REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

CORAL BAY NICKEL CORPORATION,
Petitioner,

CTA CASE NO. 8451

-versus-

Members:

BAUTISTA, Chairperson;
FABON-VICTORINO, and
RINGPIS-LIBAN, ***JJ.***

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAY 13 2016
10:12 a.m.

x---x

DECISION

RINGPIS-LIBAN, J.

STATEMENT OF THE CASE

This is a Petition for Review[1] filed by Coral Bay Nickel Corporation against the Commissioner of Internal Revenue to seek the refund of the amount of Thirteen Million Nine Hundred Seventy-Eight Thousand Five Hundred Twenty-Nine Pesos and Twenty-Nine Centavos (₱13,978,529.29), allegedly representing its unutilized input value-added tax (VAT) related to zero-rated sales for the period covering January 1, 2010 up to December 31, 2010.

[1] Docket, vol. 1, pp. 6-16.

STATEMENT OF FACTS

Petitioner Coral Bay Nickel Corporation is a domestic corporation duly registered with and licensed by the Securities and Exchange Commission (SEC) to do business in the Philippines, with principal office address at Barangay Rio Tuba, Municipality of Bataraza, Palawan.[2] It is a VAT-registered entity as evidenced by its Bureau of Internal Revenue (BIR) Certificate of Registration No. OCN 8RC0000019300, with Taxpayer's Identification Number (TIN) 005-961-540-000.[3] Petitioner is likewise registered with the Philippine Economic Zone Authority (PEZA) as an Ecozone Export Enterprise pursuant to its PEZA Certificate of Registration No. 02-072 dated December 27, 2002.[4]

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue, sued in her official capacity, having been duly appointed and empowered to perform the duties of her office, including, among others, the duty to act and approve claims for refund provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner is principally engaged in the business of owning, holding, selling, exchanging, leasing, mortgaging or otherwise disposing of, dealing in, and operating plants for processing, reducing, concentrating, smelting, converting, refining, preparing for market, or otherwise treating metals, minerals and mined products to be used in the production of mixed sulfide of nickel and cobalt, and any and all ingredients, products and by-products of any thereof, and to produce, manufacture, process, refine, treat, sell, use, deal in, distribute, market and otherwise turn to account or dispose of mixed sulfide of nickel and cobalt, and any and all ingredients, products, and by-products of any thereof.[5]

On September 1, 2004, petitioner entered into an "Off-Take Agreement"[6] with Sumitomo Metal Mining Co. Ltd. (SMM), a corporation organized and existing under the laws of Japan. Under the agreement, petitioner shall sell to SMM all the products it produces and SMM shall purchase all such products from petitioner based on the terms and conditions set forth in the agreement.

During taxable year 2010, petitioner exported nickel cobalt mixed sulfide to SMM, pursuant to the "Off-Take Agreement", which qualifies as VAT zero-rated sales in accordance with Section 106(A)(2)(a) of the National Internal Revenue Code (NIRC) of 1997, as amended. Petitioner, in the course of its

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[2] Pars. 1.1 and 1.4, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, vol. 1, pp. 105-106; Exhibit "A", docket, vol. 2, p. 628.
[3] Par. 1.5, Admitted Facts, JSFI, docket, vol. 1, p. 106; Exhibit "D", docket, vol. 2, p. 660.
[4] Exhibit "B", docket, vol. 2, p. 645.
[5] Exhibit "A-1", docket, vol. 2, pp. 633-644.
[6] Exhibit "F", docket, vol. 2, pp. 669-681.

trade or business, allegedly incurred and paid VAT input taxes in the total amount of ₱13,978,529.29.

For taxable year 2010, petitioner filed with the BIR its original and amended Quarterly VAT Returns on the following dates:

Period Covered (2010)	Date of Filing Return
First Quarter[7]	April 22, 2010
First Quarter (Amended)[8]	June 16, 2011
First Quarter (Amended)[9]	July 21, 2010
Second Quarter[10]	July 23, 2010
Second Quarter (Amended)[11]	November 21, 2011
Third Quarter[12]	October 20, 2010
Fourth Quarter[13]	January 14, 2011
Fourth Quarter (Amended)[14]	November 21, 2011

On November 29, 2011, petitioner filed an application for tax refund or issuance of tax credit certificate (TCC) for its alleged unutilized input VAT in the amount of ₱13,978,529.29, along with all supporting documents with the Large Taxpayers Audit Investigation Division II (LTAID II) of the Bureau of Internal Revenue.[15]

Thereafter, petitioner filed the instant Petition for Review on March 30, 2012 before this Court.

Within the extended time granted by the Court, respondent filed her Answer[16] on June 1, 2012. She interposed that petitioner is not entitled to the refund or tax credit in the amount of ₱13,978,529.29 representing its alleged unutilized input tax because it failed to submit all necessary and relevant documents in its administrative claim for refund or tax credit of excess input tax attributable to zero-rated sales. Respondent added that petitioner must submit complete documents to support its application for refund pursuant to Section 112(D) of the NIRC of 1997, as amended, otherwise, there will be no sufficient compliance with the filing of an administrative claim for refund, which is a condition *sine qua non* prior to the filing of the judicial claim. Respondent likewise asserted that in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund or tax credit.

[7] Exhibit "K", docket, vol. 2, pp. 704-705.
[8] Exhibit "K-1", docket, vol. 2, pp. 706-707.
[9] Exhibit "K-2", docket, vol. 2, pp. 708-709.
[10] Exhibit "L", docket, vol. 2, pp. 710-711.
[11] Exhibit "L-1", docket, vol. 2, pp. 712-713.
[12] Exhibit "M", docket, vol. 2, pp. 714-715.
[13] Exhibit "N", docket, vol. 2, pp. 716-717.
[14] Exhibit "N-1", docket, vol. 2, pp. 718-719.
[15] Exhibits "E" and "E-2", docket, vol. 2, pp. 661-668.
[16] Docket, vol. 1, pp. 73-78.

In the Notice of Pre-Trial Conference[17], the pre-trial conference was set on July 5, 2012. Accordingly, respondent's Pre-Trial Brief[18] was filed on June 15, 2012; while petitioner's Pre-Trial Brief[19] was filed on July 2, 2012.

On July 27, 2012, the parties submitted their Joint Stipulation of Facts and Issues[20]. Thereafter, the Court issued the Pre-Trial Order[21] on August 6, 2012, terminating the pre-trial.

Upon motion[22] of petitioner, the Court commissioned Mr. Henry M. Tan as the Independent Certified Public Accountant (Independent CPA) for this case.[23]

During trial, petitioner presented the following witnesses: Mr. Allen Roy T. Catacutan[24], its Tax Assessment Chief; Mr. Henry M. Tan[25], the Independent Certified Public Accountant; Mr. John S. Barrientos[26], the QS/CSR Manager of SMCC Philippines, Inc.; and Engr. Zosimo Oliver P. Villa[27], a Geodetic Engineer and an expert in Surveying.

Petitioner filed its Formal Offer of Evidence[28] on September 20, 2013. In the Resolution[29] dated November 6, 2013, the Court admitted petitioner's Exhibits "A", "A-1", "B", "B-1", "B-2", "C", "C-1", "D", "E", "E-1", "E-2", "E-3", "F", "G", "G-1", "G-2", "H", "H-1", "I", "I-1", "I-2", "J", "J-1", "J-2", "K", "K-1", "K-2", "L", "L-1", "M", "N", "N-1", "O", "P", "P-1", "Q", "R", "R-1", "S", "T", "T-1", "WWW-1", "WWW-2", "YYY", "YYY-1", "ZZZ-1", "ZZZ-2", "ZZZ-3", "ZZZ-4", "ZZZ-5", "FF-1-1", "FF-2-1", "A^4", "B^4", "C^4", "C^4-1", "D^4", "D^4-1", "D^4-2", "D^4-3", "D^4-4", "D^4-5", "D^4-6", "E^4, "E^4-1", "E^4-2", "E^4-3", "F^4, "F^4-1", "G^4, "G^4-1", "H^4", "H^4-1", "H^4-2", "I^4", "I^4-1", "I^4-2", "J^4, "J^4-1", "J^4-2", "K^4", "L^4", "M^4-1", "M^4-2", "N^4-1", "N^4-2", "N^4-3", "N^4-4", "O^4-1", "O^4-2", "P^4", "P^4-1", "P^4-2", "Q^4, "Q^4-1", "R^4", and "R^4-1". The Court, however, denied the admission of Exhibits "V-1" to "V-86", "W-1" to "W-8", "X-1" to "X-12", "Y-1" to "Y-12", "Z-1" to "Z-9", "AA-1" to "AA-15", "BB-1" to "BB-12", "CC-1" to "CC-87", "DD-1" to "DD-2", "EE-1" to "EE-140", "EE-141" to "EE-246", "EE-247" to "EE-359", "EE-360" to

[17] Docket, vol. 1, p. 80.
[18] Docket, vol. 1, pp. 81-85.
[19] Docket, vol. 1, pp. 86-93.
[20] Docket, vol. 1, pp. 105-111.
[21] Docket, vol. 1, pp. 116-122.
[22] Motion to Avail the Provisions of Rule 13 of the Revised Rules of the Court of Tax Appeals, docket, vol. 1, pp. 152-154.
[23] Oath of Commission, docket, vol. 1, p. 168.
[24] Minutes of the Hearing dated October 18, 2012, docket, vol. 1, p. 151.
[25] Minutes of the Hearing dated January 14, 2013 and July 31, 2013, docket, vol. 1, p. 321 and vol. 2, p. 577.
[26] Minutes of the Hearing dated June 3, 2013 and September 2, 2013, docket, vol. 1, p. 522 and vol. 2, p. 596.
[27] Minutes of the Hearing dated September 2, 2013, docket, vol. 2, p. 596.
[28] Docket, vol. 2, pp. 599-627.
[29] Docket, vol. 2, pp. 869-870.

"EE-458", "FF-1" to "FF-2", "GG-1", "HH-1" to "HH-13", "II-1" to "II-4", "JJ-1", "KK-1" to "KK-3", "LL-1" to "LL-142", "LL-143" to "LL-284", "LL-285" to "LL-385", "MM-1" to "MM-34", "NN-1" to "NN-5", "OO-1" to "OO-15", "PP-1" to "PP-103", "QQ-1" to "QQ-2", "RR-1" to "RR-2", "SS-1" to "SS-2", "TT-1" to "TT-2", "UU-1" to "UU-7", "VV-1", "WW-1" to "WW-5", "XX-1", "YY-1", "ZZ-1" to "ZZ-5", "AAA-1" to "AAA-3", "BBB-1" to "BBB-36", "CCC-1" to "CCC-17", "DDD-1" to "DDD-6", "EEE-1" to "EEE-45", "FFF-1" to "FFF-100", "FFF-101" to "FFF-162", "GGG-1" to "GGG-100", "GGG-100" to "GGG-200", "GGG-201" to "GGG-300", "GGG-300" to "GGG-339", "HHH-1" to "HHH-24", "III-1" to "III-66", "JJJ-1", "KKK-1" to "KKK-2", "LLL-1" to "LLL-5", "MMM-1", "NNN-1" to "NNN-6", "OOO-1" to "OOO-48", "PPP-1" to "PPP-6", "QQQ-1" to "QQQ-3", "RRR-1", "SSS-1" to "SSS-3", "TTT-1" to "TTT-4", "UUU-1" to "UUU-5", and "VVV-1" to "VVV-2" for failure of petitioner to submit the duly marked exhibits; and Exhibits "Y-13" to "Y-26" for not being identified during trial and for failure of petitioner to submit the duly marked exhibits.

Petitioner filed a Motion for Reconsideration (with Motion to Reopen the Case)[30] on November 27, 2013, praying for the admission of the denied exhibits. In the Resolution[31] dated February 7, 2014, the Court partially granted petitioner's Motion, admitting its Exhibits "V-1" to "V-86", "W-1" to "W-8", "X-1" to "X-12", "Y-1" to "Y-12", "Z-1" to "Z-9", "AA-1" to "AA-15", "BB-1" to "BB-12", "CC-1" to "CC-87", "DD-1" to "DD-2", "EE-1" to "EE-140", "EE-141" to "EE-246", "EE-247" to "EE-359", "EE-360" to "EE-458", "FF-1" to "FF-2", "GG-1", "HH-1" to "HH-13", "II-1" to "II-4", "JJ-1", "KK-1" to "KK-3", "LL-1" to "LL-142", "LL-143" to "LL-284", "LL-285" to "LL-385", "MM-1" to "MM-34", "NN-1" to "NN-5", "OO-1" to "OO-15", "PP-1" to "PP-103", "QQ-1" to "QQ-2", "RR-1" to "RR-2", "SS-1" to "SS-2", "TT-1" to "TT-2", "UU-1" to "UU-7", "VV-1", "WW-1" to "WW-5", "XX-1", "YY-1", "ZZ-1" to "ZZ-5", "AAA-1" to "AAA-3", "BBB-1" to "BBB-36", "CCC-1" to "CCC-17", "DDD-1" to "DDD-6", "EEE-1" to "EEE-45", "FFF-1" to "FFF-100", "FFF-101" to "FFF-162", "GGG-1" to "GGG-100", "GGG-100" to "GGG-200", "GGG-201" to "GGG-300", "GGG-300" to "GGG-339", "HHH-1" to "HHH-24", "III-1" to "III-66", "JJJ-1", "KKK-1" to "KKK-2", "LLL-1" to "LLL-5", "MMM-1", "NNN-1" to "NNN-6", "OOO-1" to "OOO-48", "PPP-1" to "PPP-6", "QQQ-1" to "QQQ-3", "RRR-1", "SSS-1" to "SSS-3", "TTT-1" to "TTT-4", "UUU-1" to "UUU-5", and "VVV-1" to "VVV-2". The Court, however, denied petitioner's motion to reopen the case and thus, still denied the admission of Exhibits "Y-13" to "Y-26".

Thereafter, petitioner filed a Motion for Reconsideration (On the Motion to Reopen the Case)[32], through registered mail on February 26, 2014, which was received by the Court on March 11, 2014, praying that the case be

[30] Docket, vol. 2, pp. 875-891.
[31] Docket, vol. 2, pp. 904-907.
[32] Docket, vol. 2, pp. 908-913.

reopened for the purpose of identifying Exhibits "Y-13" to "Y-26". This was granted by the Court in the Resolution[33] dated May 20, 2014. Petitioner's witnesses Mr. Allen Roy T. Catacutan[34] and Mr. Henry M. Tan[35] were recalled to identify Exhibits "Y-13" to "Y-26".

Petitioner then filed a Supplemental Formal Offer of Evidence[36] on July 25, 2014. In the Resolution[37] dated August 8, 2014, the Court admitted petitioner's Exhibits "S^4" and "S^4-1" but denied its Exhibits "Y-13", "Y-14", "Y-15", "Y-16", "Y-17", "Y-18", "Y-19", "Y-20", "Y-21", "Y-22", "Y-23", and "Y-24" for failure of petitioner to submit the duly marked exhibits. Consequently, petitioner filed a Motion for Reconsideration[38] on August 20, 2014, praying for the admission of its denied exhibits. This was granted by the Court in the Resolution[39] dated October 13, 2014, admitting Exhibits "Y-13", "Y-14", "Y-15", "Y-16", "Y-17", "Y-18", "Y-19", "Y-20", "Y-21", "Y-22", "Y-23", "Y-24", "Y-25", and "Y-26".

Subsequently, respondent presented her sole witness, Revenue Officer Evangeline M. Casipe[40] on December 1, 2014. Afterwards, respondent filed a Motion for Leave to Admit Attached Formal Offer of Evidence[41] on December 17, 2014. This was granted by the Court in the Resolution[42] dated February 16, 2015, which also admitted respondent's Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", and "R-6-a".

Petitioner filed its Memorandum[43] on April 21, 2015. On the other hand, respondent failed to file her Memorandum as per Records Verification[44] dated May 4, 2015. Thereafter, in the Resolution[45] dated May 27, 2015, the instant case was declared submitted for decision.

STATEMENT OF ISSUES

The parties stipulated the following issues[46] for resolution of this Court:

[33] Docket, vol. 2, pp. 937-939.
[34] Minutes of the Hearing dated June 26, 2014, docket, vol. 2, p. 982.
[35] Minutes of the Hearing dated July 21, 2014, docket, vol. 3, p. 1032.
[36] Docket, vol. 2, pp. 1004-1010.
[37] Docket, vol. 3, pp. 1037-1038.
[38] Docket, vol. 3, pp. 1042-1045.
[39] Docket, vol. 3, pp. 1069-1070.
[40] Minutes of the Hearing dated December 1, 2014, docket, vol. 3, p. 1090.
[41] Docket, vol. 3, pp. 1094-1098.
[42] Docket, vol. 3, pp. 1117-1118.
[43] Docket, vol. 3, pp. 1147-1178.
[44] Docket, vol. 3, p. 1179.
[45] Docket, vol. 3, p. 1181.
[46] Statement of the Issues, JSFI, docket, vol. 1, p. 108.

Whether Petitioner is entitled to refund in the amount of **Thirteen Million Nine Hundred Seventy-Eight Thousand Five Hundred Twenty-Nine Pesos and Twenty-Nine Centavos (Php13,978,529.29)** on its unutilized input VAT attributed to its zero rated sales, for the period January 1, 2010 up to December 31,2010.

a) Whether Petitioner is engaged in zero-rated or effectively zero-rated sales;

b) Whether the input taxes being claimed are due or paid;

c) Whether the input taxes being claimed have not been applied against output taxes during and in the succeeding quarters;

d) Whether the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;

e) Whether the claim is filed within two years after the close of the taxable quarter when such sales were made.

f) Whether petitioner has complied with the provisions of Section 112 of the NIRC of 1997, as amended, in the prescriptive period for filing of administrative and judicial claims for refund and/or issuance of a tax credit certificate.

DISCUSSION/RULING

Pertinent to petitioner's refund claim is Section 112(A) of the National Internal Revenue Code of 1997, as amended, which allows the refund or tax credit of unutilized input tax attributable to zero-rated or effectively zero-rated sales. Section 112(A) is quoted hereunder for ready reference:

"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."

Pursuant to the above-quoted provision and, as laid down by the Supreme Court in a number of cases[47], a taxpayer engaged in zero-rated or effectively zero-rated transactions may claim a refund/tax credit certificate for input taxes attributable to such sales upon compliance with the following requisites:

1. the taxpayer is engaged in sales which are zero-rated or effectively zero-rated;
2. the taxpayer is VAT-registered;
3. the claim must be filed within two (2) years after the close of the taxable quarter when such sales were made;
4. the creditable input tax due or paid must be attributable to such sales and were not applied against output VAT liability; and
5. the foreign currency exchange proceeds thereof had been duly accounted for in accordance with BSP rules and regulations.

The Court finds it appropriate to resolve first the issue pertaining to the timeliness of the filing of petitioner's claim for refund prior to resolving the

[47] *Commissioner of Internal Revenue vs. Toledo Power Company*, G.R. Nos. 195175 & 199645, August 10, 2015; *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013; *Southern Philippines Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179632, October 19, 2011; *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011; *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.

other requisites to determine whether this Court has acquired the proper jurisdiction over the case.

Petitioner timely filed its claim

The relevant provision in determining the timeliness of petitioner's claim is Section 112(A) and (C) of the NIRC of 1997, as amended, which reads:

> "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.
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, **the**

> **taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.**" *(Emphasis supplied)*

In addition, Section 4.112-1 of Revenue Regulations No. 16-2005 states that:

> "SECTION 4.112-1. *Claims for Refund/Tax Credit Certificate of Input Tax.* –
>
> (a) *Zero-rated and Effectively Zero-rated Sales of Goods, Properties or Services*
>
> A VAT-registered person whose sales of goods, properties or services are zero-rated or effectively zero-rated may apply for the issuance of a tax credit certificate/refund of input tax attributable to such sales. The input tax that may be subject of the claim shall exclude the portion of input tax that has been applied against the output tax. **The application should be filed within two (2) years after the close of the taxable quarter when such sales were made.**
>
> In case of zero-rated sales under Secs. 106(A)(2)(a)(1) and (2), and Sec. 106(A)(2)(b) and Sec. 108(B)(1) and (2) of the Tax Code, the payments for the sales must have been made in acceptable foreign currency duly accounted for in accordance with the BSP rules and regulations." *(Emphasis supplied)*

Based on the foregoing provisions, the application for tax credit certificate or refund of unutilized excess input VAT must be filed within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present petition pertains to the taxable quarters ended March 31, 2010, June 30, 2010, September 30, 2010 and December 31, 2010. Counting two years from the said dates, petitioner had until March 31, 2012, June 30, 2012, September 30, 2012 and December 31, 2012, within which to file its administrative claim for issuance of tax credit certificate or tax refund. Thus, petitioner's administrative claim was timely filed on November 29, 2011, as shown below:

CY 2010	Close of the Taxable Quarter	Last Day to File Administrative Claim	Date of Filing of Administrative Claim and Submission of Documents
1st Quarter	March 31, 2010	March 31, 2012	November 29, 2011[48]
2nd Quarter	June 30, 2010	June 30, 2012	
3rd Quarter	September 30, 2010	September 30, 2012	
4th Quarter	December 31, 2010	December 31, 2012	

Anent petitioner's judicial claim, applying Section 112(C) of the NIRC of 1997, as amended, respondent had 120 days from November 29, 2011 or until March 28, 2012 to act upon petitioner's application for refund. Respondent, however, failed to render a decision on petitioner's administrative claim within that period. Consequently, petitioner had thirty (30) days or until April 27, 2012, within which to appeal its claim for refund before the Court of Tax Appeals. Thus, the Petition for Review was timely filed on March 30, 2012.

The Court shall now determine whether petitioner complied with the other requisites for entitlement to a refund in the amount of ₱13,978,529.29, allegedly representing its unutilized input VAT attributed to its zero-rated sales for taxable year 2010.

Petitioner is a VAT-registered taxpayer

It is apparent from the records that petitioner is a VAT-registered entity as evidenced by its BIR Certificate of Registration No. OCN8RC0000019300 duly issued by respondent, with Taxpayer Identification No. 005-961-840-000.[49]

Petitioner had zero-rated sales and the proceeds thereof were paid in foreign currency duly accounted for in accordance with BSP rules and regulations

Petitioner is registered with the Philippine Economic Zone Authority and is primarily engaged in the manufacture of nickel/cobalt mixed sulfide[50] for shipment to its sole customer, Sumitomo Metal Mining Co., Ltd., a corporation organized and existing under the laws of Japan, based on an Off-Take Agreement[51]. Petitioner asserts that these mixed sulfide are 100% exported and/or shipped to Japan and are paid for in acceptable foreign currency, specifically in US Dollars, which are inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP), hence, the same are subject to zero percent (0%) VAT, pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

[48] Exhibits "E" to "E-3", docket, vol. 2, pp. 661-668.
[49] Exhibit "D", docket, vol. 2, p. 660; Par. 1.5, Admitted Facts, JSFI, docket, vol. 1, p. 106.
[50] Exhibits "B" and "C", inclusive of sub-markings, docket, vol. 2, pp. 645- 659.
[51] Exhibit "F", docket, vol. 2, pp. 669-681.

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

"SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –

(A) *Rate and Base of Tax.* –

xxx xxx xxx

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

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

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

Based on the afore-quoted provision, in order for an export sale to qualify as zero-rated, the following conditions must be present:

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

Corollary to the first requisite, Section 113(A)(1), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Section 4.113-1(A)(1), B(1) and (2)(c) of RR No. 16-2005, as amended, provides that a VAT taxpayer, like herein petitioner, shall for every sale, barter or exchange of goods or properties, issue a VAT invoice 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

xxx xxx xxx

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* – The following information shall be indicated in the VAT invoice or VAT official receipt:

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

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:

xxx xxx xxx

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

xxx xxx xxx

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

"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

xxx xxx xxx

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

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

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

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

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

xxx xxx xxx

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

In addition to the above requirements, the invoice or receipt must be duly registered with the BIR as prescribed under Section 237 in relation to Section 238 of the NIRC of 1997, as amended, to wit:

"SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* – All persons subject to an internal revenue tax shall, for each sale and transfer of merchandise or for services rendered valued at Twenty-five pesos (₱25.00) or more, **issue duly registered** receipts or **sale** or **commercial invoices**, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service. xxx" *(Emphasis supplied)*

"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."

Pursuant to the foregoing provision of Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, in relation to Sections 113(A)(1), (B)(1), (2)(c) and (3), 237 and 238 of the same Code, and Section 4.113-1(A)(1), B(1) and (2)(c) of Revenue Regulations No. 16-2005, any VAT-registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit: (1) sales invoice as proof of sale of goods; (2) export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and (3) 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. In other words, only export sales supported by these documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

Furthermore, the sales invoices supporting the export sales must be registered with the BIR and must contain all the required information under the law and regulations, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

Petitioner submitted relevant documents such as sales invoices[52], bills of lading[53], advices of incoming foreign remittances issued by Bank of Tokyo-Mitsubishi UFJ Manila Branch[54], general ledger for sales[55], and Audited Financial Statements[56] in order to prove the amount of ₱15,794,429,332.83 zero-rated sales; which was reported in its amended Quarterly VAT Returns for the year 2010, as follows:

EXHIBIT NO.	TAXABLE YEAR 2010	ZERO-RATED SALES
"K-2"[57]	1st Quarter	₱ 3,392,863,165.35
"L-1"[58]	2nd Quarter	3,499,111,657.20
"M"[59]	3rd Quarter	2,429,796,266.53

[52] Exhibits "Y-1" to "Y-13" and "Z-1" to "Z-9".
[53] Exhibits "Y-14" to "Y-26".
[54] Exhibits "AA-1" to "AA-10".
[55] Exhibits "AAA-1" to "AAA-3".
[56] Exhibits "BBB-1" to "BBB-36".
[57] Docket, vol. 2, pp. 708-709.
[58] Docket, vol. 2, pp. 712-713.
[59] Docket, vol. 2, pp. 714-715.

"N-1"[60]	4th Quarter	6,472,658,243.75
TOTAL		**₱15,794,429,332.83**

However, out of the ₱15,794,429,332.83 declared zero-rated sales, the Court-commissioned Independent CPA, Mr. Henry M. Tan, accounted for a total amount of ₱15,602,245,250.86 only, of which only the amount of ₱15,486,382,071.53 has corresponding foreign currency remittances, detailed as follows:[61]

Date	Invoice Serial No.	Invoice Exh No.	Bill of Lading (Exh No)	Amount Per Invoice (in US$)	Equivalent Amount of Invoice in PhP (per General Ledger balances)	Amount per Advice of Incoming Foreign Remittance	Peso Equivalent
Original Invoices (Provisional Calculation)							
1/18/2010	0083	Y-1	Y-14	23,471,094.84	1,061,785,388.37	23,471,094.84	1,061,785,388.37
2/11/2010	0084	Y-2	Y-15	20,135,990.90	925,651,501.68	20,135,990.90	925,651,501.68
3/16/2010	0086	Y-3	Y-16	31,363,801.43	1,427,805,696.30	31,363,801.43	1,427,805,696.30
4/15/2010	0089	Y-4	Y-17	31,294,869.82	1,395,125,296.58	31,294,869.82	1,395,125,296.58
5/21/2010	0091	Y-5	Y-18	24,827,177.72	1,166,455,290.82	22,344,459.95	1,049,809,761.74
6/23/2010	0093	Y-6	Y-19	13,284,561.72	616,722,493.29	13,284,561.72	616,722,493.29
7/20/2010	0094	Y-7	Y-20	8,405,470.73	390,005,436.40	8,405,470.73	390,005,436.40
8/12/2010	0096	Y-8	Y-21	17,963,462.63	807,996,549.10	17,963,462.63	807,996,549.10
9/4/2010	0097	Y-9	Y-22	25,927,656.74	1,144,005,998.34	23,334,891.06	1,143,388,920.11
9/27/2010	0098	Y-10	Y-23	22,441,521.60	987,651,365.62	20,197,369.44	987,826,409.49
10/28/2010	0100	Y-11	Y-24	39,749,869.36	1,690,005,445.71	35,774,882.42	1,694,970,204.39
11/25/2010	0101	Y-12	Y-25	32,760,932.37	1,432,504,528.81	29,484,839.13	1,431,541,357.39
12/20/2010	0104	Y-13	Y-26	29,419,524.97	1,291,723,082.86	26,477,572.47	1,288,945,879.71
Invoice Adjustments (Final Computation):							
3/1/2010	0085	Z-1		1,392,731.58	64,267,598.76	1,392,731.58	64,267,598.76
4/1/2010	0087	Z-2		2,316,328.21	106,852,220.33	2,316,328.21	106,852,220.33
4/1/2010	0088	Z-3		3,563,183.89	164,369,672.84	3,563,183.89	164,369,672.84
5/4/2010	0090	Z-4	Y-14	7,642,107.83	337,643,608.15	7,642,107.83	337,643,608.15
6/1/2010	0092	Z-5	Y-15	5,062,523.13	235,235,199.76	5,062,523.13	235,235,199.76
8/2/2010	0095	Z-6	Y-16	2,364,946.92	108,697,690.34	2,364,946.92	108,697,690.34
11/2/2010	0099	Z-7	Y-19	752,668.83	32,412,177.83	752,668.83	32,412,177.83
12/1/2010	0102	Z-8	Y-20	1,693,796.89	74,234,037.17	1,693,796.89	74,234,037.17
12/1/2010	0103	Z-9	Y-21	3,219,361.85	141,094,971.80	3,219,361.85	141,094,971.80
				349,053,583.96	**15,602,245,250.86**	**331,540,915.67**	**15,486,382,071.53**

The Court found that there is a discrepancy amounting to ₱192,184,081.97 between the zero-rated sales per petitioner's VAT returns in the amount of ₱15,794,429,332.83 and the zero-rated sales accounted by the Independent CPA in the amount of ₱15,602,245,250.86. Other than the credit memos in the amounts of US$4,130.76[62], US$9,845.95[63], and US$3,131.12[64], pertaining to downward adjustments to petitioner's sales covered by invoice

[60] Docket, vol. 2, pp. 718-719.
[61] Exhibits "V-18" and "V-19".
[62] Exhibit "AA-11".
[63] Exhibit "AA-12".
[64] Exhibit "AA-13".

nos. 0097, 0100, and 0101, petitioner failed to explain such discrepancy. Hence, petitioner's declared zero-rated sales relating to the said discrepancy in the amount of ₱191,446,298.69 shall be denied VAT zero-rating, computed as follows:

Zero-Rated Sales per VAT returns				₱15,794,429,332.83
Zero-Rated Sales accounted by the Independent CPA				15,602,245,250.86
Discrepancy				₱ 192,184,081.97
Less: Credit Memos				
Exh. No.	Inv. No.	Amt. in US$	Amt. in PhP[65]	
A-11	0097	4,130.76	182,261.52	
AA-12	0100	9,845.95	418,610.41	
AA-13	0101	3,131.12	136,911.35	
		17,107.83	737,783.28	737,783.28
Zero-Rated Sales without supporting documents				**₱ 191,446,298.69**

Likewise, there is a ₱115,863,179.33 discrepancy between the zero-rated sales accounted by the Independent CPA in the amount of ₱15,602,245,250.86 and those with foreign currency remittances in the amount of ₱15,486,382,071.53. Such discrepancy representing zero-rated sales without foreign currency remittances shall be denied VAT zero-rating.

Moreover, the Court found that the ₱15,486,382,071.53 zero-rated sales with foreign currency remittances included the amount of ₱335,489,491.93, which does not have corresponding bills of lading, hence, must also be disallowed:

Invoice		**Amount per Advice of Incoming Foreign Remittance (in US$)**	**Peso Equivalent**
Exhibit No.	**Serial No.**		
Z-1	0085	1,392,731.58	64,267,598.76
Z-2	0087	2,316,328.21	106,852,220.33
Z-3	0088	3,563,183.89	164,369,672.84
Zero-Rated Sales without bills of lading		**7,272,243.68**	**335,489,491.93**

In sum, of the ₱15,794,429,332.83 zero-rated sales reported by petitioner in its 2010 amended Quarterly VAT Returns, only the amount of ₱15,151,630,362.90, as computed below, qualifies for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended:

Zero-Rated Sales per VAT returns		₱ 15,794,429,332.83
Less: Disallowances		
Without supporting documents	₱191,446,298.69	
Without foreign currency remittances	115,863,179.33	

[65] Equivalent Amount of Invoice in Peso (per General Ledger balances) divided by Amount per Invoices in US$ multiplied by US$ amount per Credit Memo.

Without bills of lading	335,489,491.93	
		642,798,969.95
Valid Zero-Rated Sales		**₱15,151,630,362.90**

Petitioner paid input VAT attributable to zero-rated sales and were not applied against any output VAT

In its amended Quarterly VAT Returns for taxable year 2010, petitioner reflected a total amount of ₱13,978,529.29 input VAT arising from amortization of input VAT on capital goods exceeding ₱1,000,000.00, domestic purchases of goods other than capital goods, and domestic purchases of services for the same period, broken down as follows:

	1st Quarter *(Exh. "K-2")*	**2nd Quarter** *(Exh. "L-1")*
Input Tax Deferred on Capital Goods exceeding ₱1 Million from Previous Quarter	₱ 975,162.34	₱ 1,044,821.25
Add: Input Tax on Capital Goods exceeding ₱1 Million Purchased this Quarter	154,821.43	-
Total Unamortized Input Tax on Capital Goods exceeding ₱1 Million	₱ 1,129,983.77	₱ 1,044,821.25
Less: Input Tax on Purchases of Capital Goods exceeding ₱1 Million deferred for the succeeding period	1,044,821.25	959,658.73
Amortization of Input Tax on Capital Goods exceeding ₱1 Million	₱ 85,162.52	₱ 85,162.52
Add: Input Tax on -		
Domestic Purchases of Goods Other than Capital Goods	90,889.06	79,161.10
Domestic Purchase of Services	2,723,698.68	1,838,407.42
Total Allowable Input Tax	**₱ 2,899,750.26**	**₱ 2,002,731.04**

	3rd Quarter *(Exh. "M")*	**4th Quarter** *(Exh. "N-1")*	**Total**
Input Tax Deferred on Capital Goods exceeding ₱1 Million from Previous Quarter	₱ 959,658.73	₱ 874,496.21	₱ 975,162.34
Add: Input Tax on Capital Goods exceeding ₱1 Million Purchased this Quarter	-	127,500.00	282,321.43
Total Unamortized Input Tax on Capital Goods exceeding ₱1 Million	₱ 959,658.73	₱ 1,001,996.21	₱ 1,257,483.77
Less: Input Tax on Purchases of Capital Goods exceeding ₱1 Million deferred for the succeeding period	874,496.21	910,458.69	910,458.69
Amortization of Input Tax on Capital Goods exceeding ₱1 Million	₱ 85,162.52	₱ 91,537.52	₱ 347,025.08
Add: Input Tax on -			
Domestic Purchases of Goods Other than Capital Goods	110,692.86	78,871.56	359,614.58
Domestic Purchase of Services	4,642,999.37	4,066,784.16	13,271,889.63
Total Allowable Input Tax	**₱4,838,854.75**	**₱4,237,193.24**	**₱13,978,529.29**

In support of the ₱13,978,529.29 input taxes, petitioner submitted its Summary List of Purchases[66], general ledger for input taxes[67], and the related suppliers' invoices and official receipts[68]. Upon examination of these documents, the Court-commissioned Independent CPA, in the Second Supplemental Report[69] dated January 18, 2013, noted the following exceptions on petitioner's claimed input VAT:

Findings					**Amount of Input VAT**	**Exhibit**
Input VAT on purchases of goods:						
Supported by VAT invoice dated outside period of claim					29,478.51	XXX-49
Supported with VAT invoice with wrong TIN of company					1,862.40	XXX-50
Supported by VAT invoice not issued in the name of company					93.54	XXX-51
Supported by VAT invoice with VAT not separately indicated					5,529.72	XXX-52
				Subtotal	***36,964.17***	
Input VAT on purchase of services:						
Supported by VAT OR not issued in the name of company					43,485.78	XXX-63 and DDD-1 to DDD-7, Annex 5
Supported by VAT OR with VAT amount not reconciled with VAT claimed by the company						
Payee	OR No.	Input VAT Claim	Should-be Input VAT	Overclaimed Input VAT		
Jupiter Arms Properties Inc.	25107	990.45	940.07	50.38		
Mandarin Oriental Manila	29819A	2,642.76	880.92	1,761.84		
	Total	3,633.21	1,820.99	1,812.22	1,812.22	XXX-64
Supported by VAT OR with VAT not separately indicated					123,706.84	XXX-65 and DDD-1 to DDD-7, Annex 7
Supported by VAT OR dated outside period of claim					645,349.08	XXX-67 to XXX-68 and DDD-1 to DDD-7, Annex 3
Supported with VAT OR with wrong or no TIN of company					8,273.19	XXX-69 and DDD-1 to DDD-7, Annex 6
Supported by VAT OR with no registered address of the company					765.67	XXX-70
Supported by VAT OR with no date indicated					1,952.66	XXX-71 and DDD-1 to DDD-7, Annex 4
Supported by VAT OR with no TIN and registered address of company					92,878.66	XXX-72 and DDD-1 to DDD-7, Annex 8
Supported by VAT OR not issued in the name of company and/or no registered address or TIN and with VAT not separately indicated					75,561.83	XXX-73 and DDD-1 to DDD-7, Annexes 10, 12 and 16
Supported by a photocopied VAT OR and with VAT not separately indicated or not issued in the name of company					17,992.48	XXX-74 and DDD-1 to DDD-7, Annex 17
Supported by non-VAT official acknowledgement receipt or statements of account (SOAs)					2,904.86	XXX-75 and DDD-1 to DDD-7, Annex 18

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66 Exhibits "BB-1" to "BB-12".

67 Exhibits "CCC-1" to "CCC-17".

68 Exhibits "CC-1" to "CC-87", "DD-1" to "DD-2", "EE-1" to "EE-458", "FF-1" to "FF-2", "GG-1", "HH-1" to "HH-13", "2-1" to "2-4", "JJ-1", "KK-1" to "KK-3", "LL-1" to "LL-385", "MM-1" to "MM-34", "NN-1" to "NN-5", "OO-1" to "OO-15", "PP-1" to "PP-103", "QQ-1" to "QQ-2", "RR-1" to "RR-2", "SS-1" to "SS-2", "TT-1" to "TT-2", "UU-1" to "UU-7", "VV-1", "WW-1" to "WW-5", "XX-1", "YY-1", "ZZ-1" to "ZZ-5", "EEE-1" to "EEE-45", "FFF-1" to "FFF-162", "GGG-1" to "GGG-339", "HHH-1" to "HHH-24", "III-1"-III-66", "JJJ-1", "KKK-1" to "KKK-2", "LLL-1" to "LLL-5", "MMM-1", "NNN-1" to "NNN-6", "OOO-1" to "OOO-48", "PPP-1" to "PPP-6", "QQQ-1" to "QQQ-3", "RRR-1", "SSS-1" to "SSS-3", "TTT-1" to "TTT-4", "UUU-1" to "UUU-5", and "VVV-1" to "VVV-2".

69 Exhibits "XXX-1" to "XXX-120".

Supported by a VAT OR with wrong registered address of the company	824.78	XXX-76
Supported by VAT OR not issued in the name of the company and with wrong/no TIN and/or wrong/no registered address of company	605.72	XXX-77 and DDD-1 to DDD-7, Annexes 13, 14 and 15
Supported by VAT OR not issued in the name of the company and with no TIN and registered address of company	22,641.67	XXX-78
Subtotal	***1,038,755.44***	
Input VAT on purchase of goods and services without supporting documents	***288,221.95***	
TOTAL	**₱1,363,941.56**	

The Court finds that aside from the input VAT of ₱1,363,941.56 excepted by the Independent CPA, the following input VAT in the amount of ₱1,914,851.82 shall likewise be disallowed for not being properly substantiated by VAT invoices or receipts as prescribed under Sections 110(A), 113(A) and (B), 237, and 238 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-8, and 4.113-1 of Revenue Regulations No. 16-05, as amended, detailed as follows:

	Exhibit No.	Supplier	Input VAT
1.	*Authority to Print unreadable or cannot be seen clearly on OR*		
	EE-360	Philippine Ports Authority	623.22
		Subtotal	*623.22*
2.	*Alteration in the name of payor/purchaser countersigned but authority of the countersignor cannot be ascertained*		
	EEE-7	Philippine Ports Authority	132.12
		Subtotal	*132.12*
3.	*Name of petitioner superimposed/stamped on VAT OR but without countersignature of issuer of OR*		
	EE-259	Philippine Ports Authority	7.56
	EE-366	Philippine Ports Authority	15.31
	EEE-2	Philippine Ports Authority	5.47
	EEE-9	Philippine Ports Authority	67.08
	EEE-10	Philippine Ports Authority	3.00
	EEE-11	Philippine Ports Authority	15.12
	EEE-12	Philippine Ports Authority	7.56
	EEE-15	Philippine Ports Authority	3.00
	EEE-17	Philippine Ports Authority	7.56
	EEE-30	Philippine Ports Authority	3.00
	EEE-31	Philippine Ports Authority	3.00
	EEE-37	Philippine Ports Authority	7.56
	EEE-38	Philippine Ports Authority	3.00
	FFF-129	Philippine Ports Authority	12.43
		Subtotal	*160.65*
4.	*Name of supplier cannot be seen in VAT OR*		
	EE-439	United Dockhandlers, Inc.	66.12
	EEE-1	United Dockhandlers, Inc.	86.80
		Subtotal	*152.92*
5.	*No OR per marked evidence*		
	EEE-19	Philippine Ports Authority	3.94

	EEE-23	Philippine Ports Authority	934.83
	EEE-42	Philippine Ports Authority	64.32
		Subtotal	*1,003.09*
6.	*OR date changed without countersignature*		
	LL-225	Philippine Ports Authority	3.34
	LL-286	Philippine Ports Authority	13,194.00
		Subtotal	*13,197.34*
7.	*OR date incomple as to year*		
	EE-330	Philippine Ports Authority	3,664.71
	EE-356	Philippine Ports Authority	4,503.08
	EE-141	Jupiter Arms Properties Inc.	1,382.40
		Subtotal	*9,550.19*
8.	*OR date incomplete as to year; name of payor countersigned but authority of the countersignor cannot be ascertained*		
	EEE-3	Philippine Ports Authority	1,097.83
	EEE-4	Philippine Ports Authority	153.86
	EEE-24	Philippine Ports Authority	483.52
	EEE-25	Philippine Ports Authority	29.52
		Subtotal	*1,764.73*
9.	*OR dated outside period of claim*		
	EE-286	Philippine Ports Authority	934.83
	EE-383	Philippine Ports Authority	27.39
	GG-1	Regen Enterprises	2,643.74
	LL-16	Philippine Ports Authority	128.87
	LL-18	Philippine Ports Authority	217.43
	LL-19	Philippine Ports Authority	227.27
	LL-20	Philippine Ports Authority	394.55
	LL-21	Philippine Ports Authority	109.19
	LL-42	Philippine Ports Authority	12,424.35
	LL-43	Philippine Ports Authority	8,727.83
	LL-64	Philippine Ports Authority	33.30
	LL-65	Philippine Ports Authority	10.59
	LL-66	Philippine Ports Authority	1,043.62
	LL-67	Philippine Ports Authority	8,868.57
	LL-68	Philippine Ports Authority	34,490.62
	LL-69	Philippine Ports Authority	38,295.93
	LL-71	Philippine Ports Authority	4,860.00
	LL-72	Philippine Ports Authority	4,860.00
	LL-73	Philippine Ports Authority	333.72
	LL-74	Philippine Ports Authority	20.19
	LL-75	Philippine Ports Authority	27.63
	LL-76	Philippine Ports Authority	12.43
	LL-109	Philippine Ports Authority	12.43
	LL-110	Philippine Ports Authority	12.43
	LL-111	Philippine Ports Authority	12.43
	LL-112	Philippine Ports Authority	12.43
	LL-113	Philippine Ports Authority	12.43
	LL-114	Philippine Ports Authority	12.43

	LL-115	Philippine Ports Authority	39.35
	LL-116	Philippine Ports Authority	30.90
	LL-117	Philippine Ports Authority	2.40
	LL-118	Philippine Ports Authority	27.63
	LL-119	Philippine Ports Authority	3.73
	LL-120	Philippine Ports Authority	27.63
	LL-121	Philippine Ports Authority	43.49
	LL-122	Philippine Ports Authority	11.85
	LL-123	Philippine Ports Authority	62.13
	LL-124	Philippine Ports Authority	12.43
	LL-135	Philippine Ports Authority	51,958.59
	LL-138	Philippine Ports Authority	29,696.94
	LL-139	Philippine Ports Authority	51,952.54
	LL-140	Philippine Ports Authority	59,385.19
	LL-141	Philippine Ports Authority	4,395.70
	LL-205	Philippine Ports Authority	725.76
	LL-206	Philippine Ports Authority	33,735.06
	LL-207	Philippine Ports Authority	3,024.00
	LL-208	Philippine Ports Authority	4,860.00
	LL-209	Philippine Ports Authority	3,272.77
	LL-210	Philippine Ports Authority	6.68
	LL-211	Philippine Ports Authority	1,340.84
	LL-212	Philippine Ports Authority	6.68
	LL-213	Philippine Ports Authority	6.68
	LL-214	Philippine Ports Authority	4,860.00
	LL-215	Philippine Ports Authority	732.24
	LL-216	Philippine Ports Authority	727.92
	LL-217	Philippine Ports Authority	842.40
	LL-218	Philippine Ports Authority	731.16
	LL-219	Philippine Ports Authority	3.63
	LL-220	Philippine Ports Authority	12.43
	LL-221	Philippine Ports Authority	12.43
	LL-222	Philippine Ports Authority	32.10
	LL-223	Philippine Ports Authority	55.26
	LL-224	Philippine Ports Authority	2,667.60
	LL-228	Philippine Ports Authority	1,338.02
	LL-229	Philippine Ports Authority	3.34
	LL-230	Philippine Ports Authority	3,780.00
	LL-231	Philippine Ports Authority	2,613.60
	LL-245	Philippine Ports Authority	1,569.48
	LL-246	Philippine Ports Authority	6.68
	LL-247	Philippine Ports Authority	2,532.12
	LL-248	Philippine Ports Authority	2,255.59
	LL-249	Philippine Ports Authority	1,153.44
	LL-250	Philippine Ports Authority	6.68
	LL-251	Philippine Ports Authority	79.67
	LL-252	Philippine Ports Authority	1,192.23
	LL-253	Philippine Ports Authority	6.68

	LL-288	Philippine Ports Authority		4,907.48
	LL-289	Philippine Ports Authority		1,708.56
	LL-290	Philippine Ports Authority		6.68
	LL-291	Philippine Ports Authority		69.83
	LL-292	Philippine Ports Authority		69.83
	LL-293	Philippine Ports Authority		89.51
	LL-294	Philippine Ports Authority		246.95
	LL-295	Philippine Ports Authority		79.67
	LL-296	Philippine Ports Authority		59.99
	LL-297	Philippine Ports Authority		384.71
	LL-298	Philippine Ports Authority		394.55
	LL-299	Philippine Ports Authority		443.75
	LL-300	Philippine Ports Authority		59.99
	LL-301	Philippine Ports Authority		305.99
	LL-302	Philippine Ports Authority		443.75
	LL-304	Philippine Ports Authority		59.99
	LL-309	Philippine Ports Authority		1,260.60
	LL-310	Philippine Ports Authority		1,439.45
	LL-368	Philippine Ports Authority		9.90
	LL-369	Philippine Ports Authority		24.85
	LL-370	Philippine Ports Authority		12.43
	LL-371	Philippine Ports Authority		12.43
	LL-372	Philippine Ports Authority		12.43
		Subtotal		*402,713.62*
10.	*OR undated*			
	EE-63	DHL Express (Phils) Corp		33.60
		Subtotal		*33.60*
11.	*Overclaimed input VAT*			
	EE-184	Lengeric Manpower and General Services Inc.		
		Input VAT Per Claim	₱ 3,696.69	
		Less: Input VAT per OR	1,400.99	
		Overclaimed input VAT		2,295.70
		Subtotal		*2,295.70*
12.	*VAT amount changed without countersignature*			
	EE-156	Jupiter Arms Properties Inc.		1,511.76
	EE-442	Vanabell Apparel		3,203.57
	LL-233	Philippine Ports Authority		3.34
	FFF-9	Philippine Ports Authority		50,217.69
		Subtotal		*54,936.36*
13.	*VAT amount countersigned but authority of the countersignor cannot be ascertained*			
	CC-14	Commander Auto Supply		227.14
	CC-20	Commander Auto Supply		1,725.00
	CC-24	Commander Auto Supply		6,921.43
	CC-25	Commander Auto Supply		642.86
	CC-27	Commander Auto Supply		3,964.29
		Subtotal		*13,480.72*
14.	*VAT amount countersigned but countersignor different from issuer of OR*			
	EE-4	Cendaur Engineering		197,126.35

	EE-5	Cendaur Engineering	196,074.16
	EE-85	Discovery Tour Inc	4,025.28
	EE-87	Discovery Tour Inc	13,127.28
	EE-90	Discovery Tour Inc	2,622.24
	EE-99	Discovery Tour Inc	5,542.08
	EE-100	Discovery Tour Inc	2,382.36
	EE-102	Discovery Tour Inc	8,536.44
	EE-103	Discovery Tour Inc	16,083.96
	EE-104	Discovery Tour Inc	6,056.40
	EE-114	Fuji Xerox Phils Inc.	2,692.06
	EE-115	Fuji Xerox Phils Inc.	2,746.88
	EE-140	Jupiter Arms Properties Inc.	7,833.60
	EE-149	Jupiter Arms Properties Inc.	2,304.00
	EE-164	Jupiter Arms Properties Inc.	1,843.20
	EE-166	Jupiter Arms Properties Inc.	2,159.94
	EE-436	Tricom Systems (Phils) Inc.	689.46
	EE-437	Tricom Systems (Phils) Inc.	689.46
	EE-438	Tricom Systems (Phils) Inc.	4,136.79
	FF-1	SMCC Philippines Inc.	55,383.60
		Subtotal	*532,055.53*
15.	*VAT amount unreadable*		
	EE-228	New World Int'l Dev't Phils. Inc.	2,446.99
		Subtotal	*2,446.99*
16.	*VAT amount not separately indicated in the OR*		
	CC-75	Mercury Drug Corp	274.23
	EE-245	North Star Port Dev't Corp.	14,925.30
	EE-246	North Star Port Dev't Corp.	25,161.47
	EE-247	North Star Port Dev't Corp.	14,882.78
	EE-248	Our Lady of Piat Cargo Hauler	1,188.00
	EEE-20	DHL Express (Phils) Corp	170.11
		Subtotal	*56,601.89*
17.	*OR with marking "Collected in behalf of CEU Holdings"*		
	EE-10	Century Properties Mgt. Inc.	64,032.48
	EE-11	Century Properties Mgt. Inc.	64,032.48
	EE-17	Century Properties Mgt. Inc.	64,032.48
	EE-447	Century Properties Mgt. Inc.	64,032.48
	EE-448	Century Properties Mgt. Inc.	64,032.48
		Subtotal	*320,162.40*
18.	*OR with marking "Collected in behalf of Leoncio Lim"*		
	EE-450	Century Properties Mgt. Inc.	64,032.20
	EE-452	Century Properties Mgt. Inc.	64,032.20
	EE-453	Century Properties Mgt. Inc.	64,032.20
		Subtotal	*192,096.60*
19.	*No supporting documents offered as evidence; No manifestation by petitioner to take judicial notice of previous Court decisions involving petitioner, resolving input VAT refund cases pertaining to prior periods*		
	V-25	Current year amortization of input taxes on purchase of capital goods in previous years used outside PEZA zone and supported by VAT invoices	309,685.76

		Subtotal	*309,685.76*
	Exhs. DDD-1 to DDD-7, Annex 1		
		Philippine Ports Authority	1,580.54
		Philippine Ports Authority	15.12
		Philippine Ports Authority	162.73
		Subtotal	*1,758.39*
	Total Additional Input VAT Disallowance per this Court's further verification		**1,914,851.82**

In sum, petitioner was able to properly substantiate its input VAT claim but only to the extent of ₱10,699,735.91, computed as follows:

Input VAT Claim			₱ 13,978,529.29
Less:	Disallowances		
	Per Independent CPA's findings	₱1,363,941.56	
	Per this Court's Further Verification	1,914,851.82	3,278,793.38
Valid Input VAT			**₱10,699,735.91**

Since petitioner's sales for the four quarters of 2010 were all direct export sales, the substantiated input VAT of ₱10,699,735.91 is entirely attributable thereto. However, the input VAT related to the declared zero-rated sales without supporting documents, foreign currency remittances and bills of lading shall be disallowed. Consequently, petitioner's duly substantiated input VAT attributable to the declared valid zero-rated sales of ₱15,151,630,362.90 amounts only to ₱10,264,279.90, computed as follows:

Valid Zero-Rated Sales	₱	15,151,630,362.90
Declared Zero-Rated Sales	÷ ₱	15,794,429,332.83
Multiplied by Valid Input VAT	× ₱	10,699,735.91
Input VAT Attributable to Valid Zero-Rated Sales	**₱**	**10,264,279.90**

As to whether or not the said input VAT was applied against any output VAT and/or carried over to the succeeding taxable quarters, petitioner's Quarterly VAT Returns for the subject period of claim showed that petitioner had no output tax liability against which the claimed input VAT may be applied or credited.[70] Even though the claimed amount of ₱13,978,529.29 was carried over to the succeeding first quarter of 2011[71], the same remained unutilized as petitioner still had no output tax liability for the said period. Moreover, the total claim of ₱13,978,529.29 was deducted as "VAT Refund/TCC claimed"[72] in petitioner's Quarterly VAT Return for the first quarter of 2011; hence, the same is already precluded from being applied to future VAT liability, if any.

[70] Line 19B, Exhibits "K-2", "L-1", "M", and "N-1", docket, vol. 2, pp. 708, 712, 714, and 718.
[71] Line 20A, Exhibit "O", docket, vol. 2, p. 720.
[72] Line 23D, Exhibit "O", docket, vol. 2, p. 720.

Tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government.[73] The burden in claiming tax refund rests upon the taxpayer. In this case, petitioner was able to prove its entitlement to the refund of its unutilized input VAT attributed to its zero-rated sales for the period covering January 1, 2010 up to December 31, 2010, in the reduced amount of ₱10,264,279.90.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the amount of **₱10,264,279.90**, representing petitioner's unutilized input VAT attributable to its zero-rated sales for taxable year 2010.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

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[73] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice