REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

OCEANAGOLD (PHILIPPINES), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10382

Members:

BACORRO-VILLENA, *Acting Chairperson, and* **CUI-DAVID**, *JJ.*

Promulgated:

FEB 2 0 2023 1:30 p.m.

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DECISION

BACORRO-VILLENA, J.:

Before the Court is a Petition for Review[1] filed by petitioner Oceanagold (Philippines), Inc. (**petitioner/Oceanagold**) pursuant to Section 3(a)(1)(2)[2], Rule 4 of the Revised Rules of the Court of Tax

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[1] Filed on 23 October 2020, Division Docket, Volume I, pp. 6-33.

[2] **SEC. 3**. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the

Appeals (**RRCTA**). The petition seeks the refund and/or issuance of a tax credit certificate (**TCC**) for unutilized input taxes attributable to petitioner's zero-rated sales/receipts for the first (1st), second (2nd), third (3rd), and fourth (4th) quarters of calendar year (**CY**) 2018 in the aggregate amount of ₱161,958,657.30.

PARTIES OF THE CASE

Petitioner is a corporation organized under the laws of the Philippines, engaged in large-scale exploration, development and utilization of mineral resources.[3] It holds office at 2nd Floor Carlos J. Valdes Building, 108 Aguirre Street, Legaspi Village, 1229 Makati City, Philippines. It is a value-added tax (**VAT**)-registered entity with Tax Identification Number (**TIN**)/VAT Registration No. 004-870-171-000 with the Bureau of Internal Revenue (**BIR**) Certificate of Registration No. OCN8RC0000048136.[4]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**) with the power to abate tax liabilities and provide tax refunds.

FACTS OF THE CASE

On 16 December 2011, the Board of Investments (**BOI**) issued to petitioner Certificate of Registration No. 2011-270[5] as "New Export Producer of Doré Bars and Copper Concentrate". The BOI confirmed petitioner's export of 100% of its total sales volume for CY 2018 as shown by BOI IS-Certificate No. 2019-036 (**2019 BOI Certificate**).[6]

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taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code[.]

3 Division Docket, Volume II, Exhibit "P-2", Amended Articles of Incorporation (AOI), p. 733.
4 Exhibit "P-4", id., p. 753.
5 Exhibit "P-5", id., p. 754.
6 Exhibit "P-5.1", id., p. 764-765-a.

For the 1st, 2nd, 3rd, and 4th quarters of CY 2018, petitioner engaged in zero-rated sales of minerals; out of which it had claimed an aggregate input VAT of ₱161,958,657.30 attributable to its zero-rated sales (which remained unapplied to the same and succeeding quarters).[7]

On 26 June 2020, petitioner filed with the BIR an administrative claim for refund[8] of the above-mentioned amount. On 07 July 2020, the VAT Credit Audit Division (**VCAD**) received its claim along with all previously submitted documents.[9] Respondent, however, did not act on petitioner's claim. Aggrieved, petitioner filed the instant Petition for Review before this Court on 23 October 2020.

In its petition, petitioner asked for the Court to: (1) declare that it is entitled to a refund in the amount of ₱161,958,657.30, representing unutilized input VAT arising from its zero-rated sales for the 1st, 2nd, 3rd and 4th quarters of CY 2018; and, (2) order respondent to grant petitioner a refund in the said amount of ₱161,958,657.30.[10]

On 03 November 2020, the Court issued Summons[11] on respondent who, on 05 February 2021, filed an Answer[12] that essentially stated why the denial of petitioner's claim for refund was proper. According to respondent, petitioner failed to substantiate its claim for refund with supporting documents.

On 18 February 2021, the Court issued a Notice of Pre-Trial Conference.[13] On 17 March 2021, petitioner filed its Pre-Trial Brief[14] (**PTB**) while respondent filed its PTB[15] on equal date. Later, pre-trial was held and the Court ordered the parties to submit their Joint Stipulation of Facts and Issues (**JSFI**).[16] Still later, on 21 May 2021, the

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7 Petition for Review, id., Volume I, pp. 11 and 18.
8 Exhibits "P-35" and "P-36", id., Volume II, pp. 1113-1121 and 1122.
9 Petitioner for Review, id., Volume I, p. 15.
10 Id., p. 27.
11 Id., p. 474.
12 Id., Volume II, pp. 488-498.
13 Id., pp. 500-501.
14 Id., pp. 502-531.
15 Id., pp. 532-561.
16 See Order dated 22 March 2021, id., p. 569.

parties submitted their JSFI.[17] In the Pre-Trial Order dated 07 June 2021[18], the Court admitted and approved the parties' JSFI.

In the trial that ensued, petitioner presented the following witnesses who all testified *via* their judicial affidavits: (1) Hesther T. Bahiwag (**Bahiwag**); (2) Annalyn B. Artuz (**Artuz**); (3) Atty. Joan D. Adaci-Cattiling (**Atty. Adaci-Cattiling**); and, (4) Dorelyn Casono-Rosbero (**Casono-Rosbero**).

On the witness stand, Bahiwag, petitioner's Financial Accounting Superintendent, declared that petitioner is VAT-registered. She also testified on the latter's accumulation of input VAT for the 1st to 4th quarters of CY 2018 resulting from its zero-rated export sales among others, and petitioner's filing of VAT Returns during said quarters.[19]

Artuz, the Court-appointed Independent Certified Public Accountant (**ICPA**) testified next about her findings as contained in the ICPA Report.[20] The ICPA concluded that after a review and verification of petitioner's documents, out of the total refund claim of ₱161,958,657.30, only the lesser amount of ₱160,574,206.21 was adequately supported by relevant documents.[21]

Atty. Adaci-Cattiling, petitioner's President and Senior Legal Counsel, also assumed the witness stand where she identified and authenticated some of petitioner's legal documents; particularly, as regards petitioner's juridical identity and SEC registration.[22]

Lastly, Casono-Rosbero also identified and authenticated certain documents that petitioner presented in court. She likewise explained her responsibilities as a customs broker and operations manager, and the whole importation process utilized by Antrak Philippines Transport Solutions Corporation (**Antrak**).[23]

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17 Id., pp. 537-561.
18 Id., pp. 589-599.
19 Exhibit "P-47", Judicial Affidavit of Hesther T. Bahiwag, id., Volume I, pp. 76-97.
20 Exhibit "P-50", ICPA Report.
21 Exhibit "P-49", Judicial Affidavit of Annalyn B. Artuz, Division Docket, Volume II, pp. 644-648.
22 Exhibit "P-46", Judicial Affidavit of Atty. Joan D. Adaci-Cattiling, id., Volume I, pp. 34-37.
23 Exhibit "P-48", Judicial Affidavit of Dorelyn Casono-Rosbero, id., pp. 458-465.

Later, on 22 November 2021[24], the Court ordered petitioner to file its Formal Offer of Evidence (**FOE**) within twenty (20) days from notice. The Court likewise gave respondent an equal period to file a comment to petitioner's FOE. On 13 December 2021, petitioner filed its FOE "With Motion for Marking"[25] with respondent's Comment[26] thereto on 17 December 2021.

Without objection from the parties and prior to resolving petitioner's FOE, respondent presented the testimony of its sole witness, Revenue Officer (**RO**) Jayson B. Gordovez (**Gordovez**).

RO Gordovez testified to his examination of petitioner's administrative claim. The witness stated that, upon examination of petitioner's submitted documents, its claim was denied through a letter[27] dated 11 September 2020.[28]

Upon termination of RO Gordovez's testimony, the Court resolved petitioner's FOE[29] and admitted all of its exhibits; particularly, Exhibits **"P-1"** to **"P-36"** and **"P-41"** to **"P-77"**[30], inclusive of their

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[24] See Order dated 22 November 2021, id., Volume II, p. 651.
[25] Id., pp. 661-716.
[26] Id., pp. 1134-1136.
[27] Exhibit "R-4", BIR Records, p. 323.
[28] Exhibit "R-6", Judicial Affidavit of Jayson B. Gordovez, Division Docket, Volume II, pp. 656-659.
[29] See Order dated 02 March 2022, id., p. 1142.
[30]

Exhibit No.	Description
"P-1"	Certificate of Incorporation dated July 24, 1996 issued by the Securities and Exchange Commission ("SEC") to Australasian Philippines Mining, Inc. with attached Articles of Incorporation and By-Laws.
"P-2"	Certificate of Filing of Amended Articles of Incorporation dated January 7, 2015 issued by SEC to OceanaGold (Philippines), Inc. with attached Amended Articles of Incorporation.
"P-3"	Certificate of Filing of Amended Articles of Incorporation dated June 1, 2007 issued by SEC to OceanaGold (Philippines), Inc. with attached Amended Articles of Incorporation.
"P-4"	Bureau of Internal Revenue ("BIR") Certificate of Registration OCN No. 8RC0000048136 dated January 1, 1997 issued to OceanaGold (Philippines), Inc. (Formerly Australasian Philippines Mining, Inc.)
"P-5"	Board of Investment ("BOI") Certificate of Registration No. 2011-270 dated December 16, 2011.
"P-5.1"	BOI-IS Certificate No. 2019-C061.
"P-6"	Application for Registration Information Update (BIR Form 1905) stamped received by the BIR on June 28, 2007.
"P-8" to P-15.2"	Various Monthly VAT Declarations and Returns for the months of January to November 2018.

"P-16"	Original Quarterly VAT Return (BIR Form 2550Q) for the 1st Quarter of 2018 filed on April 25, 2018.
"P-16.1" to "P-16.2"	Various Amended Quarterly VAT Return (BIR Form 2550Q) for the 1st Quarter of 2018 filed on June 27, 2018 and March 27, 2019, respectively.
"P-16.3" to "P-16.4"	Final Amended Quarterly VAT Return (BIR Form 2550Q) for the 1st Quarter of 2018 filed on April 2, 2019.
"P-17"	Original Quarterly VAT Return (BIR Form 2550Q) for the 2nd Quarter of 2018 filed on July 25, 2018.
"P-17.1"	Amended Quarterly VAT Return (BIR Form 2550Q) for the 2nd Quarter of 2018 filed on March 27, 2019.
"P-17.2" to "P-17.3"	Final Amended Quarterly VAT Return (BIR Form 2550Q) for the 2nd Quarter of 2019 filed on April 2, 2019.
"P-18"	Original Quarterly VAT Return (BIR Form 2550Q) for the 3rd Quarter of 2018 filed on October 25, 2018.
"P-18.1"	Amended Quarterly VAT Return (BIR Form 2550Q) for the 3rd Quarter of 2018 filed on March 28, 2019.
"P-18.2" to "P-18.3"	Final Amended Quarterly VAT Return (BIR Form 2550Q) for the 3rd Quarter of 2019 filed on April 2, 2019.
"P-19"	Original Quarterly VAT Return (BIR Form 2550Q) for the 4th Quarter of 2018 filed on January 24, 2018.
"P-19.1"	Amended Quarterly VAT Return (BIR Form 2550Q) for the 4th Quarter of 2018 filed on March 28, 2019.
"P-19.2" to "P-19.3"	Final Amended Quarterly VAT Return (BIR Form 2550Q) for the 4th Quarter of 2018 filed on April 2, 2019.
"P-20"	Letter dated December 23, 2013 notifying and classifying OceanaGold (Philippines), Inc. as a large taxpayer.
"P-21" to "P-21.2"	Original Quarterly Income Tax Return (BIR Form No. 1702Q) for the 1st to 3rd Quarters of 2018.
"P-21.3"	Annual Income Tax Return (BIR Form No. 1702-MX) for taxable year 2018.
"P-21.4"	Audited Financial Statements as of December 31, 2018 as attached to the Annual Income Tax Return (BIR Form No. 1702-MX) for taxable year 2018.
"P-22"	Summary List of Sales/Sales Scheduled for the 1st to 4th Quarters of 2018.
"P-23"	Schedule of Export Sales for the 1st to 4th Quarters of 2018.
"P-23-1"	Reconciliation Export Sales and Foreign Currency Remittance on Zero rated Sale of Goods (Schedule of Export Sales) for the 1st to 4th quarters of taxable year 2018.
"P-24"	Offtake (Sales) Agreement dated October 12, 2012.
"P-25"	Refining Agreement.
"P-26" to P-26.18"	Various Provisional Invoices.
"P-27" to 27.3"	Various Sales Invoice from 1st to 4th Quarters of 2018.
"P-27.4" to P-27.16"	Various Final Sales Invoices.
"P-28" to "P-28.3"	Various Bills of Lading/Airway Bill from 1st to 4th Quarters of 2018.
"P-28.4" to P-28.17"	Various bills of lading and airway bills.
"P-29" to "P-29.3"	Various Permit to Export from 1st to 4th Quarters of 2018
"P-29.4" to "P-29.17"	Various permits to export.
"P-30" to "P-30.3"	Various HSBC Transaction Details for the 1st to 4th Quarters of 2018.
"P-31" to "P-31.5"	Various Certificate of Inward Remittance issued by HSBC for the 1st to 4th Quarters of 2018).
"P-32" to "P-32.1"	Amended Quarterly VAT Return (BIR Form 2550Q) for the 4th Quarter of 2019 filed on June 8, 2020.
"P-33" to "P-33.3	Various Statement of Settlement of Duties and Taxes ("SSDT") with attached SAD, Commercial Invoice, and Bill of Lading/Airway Bill for the 1st to 4th Quarters of 2018.

"P-33-1" to "P-33.1397-1", "P-33-2" to "P-33.1390-2", "P-33-3" to "P-33.967-3", "P-33-4" to "P-33.401-4", "P-33-5" to "P-33.10-5", "P-33-6" to "P-33.1-6.14"	Various SAD, SSDT, bank payment details, bank statements, commercial invoices, and bank certifications.
"P-33-7" to "P-33.4-7"	Various VAT Payment Certifications issued by the Bureau of Customs ("BOC").
"P-34"	Schedule of Importations for the period January 1, 2018 to December 31, 2018.
"P-34.1" to "P-34.2"	Schedule of Amortization of input tax on imported and locally purchased capital goods exceeding P1.0 million from previous quarter/year.
"P-35"	Application for Refund Letter dated June 26, 2020.
"P-35.1"	Stamp dated June 26, 2020.
"P-35.2"	Stamp dated July 7, 2020.
"P-36"	BIR Form No. 1914.
"P-36.1"	Stamp dated July 7, 2020.
"P-41"	Screenshot of the website of eTrade system.
"P-42"	Screenshot of the webpage of eTrade system showing a certain user account's details and several options available to the user.
"P-43"	Screenshot of the webpage of the eTrade system, which shows the status notification per import entry.
"P-44"	Screenshot of the webpage of InterCommerce Network.
"P-45"	Screenshot of the webpage of E-konek Pilipinas.
"P-46"	Judicial Affidavit of Atty. Joan D. Adaci-Cattiling dated October 19, 2020.
"P-46.1"	Signature of Atty. Joan D. Adaci-Cattiling on page 4 of her Judicial Affidavit.
"P-47"	Judicial Affidavit of Hesther T. Bahiwag dated October 22, 2020.
"P-47.1"	Signature of Ms. Hesther T. Bahiwag on page 32 of her Judicial Affidavit.
"P-48"	Judicial Affidavit of Mrs. Dorelyn Casono-Rosbero dated October 20, 2020.
"P-48.1"	Signature of Mrs. Dorelyn Casono-Rosbero on page 8 of her Judicial Affidavit.
"P-49"	Judicial Affidavit of Ms. Annalyn B. Artuz dated November 11, 2021.
"P-49.1"	Signature of Ms. Annalyn B. Artuz on page 5 of her Judicial Affidavit.
"P-50"	Independent CPA Report dated September 6, 2021.
"P-50.1"	Signature of Mrs. Annalyn B. Artuz on page 37 of her report.
"P-50.2"	USB Flash Drive.
"P-51"	VAT Incurred and Recorded per Books but Not Claimed for Input VAT Allowable Deductions in VAT Returns – 2016.
"P-51.1"	VAT Incurred and Recorded per Books but Not Claimed for Input VAT Allowable Deductions in VAT Returns – 2017.
"P-51.2"	VAT Incurred and Recorded per Books but Not Claimed for Input VAT Allowable Deductions in VAT Returns – 2018.
"P-52"	Batch Audit Report.
"P-53" to "P-55"	Input VAT claimed for refund from periods prior to the period of claim based on Application for Tax Credits/Refund filed with BIR – 2nd to 4th quarter of 2013.
"P-56" to "P-57"	Input VAT claimed for refund from periods prior to the period of claim based on Application for Tax Credits/Refund filed with BIR – 1st to 4th quarters of 2014.
"58" to "P-59"	Input VAT claimed for refund from periods prior to the period of claim based on Application for Tax Credits/Refund filed with BIR – 1st to 4th quarters of 2015.

sub-markings. The Court likewise admitted all of respondent's exhibits (Exhibits "**R-1**" to "**R-6-A**"[31]) which were offered orally. Furthermore, the Court directed both parties to file their respective memoranda within thirty (30) days from such order.

Subsequently, respondent filed his or her Memorandum[32] on 15 March 2022 while petitioner filed its own Memorandum[33] on 30 March 2022. With the filing of the parties' memoranda, the Court submitted the present petition for decision in a Resolution[34] dated 05 April 2022.

"P-60"	Input VAT claimed for refund from periods prior to the period of claim based on Application for Tax Credits/Refund filed with BIR – 1st quarter of 2016.
"P-61" to "P-61.4"	Tax Credit Certificates.
"P-62" to "P-62.16"	Export Declarations.
"P-63"	Trial Balance.
P-64"	Sales General Ledger with "Accrued Sales" Remarks.
"P-65" to "P-65.1"	General Ledger of Account No. 80599050000427 VAT Receivable – PHP of taxable years 2018 and 2019.
"P-66" to "P-69"	Amended Quarterly VAT Return (BIR Form 2550Q) for 1st to 4th quarters of 2019.
"P-70" to "P-73"	Amended Quarterly VAT Return (BIR Form 2550Q) for 1st to 4th quarters of 2020.
"P-74"	Amended Quarterly VAT Return (BIR Form 2550Q) for the 1st quarter of 2021.
"P-75"	Original Quarterly VAT Return (BIR Form 2550Q) for the 2nd quarter of 2021.
"P-76"	Input VAT claimed for refund from periods prior to the period of claim based on Application for Tax Credits/Refund filed with BIR – 2nd to 4th quarters of 2016.
P-77"	Input VAT claimed for refund from periods prior to the period of claim based on Application for Tax Credits/Refund filed with BIR – 1st to 4th quarters of 2017.

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Exhibit No.	Description
"R-1"	Tax Verification Notice TVN2018-00116248 dated 07 July 2020.
"R-2"	Revised Checklist of Mandatory Requirements on Claims for VAT Refund.
"R-3"	Memorandum dated 11 September 2018.
"R-4"	Letter Denial dated 11 September 2020.
"R-5"	Memorandum dated 02 December 2020.
"R-6"	Judicial Affidavit of Jayson B. Gordovez.
"R-6-A"	Signature of Jayson B. Gordovez on his Judicial Affidavit.

32 Id., pp. 1143-1149.
33 Id., pp. 1151-1185.
34 Id., p. 1187.

ISSUE

The parties put forth a single issue for this Court's resolution –

WHETHER PETITIONER OCEANAGOLD (PHILIPPINES), INC. IS ENTITLED TO A REFUND OF ITS ALLEGED UNUTILIZED INPUT VALUE-ADDED TAX (VAT) ARISING FROM IMPORTATION OF GOODS (OTHER THAN CAPITAL GOODS) AND PURCHASES OF CAPITAL GOODS ATTIRUBUTABLE TO ZERO-RATED SALES FOR THE 1ST, 2ND, 3RD, AND 4TH QUARTERS OF TAXABLE YEAR 2018 IN THE AMOUNT OF ₱161,958,657.30.[35]

ARGUMENTS

In sum, petitioner essentially argues that it is entitled to a refund of the input VAT being claimed. It maintains that the same remains unutilized and is directly attributable to its zero-rated sales. Additionally, petitioner contends that the documents it presented during the trial substantiate sufficiently its entitlement to the refund claimed.

On the other hand, respondent argues that the denial of petitioner's claim for refund is justified because of the latter's failure to properly substantiate its claim with supporting documents at the administrative level.

RULING OF THE COURT

After a careful review of the records of the case, the Court finds the present petition partly meritorious.

Petitioner anchors its claim for refund on Section 110(B), in relation to Section 112(A) and (C) of the National Internal Revenue Code (**NIRC**) of 1997, as amended by Republic Act (**RA**) No. 10963[36],

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35 Joint Stipulation of Facts and Issues (JSFI), id., p. 538.

36 AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO.

otherwise known as Tax Reform for Acceleration and Inclusion (**TRAIN Law**). The said provisions read as follows:

> ...
>
> **Sec. 110.** *Tax Credits.* —
>
> ...
>
> (B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however,* That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.
>
> ...
>
> **Sec. 112.** *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> ...
>
> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents

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8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.
>
> ...

In *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[37] (**Deutsche Knowledge Services**), the Supreme Court set forth the requisites for the entitlement to a tax refund or credit of excess input vat attributable to zero-rated sales, to wit:

> ...
>
> Under Section 4.112-1(a) of Revenue Regulations No. (RR) 16-05, otherwise known as the Consolidated VAT Regulations of 2005, in relation to Section 112 of the Tax Code, a claimant's entitlement to a tax refund or credit of excess input VAT attributable to zero-rated sales hinges upon the following requisites: "(1) the taxpayer must be VAT-registered; (2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax."
>
> ...

The Court shall now proceed with the determination of petitioner's compliance with the aforementioned requisites.

<u>FIRST (1ST) REQUISITE:</u>
PETITIONER IS A VALUE-ADDED TAX (VAT)-REGISTERED ENTITY.

[37] G.R. No. 234445, 15 July 2020; Citations omitted.

Undisputedly, petitioner is a VAT-registered entity with TIN 004-870-171-000 as evidenced by its Certificate of Registration Number OCN8RC0000048136 dated 28 February 2014.[38]

<u>SECOND (2ND) REQUISITE:</u>
PETITIONER IS ENGAGED IN ZERO-RATED OR EFFECTIVELY ZERO-RATED SALES

Petitioner claims that during the 1st to 4th quarters of CY 2018, it generated export sales of gold, silver and copper to its foreign customers Trafigura Pte. Ltd. and Perth Mint Australia, and that these export sales were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (**BSP**). Petitioner submits that such export sales are subject to zero-percent (0%) VAT, pursuant to Section 106 (A)(2)(a)(1) of the NIRC of 1997, as amended, which states:

> ...
> **SEC. 106.** *Value-Added Tax on Sale of Goods or Properties.* —
>
> (A) *Rate and Base of Tax.* — ...
> ...
>
> (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)[.]
> ...

38 Exhibit "P-4", Formal Offer of Evidence (FOE), CD, supra at note 4.

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

1. The sale was made by a VAT-registered person;
2. There was a sale and actual shipment of goods from the Philippines to a foreign country; and,
3. The sale was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.

In the case at bar, the presence of the *first* essential element is beyond question.

As for the *second* essential element, Sections 113(A)(1), (B)(1) and (2)(c) of the NIRC of 1997, as amended, and Sections 4.113-1(A)(1), (B)(1) and (2)(c) of Revenue Regulations (**RR**) No. 16-2005[39], respectively, provide:

> ...
> **SEC. 113.** *Invoicing and Accounting Requirements for VAT-Registered Persons.* —
> (A) *Invoicing Requirements.* — A VAT-registered person shall issue:
>
> 1. **A VAT invoice for every sale, barter or exchange of goods or properties**; and
>
> 2. A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> 1. A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> 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:
>
> ...

[39] Consolidated Value-Added Tax Regulations of 2005.

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[.][40]

...

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

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

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

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

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

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

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

1. A statement that the seller is a VAT-registered person, followed by his TIN;
2. The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:

   ...

   c. If the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt[.][41]

...

Per the above provisions, any VAT-registered person claiming for VAT zero-rating (in relation to export sales of goods) must present the following documents, to wit: (1) sales invoice as proof of sale of goods;

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40 Emphasis supplied.
41 Emphasis supplied.

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

In addition to the above requirements, the sales invoices supporting the export sales must be duly registered with the BIR and must contain all the required information, pursuant to Section 237 of the NIRC of 1997, as amended, *viz*:

> ...
>
> SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, **issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service.** *Provided, however,* That in the case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or regardless of the amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which **shall** show the **name, business style, if any, and address of the purchaser, customer or client**: *Provided, further,* That where the purchaser is a VAT-registered person, in addition to the information herein required, the **invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.**[42]
>
> ...

To summarize the foregoing requirements, the following information shall be indicated in the VAT invoices evidencing the export sale:

1. A statement that the seller is a VAT-registered person, followed by its TIN;

2. The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT, provided that (a) the amount of tax shall be shown as a separate item in the invoice or receipt, (b) if the sale is exempt from VAT, the term "VAT exempt sale" shall be

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42 Emphasis supplied and italics in the original text.

written or printed prominently on the invoice or receipt, or (c) **if the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;** (d) if the sale involves goods, properties or services, some of which are subject to and some of which are VAT-zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale;

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

4. Date of transaction; and,

5. Quantity, unit cost and description of merchandise or nature of service.

Thus, only export sales compliant with the foregoing requirements shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

In its 1st to 4th quarters of CY 2018, petitioner reported the total sales of ₱12,400,121,018.60 as shown below:

	1st Quarter[43]	2nd Quarter[44]	3rd Quarter[45]	4th Quarter[46]	Total
Vatable sales subject to 12%	₱-	₱4,658,110.71	₱794,375.00	₱2,956,826.78	₱8,409,312.49
Zero-rated sales/receipts	2,872,761,177.05	3,184,669,584.95	2,761,266,026.29	3,573,014,917.82	12,391,711,706.11
Total sales	**₱2,872,761,177.05**	**₱3,189,327,695.66**	**₱2,762,060,401.29**	**₱3,575,971,744.60**	**₱12,400,121,018.60**

43 Exhibit "P-16.3", Division Docket, Volume II, p. 800.
44 Exhibit "P-17.2", id., p. 803.
45 Exhibit "P-18.2", id., p. 808.
46 Exhibit "P-19.2", id., p. 811.

Petitioner incurred the aforesaid declared zero-rated sales from the shipments of doré and copper concentrates to its foreign clients, Trafigura Pte. Ltd. and Western Australian Mint, pursuant to the respective Offtake Agreement[47] and Refining Agreement.[48] To support the said zero-rated sales, petitioner submitted in evidence the (1) corresponding provisional[49] and final sales invoices[50]; and, (2) export documents such as bills of lading/air waybills[51], permits to export[52], which the ICPA had all examined. Upon scrutiny of the supporting documents and the ICPA Report[53], the following table summarizes petitioner's zero-rated sales:

Particular	Provisional Invoice		Sales Invoice		Bill of Lading/Airway Bill		Summary List of Sales	
	Exhibit No.	Date	Exhibit No.	Date	Exhibit No.	Date	Amount in USD	Amount in PHP
1st Quarter of 2018								
Shipment 58	P-26.4	10/11/2017	P-27	1/19/2018	P-28.4	10/7/2017	2,423,911.73	122,429,357.57
Shipment 59	P-26.7	12/1/2017	P-27.4	3/7/2018	P-28.6	11/30/2017	(3,112,428.57)	(162,057,930.78)
Shipment 61	P-26	3/1/2018	P-27.5	4/17/2018	P-28	2/25/2018	34,136,072.21	1,777,397,007.83
Dore 39	P-26.10	1/10/2018	P-27.9	12/17/2018	P-28.11	1/8/2018	12,575,859.20	635,194,072.33
Dore 40	P-26.11	3/7/2018	P-27.10	12/17/2018	P-28.12	3/1/2018	5,037,476.90	262,291,347.23
Dore 41	P-26.12	3/28/2018	P-27.11	12/17/2018	P-28.13	3/26/2018	4,561,483.50	237,507,322.88
Subtotal							55,622,374.97	2,872,761,177.06
2nd Quarter of 2018								
Shipment 60	P-26.5	12/28/2017	P-27.1	4/7/2018	P-28.5	12/23/2017	(174,953.25)	(9,114,889.37)
Shipment 61	P-26	3/1/2018	P-27.5	4/17/2018	P-28	2/25/2018	168,705.08	8,789,365.96
Shipment 62	P-26.1	5/1/2018	P-27.6	7/20/2018	P-28.7	4/26/2018	18,618,611.99	970,011,066.07
Shipment 63	P-26.6	6/7/2018	P-27.2	8/9/2018	P-28.1	6/3/2018	31,071,744.00	1,648,293,875.71
Dore 42	P-26.13	5/30/2018	P-27.12	12/17/2018	P-28.14	5/28/2018	6,609,084.70	344,961,175.92
Dore 43	P-26.14	7/2/2018	P-27.13	12/17/2018	P-28.15	6/29/2018	4,179,780.40	221,728,990.66
Subtotal							60,472,972.92	3,184,669,584.95
3rd Quarter of 2018								
Shipment 62	P-26.1	5/1/2018	P-27.6	7/20/2018	P-28.7	4/26/2018	10,822,145.67	578,259,709.59
Shipment 63	P-26.6	6/7/2018	P-27.2	8/9/2018	P-28.1	6/3/2018	(2,950,758.38)	(157,198,701.94)
Shipment 64	P-26.8	8/18/2018	P-27.7	10/13/2018	P-28.8	8/14/2018	28,521,827.76	1,519,471,852.09
Dore 44	P-26.2	8/3/2018	P-27.14	12/17/2018	P-28.16	7/31/2018	6,903,610.20	368,880,603.82
Dore 45	P-26.15	9/4/2018	P-27.15	12/17/2018	P-28.2	8/30/2018	4,186,390.20	223,025,751.51
Dore 46	P-26.16	10/2/2018	P-27.16	12/17/2018	P-28.17	9/28/2018	4,242,089.86	228,826,811.23
Subtotal							51,725,305.31	2,761,266,026.30
4th Quarter of 2018								
Shipment 64	P-26.8	8/18/2018	P-27.7	10/13/2018	P-28.8	8/14/2018	(1,820,632.58)	(98,330,545.01)
Shipment 65	P-26.9	10/23/2018	P-27.8	12/15/2018	P-28.9	10/16/2018	32,319,005.00	1,744,049,258.53
Shipment 66	P-26.18	10/30/2018	-	-	-	-	26,265,082.24	1,418,550,826.70
Dore 39	P-26.10	1/10/2018	P-27.9	12/17/2018	P-28.11	1/8/2018	15,145.06	799,189.67
Dore 40	P-26.11	3/7/2018	P-27.10	12/17/2018	P-28.12	3/1/2018	5,842.84	308,320.82
Dore 41	P-26.12	3/28/2018	P-27.11	12/17/2018	P-28.13	3/26/2018	13,245.98	698,977.12
Dore 42	P-26.13	5/30/2018	P-27.12	12/17/2018	P-28.14	5/28/2018	8,020.63	423,240.62
Dore 43	P-26.14	7/2/2018	P-27.13	12/17/2018	P-28.15	6/29/2018	5,518.73	291,217.86
Dore 44	P-26.2	8/3/2018	P-27.14	12/17/2018	P-28.16	7/31/2018	8,166.18	430,921.15
Dore 45	P-26.15	9/4/2018	P-27.15	12/17/2018	P-28.2	8/30/2018	6,030.86	318,242.45
Dore 46	P-26.16	10/2/2018	P-27.16	12/17/2018	P-28.17	9/28/2018	7,582.26	400,108.28
Dore 47	P-26.3	12/3/2018	P-27.3	12/17/2018	P-28.10	11/27/2018	5,523,251.52	291,671,930.63
Dore 48	P-26.17	12/28/2018	-	-	-	-	4,044,102.20	213,403,228.99
Subtotal							66,400,360.92	3,573,014,917.81
TOTAL							$234,221,014.12	₱12,391,711,706.12

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47 Exhibit "P-24", id., p. 904.
48 Exhibit "P-25", id., p. 936.
49 Exhibits "P-26" to "P-26.18", ICPA Exhibits, Universal Serial Bus (USB) Flash Drive.
50 Exhibits "P-27" to "P-27.16", id.
51 Exhibits "P-28" to "P-28.17", id.
52 Exhibits "P-29" to "P-29.17", id.
53 Exhibit "P-50", supra at note 20.

As can be gleaned from the above table, the following zero-rated sales declared in the total amount of ₱1,631,954,055.69 ($30,309,184.44) are supported by provisional invoices *only*:

Particular	Provisional Invoice		Sales Invoice		Bill of Lading/Airway Bill		Summary List of Sales	
	Exhibit No.	Date	Exhibit No.	Date	Exhibit No.	Date	Amount in USD	Amount in PHP
4th Quarter of 2018								
Shipment 66	P-26.18	10/30/2018	-	-	-	-	26,265,082.24	1,418,550,826.70
Dore 48	P-26.17	12/28/2018	-	-	-	-	4,044,102.20	213,403,228.99
TOTAL							$30,309,184.44	₱1,631,954,055.69

The Court noted that the relevant provisional invoices do not have the word "zero-rated" prominently written or printed on them, in clear violation of the invoicing requirements set forth in the NIRC of 1997, as amended, and RR No. 16-2005.[54]

Furthermore, nowhere in RR No. 18-2012[55], which provides the regulations for processing the authority to print (**ATP**) of official receipts, sales invoices, and other commercial invoices (including provisional invoices), was it stated that provisional invoices/commercial invoices/supplementary invoices need not contain the required information in a VAT invoice. In fact, the afore-cited Section 237 of the NIRC of 1997, as amended, requires that provisional invoices must be duly registered with the BIR and compliant with the existing rules and regulations.

In *Oceanagold (Philippines), Inc. v. Commissioner of Internal Revenue*[56], a case involving the same parties herein, this Court, sitting *En Banc*, declared:

> ...
>
> Again, nowhere in the NIRC of 1997, as amended, does it state that provisional invoices do not need to contain the words "zero-rated sale", or any other information required to be contained in a regular VAT invoice, or the final VAT invoice.

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54 Supra at pp. 13-15.

55 Regulations in the Processing of Authority to Print (ATP) Official Receipts, Sales Invoices, and Other Commercial Invoices using the On-line ATP System and Providing for the Additional Requirements in the Printing Thereof.

56 CTA EB No. 2358 (CTA Case No. 9112), 10 February 2022; Citations omitted, emphasis supplied and underscoring in the original text.

The completeness of the information contained in the provisional invoices gains particular importance in the case of petitioner, where the provisional invoice is used as proof of the actual sale and actual shipment of the goods together with the bill of lading, in determining that the sales were made within the period claimed for refund/tax credit.

In fact, in *Commissioner of Internal Revenue v. Philex Mining Corporation*, the CTA *En Banc* held:

> As correctly found by the Court in Division, it was established that the shipment date in the Bills of Lading and Provisional Invoices is the date of sale. The Final Invoices bearing dates later than the dates of shipment does not remove the fact that the sales and actual shipment of goods from the Philippines to a foreign country, as contemplated under Section 106(A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997, as amended, had actually transpired during the period of claim. The final invoices are merely additional evidence to support respondent's claimed zero-rated sales, having been issued by respondent in reference to sales transactions consummated during the period of claim.
>
> As stated in the assailed Decision, aside from the provisional invoice issued by respondent upon shipment, a final invoice was issued after the contracting parties reached an agreement regarding the final settlement of weigh[t]s, assays and quotations or final value of the shipment which is done after arrival of the shipment at the port of loading. Thus, the Final Invoices dated outside the period of claim do not cover separate sales transactions for different taxable periods, but actually relates to the sales transactions of respondent during the period of claim as indicated in the provisional invoices, bills of lading and export declarations.

The abovequoted case also reiterated the need for indicating the word "zero-rated sales" on the provisional invoices, *to wit*:

> A scrutiny of the sales invoices, both provisional and final, supporting petitioner's sales of gold to Heraeus Ltd. amounting to P1,099,909.00, shows that the same were not duly registered with the BIR as there was no BIR Permit number reflected thereon and the word 'VAT' after petitioner's TIN was not imprinted. <u>Likewise, the word 'zero-rated sales' was not stamped nor imprinted on the Provisional Invoice</u>. Thus, petitioner's reported sales in the amount of P1,099,909.00 cannot qualify for VAT zero-rating.

...

In addition, no evidence was adduced to prove the actual shipment of goods (*e.g.*, bill of lading or airway bill) for the aforesaid sales. It bears noting that under Section 106(A)(2)(a)(1)[57] of the NIRC of 1997, as amended, "export sales" is defined as:

> ...
>
> ... 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).[58]
>
> ...

The term "export sales" is further defined under Article 23 of Executive Order No. 226 (Omnibus Investments Act of 1987), which states:

> ...
>
> ART. 23. "Export sales" shall mean the Philippine port F.O.B. value, **determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents**, of exports products exported directly by a registered export producer or the net selling price of export product sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same: Provided, That sales of export products to another producer or to an export trader shall **only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents**: ...[59]
>
> ...

Likewise, in *Aniceto G. Saludo, Jr., et al. v. Hon. Court of Appeals, et al.*[60], the Supreme Court ruled that the airway bill or bill of lading is a receipt of the goods shipped, as follows:

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[57] Supra at p. 12.
[58] Emphasis supplied.
[59] Emphasis supplied.
[60] G.R. No. 95536, 23 March 1992, Citations omitted and emphasis supplied.

> ...
>
> A bill of lading is a written acknowledgment of the receipt of the goods and an agreement to transport and deliver them at a specified place to a person named or on his order. Such instrument may be called a shipping receipt, forwarder's receipt and receipt for transportation. The designation, however, is immaterial. It has been [held] that freight tickets for bus companies as well as receipts for cargo transported by all forms of transportation, whether by sea or land, fall within the definition. Under the Tariff and Customs Code, **a bill of lading includes airway bills of lading**. The two-fold character of a bill of lading is all too familiar; **it is a receipt as to the quantity and description of the goods shipped** and a contract to transport the goods to the consignee or other person therein designated, on the terms specified in such instrument.
>
> ...

Thus, zero-rated sales supported by airway bills dated outside the period of claim may be disallowed.

As for the *third* essential element (*i.e.*, the sale was paid for in acceptable foreign currency in accordance with the rules and regulations of the BSP), petitioner presented certifications issued by HSBC dated 22 March 2018.[61] Petitioner also presented the Certificate of Inward Remittances issued by The Hongkong and Shanghai Banking Corporation Limited (**HSBC**) and HSBC bank transaction details on refund made issued on 17 November 2020.[62] Based on ICPA Artuz's verification, petitioner's remaining export sales (except those previously disallowed) were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP. Hence, petitioner satisfactorily complied with the *third* essential element.

Accordingly, out of petitioner's ₱12,391,711,706.11 (equivalent to US$234,221,014.12) reported zero-rated sales arising from export sales of goods to its non-resident foreign customers (*i.e.*, Trafigura PTE Ltd. and Perth Mint Australia), only ₱10,759,757,650.42 could qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, computed as follows:

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[61] Exhibits "P-31" to "P-31.38", FOE, CD.
[62] Exhibit "P-31.4", ICPA Exhibits, USB Flash Drive.

Particulars	Zero-Rated Sales
Declared Zero-Rated Sales	₱12,391,711,706.11
Less: Disallowances	
Export sales supported only by provisional invoices with no "zero-rated" word printed thereon	1,631,954,055.69
Total Valid Zero-Rated Sales	**₱10,759,757,650.42**

THIRD (3RD) REQUISITE:
THE CLAIM MUST BE FILED WITHIN TWO (2) YEARS AFTER THE CLOSE OF THE TAXABLE QUARTER WHEN SUCH SALES WERE MADE.

In accordance with Section 112(A) and (C) of the NIRC of 1997, as amended by the TRAIN Law, the administrative claim for refund of unutilized input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The instant administrative claim covers the 1st to 4th quarters of CY 2018. Thus, petitioner's last day for filing of its administrative claim and the actual filing of its administrative claim for the said periods fell on the following dates:

Period Covered	Last Day to File Administrative Claim	Actual Date of Filing of Administrative Claim
January to March 2018 (1st Quarter)	31 July 2020	7 July 2020[63]
April to June 2018 (2nd Quarter)	31 August 2020	
July to September 2018 (3rd Quarter)	30 September 2020	
October to December 2018 (4th Quarter)	31 December 2020	

Clearly, petitioner's administrative claim was filed within the reglementary period.

[63] Exhibit "P-35" and "P-36", Division Docket, Volume I, pp. 447-456.

As to the timeliness of petitioner's judicial claim, pursuant to the TRAIN Law amendment to Section 112(C) of the NIRC of 1997, as amended, respondent had ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the administrative claim, or until 05 October 2020, to decide on petitioner's claim. However, respondent failed to act on petitioner's claim within the said 90-day period.

Section 7(a)(2) of RA 1125, as amended by RA 9282 provides:

> ...
> SECTION 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
> ...
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial**[.][64]
> ...

Furthermore, Section 11 of RA 1125, as amended by RA 9282, states:

> ...
> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — **Any party adversely affected by** a decision, ruling or **inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days** after the receipt of such decision or ruling or **after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.**[65]
> ...

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64 Emphasis supplied.
65 Emphasis supplied.

Based on the foregoing and considering the prevailing rule that an inaction on the part of the CIR is deemed a denial, petitioner had 30 days from 05 October 2020, or until **04 November 2020**, to appeal such inaction to this Court. Evidently, petitioner's judicial claim for refund was timely filed on 23 October 2020.

FOURTH (4^{TH}) REQUISITE:
THE CREDITABLE INPUT TAX DUE OR PAID MUST BE ATTRIBUTABLE TO SUCH SALES, EXCEPT THE TRANSITIONAL INPUT TAX, TO THE EXTENT THAT SUCH INPUT TAX HAS NOT BEEN APPLIED AGAINST THE OUTPUT TAX.

To satisfy the 4^{th} requisite, the following conditions must be complied with:

a. **1^{st} condition**: the input taxes are due or paid;

b. **2^{nd} condition**: the input taxes claimed are attributable to zero-rated or effectively zero-rated sales and where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales;

c. **3^{rd} condition**: the input taxes are not transitional input taxes; and,

d. **4^{th} condition**: the input taxes have not been applied against output taxes during and in the succeeding quarters.

Anent the ***3^{rd} condition***, petitioner's input taxes do not appear to be transitional input taxes since they operate to benefit only newly VAT-registered persons; thus, petitioner is deemed to have complied with the same.

As to the ***1^{st} condition***, petitioner, in its Amended Quarterly VAT Returns for the 1^{st} to 4^{th} quarters of CY 2018, declared excess and unutilized input tax amounting to ₱162,967,774.80 from its importation of goods and amortization of capital goods, as shown below:

	1st Quarter[66]	2nd Quarter[67]	3rd Quarter[68]	4th Quarter[69]	Total
a. Input tax deferred on capital goods exceeding ₱1 Million from previous quarter *(Line 20B)*	₱280,897,829.79	₱261,688,615.80	₱242,772,773.26	₱224,167,246.85	₱1,009,526,465.70
b. Importation of goods other than capital goods *(Line 21G/H)*	35,628,925.00	19,683,182.00	519,909.00	31,927,889.00	87,759,905.00
c. Input tax on purchases of capital goods exceeding ₱1 Million deferred for the succeeding period *(Line 23A)*	(261,688,615.80)	(242,772,773.26)	(224,167,246.85)	(205,689,959.99)	(934,318,595.90)
Total allowable input VAT credits	**₱54,838,138.99**	**₱38,599,024.54**	**₱19,125,435.41**	**₱50,405,175.86**	**₱162,967,774.80**

For purposes of satisfying the aforesaid condition, it is crucial that petitioner provides supporting documents to prove that the input VAT claimed during the subject period are actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, which provides:

> ...
> **SEC. 110.** *Tax Credits.* —
>
> (A) *Creditable Input Tax.* —
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> a. Purchase or **importation** of goods:
>
> i. For sale; or
> ii. For conversion into or intended to form part of a finished product for sale including packaging materials; or
> iii. For use as supplies in the course of business; or
> iv. For use as materials supplied in the sale of service; or

66 Exhibit "P-16.3", Division Docket, Volume II, p. 800.
67 Exhibit "P-17.2", id., p. 803.
68 Exhibit "P-18.2", id., p. 808.
69 Exhibit "P-19.2", id., p. 811.

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

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

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

a. To the purchaser upon consummation of sale and on importation of goods or properties; and
b. To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

Provided, That the input tax on goods purchased or **imported** in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (₱1,000,000): *Provided, however,* That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, finally,* That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.[70]

...

The above provisions implemented by Sections 4.110-1 to 4.110-3 of RR No. 16-2005, as amended by RR No. 13-2018[71], provide as follows:

...

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

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70 Emphasis supplied.

71 Regulations Implementing the Value-Added Tax Provisions under the Republic Act (RA) No. 10963, or the "Tax Reform for Acceleration and Inclusion (TRAIN)," Further Amending Revenue Regulations (RR) No. 16-2005 (Consolidated Value-Added Tax Regulations of 2005), as Amended.

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

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

a. Purchase or **importation** of goods
   1. For sale; or
   2. For conversion into or intended to form part of a finished product for sale, including packaging materials; or
   3. For use as supplies in the course of business; or
   4. For use as raw materials supplied in the sale of services; or
   5. For use in trade or business for which deduction for depreciation or amortization is allowed under the Tax Code.

...

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

a. To the importer upon payment of VAT prior to the release of goods from customs custody[.]

...

SEC. 4.110-3. ***Claim for Input Tax on Depreciable Goods.*** — Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million pesos (₱1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:

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

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

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed One million pesos (₱1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition...

...

c. The amortization of the input VAT shall only be allowed until December 31, 2021 after which taxpayers with unutilized input VAT on capital goods purchased or imported shall be allowed to apply the same as scheduled until fully utilized: Provided, That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.[72]

...

Meanwhile, Section 4.110-8 of RR No. 16-2005 provides for the substantiation requirements of input tax credits, as follows:

...

SEC. 4.110-8. ***<u>Substantiation of Input Tax Credits.</u>*** —

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

   1. For the **importation** of goods — import entry or other equivalent document showing actual payment of VAT on the imported goods.[73]

...

To establish that petitioner incurred/paid the aforementioned input VAT, petitioner submitted the original printouts of Single Administrative Document (SAD)[74], Statement of Settlement of Duties

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[72] Emphasis supplied.
[73] Emphasis supplied.
[74] Exhibits "P-33-1" to "P-33.1397-1", ICPA Exhibits, USB Flash Drive.

and Taxes (SSDT)[75], HSBC Bank Payment Details[76], Schedule of Importations for the period January 1, 2018 to December 31, 2018[77], Schedule of Amortization of Input Tax on Imported Capital Goods Exceeding ₱1 Million from Previous Quarter/Year[78], Schedule of Amortization of Input Tax on Locally Purchased Capital Goods Exceeding ₱1 Million from Previous Quarter/Year[79] and local suppliers' invoices.[80]

However, ICPA Artuz noted the following exceptions in the amount of ₱1,384,450.93:

Particulars	ICPA Annex	Amount
Amortization of 2014 domestic purchase of capital goods exceeding ₱1 Million supported only by scanned copy of VAT Invoice	Annex 2-Q1.7 Annex 2-Q2.7 Annex 2-Q3.7 Annex 2-Q4.7	₱36,857.16
Amortization of 2013 domestic purchase of capital goods exceeding ₱1 Million supported only by scanned copy of VAT Invoice	Annex 2-Q1.8 Annex 2-Q2.8	37,071.44
Importation of goods other than capital goods supported by original print-outs of SAD and further supported by original print-outs of Bank Statements but not supported by SSDT	Annex 2-Q4.9	156,130.00
Amortization of 2013 domestic purchase of capital goods exceeding ₱1 Million not supported	Annex 2-Q1.10 Annex 2-Q2.10 Annex 2-Q3.10	897,676.42
Difference in input VAT amount on importation of goods other than capital goods *per* schedules and supporting documents	Annex 2-Q1.11	(7,650.00)
Difference in 2013 amortization of input VAT amount on domestic purchase of capital goods exceeding ₱1 Million *per* schedules and supporting documents (see Table 23, item 5)	Annex 2-Q1.12	264,365.91
Total		**₱1,384,450.93**

Accordingly, out of petitioner's total allowable input VAT credits of ₱162,967,774.80 for the 1st to 4th quarters of CY 2018, only the amount of ₱161,583,323.87 represents the substantiated input VAT, computed as follows:

[75] Exhibits "P-33-2" to "P-33.1390-2", id.
[76] Exhibits "P-33-3" to "P-33.967-3", id.
[77] Exhibit "P-34", id.
[78] Exhibit "P-34.1", id.
[79] Exhibit "P-34.2", id.
[80] Exhibits "P-33-5" to "P-33.10-5", id.

Total Amount of Input VAT	₱162,967,774.80
Less: ICPA's noted exceptions	1,384,450.93
Substantiated/Valid Input	**₱161,583,323.87**

Pursuant to the 2^{nd} ***condition***, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume, as follows:

	Amount
Total VATable Sales [A]	₱8,409,312.49
Total Zero-Rated Sales [B]	12,391,711,706.11
Total Sales [C= A + B]	12,400,121,018.60
Valid Zero-Rated Sales [D]	10,759,757,650.42
Percentage of Valid Zero-Rated Sales [E= D/C]	86.77%
Substantiated/Valid Input VAT [F]	161,583,323.87
Substantiated /Valid Input VAT attributable to Valid Zero-Rated Sales [G= E x F]	140,205,850.12
Less: Portion of the Input VAT attributable to Zero-Rated Sales already applied directly against the Output VAT [H]	895,040.06[81]
Excess and Unutilized Input VAT attributable to Valid Zero-Rated Sales [G - H]	**₱139,310,810.06**

Furthermore, the claimed input VAT of ₱161,958,657.30 was deducted as "VAT Refund/TCC Claimed" in petitioner's 4^{th} Quarter 2019 Amended VAT Return[82], thus complying with the 4^{th} ***condition***.

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81 *Computed as:*

	Amount	
Input VAT attributable to Zero-Rated Sales *per* VAT Returns [E=C x D]		₱162,853,697.36
Total Zero-Rated Sales [A]	₱12,391,711,706.11	
Total Sales [B]	12,400,121,018.60	
Percentage of Zero-Rated Sales [C= A/B]	99.93%	
Total Amount of Input VAT [D]	162,967,774.80	
Unutilized Input VAT arising from Zero-Rated Sales subject for refund [F]		161,958,657.30
Input VAT attributable applied directly against output VAT due [G= E – F]		**₱895,040.06**

82 Exhibit "P-69", ICPA Exhibits, USB Flash Drive.

In sum, petitioner has sufficiently proven its entitlement to the refund of the lesser amount of ₱139,310,810.06 representing unutilized input VAT attributable to its zero-rated sales for the 1st to 4th quarters of CY 2018.

WHEREFORE, the foregoing premises considered, the Petition for Review filed by petitioner Oceanagold (Philippines), Inc. on 23 October 2020 is **PARTIALLY GRANTED.** Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to issue a **REFUND** or **TAX CREDIT CERTIFICATE** in the amount of **₱139,310,810.06** in favor of petitioner.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
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.

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice