxes claimed are due or paid.**

Anent the *seventh* requisite, petitioner must provide supporting documents to prove that the input taxes claimed for refund for the period covering April 1, 2017 to March 31, 2018 were actually *due or paid* under Section 110(A) of the NIRC of 1997, as amended, which provides:

[102] G.R. Nos. 158885 & 170680, April 2, 2009.

"SEC. 110. *Tax Credits.* —

(A) *Creditable input Tax.* —

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods:

i. For sale; or

ii. For conversion into or intended to form part of a finished product for sale including packaging materials; or

iii. For use as supplies in the course of business or

iv. For use as materials supplied in the sale of service; or

v. For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

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

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

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

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

Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One Million pesos (P1,000,000): *Provided, however,* That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, finally,* That in the case of purchase of services, lease or use of

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properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee."

The above provisions are implemented by Sections 4.110-1 to 4.110-3 of RR No. 16-2005,[103] as amended, which provide as follows:

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

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

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

(a) Purchase or importation of goods:

(1) For sale; or

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

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

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

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

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

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

[103] *Supra* at note 50.

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

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

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

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

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

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

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

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

SEC. 4.110-3. *Claim for Input Tax on Depreciable Goods.* — Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million pesos (P1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:

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

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

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

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

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

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

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

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

(a) The amortization of the input VAT shall only be allowed until December 31, 2021 after which taxpayers with unutilized input VAT on capital goods purchased or imported shall be allowed to apply the same as scheduled until fully utilized: *Provided*, That in the case of purchase of services, lease or use of properties, the input tax shall be

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creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

xxx xxx xxx

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

Relative thereto, Section 4.110-8 of RR No. 16-2005[104] provides for the substantiation requirements of input tax credits, as follows:

"SEC. 4.110-8. *Substantiation of Input Tax Credits.–*

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

(1) **For the importation of goods** - import entry or other equivalent document showing actual payment of VAT on the imported goods.

(2) **For the domestic purchase of goods and properties** – invoice showing the information required under Secs. 113 and 237 of the Tax Code.

(3) For the purchase of real property – ...

(4) **For the purchase of services** – official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code." *[Emphasis supplied]*

Verily, to prove entitlement to credits for input taxes due and paid, petitioner must not only present the supporting documents prescribed under Section 4.110-8 of RR No. 16-2005, but also, these documents must comply with the invoicing requirements under Sections 113(A) and (B), 237

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[104] *Supra* at note 50.

and 238 of the NIRC of 1997, as amended, as implemented by Section 4.113-1(A) and (B) of RR No. 16-2005.

Based on petitioner's Amended Quarterly VAT Returns[105] for the period covering April 1, 2018 to March 31, 2019, petitioner reported current input tax amounting to ₱1,685,855,716.90, [106] out of which the amount of ₱1,381,096,733.07[107] is the subject of the present claim, as shown below:

	1st Qtr 2019	**2nd Qtr 2019**	**3rd Qtr 2019**	**4th Qtr 2019**	**Total**
	P-10	**P-13**	**P-17**	**P-20**	
Input Tax Due on Capital Goods exceeding ₱1M					
Deferred from previous quarter	₱ 14,425,367.03	₱ 12,054,628.58	₱ 9,914,113.08	₱ 7,906,800.60	₱ 44,300,909.29
Purchase of Capital Goods Exceeding P1M	-	-	-	-	-
Total	14,425,367.03	12,054,628.58	9,914,113.08	7,906,800.60	44,300,909.29
Less: Deferred for the succeeding period	12,054,628.58	9,914,113.10	7,906,800.57	6,087,772.66	35,963,314.91
Amortized input tax on capital goods exceeding ₱1M	2,370,738.45	2,140,515.48	2,007,312.51	1,819,027.94	8,337,594.38
Input Tax Due on Current Purchases of Goods other than Capital Goods	81,418,138.62	145,798,573.68	206,960,536.98	213,045,590.10	647,222,839.38
Input Tax Paid on:					-
Importation of goods other than capital goods	106,796,280.00	61,619,675.00	102,321,190.00	82,592,665.00	353,329,810.00
Input tax on domestic purchases of services	166,334,109.49	129,701,730.68	172,452,962.52	128,997,136.18	597,485,938.87
Services Rendered by Non-Residents	15,220,045.67	17,830,133.10	24,502,126.87	21,902,712.08	79,455,017.72
Sub-total	288,350,435.16	209,151,538.78	299,276,279.39	233,492,513.26	1,030,270,766.59
Creditable Withholding VAT (reflected as Others in VAT Returns)	4,010.39	17,368.22	2,585.48	552.46	24,516.55

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[105] Exhibits "P-10", "P-13", "P-17", and "P-20", Docket – Vol. III, pp. 1420 to 1421, 1426 to 1427, 1434 to 1435, and 1440 to 1441.
[106] Exhibit "P-215", Docket – Vol. III, p. 1114.
[107] With discrepancy of P0.01 against the total amount per VAT Returns.

Total input tax during the period	**372,143,322.62**	**357,107,996.16**	**508,246,714.36**	**448,357,683.76**	**1,685,855,716.90**
Less: Output tax	51,391,194.57	66,487,202.13	116,180,073.87	70,700,513.25	304,758,983.82
Excess input tax	**₱320,752,128.05**	**₱290,620,794.03**	**₱392,066,640.49**	**₱377,657,170.51**	**₱1,381,096,733.08**

Based on the foregoing, petitioner's input VAT consists of the following:

a) Domestic Purchase of Goods Other than Capital Goods	₱ 647,222,839.38
b) Domestic Purchase of Services	597,485,938.87
Total Input VAT from Domestic Purchases of Goods and Services	₱ 1,244,708,778.25
c) Importation of Goods Other than Capital Goods	353,329,810.00
d) Services rendered by Non-residents	79,455,017.72
e) Amortized input tax on capital goods for FY 2019	8,337,594.38
f) Others	,24,516.55
Total Current Input VAT	**₱1,685,855,716.90**

To support its input VAT arising from importations and domestic purchases of goods and services, petitioner submitted its importation documents [i.e., SAD, Statement of Settlement of Taxes and Duties (SSDT)], Supplier's Certification, Computation for the Transfer Pricing Adjustments, Debit and Credit Memos,[108] and VAT SIs and ORs [109] issued by its various suppliers, which the ICPA examined.

Based on the ICPA's review of petitioner's supporting documents, out of petitioner's total input VAT amounting to ₱1,685,855,716.90, only the total amount of ₱1,611,787,038.32 was duly substantiated and supported by documents in accordance with the invoicing requirements. The result of the ICPA's review[110] is shown below:

[108] Exhibits "P-78-A" to "P-79".
[109] Exhibits "P-60-A-01-1" to "P-60-D-13-56"; "P-61-A-03-1" to "P-61-B-955".
[110] Exhibit "P-215", Docket – Vol. III, pp. 1128 to 1129.

	Per Claim[111]	Per ICPA
a. Local purchases of goods and services	₱ 1,244,708,778.25	₱1,171,255,240.68[112]
b. Importation	353,329,810.00	352,719,233.23[113]
c. Services rendered by Non-residents	79,455,017.72	79,455,016.32[114]
d. Amortized input tax on capital goods for FY 2019	8,337,594.38	8,337,594.39[115]
e. Others	24,516.55	19,953.70[116]
Total Input Tax	**₱1,685,855,716.90**	**₱ ₱1,611,787,038.32**

Domestic purchase of goods and services and Importation - ₱1,598,038,588.25[117]

Comparison made by the ICPA of the input VAT on domestic purchases of goods and services and importation based on supporting documents submitted for his review by petitioner in the total amount of ₱1,602,783,734.13 against the input VAT reported in the schedule (Summary List of Purchases[118] and Summary List of Importations[119]) and VAT returns amounting to ₱1,598,037,598.96 resulted in a difference amounting to ₱4,746,135.17, the pertinent portion of the ICPA report is reproduced below:

Observations	Domestic	Importation	Total
Input taxes supported by proper documents	₱ 1,171,255,240.68	₱ 352,719,233.23	₱ 1,523,974,473.91
Input taxes not duly supported by proper documents	78,036,059.22	773,201.00	78,809,260.22
Total input taxes examined	**₱1,249,291,299.90**	**₱353,492,434.23**	**₱1,602,783,734.13**
Input taxes per schedule			**1,598,037,598.96**
Difference			**₱ 4,746,135.17**

[111] Exhibits "P-10", "P-13", "P-17", and "P-20", Docket – Vol. III, pp. 1420 to 1421, 1426 to 1427, 1434 to 1435, and 1440 to 1441.
[112] Annexes AK, CR, AL, CS, AM, CT, CZ, BF, BR, FA, FB, FC, FF, GA, FG, FH, FI, BT, FO, FP, GC, GB, FS, BU, BY, GE, GK, GF, BZ, GG, GJ, GH, CA, GL, GS, GN, GO, CB, GP, CH, CI, HG, CM, and HK of Exhibit "P-215", Docket – Vol. III, pp. 1116 to 1118.
[113] Annexes AN, CB, CK, CL, CO, CP, and CQ of Exhibit "P-215", Docket – Vol. III, pp. 1126 to 1127.
[114] Par. 126 of Exhibit "P-215", Docket – Vol. III, pp. 1127 to 1128.
[115] Pars. 127 and 128 of Exhibit "P-215", Docket – Vol. III, p. 1128.
[116] Par. 129 of Exhibit "P-215", Docket – Vol. III, p. 1128.
[117] Items a, b, and c, Par. 115 of Exhibit "P-215", Docket – Vol. III, p. 1114.
[118] Exhibit "P-74".
[119] Exhibit "P-75".

It is to be noted that there is a difference of ₱989.29 between the total input VAT declared per return (₱1,598,038,588.25) and the total input VAT used by the ICPA in its report, as shown in the table above (₱1,598,037,598.96). Thus, the difference should only be ₱4,745,145.88.

The ICPA accounted for the difference of ₱4,746,135.17, as follows:

Reference	Domestic	Importation	Total
Annex CB and Annex GP	₱ 2,571,483.73		₱ 2,571,483.73
Annex BY and Annex GE	1,997,520.81		1,997,520.81
Annex FH	6,685.71		6,685.71
Annex GC	6,086.61		6,086.61
Annex GF	380.74		380.74
Annex FP	245.85		245.85
Annex FF	107.48		107.48
Annex CB		₱ 21,144.00	21,144.00
Annex CO		71,316.23	71,316.23
Annex CP		71,164.00	71,164.00
Total	**₱4,582,510.93**	**₱163,624.23**	**₱4,746,135.16**[120]

The ICPA explained that the difference pertains to input taxes duly supported by valid invoices and receipts but not included in the schedule. Thus, there is an understatement of input taxes in the schedule vis-à-vis the actual supporting documents.[121]

Upon careful examination of the supporting documents, the Court finds that the difference of ₱4,746,135.17 arose from the following: (1) the spot rate used by petitioner in recording its transactions was different from the exchange rate used by the ICPA in his review; and, (2) only a portion of the total input VAT per supporting document was claimed.

However, the Court cannot go beyond the subject claim. Analogous to an assessment case, the power to assess is bestowed to respondent; thus, the Court is constrained to limit its findings based on the disputed claim only.[122] Consequently, the Court will not consider the ICPA's

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[120] With 0.01 difference due to rounding off.
[121] Par. 120 of Exhibit "P-215", Docket – Vol. III, p. 1116.
[122] *Commissioner of Internal Revenue v. Transnational Plans, Inc.*, CTA EB Nos. 1337 and 1339 (CTA Case No. 8291), March 27, 2017.

conclusion that there was an understatement of input VAT in the adjusted amount of ₱4,745,145.88[123].

The Court will then proceed to determine whether petitioner complied with the requisites for a valid refund claim of its alleged excess or unutilized input VAT.

Based on the ICPA report, out of the total input VAT on domestic purchases of goods and services of ₱1,244,708,778.25, We find the following disallowances amounting to ₱78,036,059.22 proper; thus, shall be sustained:

Observations	**Amount**	**Reference**
1) Input VAT on domestic purchases of goods and services not duly supported by original TIN VAT Invoice / TIN VAT ORs dated April 2018 to March 2019.	₱ 38,567,154.35	Annex AO Annex CU
2) IVAT on goods and services supported by invoice/official receipt without the word "TIN VAT"; Possible overclaiming of IVAT	1,902.41	Annex CV
3) IVAT on goods and services supported by invoice/official receipt without the word "TIN VAT"; Incomplete or incorrect name of buyer indicated on the invoice/official receipt; Incomplete or incorrect address of buyer indicated on the invoice/official receipt; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; No business style of buyer indicated on the invoice/official receipt	2,893.90	Annex CW
4) IVAT on goods and services supported by invoice/official receipt without the word "TIN VAT"; Incomplete or incorrect address of buyer indicated on the invoice/official receipt; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; Possible underclaiming of IVAT; Possible underclaiming of IVAT; Possible underclaiming of IVAT;	1,355.65	Annex CX
5) IVAT on goods and services supported by invoice/official receipt without the word "TIN VAT"; Invoice/Official Receipt with statement "Document not valid for claiming input taxes"; IVAT on goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year;	1,285.71	Annex CY
6) Input VAT on domestic purchases of goods and services that are properly supported by invoices/ORs dated April 2018 to March 2019, but the Company's name was incomplete/incorrect	15,096.47	Annex AR Annex CZ

[123] Accounted difference of ₱4,746,135.17 less typographical error in input VAT per VAT returns used by the ICPA in his report.

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Observations	Amount	Reference
7) Input VAT on domestic purchases of goods and services supported by TIN VAT Invoice/TIN VAT ORs dated April 2018 to March 2019, but the Company's name and address are wrong.	62,813.16	Annex AS Annex DE
8) Incomplete or incorrect name of buyer indicated on the invoice/official receipt; Incomplete or incorrect address of buyer indicated on the invoice/official receipt; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt;	42,900.15	Annex DF
9) Incomplete or incorrect name of buyer indicated on the invoice/official receipt; Incomplete or incorrect address of buyer indicated on the invoice/official receipt; IVAT on goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year;	12,257.40	Annex DG
10) Input VAT on domestic purchases of goods and services supported by TIN VAT Invoice/TIN VAT ORs dated April 2018 to March 2019 but the Company's name and TIN.	5,857.12	Annex AT Annex DL
11) Incomplete or incorrect name of buyer indicated on the invoice/official receipt; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; Possible overclaiming of IVAT;	4,658.47	Annex DM
12) Incomplete or incorrect name of buyer indicated on the invoice/official receipt; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; IVAT on goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year;	2,245.10	Annex DN
13) Incomplete or incorrect name of buyer indicated on the invoice/official receipt; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; Possible underclaiming of IVAT; No business style of buyer indicated on the invoice/official receipt; No business style of buyer indicated on the invoice/official receipt; No business style of buyer indicated on the invoice/official receipt;	927.75	Annex DO
14) Incomplete or incorrect name of buyer indicated on the invoice/official receipt; Invoice/official receipt with alteration on buyer's name and without countersign of vendor	2,177.19	Annex DP
15) Input VAT on domestic purchases of goods and services supported by TIN VAT Invoice/TIN VAT ORs dated April 2018 to March 2019, but the Company's name, TIN, address, and business style are incorrect/incomplete.	204,007.32	Annex AU Annex DH
16) Incomplete or incorrect name of buyer indicated on the invoice/official receipt; Incomplete or incorrect address of buyer indicated on the invoice/official receipt; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; IVAT on goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year; IVAT on goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year; IVAT on	2,616.87	Annex DI

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Observations	Amount	Reference
goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year;		
17) Incomplete or incorrect name of buyer indicated on the invoice/official receipt; Incomplete or incorrect address of buyer indicated on the invoice/official receipt; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; No business style of buyer indicated on the invoice/official receipt; No business style of buyer indicated on the invoice/official receipt; No business style of buyer indicated on the invoice/official receipt; IVAT on goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year	33,963.43	Annex DK
18) Input VAT on domestic purchases of goods and services supported by TIN VAT Invoice/TIN VAT ORs dated April 2018 to March 2019, but the Company's name, address, and business style are incorrect/incomplete.	94,721.42	Annex AW Annex DJ
19) Incomplete or incorrect name of buyer indicated on the invoice/official receipt; IVAT on goods and services supported by invoice/official receipt with no date or incomplete date; Incomplete or incorrect address of buyer indicated on the invoice/official receipt; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt;	1,937.14	Annex DA
20) Incomplete or incorrect name of buyer indicated on the invoice/official receipt; IVAT on goods and services supported by invoice/official receipt with no date or incomplete date; Incomplete or incorrect address of buyer indicated on the invoice/official receipt; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; IVAT on goods and services supported by certified true copy of invoice/official receipt	2,599.29	Annex DB
21) Input VAT on domestic purchases of goods and services supported by TIN VAT Invoice/TIN VAT ORs but with no invoice date or incomplete invoice date, and the Company's name, TIN, address, and business style are incorrect/incomplete.	143,110.30	Annex AX Annex DC
22) Incomplete or incorrect name of buyer indicated on the invoice/official receipt; IVAT on goods and services supported by invoice/official receipt with no date or incomplete date; Incomplete or incorrect address of buyer indicated on the invoice/official receipt; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; Incomplete or incorrect	7,611.95	Annex DD

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Observations	Amount	Reference
TIN of buyer indicated on the invoice/official receipt; No business style of buyer indicated on the invoice/official receipt		
23) Input VAT on domestic purchases of goods and services supported by TIN VAT Invoice/TIN VAT ORs but with no invoice date or incomplete invoice date, and the Company's name and business style are incorrect/incomplete.	413.04	Annex AY
24) Input VAT on domestic purchases of goods and services supported by VAT invoices/TIN VAT ORs but with no or incomplete invoice date.	276,343.62	Annex AZ Annex DQ
25) Input VAT on domestic purchases of goods and services supported by VAT invoices/TIN VAT ORs but with no invoice date or incomplete invoice date, and the Company's address and business style are incorrect/incomplete.	1,237.51	Annex BA
26) Input VAT on domestic purchases of goods and services supported by VAT invoices/TIN VAT ORs but with no invoice date or incomplete invoice date, and the Company's address, TIN, and business style are incorrect/incomplete.	308,530.70	Annex BB
27) Input VAT on domestic purchases of goods and services supported by VAT invoices/TIN VAT ORs but with no invoice date or incomplete invoice date, Company's TIN and business style are incorrect/incomplete, and VAT amount is not indicated/not separately shown/not properly shown in the designated line item.	168.03	Annex BC
28) Input VAT on domestic purchases of goods and services supported by VAT invoices/TIN VAT ORs but with no invoice date or incomplete invoice date, and the Company's TIN and business style are incorrect/incomplete.	105,267.88	Annex BD Annex DR
29) Input VAT on domestic purchases of goods and services supported by VAT invoices/TIN VAT ORs but with no invoice date or incomplete invoice date, and VAT amount is not indicated/not separately shown/not properly shown in the designated line item.	319.78	Annex BE
30) Input VAT on domestic purchases of goods and services supported by VAT invoices/TIN VAT ORs but with no invoice date or incomplete invoice date and the Company's business style is incorrect/incomplete.	268.39	Annex BF
31) Input VAT on domestic purchases of goods and services claimed during the period April 2018 to March 2019, but the TIN VAT Invoices/TIN VAT ORs were not dated within the refund period.	15,513,943.41	Annex BG Annex DS
32) Input VAT on domestic purchases of goods and services supported by TIN VAT Invoice/TIN VAT ORs dated April 2018 to March 2019, but the Company's address is incorrect/incomplete	702,035.85	Annex BH Annex DT
33) Input VAT on domestic purchases of goods and services supported by TIN VAT Invoice/TIN VAT	324,121.36	Annex BI Annex DU

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Observations	Amount	Reference
ORs dated April 2018 to March 2019, but the Company's address and TIN.		
34) Incomplete or incorrect address of buyer indicated on the invoice/official receipt; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; Invoice/official receipt with alteration on buyer's name and with countersign of the vendor; Invoice/official receipt with alteration on the date and with countersign of the vendor; Invoice/official receipt with alteration on the date and with countersign of the vendor; Invoice/official receipt with alteration on the date and with countersign of the vendor; No business style of buyer indicated on the invoice/official receipt	7,097.53	Annex DV
35) Incomplete or incorrect address of buyer indicated on the invoice/official receipt; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; Propriety of forex rates used (i.e., possible overclaiming);	12,844.80	Annex DW
36) Incomplete or incorrect address of buyer indicated on the invoice/official receipt; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; Possible underclaiming of IVAT;	1,126.91	Annex DX
37) Incomplete or incorrect address of buyer indicated on the invoice/official receipt; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; Possible underclaiming of IVAT; No business style of buyer indicated on the invoice/official receipt; No business style of buyer indicated on the invoice/official receipt; No business style of buyer indicated on the invoice/official receipt;	16,830.79	Annex DY
38) Input VAT on domestic purchases of goods and services supported by TIN VAT Invoice/TIN VAT ORs dated April 2018 to March 2019, but the Company's address, TIN, and business style are incorrect/incomplete, and VAT amount is not indicated/not separately shown/not properly shown in the designated line item.	34,666.72	Annex BJ Annex DZ
39) Incomplete or incorrect address of buyer indicated on the invoice/official receipt; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; VAT amount not indicated/not separately shown/not properly shown on the designated line item;	73.39	Annex EA
40) Input VAT on domestic purchases of goods and services supported by TIN VAT Invoice/TIN VAT ORs dated April 2018 to March 2019, but the Company's address, TIN, and business style are incorrect/incomplete.	459,600.40	Annex BK Annex EB

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Observations	Amount	Reference
41) Incomplete or incorrect address of buyer indicated on the invoice/official receipt; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; IVAT on goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year;	1,449.66	Annex EC
42) Incomplete or incorrect address of buyer indicated on the invoice/official receipt; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; IVAT on goods and services supported by certified true copy of invoice/official receipt; IVAT on goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year; IVAT on goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year; VAT on goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year;	503.57	Annex ED
43) Incomplete or incorrect address of buyer indicated on the invoice/official receipt; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; No business style of buyer indicated on the invoice/official receipt; IVAT on goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year; IVAT on goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year; IVAT on goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year;	42,862.00	Annex EE
44) Incomplete or incorrect address of buyer indicated on the invoice/official receipt; Invoice/official receipt with alteration on buyer's name and with countersign of vendor	44,132.02	Annex EF
45) Incomplete or incorrect address of buyer indicated on the invoice/official receipt; Invoice/official receipt with alteration on buyer's name and without countersign of vendor	28,027.27	Annex EG
46) Incomplete or incorrect address of buyer indicated on the invoice/official receipt; Invoice/official receipt with alteration on the date and with countersign of the vendor.	49,866.55	Annex EH
47) Incomplete or incorrect address of buyer indicated on the invoice/official receipt; Possible overclaiming of IVAT; VAT amount not indicated/not separately shown/not properly shown on the designated line item;	3,183.08	Annex EI
48) Incomplete or incorrect address of buyer indicated on the invoice/official receipt; Possible underclaiming of IVAT; Invoice/Official Receipt with statement "Document not valid for claiming input taxes";	258.48	Annex EJ
49) Incomplete or incorrect address of buyer indicated on the invoice/official receipt; Possible	1,138.23	Annex EK

Observations	Amount	Reference
underclaiming of IVAT; IVAT on goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year;		
50) Incomplete or incorrect address of buyer indicated on the invoice/official receipt; VAT amount not indicated/not separately shown/not properly shown on the designated line item; IVAT on goods and services supported by a certified true copy of the invoice/official receipt; No business style of buyer indicated on the invoice/official receipt; No business style of buyer indicated on the invoice/official receipt; No business style of buyer indicated on the invoice/official receipt;	5,357.14	Annex EL
51) Incomplete or incorrect address of buyer indicated on the invoice/official receipt; Invoice/Official Receipt with statement "Document not valid for claiming input taxes"; No business style of buyer indicated on the invoice/official receipt;	151.64	Annex EM
52) Incomplete or incorrect address of buyer indicated on the invoice/official receipt; IVAT on goods and services supported by a certified true copy of the invoice/official receipt	32,919.19	Annex EN
53) Incomplete or incorrect address of buyer indicated on the invoice/official receipt; IVAT on goods and services supported by a certified true copy of the invoice/official receipt; No business style of buyer indicated on the invoice/official receipt;	554.40	Annex EO
54) Input VAT on domestic purchases of goods and services supported by TIN VAT Invoice/TIN VAT ORs dated April 2018 to March 2019, but the Company's address and business style are incorrect/incomplete.	41,924.41	Annex BL Annex EP
55) Input VAT on domestic purchases of goods and services supported by TIN VAT Invoice/TIN VAT ORs dated April 2018 to March 2019, but the Company's TIN is incorrect/incomplete.	2,713,854.43	Annex BM Annex EQ
56) Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; Invoice/official receipt with alteration on buyer's name and with countersign of vendor	114,378.38	Annex ER
57) Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; Invoice/official receipt with alteration on buyer's name and without countersign of vendor	10,195.89	Annex ES
58) Input VAT on domestic purchases of goods and services supported by TIN VAT Invoice/TIN VAT ORs dated April 2018 to March 2019, but the Company's TIN is incorrect/incomplete and with alteration in invoice/OR date and/or amount that is not countersigned.	18,608.80	Annex BN
59) Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; Possible overclaiming of IVAT; No business style of buyer indicated on the invoice/official receipt;	22,311.85	Annex ET
60) Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; VAT amount not	15,551.67	Annex EU

Observations	Amount	Reference
indicated/not separately shown/not properly shown on the designated line item		
61) Input VAT on domestic purchases of goods and services supported by TIN VAT Invoice/TIN VAT ORs dated April 2018 to March 2019, but the Company's TIN and business style are incorrect/incomplete, and VAT amount is not indicated/not separately shown/not properly shown in the designated line item.	150,372.03	Annex EV
62) Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; IVAT on goods and services supported by a certified true copy of the invoice/official receipt	19,676.57	Annex EW
63) Input VAT on domestic purchases of goods and services supported by TIN VAT Invoice/TIN VAT ORs dated April 2018 to March 2019, but the Company's TIN and business style are incorrect/incomplete.	1,789,318.18	Annex BP Annex EX
64) Input VAT on domestic purchases of goods and services supported by TIN VAT Invoice/TIN VAT ORs that were not dated within respective quarter of the period of refund and the Company's TIN and business style is incorrect/incomplete.	1,711.34	Annex BQ Annex EY
65) Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; Invoice/official receipt with alteration on the date and with countersign of the vendor; No business style of buyer indicated on the invoice/official receipt;	22,945.71	Annex EZ
66) Invoice/official receipt with alteration on buyer's name and with countersign of vendor; Invoice/official receipt with alteration on the date and without countersign of vendor	25,950.54	Annex FD
67) Invoice/official receipt with alteration on buyer's name and with countersign of vendor; Invoice/official receipt with alteration on the date and without countersign of vendor; IVAT on goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year;	11,414.38	Annex FW
68) Invoice/official receipt with alteration on buyer's name and with countersign of the vendor; Invoice/official receipt with alteration on the date and without countersign of the vendor; Possible underclaiming of IVAT;	358.34	Annex FE
69) Invoice/official receipt with alteration on buyer's name and with countersign of vendor; Propriety of forex rates used (i.e., possible overclaiming)	1.07	Annex GA
70) Invoice/official receipt with alteration on buyer's name and with countersign of the vendor; Possible overclaiming of IVAT	659.61	Annex FG
71) Invoice/official receipt with alteration on buyer's name and with countersign of vendor; No business style of buyer indicated on the invoice/official receipt; IVAT on goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year;	20,313.05	Annex FJ

Observations	Amount	Reference
72) Invoice/official receipt with alteration on buyer's name and with countersign of vendor; No business style of buyer indicated on the invoice/official receipt	3,295.57	Annex FY
73) Input VAT on domestic purchases of goods and services supported by invoices/ORs dated April 2018 to March 2019 with alteration in the Company's name and not countersigned by the vendor.	488,458.10	Annex BS Annex FK
74) Input VAT on domestic purchases of goods and services that are supported by invoices/ORs dated April 2018 to March 2019 with alteration in the Company's name and not countersigned by the vendor; No business style of buyer indicated on the invoice/official receipt; IVAT on goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year;	4,285.71	Annex FZ
75) Invoice/official receipt with alteration on buyer's name and without countersign of vendor; Invoice/official receipt with alteration on the date and without countersign of vendor	19,700.78	Annex FL
76) Invoice/official receipt with alteration on buyer's name and without countersign of vendor; Invoice/official receipt with alteration on the date and without countersign of vendor; IVAT on goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year;	23,682.26	Annex FM
77) Invoice/official receipt with alteration on buyer's name and without countersign of vendor; VAT computation indicated on the invoice/official receipt is erroneous	2,793.05	Annex FN
78) Input VAT on domestic purchases of goods and services duly supported by original TIN VAT invoices/ORs but with alteration in invoice/OR date and/or amount and countersigned.	21,631.50	Annex BT Annex FO
79) Invoice/official receipt with alteration on the date and with countersign of the vendor; Propriety of forex rates used (i.e., possible overclaiming); IVAT on goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year;	531.01	Annex GB
80) Invoice/official receipt with alteration on the date and with countersign of the vendor; VAT amount not indicated/not separately shown/not properly shown on the designated line item	9,629.84	Annex FX
81) Invoice/official receipt with alteration on the date and with countersign of the vendor; VAT amount not indicated/not separately shown/not properly shown on the designated line item; IVAT on goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year;	6,982.73	Annex FQ
82) Invoice/official receipt with alteration on the date and with countersign of the vendor; VAT computation indicated on the invoice/official receipt is erroneous	3,022.20	Annex FR

Observations	Amount	Reference
83) Invoice/official receipt with alteration on the date and with countersign of the vendor; No business style of buyer indicated on the invoice/official receipt	31,742.08	Annex FT
84) Input VAT on domestic purchases of goods and services duly supported by original TIN VAT invoices/ORs but with alteration in invoice/OR date and/or amount and not countersigned.	1,861,459.12	Annex BV Annex FU
85) Input VAT on domestic purchases of goods and services duly supported by original TIN VAT invoices/ORs but with alteration in invoice/OR date and/or amount and not countersigned VAT amount is not indicated/not separately shown/not properly shown in the designated line item.	40,603.89	Annex BW Annex FV
86) Input VAT on domestic purchases of goods and services duly supported by original TIN VAT invoices/ORs but with alteration in invoice/OR date and/or amount and not countersigned.; IVAT on goods and services supported by a certified true copy of the invoice/official receipt	664.29	Annex GD
87) Input VAT on domestic purchases of goods and services duly supported by original TIN VAT invoices/ORs that were not dated within a respective quarter of the period of refund and with alteration in invoice/OR date and/or amount and not countersigned.	62,130.24	Annex BX
88) Input VAT on domestic foreign-currency-denominated purchases of goods and services duly supported by original TIN VAT Invoice/TIN VAT ORs, but erroneously computed due to incorrect foreign exchange rate used (overclaimed).	535,243.94	Annex BZ Annex GG
89) Propriety of forex rates used (i.e., possible overclaiming); IVAT on goods and services supported by a certified true copy of the invoice/official receipt	140.80	Annex GJ
90) Propriety of forex rates used (i.e., possible overclaiming); IVAT on goods and services supported by a certified true copy of the invoice/official receipt; IVAT on goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year;	54.82	Annex GH
91) Propriety of forex rates used (i.e., possible overclaiming); No business style of buyer indicated on the invoice/official receipt; IVAT on goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year;	99,299.02	Annex GI
92) Input VAT on domestic purchases of goods and services duly supported by original TIN VAT Invoice/TIN VAT ORs dated April 2018 to March 2019, but input VAT erroneously computed (overclaimed).	535,743.11	Annex CA Annex GL
93) Possible overclaiming of IVAT; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt	4,195.88	Annex GR

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Observations	Amount	Reference
94) Possible overclaiming of IVAT; Invoice/official receipt with alteration on the date and with countersign of the vendor.	51.43	Annex GS
95) Possible overclaiming of IVAT; VAT computation indicated on the invoice/official receipt is erroneous; IVAT on goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year;	1,220.09	Annex GT
96) Possible overclaiming of IVAT; Invoice/Official Receipt with statement "Document not valid for claiming input taxes"; IVAT on goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year;	11,863.50	Annex GM
97) Possible overclaiming of IVAT; IVAT on goods and services supported by a certified true copy of the invoice/official receipt	129.60	Annex GN
98) Possible overclaiming of IVAT; IVAT on goods and services supported by certified true copy of invoice/official receipt; IVAT on goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year;	2,643.64	Annex GO
99) Possible underclaiming of IVAT; Incomplete or incorrect address of buyer indicated on the invoice/official receipt; Incomplete or incorrect TIN of buyer indicated on the invoice/official receipt; No business style of buyer indicated on the invoice/official receipt; No business style of buyer indicated on the invoice/official receipt; No business style of buyer indicated on the invoice/official receipt; Incomplete or incorrect name of buyer indicated on the invoice/official receipt	93.83	Annex GU
100) Possible underclaiming of IVAT; VAT computation indicated on the invoice/official receipt is erroneous; IVAT on goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year;	535.71	Annex GQ
101) Input VAT on domestic purchases of goods and services duly supported by original TIN VAT Invoice/TIN VAT official receipts dated April 2018 to March 2019, but VAT amount is not indicated/not separately shown/not properly shown in the designated line item.	4,099,764.95	Annex CC Annex GV
102) VAT amount not indicated/not separately shown/not properly shown on the designated line item; IVAT on goods and services supported by a certified true copy of the invoice/official receipt	143,536.41	Annex GW
103) Input VAT on domestic purchases of goods and services duly supported by original TIN VAT Invoice/TIN VAT official receipts, but VAT amount is not indicated/not separately shown/not properly shown in designated line item and business style is not indicated	153,160.13	Annex CD Annex GX
104) VAT amount not indicated/not separately shown/not properly shown on the designated line item; IVAT on goods and services supported by invoice/official receipt dated outside the taxable	4,741.29	Annex GY

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Observations	**Amount**	**Reference**
quarter but within the year; Invoice/official receipt with alteration on the date and with countersign of the vendor.;		
105) Input VAT on domestic purchases of goods and services duly supported by original TIN VAT Invoice/TIN VAT official receipts dated April 2018 to March 2019, but VAT computation is incorrect.	3,677,668.82	Annex CE Annex GZ
106) VAT computation indicated on the invoice/official receipt is erroneous; Invoice/official receipt with alteration on the date and without countersign of vendor	25,886.52	Annex HC
107) VAT computation indicated on the invoice/official receipt is erroneous; Possible overclaiming of IVAT	25,131.29	Annex HA
108) VAT computation indicated on the invoice/official receipt is erroneous; IVAT on goods and services supported by a certified true copy of the invoice/official receipt	3,420.00	Annex HB
109) Input tax on domestic purchases of goods and services supported with invoices/ORs dated within April 2018 to March 2019 but classified as VAT-exempt purchase	355,742.15	Annex CF Annex HD
110) Input tax on domestic purchases of goods and services supported with invoices/ORs dated within April 2018 to March 2019 but with the statement "Document not valid for claiming input taxes."	594,344.76	Annex CG Annex HE
111) Invoice/Official Receipt with statement "Document not valid for claiming input taxes"; IVAT on goods and services supported by a certified true copy of the invoice/official receipt	1,372.93	Annex HF
112) IVAT on goods and services supported by a certified true copy of the invoice/official receipt; No business style of buyer indicated on the invoice/official receipt	33,822.00	Annex HH
113) IVAT on goods and services supported by a certified true copy of the invoice/official receipt; No business style of buyer indicated on the invoice/official receipt; IVAT on goods and services supported by invoice/official receipt dated outside the taxable quarter but within the year;	31,114.29	Annex HI
114) Input VAT on domestic purchases of goods and services supported by TIN VAT Invoice/TIN VAT ORs dated April 2018 to March 2019, but the Company's business style is not indicated	2,945,593.80	Annex CJ Annex HJ
Total	**₱78,036,059.22**	

Likewise, the input VAT on the importation of goods amounting to ₱773,201.00 should be disallowed for petitioner's failure to properly account and substantiate the same, summarized as follows:

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Observations	Amount	Reference
1) Input VAT on importation of goods not duly supported by SSDT and SAD claimed under the period of refund.	₱1,564,675.00	Annex AP
2) Input VAT on importation of goods not duly supported by SSDT and SAD claimed and commercial invoice under the period of refund.	-791,474.00	Annex CN
Total	**₱773,201.00.00**	

Moreover, the Court finds that the input VAT amounting to ₱45,116,209.84 without supporting exhibits and with supporting exhibits but were denied admission by the Court,[124] should likewise be disallowed, to wit:

1. Input VAT from domestic purchase of goods and services supported by denied exhibits			
Annex	**Exhibit**	**Supplier**	**Input VAT**
CR	"P-60-A-02-8639"	DAVAO DEL NORTE ELECTRIC COOPERATIVE	₱ 7,988.22
CR	"P-60-A-04-5231"	KING SOLOMON & ALLIED SERVICES	13,423.99
CR	"P-60-A-04-5251"	KING SOLOMON & ALLIED SERVICES	48,868.63
		Sub-total	**₱ 70,280.84**
2. Input VAT from importation without supporting documents			
Annex	**Exhibit**	**Particulars**	**Input VAT**
AN	-	WITHDRAWAL FROM PEZA FOR CONSUMPTION / SALE OF SCRAP MATERIALS	₱ 45,045,929.00
		Sub-total	**₱ 45,045,929.00**
		Total	**₱ 45,116,209.84**

In sum, out of petitioner's total input VAT from importation and domestic purchase of goods and services amounting to ₱1,598,038,588.25, the total amount of ₱123,925,470.06 shall be disallowed for petitioner's failure to meet the substantiation and invoicing requirements under the existing law and regulations, determined as follows:

• Exceptions noted by the ICPA	
On domestic purchase of goods and services	₱ 78,036,059.22
On importation	773,201.00
• Exceptions noted by the Court	
On domestic purchase of goods and services	70,280.84
On importation	45,045,929.00
Total exceptions noted	**₱ 123,925,470.06**

[124] *Supra* at notes 26 to 33.

Services rendered by Non-residents - ₱79,455,017.72[125]

The ICPA found that petitioner's input VAT arising from payments for services rendered by non-residents amounting to ₱79,455,017.72[126] was duly supported by BIR Form No. 1600 with corresponding proofs of payment, broken down as follows:

Period Covered	**Date Filed**	**eFPS Filing Reference**[127]	**Amount**
2018			
April	May 10, 2018[128]	171800025200799	₱ 4,088,943.66
May	June 8, 2018[129]	171800025607680	5,301,333.96
June	July 10, 2018[130]	171800026013476	5,829,768.05
July	August 9, 2018[131]	171800026391102	6,032,380.98
August	September 6, 2018[132]	171800026735233	5,876,049.24
September	October 10, 2018[133]	171800027202608	5,921,702.55
October	November 5, 2018[134]	171800027455853	6,041,349.09
November	December 10, 2018[135]	171800028038269	6,301,560.89
December	January 9, 2019[136]	171900028403311	12,159,215.59
2019			
January	February 8, 2019[137]	171900029050221	6,977,772.46
February	March 6, 2019[138]	171900029450073	6,654,850.58
March	April 10, 2019[139]	171900029923396	8,270,089.27
TOTAL			**₱21,902,712.31**
Per Return			**79,455,017.72**
Difference			**₱ (1.40)**[140]

Upon examination of the supporting documents, the Court agrees with the ICPA findings; thus, the total input VAT amount of ₱79,455,017.72 duly supported by documents may be validly claimed for refund.

[125] Item d, Par. 115 of Exhibit "P-215", Docket – Vol. III, p. 1114.
[126] Exhibit "P-90", USB.
[127] Exhibits "P-33" to "P-44", Docket – Vol. II, pp. 1466 to 1477.
[128] Exhibit "P-21", Docket – Vol. II, pp. 1442 to 1443.
[129] Exhibit "P-22", Docket – Vol. II, pp. 1444 to 1445.
[130] Exhibit "P-23", Docket – Vol. II, pp. 1446 to 1447.
[131] Exhibit "P-24", Docket – Vol. II, pp. 1448 to 1449.
[132] Exhibit "P-25", Docket – Vol. II, pp. 1450 to 1451.
[133] Exhibit "P-26", Docket – Vol. II, pp. 1452 to 1453.
[134] Exhibit "P-27", Docket – Vol. II, pp. 1454 to 1455.
[135] Exhibit "P-28", Docket – Vol. II, pp. 1456 to 1457.
[136] Exhibit "P-29", Docket – Vol. II, pp. 1458 to 1459.
[137] Exhibit "P-30", Docket – Vol. II, pp. 1460 to 1461.
[138] Exhibit "P-31", Docket – Vol. II, pp. 1462 to 1463.
[139] Exhibit "P-32", Docket – Vol. II, pp. 1464 to 1465.
[140] Due to rounding off.

Amortized input VAT on capital goods exceeding ₱1,000,000.00 for FY 2019 - ₱8,337,594.38.[141]

In support of its claim, petitioner submitted a schedule of amortization of deferred input VAT[142] on its purchases of capital goods exceeding ₱1,000,000, which the ICPA evaluated.

The ICPA noted that the amortized input VAT could be traced in petitioner's VAT returns, as summarized in his report.[143]

According to the ICPA, there are two (2) sources of petitioner's deferred input VAT: (1) from petitioner's purchases of capital goods generated from its purchases from TY 2013 and 2014, where the supporting documents are no longer available; and, (2) from purchases of cars and computers as evidenced by BIR decisions[144] on petitioner's previous input VAT refund claims.

However, as noted by the ICPA, no supporting documents were presented to substantiate its purchase of capital goods exceeding ₱1,000,000.00 and corroborate its amortization schedule.[145]

Thus, the Court has no way to verify the existence of the said purchases of capital goods and the veracity of the computation of the said amortized input VAT.

Consequently, the Court finds the disallowance of the amortized portion of the deferred input VAT amounting to ₱8,337,594.38 in order.

Input VAT on sales to government - ₱24,516.55[146]

The BIR alleged that petitioner failed to provide proof for the final withholding VAT in the amount of ₱4,562.85.

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[141] Item e, Par. 115 of Exhibit "P-215", Docket – Vol. III, p. 1114.
[142] Exhibit "P-165", USB.
[143] Exhibit "P-215", Docket – Vol. III, p. 1087.
[144] Exhibit "P-166" to "P-169", USB.
[145] Table 2-C, page 11, Exhibit "P-165", USB.
[146] Item f, Par. 115 of Exhibit "P-215", Docket – Vol. III, p. 1114.

The ICPA noted that the input VAT reported under the line item "Others"[147] in the VAT returns pertain to petitioner's sales to the government amounting to ₱24,516.55.

The ICPA's verification disclosed that only the total amount of ₱19,953.70 was duly supported by Certificate of Final Tax Withheld at Source (BIR Form No. 2306)[148] and that petitioner failed to provide supporting documents on the remaining balance of ₱4,562.85. According to respondent, said amount should be disallowed.

Moreover, petitioner is amenable to the above disallowance for ₱4,562.85 made by the BIR.[149]

Thus, for compliance with the *seventh* requisite, out of the total declared input taxes of ₱1,685,855,716.90, the amount of ₱132,267,627.29 shall be disallowed. Consequently, petitioner's valid input taxes amounted to **₱1,553,588,089.61**.

Declared input taxes		₱1,685,855,716.90
1. Exceptions/disallowances noted by the ICPA		
a. Input VAT on domestic purchases not properly supported with documents	₱78,036,059.22	
b. Input VAT on importations not duly supported with proper documentation	773,201.00	
c. Unsupported input VAT on sales to the Government	4,562.85	78,813,823.07
2. Disallowances found by the Court		
a. Unsupported input VAT on domestic purchases of goods and services	70,280.84	
b. Unsupported input VAT on importation	45,045,929.00	
c. Unsupported amortized input VAT on purchase of capital goods exceeding 1M	8,337,594.38	53,453,804.22
Disallowances		132,267,627.29
Valid input taxes		**₱1,553,588,089.61**

[147] Line item 26G, Exhibits "P-10", "P-13", "P-17", and "P-20", Docket – Vol. III, pp. 1420 to 1421, 1426 to 1427, 1434 to 1435, and 1440 and 1441.
[148] Exhibit "P-176", USB.
[149] Page 37 of *Petition for Review*, Docket – Vol. I, p. 41.

Eighth requisite*: *A portion of the input taxes claimed by petitioner is attributable to zero-rated or effectively zero-rated sales.

To reiterate, the *eighth* requisite is that the input VAT claimed is attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.

As discussed earlier, petitioner declared in its Amended Quarterly VAT returns for the period covering April 1, 2018 to March 31, 2019 a total sales of ₱39,600,679,515.70 consisting of VATable sales amounting to ₱2,539,658,198.47, zero-rated sales amounting to ₱36,533,275,020.59, and exempt sales amounting to ₱527,746,296.64. It is to be noted, however, that the VATable sales amounting to ₱2,539,658,198.47 include the Sales to the Government amounting to ₱490,331.00.[150]

Since petitioner's input VAT for the FY 2019 in the total amount of ₱1,685,855,716.90, as declared in its quarterly VAT returns, cannot be identified to specific sales, this Court shall proportionately allocate the said input VAT on the basis of the volume of petitioner's sales, thus:

Total Zero-Rated Sales per VAT Returns	₱ 36,533,275,020.59
Divided by the Reported Total Sales per Quarterly VAT Returns	₱ 39,600,679,515.70
Multiplied by Total Declared Input VAT	₱1,685,855,716.90
Declared input VAT allocated to total zero-rated sales	**₱ 1,555,272,063.60**

Total VATable Sales per VAT Returns	₱2,539,167,867.47[151]
Divided by the Reported Total Sales per Quarterly VAT Returns	₱ 39,600,679,515.70
Multiplied by Total Declared Input VAT	₱1,685,855,716.90
Declared input VAT allocated to VATable sales	**₱ 108,095,889.21**

[150] Exhibit "P-215", Docket – Vol. III, pp. 1113 to 1114; This amount was subjected to 5% withholding VAT in the amount of ₱24,516.55.
[151] ₱2,539,658,198.47 - ₱490,331.00.

VATable Sales to Government	₱ 490,331.00
Divided by the Reported Total Sales per Quarterly VAT Returns	₱ 39,600,679,515.70
Multiplied by Total Declared Input VAT	₱1,685,855,716.90
Declared input VAT allocated to VATable sales to the Government	**₱ 20,874.07**

Total Exempt Sales per VAT Returns	₱ 527,746,296.64
Divided by the Reported Total Sales per Quarterly VAT Returns	₱ 39,600,679,515.70
Multiplied by Total Declared Input VAT	₱1,685,855,716.90
Declared input VAT allocated to Exempt sales	**₱ 22,466,890.02**

Thus, regarding petitioner's compliance with the *eighth* requisite, only the amount of ₱1,555,272,063.60 represents its input VAT attributable to the total declared zero-rated for the subject period of the claim.

<u>Ninth requisite</u>: Petitioner's input taxes have not been applied against output taxes during and in the succeeding quarters.

Regarding the *ninth* requisite, petitioner reported output taxes from its taxable sales for the 1st to 4th quarter of FY 2019 in the aggregate amount of ₱304,758,983.82, to wit:

FY ending March 2019	Output VAT	Exhibit (Line 15B)
1st Quarter	₱ 51,391,194.57	"P-10"[152]
2nd Quarter	66,487,202.13	"P-13"[153]
3rd Quarter	116,180,073.87	"P-17"[154]
4th Quarter	70,700,513.25	"P-20"[155]
Total	**₱ 304,758,983.82**	

In the recent case of *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue,*[156] the Supreme Court held that the input tax attributable to zero-rated sales may, at the option of the VAT-registered taxpayer, be: (1) charged against output tax from regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate;

[152] Docket – Vol. III, pp. 1420 to 1421.
[153] Docket – Vol. III, pp. 1426 to 1427.
[154] Docket – Vol. III, pp. 1434 to 1435.
[155] Docket – Vol. III, pp. 1440 to 1441.
[156] G.R. No. 215159. July 5, 2022.

or (2) claimed for refund or tax credit in its entirety, and such option is vested with the taxpayer-claimant, to wit:

> "Thus, the input tax attributable to zero-rated sales may, **at the option of the VAT-registered taxpayer**, be: (1) charged against output tax from regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund of the issuance of tax credit certificate; **or** (2) claimed for refund or tax credit in its entirety. It must be stressed that the **remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative.** Furthermore, **the option is vested with the taxpayer-claimant**." *[Emphasis supplied]*

Applying the foregoing, records show that petitioner chose the ***first*** option, *i.e.,* it computed its claim for refund in the aggregate amount of ₱1,381,096,733.07 by offsetting its output VAT from the regular VATable sales against its available input VAT for the 1st to 4th quarters of FY ending March 2019, as shown hereafter:[157]

Output VAT Due (A)		₱ 304,758,983.82
Input Tax on Net Current Purchases	₱1,677,493,605.96	
Add: Input Tax Deferred on Capital Goods Exceeding P1M from Previous Quarter	44,300,909.29	
Add: Withholding VAT on Payments to GOCCs	24,516.55	
Less: Input Tax on Purchases of Capital Goods Exceeding P1M deferred for the succeeding period	35,963,314.91	
Input VAT per Return (B)		1,685,855,716.89
Excess and Unutilized Input VAT (A-B)		**₱1,381,096,733.07**

It is clear from the foregoing that petitioner opted to claim a refund of its unutilized or "excess" input tax, which is the amount after charging the input tax allocated to zero-rated sales against its output tax liabilities.

Following the same computation, since petitioner's declared input VAT allocated to sales subject to the 12% VAT in the amount of ₱108,095,889.21, as earlier determined, is not enough to cover its output VAT liability amounting to ₱304,758,983.82, the output VAT still due amounting to

[157] Exhibit "P-215", Docket – Vol. III, p. 1482.

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₱196,604,254.89 shall then be charged against its valid input VAT attributable to total reported zero-rated sales of ₱1,555,272,063.60 leaving an excess input VAT attributable to total zero-rated sales of ₱1,358,667,808.71, as herein computed:

Output VAT attributable to VATable Sales	₱ 304,758,983.82
Less: Output VAT to government sales	(58,839.72)
Adjusted output VAT	₱ 304,700,144.10
Less: Declared input VAT attributable to VATable sales	(108,095,889.21)
Output VAT still due	**₱ 196,604,254.89**

Output VAT still due	₱ 196,604,254.89
Less: Declared Input VAT attributable to Zero-rated Sales	1,555,272,063.60
Excess input VAT attributable to declared zero-rated sales	**₱1,358,667,808.71**

However, as discussed earlier, not all petitioner's input VAT is valid. Thus, this Court determines whether the valid input VAT of petitioner is sufficient to cover its excess input VAT attributable to declared zero-rated sales, *viz.*:

Excess input VAT attributable to declared zero-rated sales (A)	₱ 1,358,667,808.71
Valid input taxes (B)	1,553,588,089.61
Valid Available Input VAT attributable to Zero-rated Sales (A or B, whichever is lower)	**₱ 1,358,667,808.71**

In relation to its zero-rated sales, petitioner was able to properly substantiate only the total amount of ₱36,499,857,975.17 out of its total declared zero-rated sales of ₱36,533,275,022.09. Consequently, only the input VAT of ₱1,357,425,033.02 is attributable to the said valid zero-rated sales of ₱36,499,857,975.17, as computed below:

Valid Zero-rated Sales	₱ 36,499,857,975.17
Total Zero-rated Sales	36,533,275,022.09
Ratio of Valid Zero-rated Sales to Total Zero-Rated Sales	99.91%
Valid Input VAT attributable to Valid Zero-rated Sales	1,358,667,808.71
Total Net Refundable Amount	**₱ 1,357,425,033.02**

Further, although petitioner carried over the claimed amount of ₱1,381,096,733.07 in its succeeding

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quarters/period, the same remained unutilized until it was deducted as "VAT Refund/TCC claimed"[158] in its Quarterly VAT Return for the 2nd quarter of FY ending September 2019, *albeit*, only in the amount of ₱1,358,809,685.73, since the discrepancy of which amounting to ₱22,287,047.35 [159] pertains to input VAT allocable to exempt sales which was already deducted and does not anymore form part of petitioner's allowable input tax to be carried over, as disclosed in its VAT Returns for the 1st to 4th quarters of FY ending March 2019. Accordingly, the subject claim no longer formed part of the excess input VAT of ₱418,175,190.04[160] as of the end of the 2nd quarter of FY ending September 2019, to be carried over to the succeeding quarters. Such being the case, the excess valid input VAT of ₱1,357,425,033.02 was not utilized or applied against any output tax liability during the 3rd quarter of FY 2019 and in the succeeding quarters.[161]

In fine, petitioner was able to satisfy the *ninth* requisite and has sufficiently proven its entitlement to the refund or issuance of TCC for **₱1,357,425,033.02**, representing its excess and unutilized input VAT attributable to its zero-rated sales for the 1st to 4th quarters of FY ending March 2019.

Final note

An applicant for a tax refund or credit must prove entitlement to the claim and comply with all the documentary and evidentiary requirements, such as VAT invoicing requirements, provided by tax laws and regulations.[162] Well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.[163]

[158] Exhibit "P-45", Line 23D, Docket – Vol. III, p. 1479.

[159]

FY ending March 2018	**Input Tax allocable to Exempt Sales**	**Exhibit (Line 23C)**
1st Quarter	₱ 4,256,352.18	**"P-10"**, Docket – Vol. III, pp. 1420 to 1421
2nd Quarter	5,204,779.36	**"P-13"**, Docket – Vol. III, pp. 1426 to 1427
3rd Quarter	6,905,227.70	**"P-17"**, Docket – Vol. III, pp. 1434 to 1435
4th Quarter	5,920,688.11	**"P-20"**, Docket – Vol. III, pp. 1420 to 1421
Total	**₱22,287,047.35**	

[160] Exhibit "P-45", Line 29, Docket – Vol. III, pp. 1478 to 1479; Exhibit "P-127", USB.

[161] Exhibits "P-128" and "P-129", USB.

[162] *Philippine Gold Processing and Refining Corp. v. Commissioner of Internal Revenue*, G.R. No. 222904 (Notice), July 15, 2020.

[163] *Commissioner of Internal Revenue v. San Roque Power Corp.*, G.R. Nos. 187485, 196113 & 197156, 12 February 2013, 703 SCRA 310-434

However, once the requirements laid down by the NIRC have been met, a claimant should be considered successful in discharging its burden of proving its right to a refund. Thereafter, the burden of going forward with the evidence, as distinct from the general burden of proof, shifts to the opposing party, the respondent. It is then the turn of the latter to disprove the claim by presenting contrary evidence.[164]

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

Accordingly, respondent is **ORDERED** to refund or issue a tax credit certificate in favor of petitioner in the amount of **₱1,357,425,033.02**, representing petitioner's excess and unutilized input VAT attributable to its zero-rated sales for the first to fourth quarters of FY ending March 2019.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[164] *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015, 752 SCRA 375-412.

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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 2nd Division Acting 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice