REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PROCESS MACHINERY CO., INC., Petitioner,	**CTA CASE NO. 9217**
	Members:
-versus-	**Castañeda, Jr.,** *Chairperson,* **Casanova,** *and* **Manahan,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 17 2018 3:15 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This is a Petition for Review[1] filed on December 7, 2015 by Process Machinery Co., Inc. (PMCI) seeking the reversal and setting aside of the October 30, 2015 Final Decision on Disputed Assessment (FDDA) for alleged deficiency value-added tax (VAT) in the aggregate amount of Twelve Million Nine Hundred Seventeen Thousand Eight Hundred Five and 78/100 Pesos (₱12,917,805.78) for the taxable period January 1, 2013 to June 30, 2013, broken down as follows:

Basic Deficiency VAT	₱	6,558,630.00
50% Surcharge		3,279,315.00
20% Interest		3,079,860.77
Total	**₱**	**12,917,805.77**

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[1] Docket, pp. 10-17.

THE PARTIES

Petitioner PMCI is a corporation organized and existing under the laws of the Republic of the Philippines, with offices at 104 Gaston Building, 30 J. Elizalde St., BF Homes, Parañaque City, where it may be served with orders, pleadings and other legal processes. It is registered with the BIR with Taxapyer's Identification Number 218-150-171-000. It is engaged in the distribution of crushing, screening, wear protection, conveying and minerals processing equipment, service and systems solutions.[2]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), duly appointed and empowered to perform duties of his office, including, among others, the power to decide, cancel and abate tax liabilities. He holds office at the 5th Floor National Office Building, Agham Road, Diliman, Quezon City.[3]

THE FACTS

On May 14, 2014, petitioner was served with a Letter of Authority (LOA) No. V08-2014-00000224 dated May 8, 2014[4] informing the company of the examination of its books of accounts and other accounting records for value-added tax audit.

Upon receipt of the LOA, petitioner's accountant Marito Ibasco immediately coordinated with the BIR.[5]

On May 26, 2014, a first request for presentation of records was served on the petitioner.[6]

Petitioner submitted several documents to the BIR, including its schedule of sales from January to June 2013 and schedule of purchases from January to June 2013.[7]

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[2] Par. 1, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 281.
[3] Par. 2, JSFI, Docket, p. 281.
[4] Exhibit R-1, BIR Record, p. 3.
[5] Par. 3, JSFI, Docket, p. 281.
[6] Par. 4, JSFI, Docket, p. 281.
[7] Par. 5, JSFI, Docket, p. 282.

Subsequently, a second and final notice dated June 18, 2014 was issued to petitioner.[8]

On June 25, 2015, petitioner received a Preliminary Assessment Notice (PAN). Petitioner filed a response to said notice on July 9, 2015 contesting the assessment with documentary support.[9]

On July 14, 2015, an Assessment Notice and Formal Assessment Notice (FAN) with Details of Discrepancies, was formally issued to PMCI.[10]

On July 16, 2015 petitioner responded to the FAN, reiterating its reasons for disputing the assessment.[11]

On October 30, 2015, the BIR issued its FDDA.[12]

Petitioner received the FDDA on November 5, 2015, thus, it had thirty (30) days or until December 5, 2015 to appeal the same. The last day fell on a Saturday, thus, the last day for the filing the of the Petition for Review was on December 7, 2015.[13]

Petitioner filed its Petition for Review on December 7, 2015.[14]

In its Answer filed by registered mail on February 1, 2016 respondent CIR reiterated that the tax investigation disclosed that PMCI:[15]

- Issued VAT official receipts amounting to ₱29,750,076.39 which pertained to undeclared sales in its returns under Sections 108 and 113(D) of the tax code.

- Failed to submit VAT invoices and official receipts to support the input VAT declared in its returns and a few of the VAT invoices and official receipts were not compliant with invoicing requirements under Section 110(A)(1) of the tax code.

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[8] Par. 6, JSFI, Docket, p. 282.
[9] Par. 7, JSFI, Docket, p. 282.
[10] Par. 8, JSFI, Docket, p. 282.
[11] Par. 9, JSFI, Docket, p. 282.
[12] Par. 10, JSFI, Docket, p. 282.
[13] Par. 11, JSFI, Docket, p. 282.
[14] Par. 12, JSFI, Docket, p. 282.
[15] Docket, pp. 124-127.

On March 29, 2016, PMCI filed the Judicial Affidavit of Marito P. Ibasco, its accountant.[16] Likewise on even date, respondent filed by registered mail the Judicial Affidavit of Eric A. De Jesus, the revenue officer of Revenue Region No. 008 – VAT Audit Team authorized to conduct the investigation pursuant to the LOA.[17]

On March 31, 2016, the pre-trial conference was set and the parties and their counsels were ordered to file their pre-trial brief three (3) days before the pre-trial date.[18] PMCI filed its pre-trial brief on March 28, 2016[19] while respondent CIR filed the pre-trial brief by registered mail on March 18, 2016.[20]

Based on the Joint Stipulation of Facts and Issues (JSFI), the BIR held PMCI liable for alleged undeclared sales based on the issued official receipts amounting to ₱29,750,076.39.[21] The BIR further disallowed the amount of ₱2,987,640.78[22] which disallowance the PMCI decided no longer to dispute.[23] Petitioner also no longer disputed the undeclared sales of ₱849,110.71 computed as follows:[24]

Name of Client	Official Receipt No.	Official Receipt Date	Gross Amount	
Holcim Phils.	1332	1/8/2013	₱	715,000.00
Pinagpala PT Agg. Corp.	1334	1/25/2013	₱	47,500.00
Pinagpala PT Agg. Corp.	1335	1/25/2013		42,000.00
Pinagpala PT Agg. Corp.	1347	4/12/2013	₱	146,504.00
Total			₱	951,004.00
Undeclared Sales Net of VAT			₱	849,110.71

In their JSFI, the parties limited the issues for the determination of the Court as follows:[25]

1. Whether the BIR erred in finding and declaring that Petitioner PMCI had undeclared sales subject to VAT amounting to ₱29,750,076.39; and,

[16] Docket, pp. 138-150.
[17] Docket, pp. 244-249.
[18] Docket, pp. 129-130.
[19] Docket, pp. 134-137.
[20] Docket, pp. 238-241.
[21] Par. 13, JSFI, Docket, p. 282.
[22] Par. 14, JSFI, Docket, p. 282.
[23] Par. 17, JSFI, Docket, p. 282.
[24] Par. 16, JSFI Docket, p. 282; Q22, Judicial Affidavit of Marito P. Ibasco, Docket, p. 140.
[25] Par. 19, JSFI Docket, p. 283.

2. Whether Petitioner PMCI is liable to pay deficiency VAT for the taxable period January 1, 2013 to June 30, 2013.

On May 12, 2016, the Court approved the JSFI in its Pre-Trial Order.[26]

On May 12, 2016, petitioner PMCI filed an Amended Judicial Affidavit of Marito P. Ibasco,[27] its accountant, through a motion which was granted by the Court.[28]

On June 24, 2016, PMCI filed a Supplemental Judicial Affidavit of Marito P. Ibasco by ordinary mail.[29]

On June 30, 2016, in compliance with the order of the Court, respondent forwarded the entire BIR records on the assessment[30] which was noted by the Court.[31]

On July 25, 2016, petitioner PMCI completed and terminated the presentation of the testimony of Marito P. Ibasco, its accountant, based on the Supplemental Judicial Affidavit.[32]

On August 24, 2016, petitioner's counsel manifested that her intended witness was unwilling to testify. Thus, to give petitioner opportunity to present the intended witness without objection from respondent's counsel, the hearing was cancelled and reset to September 28, 2016.[33]

In view of the CTA Office Order No. 109-2016 authorizing the court personnel and officials to attend the CTA 2016 GAD Activities on September 28 to 29, 2016, the continuation of the presentation of evidence for the petitioner previously set on September 28, 2016 was cancelled and reset to October 12, 2016.[34]

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[26] Docket, pp. 292-295.
[27] Docket, pp. 299-311.
[28] June 6, 2016 Resolution, Docket, p. 388.
[29] Docket, pp. 394-398.
[30] Docket, p. 405.
[31] July 5, 20016 Order, Docket, p. 406.
[32] Minutes of Hearing, Docket, p. 407; Transcript of Stenographic Notes (TSN) for the July 25, 2016 hearing.
[33] Order, Docket, p. 411.
[34] Notice of Resetting, Docket, p. 412.

On October 12, 2016, counsel for petitioner PMCI manifested in open court that she will no longer present further evidence. Petitioner was granted five (5) days or until October 17, 2016 to file the Formal Offer of Evidence.[35]

On October 17, 2016, petitioner filed its Formal Offer of Documentary Evidence[36] without comment from the respondent.[37]

In a December 2, 2016 Resolution, the Court admitted all the exhibits of the petitioner.[38]

On January 18, 2017, respondent presented his lone witness, Revenue Officer Eric A. De Jesus whose testimony was completed and terminated.[39] There being no other witness to be presented, and upon motion, respondent was granted a period of five (5) days to file a Formal Offer of Evidence and petitioner was granted the same period to file its comment.[40]

On January 19, 2017, respondent CIR filed the Formal Offer of Evidence by registered mail[41] without comment from petitioner PMCI.[42]

In a June 21, 2017 Resolution, the Court admitted all the exhibits of the respondent.[43] The parties were also given a period of thirty (30) days within which to file their memoranda.[44]

On August 4, 2017, petitioner filed its Memorandum.[45] Respondent CIR, however, did not file a Memorandum.[46]

In a Resolution dated August 22, 2017, the Court submitted the instant case for decision in view of the filing of petitioner's Memorandum and the Report of the Records Division that no memorandum was filed by respondent.[47]

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[35] Order, Docket, p. 414.
[36] Docket, pp. 415-422.
[37] November 3, 2016 Records Verification, Docket, p. 502.
[38] Docket, pp. 510-511.
[39] Order, Docket, p. 513.
[40] *Id.*
[41] Docket, pp. 514-517.
[42] February 17, 2017 Records Verification, Docket, p. 519.
[43] Docket, pp. 521-522.
[44] *Id.*
[45] Docket, pp. 523-532.
[46] August 16, 2017 Records Verification, Docket, p. 533.
[47] Docket, p. 534.

THE ISSUES

The parties submitted the following issues for this Court's resolution:[48]

1. Whether the BIR erred in finding and declaring that Petitioner PMCI had undeclared sales subject to VAT amounting to ₱29,750,076.39

2. Whether Petitioner PMCI is liable to pay deficiency VAT for the taxable period January 1, 2013 to June 30, 2013.

THE COURT'S RULING

Respondent assessed PMCI deficiency VAT in the amount of ₱12,917,805.78 inclusive of increments,[49] computed as follows:

VATable Sales per Returns					₱ 16,960,954.67
Add:	Undeclared Sales (Schedule 1)			₱8,167.09	
	Undeclared Sales from issued Official Receipts (Annex C)			29,750,076.39	29,758,243.48
Gross Receipts subject to VAT					₱ 46,719,198.15
Output tax due					₱ 5,606,303.78
Less:	Input Tax carry over from previous period			₱2,147,412.31	
	Input Tax from Current Purchases			3,084,266.56	
	Total			5,231,678.87	
	Less:	Disallowed Input Tax (Annex D)	₱2,987,640.78		
		Input Tax carry over to succeeding period	3,196,364.31	6,184,005.09	(952,326.22)
VAT Payable					₱ 6,558,630.00
Less: Payments Made					-
Basic tax due					₱ 6,558,630.00
Add:	50% Surcharge			₱3,279,315.00	
	Interest (07.26.13 to 11.30.15)			3,079,860.78	6,359,175.78
Total Amount Due					**₱12,917,805.78**

[48] Docket, p. 283.
[49] Exhibit P-1, Docket, p. 423; Exhibit R-6, BIR Records, p. 394.

The deficiency VAT assessment, according to the respondent, was based on the following grounds or findings:

a.	Undeclared Sales	₱ 8,167.09
b.	Undeclared Sales from issued Official Receipts	29,750,076.39
c.	Disallowed Input Tax	2,987,640.78
d.	Input Tax Carry over to succeeding period	3,196,364.31

The Court will discuss at length the merits of each of these items below.

a. Undeclared Sales in the amount of ₱8,167.09

Respondent arrived at this item of assessment by deducting the Sales declared per VAT returns from Sales per Sales Invoice, net of VAT, thus:

Sales per Sales Invoice, net of VAT (Annex B)	₱ 48,033,991.76
Less: Sales declared per returns	48,025,824.67
Undeclared Sales	₱ 8,167.09

Upon review of Annex B[50] of the Final Decision on Disputed Assessment (FDDA) and the 1st and 2nd Quarterly VAT Returns filed with the BIR,[51] the difference of ₱8,167.09 arose from different invoice amount used and typographical error, computed as follows:

Different Invoice Amount Used (Sales Amount Inclusive of VAT)					
Date	**Invoice Number**	**Invoice Price per Annex B**	**Invoice Price per Returns**	**Difference**	**Invoice Price Net of VAT[52]**
04/25/13	1398	₱85,000.00	₱75,892.86	₱9,107.14	₱8,131.38
Typographical Error					
04/29/13	1405	1,617,488.92	1,617,448.92	40.00	35.72
TOTAL					**₱8,167.09**

However, petitioner failed to submit before the Court the pertinent sales invoices (Invoice Nos. 1398 and 1405) to refute respondent's findings. Thus, for petitioner's failure to substantiate the amounts at issue, the respondent's assessment for this item is sustained. *gr*

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[50] Docket, p. 427.
[51] Exhibits P-3 to P-4 (inclusive of sub-markings), Docket, pp. 435-440.
[52] Price Net of VAT is equal to Difference divided by 1.12.

b. Undeclared Sales from issued Official Receipts in the amount of ₱29,750,076.39

Respondent's verification also disclosed that petitioner issued official receipts to cover transactions amounting to a total of ₱29,750,076.39. Respondent believes that since the petitioner issued VATable documents to said sales/receipts, the amount represents undeclared sales that should be subject to VAT under Section 108 of the NIRC, as amended.[53]

For reference, Annex C of the FDDA[54] is reproduced below:

SUMMARY OF VAT Official Receipt Issued (in addition to the VAT Sales Invoice)			
January 1, 2013 to June 30, 2013			
Name of Client	**OR No.**	**OR Date**	**Gross Amount**
Holcim Phils.	1332	8-Jan-13	₱ 715,000.00
Mindanao Rock	1333	2-Jan-13	31,600.00
Pinagpala PT Agg. Corp.	1334	25-Jan-13	47,500.00
Pinagpala PT Agg. Corp.	1335	25-Jan-03[55]	42,000.00
Hi-Tone	1336	5-Feb-13	15,800.00
San Leonardo Aggregates	1337	31-Jan-13	50,000.00
Rapu-Rapu Processing, Inc.	1338	18-Feb-13	186,200.00
Holcim Phils.	1339	21-Feb-13	219,641.86
Safecon Industries, Inc.	1340	26-Feb-13	47,400.00
JLR Construction & Aggregates, Inc.	1341	3-Mar-13	780,000.00
Rapu-Rapu Processing, Inc.	1342	11-Mar-13	651,700.00
Rapu-Rapu Processing, Inc.	1343	11-Mar-13	426,790.00
Carmen Copper, Inc.	1344	8-Mar-13	9,322,083.40
Carmen Copper, Inc.	1345	18-Mar-13	4,666,790.70
Krushrock Corporation	1346	25-Mar-13	125,720.00
Pinagpala PT Agg. Corp.	1347	12-Apr-13	146,504.00
Carmen Copper, Inc.	1348	23-Apr-13	10,003,288.32
Master Rock Aggregates	1349	14-May-13	7,900.00
Carmen Copper, Inc.	1350	16-May-18	221,760.00
Motalban Miller Aggregate Corp.	1351	11-May-13	60,000.00
Carmen Copper, Inc.	1352	22-May-13	1,328,859.00
Batong Angono Agg Corp.	1353	21-May-13	104,260.70
Batong Angono Agg Corp.	1354	21-May-13	52,130.38
Motalban Miller Aggregate Corp.	1355	27-May-13	60,000.00

[53] Details of Discrepancy, FDDA, Exhibit P-1, Docket, p. 425.
[54] Exhibit P-1-a, Docket, p. 428.
[55] Should be Year 2013.

Carmen Copper, Inc.	1356	30-May-13	3,619,827.20
JLR Construction & Aggregates, Inc.	1357	27-May-13	103,600.00
Motalban Miller Aggregate Corp.	1358	8-Jun-13	42,500.00
Huang Construction Corp.	1359	17-Jun-13	24,500.00
Krushrock Corporation	1360	21-Jun-13	125,720.00
Motalban Miller Aggregate Corp.	1361	22-Jun-03[56]	42,500.00
PASAR Corporation	1362	28-Jun-13	48,510.00
TOTAL			**₱33,320,085.56**
NET OF VAT			**₱29,750,076.39**

Petitioner, in its defense, stated that except for the four sales transactions to Holcim Cement[57] and Pinagpala PT Agg. Corporation, which were not included in the Sales and VAT output tax schedule filed with the corresponding Quarterly VAT returns, all the other sales from the clients listed in Annex C of the FDDA have previously been declared as sales in the VAT returns.[58]

Accordingly, PMCI pointed out that it is factually erroneous for the respondent to consider that it had not declared all the sales listed in Annex C of the FDDA and, thus, incorrectly conclude that the same sales should be subject to 12% VAT. Petitioner insisted that these alleged undeclared sales had, in fact, been fully declared in the VAT returns and for which the correct taxes were paid.[59]

PMCI maintains, further, that in affirming the validity of the examiner's assessment in the FDDA, respondent required the petitioner to declare the very same transactions twice: first in the VAT sales invoice and then in the VAT official receipts and, in effect, compel it to pay VAT on the same transactions twice.[60]

Respondent cites Section 113(A) of the National Internal Revenue Code (NIRC), as amended, which prescribes the use or issuance of VAT invoices and receipts. Respondent explains that for every sale of goods petitioner should issue a VAT invoice and for every sale of service petitioner should issue a VAT official receipt.[61] Moreover, based on Section 113(D) of the NIRC, as amended, petitioner should

[56] Should be Year 2013.
[57] Should be Holcim Philippines, Inc.
[58] Arguments, Petition for Review, Docket, p. 13.
[59] Memorandum for the Petitioner, Docket, p. 528.
[60] *Id.*
[61] Respondent's Answer, Docket, p. 125.

be subjected to the consequence of erroneously issuing VATable documents and be held liable for VAT.[62]

The Court finds for the petitioner.

Section 113(A) of the NIRC, as amended, provides:

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

(A) Invoicing Requirements. – A VAT-Registered person shall issue:

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

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

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

xxx xxx xxx

(C) Accounting Requirements. - Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance.

(D) Consequence of Issuing Erroneous VAT Invoice or VAT Official Receipt. –

(1) If a person who is not a VAT-registered persons issues an invoice or receipt showing his Taxpayer Identification Number (TIN), followed by the word "VAT";

(a) The issuer shall, in addition to any liability to other percentage taxes, be liable to:

(i) The tax imposed in Section 106 or 108 without the benefit of any input tax credit; and

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[62] Respondent's Answer, Docket, p. 125.

> (ii) A 50% surcharge under Section 248(B) of this Code;
>
> (b) The VAT shall, if the other requisite information required under Subsection (B) hereof is shown on the invoice or receipt, be recognized as an input tax credit to the purchaser under Section 110 of this Code.
>
> (2) If a VAT-registered person issues a VAT invoice or VAT official receipt for a VAT-exempt transaction, but fails to display prominently on the invoice or receipt the term 'VAT exempt sale', the issuer shall be liable to account for the tax imposed in section 106 or 108 as if Section 109 did not apply.
>
> **(E) Transitional Period.** - Notwithstanding Subsection (B) hereof, taxpayers may continue to issue VAT invoices and VAT official receipt for the period July 1, 2005 to December 31, 2005 in accordance with Bureau of Internal Revenue administrative practices that existed as of December 31, 2004." (*Underscoring supplied*)

It is not disputed that PMCI is engaged in the distribution of crushing, screening, wear protection, conveying and minerals processing equipment, service and systems solutions.[63] In essence, petitioner is primarily engaged in the sale of goods. The issuance of a VAT invoice for its sales is, therefore, in accordance with the law.

Under Section 113(A) as cited, a VAT invoice is issued for every sale, barter or exchange of goods or properties. Hence, respondent's basis for the assessment should properly be the VAT invoices issued by the taxpayer and not its VAT Official Receipts.[64]

Petitioner's accountant Mr. Marito P. Ibasco explained the procedure followed by PMCI for the issuance of both VAT invoices and official receipts covering the same transactions. The pertinent portion of the Amended Judicial Affidavit of Mr. Ibasco,[65] reads:

> "38. QUESTION: What is the relationship between the official receipts issued by Process and the sales invoice?

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[63] Par. 1, JSFI, Docket, p. 281.
[64] Annex C, FDDA, Exhibit P-1, Docket, p 428.
[65] Docket, p. 304.

> ANSWER: <u>Ma'am, the official receipts are issued when the sales invoice has been paid</u>. The official receipt indicates the sales invoice number. <u>The invoice and receipt refer to the same transaction</u>." (*Underscoring supplied*)

Nowhere in Section 113(D) does the law allow the respondent to impose the 12% VAT *twice on the same transaction* as a consequence to the taxpayer who issues both VAT invoice and official receipt to cover the same. Furthermore, the provision is clearly inapplicable to PMCI since, as shown by its VAT invoices, it is a VAT-registered taxpayer and its sales of processing equipment are *not* VAT-exempt.

The Court's own verification of the documentary evidence, such the reconciliation schedule[66] of the subject VAT invoices and official receipts as well as the VAT returns and the Sales and Output VAT Schedules, corroborates the testimony of Mr. Ibasco. The table below will show that the transactions and their documentation *actually match* and *can be traced and reconciled* with the sales invoices and their corresponding official receipts that formed the basis of this item of assessment:

INVOICES							
DATE	**CLIENT NAME**	**EXHIBIT NO.**	**REF. (Docket Page)**	**INVOICE NO.**	**SALES**	**OUTPUT**	**TOTAL INVOICE PRICE**
2-Jan-13	Mindanao Rock	P-6	443	1372	28,214.29	3,385.71	31,600.00
5-Feb-13	Hi Tone	P-7	445	1381	14,107.14	1,692.86	15,800.00
9-Jul-12	San Leonardo Aggregates, Inc.	P-8	447	1307	199,500.00	23,940.00	223,440.00
14-Feb-13	Rapu Rapu Processing, Inc.	P-9	449	1386	190,000.00	-	190,000.00
2-Jan-13	Holcim Philippines, Inc.	P-10	451	1376	196,108.80	23,533.06	219,641.86
9-Jan-13	Safecon Industries, Inc.	P-11	453	1373	42,321.43	5,078.57	47,400.00
7-Mar-13	JLR Construction & Aggregates, Inc.	P-12	455	1403	1,392,857.14	167,142.86	1,560,000.00
14-Feb-13	Rapu Rapu Processing, Inc.	P-13	457	1385	665,000.00	-	665,000.00
14-Feb-13	Rapu Rapu Processing, Inc.	P-14	459	1384	388,839.29	-	435,500.00

[66] Exhibit P-5, Docket, p. 441.

18-Mar-13	Carmen Copper Corporation	P-15	461	1402	9,512,330.00	-	9,512,330.00
18-Mar-13	Carmen Copper Corporation	P-16	463	1401	4,713,930.00	-	4,713,930.00
30-Apr-13	Krushrock Corporation	P-17	465	1406	224,500.00	26,940.00	251,440.00
23-Apr-13	Carmen Copper Corporation	P-18	468	1412	4,607,280.00	-	4,607,280.00
23-Apr-13	Carmen Copper Corporation	P-18-a	469	1413	5,553,144.00	-	5,553,144.00
6-May-13	Master Rock Aggregates	P-19	471	1408	7,053.57	846.43	7,900.00
16-May-13	Carmen Copper Corporation	P-20	473	1415	224,000.00	-	224,000.00
6-Feb-13	Montalban Millex Agg. Corp.	P-21	475	1377	75,892.86	9,107.14	85,000.00
6-Feb-13	Montalban Millex Agg. Corp.	P-21-a	476	1378	31,250.00	3,750.00	35,000.00
22-May-13	Carmen Copper Corporation	P-22	479	1420	1,343,790.00	-	1,343,790.00
31-Jan-13	Batong Angono Aggregates Corp.	P-23	481	1371	93,928.56	11,271.43	105,199.99
23-Apr-13	Batong Angono Aggregates Corp.	P-24	483	1396	188,160.00	22,579.20	210,739.20
30-May-13	Carmen Copper Corporation	P-25	485	1421	3,702,096.00	-	3,702,096.00
14-Feb-13	JLR Construction & Aggregates, Inc.	P-26	487	1383	40,000.00	4,800.00	44,800.00
25-Feb-13	JLR Construction & Aggregates, Inc.	P-26-a	488	1389	52,500.00	6,300.00	58,800.00
23-Jan-13	Montalban Millex Agg. Corp.	P-27	490	1382	75,892.86	9,107.14	85,000.00
17-Jun-13	Huang Construction Corp.	P-28	493	1419	21,875.00	2,625.00	24,500.00
20-Jun-13	Philippine Associated Smelting Corp. (PASAR)	P-29	495	1404	21,000.00	-	21,000.00
7-May-13	Philippine Associated Smelting Corp. (PASAR)	P-29-a	496	1409	28,000.00	-	28,000.00
				TOTAL	**33,633,570.94**	**322,099.40**	**34,002,331.05**

OFFICIAL RECEIPTS

DATE	CLIENT NAME	EXHIBIT NO.	REF. (Docket Page)	INVOICE NO.	OR No.	GROSS AMOUNT	EWT	NET AMOUNT
2-Jan-13	Mindanao Rock	P-6-a	444	1372	1333	31,600.00	-	31,600.00
5-Feb-13	Hi Tone	P-7-a	446	1381	1336	15,800.00	-	15,800.00

31-Jan-13	San Leonardo Aggregates, Inc.	P-8-a	448	1307	1337	50,000.00	-	50,000.00
18-Feb-13	Rapu Rapu Processing, Inc.	P-9-a	450	1386	1338	190,000.00	3,800.00	186,200.00
21-Feb-13	Holcim Philippines, Inc.	P-10-a	452	1376	1339	219,641.86	3,922.18	215,719.68
26-Feb-13	Safecon Industries, Inc.	P-11-a	454	1373	1340	47,400.00	423.21	46,976.79
3-Mar-13	JLR Construction & Aggregates, Inc.	P-12-a	456	1403	1341	780,000.00	-	780,000.00
11-Mar-13	Rapu Rapu Processing, Inc.	P-13-a	458	1385	1342	665,000.00	13,300.00	651,700.00
11-Mar-13	Rapu Rapu Processing, Inc.	P-14-a	460	1384	1343	435,500.00	8,710.00	426,790.00
18-Mar-13	Carmen Copper Corporation	P-15-a	462	1402	1344	9,512,330.00	190,246.60	9,322,083.40
18-Mar-13	Carmen Copper Corporation	P-16-a	464	1401	1345	4,713,930.00	47,139.30	4,666,790.70
25-Mar-13	Krushrock Corporation	P-17-a	466	1406	1346	125,720.00	-	125,720.00
20-Jun-13		P-17-b	467		1360	125,720.00	-	125,720.00
23-Apr-13	Carmen Copper Corporation	P-18-b	470	1412	1348	10,160,424.00	157,135.68	10,003,288.32
	Carmen Copper Corporation			1413				
14-May-13	Master Rock Aggregates	P-19-a	472	1408	1349	7,900.00	-	7,900.00
16-May-13	Carmen Copper Corporation	P-20-a	474	1415	1350	224,000.00	2,240.00	221,760.00
11-May-13	Montalban Millex Agg. Corp.	P-21-b	477	1377	1351	60,000.00	-	60,000.00
27-May-13	Montalban Millex Agg. Corp.	P-21-c	478	1378	1355	60,000.00	-	60,000.00
22-May-13	Carmen Copper Corporation	P-22-a	480	1420	1352	1,343,790.00	14,931.00	1,328,859.00
21-May-13	Batong Angono Aggregates Corp.	P-23-a	482	1371	1353	105,199.99	939.29	104,260.70
21-May-13	Batong Angono Aggregates Corp.	P-24-a	484	1396	1354	52,130.38	-	52,130.38
30-May-13	Carmen Copper Corporation	P-25-a	486	1421	1356	3,702,096.00	82,268.80	3,619,827.20
27-May-13	JLR Construction & Aggregates, Inc.	P-26-b	489	1383	1357	103,600.00	925.00	102,675.00
	JLR Construction & Aggregates, Inc.			1389				
8-Jun-13	Montalban Millex Agg. Corp.	P-27-a	491	1382	1358	42,500.00	-	42,500.00
22-Jun-13		P-27-b	492		1361	42,500.00	-	42,500.00
17-Jun-13	Huang Construction Corp.	P-28-a	494	1419	1359	24,500.00	-	24,500.00
28-Jun-13	Philippine Associated Smelting Corp. (PASAR)	P-29-b	497	1404	1362	49,000.00	490.00	48,510.00
	Philippine Associated Smelting Corp. (PASAR)			1409				
					TOTAL	**32,890,282.23**	**526,471.06**	**32,363,811.17**

By presenting before the Court its quarterly sales and VAT output tax schedule[67] and the corresponding Quarterly VAT Return (BIR Form No. 2550Q) for the 3rd Quarter of Taxable Year 2012,[68] 1st Quarter[69] and 2nd Quarter[70] of Taxable Year 2013, PMCI successfully proved that the sales transactions identified by the respondent as undeclared sales were, *in fact*, supported by VAT invoices and were correctly reported in its quarterly VAT returns.

To reiterate, the Court was able to independently verify and is, thus, convinced that PMCI's alleged undeclared sales were substantiated with VAT invoices and were correctly reported in its VAT returns.

Accordingly, to allow this item of assessment to prosper would be to sanction the respondent in collecting anew VAT on transactions for which the taxes were proven to have already been declared and paid. That would be tantamount to unjust enrichment which is not permitted by the law.

In *Gonzalo v. Tarnate, Jr.*,[71] the Supreme Court explained the principle of unjust enrichment as a public policy:

> "Unjust enrichment exists, according to *Hulst v. PR Builders, Inc.*, 'when a person unjustly retains a benefit at the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." The prevention of unjust enrichment is a recognized public policy of the State, for Article 22 of the Civil Code explicitly provides that "[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.' It is well to note that Article 22 'is part of the chapter of the Civil Code on Human Relations, the provisions of which were formulated as basic principles to be observed for the rightful relationship between human beings and for the stability of the social order; designed to indicate certain norms that spring from the fountain of good conscience; guides for human conduct that should run as golden threads through society to the end that law may approach its supreme ideal which is the sway and dominance of justice.'" (*Underscoring supplied; citations omitted*) Jc

[67] Exhibits P-2-a, P-2-b, P-3-a and P-4-a, Docket, pp. 434, 437 and 440.
[68] Exhibit P-2, Docket, p. 431.
[69] Exhibit P-3, Docket, p. 435.
[70] Exhibit P-4, Docket, p. 438.
[71] G.R. No. 160600, January 15, 2014.

From the immediately preceding tables, the Court also noted a discrepancy between the total amount per invoice of ₱34,002,331.05 and the total amount per official receipts of ₱32,890,282.23. The ₱1,112,048.82 difference, however, relates to the partial payments made and recorded in three invoices, to wit:

Client Name	Invoice No.	Invoice Amount	OR No.	OR Amount	Difference
San Leonardo Aggregates, Inc.	1307	₱ 223,440.00	1337	₱ 50,000.00	₱ 173,440.00
JLR Construction & Aggregates, Inc.	1403	1,560,000.00	1341	780,000.00	780,000.00
Batong Angono Aggregates Corp.	1396	210,739.20	1354	52,130.38	158,608.82
TOTAL		**₱1,994,179.20**		**₱ 882,130.38**	**₱1,112,048.82**

At any rate, petitioner has sufficiently proven that it had correctly declared the sales in its quarterly VAT returns based on the sales invoices it issued. Therefore, this discrepancy no longer has any bearing on the issue on petitioner's alleged undeclared sales for the subject period.

Finally, as jointly stipulated, the petitioner decided not to contest the alleged undeclared sales of ₱849,110.71[72] and its failure to substantiate the same:[73]

Name of Client	OR No.	OR Date	Gross Amount
Holcim Phils.	1332	1.8.2013	₱ 715,000.00
Pinagpala PT Agg. Corp.	1334	1.25.2013	47,500.00
Pinagpala PT Agg. Corp.	1335	1.25.2013	42,000.00
Pinagpala PT Agg. Corp.	1347	4.12.2013	146,504.00
TOTAL			**₱ 951,004.00**
Net of VAT Undeclared Sales			**₱ 849,110.71**

The Court, thus, upholds respondent's assessment in the amount of ₱849,110.71 representing petitioner's undeclared sales based on the issued VAT official receipts. *Je*

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[72] Par. 17, JSFI, Docket, p. 283.

[73] Question & Answer Nos. 22, 35 and 36, Amended Judicial Affidavit of Mr. Marito P. Ibasco, Docket, pp. 301, 303-304.

c. Disallowed Input Tax in the amount of ₱2,987,640.78

Respondent disallowed the claimed input tax for PMCI's failure to submit VAT invoices or official receipts to support the claimed input taxes. In addition, a few of the submitted invoices and receipts were not in accordance with the invoicing requirements.[74]

In this regard, petitioner decided not to question this disallowed item by stipulating upon the same during trial.[75]

Consequently, the disallowed input tax in the amount of ₱2,987,640.78 is retained by the Court.

d. Input tax carry over to succeeding period in the amount of ₱3,196,364.31

This item of assessment represents the excess input tax accumulated by PMCI from January 1, 2013 to June 20, 2013 as shown in its VAT returns. Respondent contends that the excess input tax amounting to ₱3,196,364.31 was disallowed as credits for the period of assessment since the same shall be carried over to the next succeeding quarter(s) as provided under Section 110(B) of the NIRC, as amended.[76]

Respondent's disallowance does not find any basis in fact and law. The benefit of excess input tax carried over by PMCI will only redound in its favor to the succeeding quarter/s, which period is beyond the scope of the assessment subject of review. Accordingly, respondent's disallowance of ₱3,196,364.31 should be cancelled.

In view of the foregoing discussions, the computation below will show that petitioner is not liable for any deficiency VAT for the taxable period January 1, 2013 to June 30, 2013:

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[74] Details of Discrepancy, FDDA, Exhibit P-1, Docket, p. 425.
[75] Par. 16, JSFI, Docket, p. 282.
[76] Details of Discrepancy, FDDA, Exhibit P-1, Docket, p. 426.

VATable Sales per return		₱16,960,954.67
Add: Undeclared Sales	**₱ 8,167.09**	
Undeclared Sales from issued Official Receipts	**849,110.71**	857,277.80
Gross Receipts subject to VAT		**₱17,818,232.47**
Tax Rate		12%
Output Tax Due		**₱2,138,187.90**
Less:		
Input tax carry over from previous period	₱2,147,412.31	
Input tax from current purchases	3,084,266.56	
Total	5,231,678.87	
Less: Disallowed Input Tax	**2,987,640.78**	2,244,038.09
VAT Payable		**₱ (105,850.19)**
Less: Payments Made		-
Basic Tax Due		**₱ (105,850.19)**

WHEREFORE, premises considered, the Petition for Review is **GRANTED**. The VAT assessment issued by respondent against petitioner PMCI for the taxable period, from January 1, 2013 to June 30, 2013, in the aggregate amount of Twelve Million Nine Hundred Seventeen Thousand Eight Hundred Five and 78/100 Pesos (₱12,917,805.78) is hereby **CANCELLED**.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

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

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice